
Office of Utilities Regulation

REQUEST FOR PROPOSALS

2016/TEL/002/RFP.001

**CONSULTANCY FOR THE DEVELOPMENT OF
GUIDELINES RELATED TO UNFAIR CONTRACT TERMS
AND THE
ASSESSMENT OF CUSTOMER CONTRACTS IN THE
TELECOMMUNICATIONS SECTOR**



OFFICE OF UTILITIES REGULATION

2016 MARCH 14

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Section 1. Letter of Invitation

2016 March 14,

Dear Sir/Madam:

1. The Office of Utilities Regulation ("OUR") has committed funds to undertake the development of guidelines related to unfair contract terms and the assessment of Customer Contracts in the telecommunications sector.
2. The OUR now invites proposals to provide the following consulting services: Consultancy for the Development of Guidelines Related to Unfair Contract Terms and the Assessment of Customer Contracts in the Telecommunications Sector. More details on the services are provided in Section 5: Terms of Reference.
3. A firm will be selected under a Fixed Budget (SFB) method described in Volume 3 of the Government of Jamaica Handbook of Public Sector Procurement Procedures (Updated March, 2014) which can be found at the following website - www.mof.gov.jm - as well as the procedures described in this RFP.
4. The RFP includes the following documents:
 - Section 1 - Letter of Invitation
 - Section 2 - Instructions to Consultants (including Data Sheet)
 - Section 3 - Technical Proposal - Standard Forms
 - Section 4 - Financial Proposal - Standard Forms
 - Section 5 - Terms of Reference
 - Section 6 - Standard Form of Contract

Your proposal should be received by **2016 April 28 at 11:00 a.m.** Eastern Standard Time and should be addressed to:

**Consultancy – Development of Guidelines Related to Unfair Contract Terms and the
Assessment of Customer Contracts Office of Utilities Regulation
3rd Floor, PCJ Resource Centre
36 Trafalgar Road
Kingston 10**

Yours sincerely,

OFFICE OF UTILITIES REGULATION

.....
Cheryl Lewis
General Counsel

Section 2. Instructions to Consultants

Definitions

- a. "OUR" means the Office of Utilities Regulation.
- b. "Consultant" means any entity or person that may provide or provides the Services to the OUR under the Contract.
- c. "Contract" means the contract signed by the Parties and all the attached documents as listed in its Clause 1, that is, the General Conditions (GC), the Special Conditions (SC), and the Appendices.
- d. "Customer" is as defined in the Telecommunications Act to mean a person who is provided with a facility or specified service by a service provider or carrier and includes the end user of that service or facility.
- e. "Data Sheet" means the part of the Instructions to Consultants used to reflect specific assignment conditions or amendments to these Instructions to Consultants.
- f. "Day" means calendar day.
- g. "Facility" is as defined in the Telecommunications Act to mean any physical component of a telecommunications network (other than customer equipment) including wires, lines, poles, ducts, sites, towers, satellite earth stations or any other apparatus using the radio spectrum, submarine cables and other tangible resources used in the provision of a specified service.
- h. "Government" means the Government of Jamaica
- i. "Instructions to Consultants" means this document included as Section 2 of the RFP.
- j. "LOI" means the Letter of Invitation included in the RFP at Section 1.
- k. "Personnel" means such professionals and support staff provided by the Consultant or by any Sub-Consultant and assigned to perform the Services or any part thereof; "Foreign Personnel" means such professionals and support staff who at the time of being so provided had their domicile outside of Jamaica; "Local Personnel" means such professionals and support staff who at the time of being so provided had their domicile inside Jamaica.
- l. "Proposal" means the Technical Proposal and the Financial Proposal.
- m. "RFP" means this Request For Proposal.
- n. "Services" means the work to be performed by the Consultant pursuant to the Contract.

- o. “Specified service” is as defined in the Telecommunications Act to mean a telecommunications service or such other service as may be prescribed.
- p. “Sub-Consultant” means any person or entity to whom the Consultant subcontracts any part of the Services.
- q. “Terms of Reference” or “TOR” means the document included in the RFP at Section 5 which explains the objectives, scope of work, activities, tasks to be performed, respective responsibilities of the OUR and the Consultant, and expected results and deliverables of the assignment.

1. Introduction

- 1.1 The OUR will select a consulting firm/organization to provide the Services in accordance with the method of selection specified in the Data Sheet.
- 1.2 Consultants are invited to submit a Technical Proposal and a Financial Proposal for consulting services as specified in the Data Sheet for the consulting services required for the assignment named in the Data Sheet. The Proposal will be the basis for contract negotiations and ultimately for a signed Contract with the selected Consultant.
- 1.3 Consultants should familiarize themselves with local conditions and take them into account in preparing their Proposals. To obtain first-hand information on the assignment and local conditions, Consultants are encouraged to attend the pre-proposal conference if one is specified in the Data Sheet. Attending the pre-proposal conference is optional. Consultants should contact the OUR’s representative named in the Data Sheet to arrange for their visit or to obtain additional information on the pre-proposal conference. Consultants should ensure that these officials are advised of the visit in adequate time to allow them to make appropriate arrangements.
- 1.4 The OUR will timely provide, at no cost to the Consultants, the inputs and facilities specified in the Data Sheet, assist the firm in obtaining licences and permits needed to carry out the Services, and make available relevant project data and reports.
- 1.5 Consultants shall bear all costs associated with the preparation and submission of their proposals and contract negotiation.

The OUR is not bound to accept any proposal, and reserves the right to annul the selection process at any time prior to Contract award, without thereby incurring any liability to the Consultants.

- 1.5.1 The OUR reserves the right not to award a contract to any party with whom we are currently in litigation or in the past engaged in litigation.

Conflict of Interest

- 1.6 Consultants are required to provide professional, objective, and impartial advice and at all times hold the OUR's interests paramount, strictly avoid conflicts with other assignments or their own corporate interests and act without any consideration for future work.

- 1.6.1 Without limitation on the generality of the foregoing, Consultants, and any of their affiliates, shall be considered to have a conflict of interest and shall not be contracted, under any of the circumstances set forth below:

Conflicting activities

- (i) A firm that has been engaged by the OUR to provide goods, works or services other than consulting services for a project, and any of its affiliates, shall be disqualified from providing consulting services related to those goods, works or services. Conversely, a firm hired to provide consulting services for the preparation or implementation of a project, and any of its affiliates, shall be disqualified from subsequently providing goods or works or services other than consulting services resulting from or directly related to the firm's consulting services for such preparation or implementation. For the purpose of this paragraph, services other than consulting services are defined as those leading to a measurable physical output, for example surveys, exploratory drilling, aerial photography, and satellite imagery.

Conflicting assignments

- (ii) A Consultant (including its Personnel and Sub-Consultants) or any of its affiliates shall not be hired for any assignment that, by its nature, may be in conflict with another assignment of the Consultant to be executed for the OUR or for

another procuring entity. For example, a Consultant hired to prepare engineering design for an infrastructure project shall not be engaged to prepare an independent environmental assessment for the same project, and a Consultant assisting the OUR in the privatization of public assets shall not purchase, nor advise the procuring entities of, such assets. Similarly, a Consultant hired to prepare Terms of Reference for an assignment should not be hired for the assignment in question.

Conflicting relationships

- (iii) A Consultant (including its Personnel and Sub-Consultants) that has a business or family relationship with a member of the OUR's staff who is directly or indirectly involved in any part of (i) the preparation of the Terms of Reference of the assignment, (ii) the selection process for such assignment, or (iii) supervision of the Contract, may not be awarded a Contract, unless the conflict stemming from this relationship has been resolved in a manner acceptable to the OUR throughout the selection process and the execution of the Contract.

1.6.2 Consultants have an obligation to disclose any situation of actual or potential conflict that impacts their capacity to serve the best interest of the OUR, or that may reasonably be perceived as having this effect. Failure to disclose said situations may lead to the disqualification of the Consultant or the termination of its Contract.

1.6.3 No agent or current employees of the OUR shall be permitted to work as Consultants in connection with the project to which this RFP relates. Recruiting former employees of the OUR to work on this project is acceptable provided no conflict of interest exists. If the Consultant nominates any Government employee as Personnel in its technical proposal, such Personnel must have written certification from the Government or their employer confirming that they are on leave without pay from their official position and allowed to work full-time outside of their previous official position. Such certification shall be provided to the OUR by the

Consultant as part of its technical proposal.

**Unfair
Advantage**

1.6.4 If a Consultant could derive a competitive advantage from having provided consulting services related to the assignment in question, the OUR shall make available to all other Consultants together with this RFP all information that would in that respect give such Consultant any competitive advantage over competing Consultants.

**Fraud and
Corruption**

1.7 The OUR requires that Consultants, observe the highest standard of ethics during the procurement and execution of its contracts. In pursuit of this policy:

- (a) the terms set forth below for the purposes of this provision, are defined as follows:

“corrupt practice” means the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence the action of a public official in the procurement process or in contract execution;

“fraudulent practice” means a misrepresentation or omission of facts in order to influence a procurement process or the execution of a contract, to the detriment of the OUR and includes collusive practice among bidders (prior to or after bid submission) designed to establish bid prices at artificial non-competitive levels and to deprive the OUR of the benefits of free and open competition;

“collusive practice” means a scheme or arrangement between two or more bidders, with or without the knowledge of the OUR, designed to establish bid prices at artificial non-competitive levels or to influence the action of any party in the procurement process or the execution of a contract; and

“coercive practice” means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the procurement process or affect the execution of a contract;

- (b) the OUR will reject a proposal for award if it determines that the Consultant recommended for award has, directly or through an agent, engaged in corrupt, fraudulent, collusive

or coercive practices in competing for the Contract in question;

- (c) the OUR will sanction a firm or individual, including declaring them ineligible, either indefinitely or for a stated period of time, to be awarded a contract with the OUR if it at any time determines that they have, directly or through an agent, engaged in corrupt, fraudulent, collusive or coercive practices in competing for, or in executing, a contract with the OUR; and
- (d) the OUR will have the right to require that a provision be included in the RFP and in its contracts, requiring Consultants to permit the OUR to inspect their accounts and records and other documents relating to the Bid submission and contract performance and to have them audited by auditors appointed by the OUR.

1.8 Consultants shall furnish information on commissions and gratuities, if any, paid or to be paid to agents relating to this proposal and during execution of the assignment if the Consultant is awarded the Contract, as requested in the Financial Proposal submission form (Section 4).

Origin of Consulting Services

- 1.9 Consulting Services provided under the Contract may originate from any country except where:
- the procurement is covered under a Free Trade Agreement
 - a multilateral funding agency policy which limits the origin.
 - the procurement is limited to local consultants.

Only one Proposal

1.10 Consultants may only submit one proposal. If a Consultant submits or participates in more than one proposal, such proposals shall be disqualified. However, this does not limit the participation of the same Sub-Consultant, including individual experts, to more than one Proposal.

Proposal Validity

1.11 The Data Sheet indicates how long Consultants' Proposals must remain valid after the submission date. During this period, Consultants shall maintain the availability of Professional staff nominated in the Proposal. The OUR will make its best effort to

complete contract negotiations within this period. Should the need arise however, the OUR may request Consultants to extend the validity period of their Proposals. Consultants who agree to such extension shall confirm that they maintain the availability of the Professional staff nominated in the Proposal, or in their confirmation of extension of validity of the Proposal, Consultants could submit new staff in replacement, who would be considered in the final evaluation for contract award. Consultants who do not agree have the right to refuse to extend the validity of their Proposals.

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| 2. Clarification and Amendment of RFP Documents/ Extension of Deadline for Submission of Proposals | <p>2.1 Consultants may request a clarification of any of the RFP documents up to the number of days indicated in the Data Sheet before the Proposal submission date. Any request for clarification must be sent in writing, or by standard electronic means to the OUR's address indicated in the Data Sheet. The OUR will respond in writing, or by standard electronic means and will send written copies of the response (including an explanation of the query but without identifying the source of inquiry) to all Consultants. Should the OUR deem it necessary to amend the RFP as a result of a clarification, it shall do so following the procedure under paragraph 2.2 of these Instructions to Consultants.</p> <p>2.2 At any time before the submission of Proposals, the OUR may amend the RFP by issuing an addendum in writing or by standard electronic means. The addendum shall be sent to all Consultants and will be binding on them. Consultants shall acknowledge receipt of all amendments. To give Consultants reasonable time in which to take an amendment into account in their Proposals the OUR may, if the amendment is substantial, extend the deadline for the submission of Proposals.</p> <p>2.3 The OUR reserves the right to extend the deadline for the submission of Proposals for any other reason it may deem fit. Such extension of time shall be notified by way of an addendum issued by the OUR in accordance with paragraph 2.2 of these Instructions to Consultants.</p> |
| 3. Preparation of Proposals | <p>3.1 The Proposal, as well as all supporting documentation and related correspondence exchanged by the Consultants and the OUR, shall be written in the English language.</p> <p>3.2 In preparing their Proposal, Consultants are expected to</p> |

examine in detail the documents comprising the RFP. Material deficiencies in providing the information requested may result in rejection of a Proposal.

3.3 While preparing the Technical Proposal, Consultants must give particular attention to the following:

(a) If a Consultant considers that it may enhance its expertise for the assignment by associating with other Consultants in a joint venture or sub-consultancy, it may do so. In case of a joint venture, all partners shall be jointly and severally liable and shall indicate in its Technical Proposal who will act as the leader of the joint venture.

(b) The estimated number of professional calendar-months or the budget for executing the assignment shall be shown in the Data Sheet, but not both. However, the Proposal shall be based on the number of Professional staff-months or budget estimated by the Consultants.

Language

(c) Documents to be issued by the Consultants as part of this assignment must be in English. It is expected that the firm's Personnel be proficient in reading, writing, and speaking English.

**Technical
Proposal Format
and Content**

3.4 Consultants are required to submit a Full Technical Proposal (FTP). The Data Sheet indicates the format of the Technical Proposal to be submitted. Submission of the wrong type of Technical Proposal will result in the Proposal being deemed non-responsive. The Technical Proposal shall provide the information indicated in the following paragraphs from (a) to (g) using the attached Standard Forms (Section 3 of this RFP).

(a) A brief description of the Consultants' organization and an outline of recent experience of the Consultants and, in the case of joint venture, for each partner, on assignments of a similar nature is required in Form TECH-2 of Section 3. For each assignment, the outline should indicate the names of Sub-Consultants/ Professional staff, duration of the assignment, contract amount, and Consultant's involvement. Information should be provided only for those assignments for which the Consultant was

legally contracted as a corporation or as one of the major firms within a joint venture. Assignments completed by individual Professional staff working privately or through other consulting firms cannot be claimed as the experience of the Consultant, or that of the Consultant's associates, but can be claimed by the Professional staff themselves in their CVs. Consultants should be prepared to substantiate the claimed experience if so requested by the OUR.

- (b) Comments and suggestions on the Terms of Reference including workable suggestions that could improve the quality/ effectiveness of the assignment; and on requirements for counterpart staff and facilities including: administrative support, office space, local transportation, equipment, data, etc. to be provided by the OUR (Form TECH-3 of Section 3 of the RFP).
- (c) A description of the approach, methodology and work plan for performing the assignment covering the following subjects: technical approach and methodology, work plan, and organization and staffing schedule. Guidance on the content of this section of the Technical Proposals is provided under Form TECH-4 of Section 3. The work plan should be consistent with the Work Schedule (Form TECH-8 of Section 3) which will show in the form of a bar chart the timing proposed for each activity.
- (d) The list of the proposed professional staff team by area of expertise, the position that would be assigned to each staff team member, and their tasks (Form TECH-5 of Section 3).
- (e) Estimates of the staff input (staff-months of foreign and local professionals) needed to carry out the assignment (Form TECH-7 of Section 3). The staff-months input should be indicated separately for home office and field activities, and for foreign and local professional staff.
- (f) CVs of the professional staff signed by the staff themselves or by the authorized representative of the professional staff (Form TECH-6 of Section 3).

- (g) A detailed description of the proposed methodology and staffing for training.
- 3.5 The Technical Proposal shall not include any financial information. A Technical Proposal containing financial information may be declared non responsive.
- Financial Proposals**
- 3.6 The Financial Proposal shall be prepared using the attached Standard Form (Section 4). It shall list all costs associated with the assignment, including (a) remuneration for staff (foreign and local, in the field and at the Consultants' home office), and (b) reimbursable expenses indicated in the Data Sheet. If appropriate, these costs should be broken down by activity and, if appropriate, into foreign and local expenditures. All activities and items described in the Technical Proposal must be priced separately; activities and items described in the Technical Proposal but not priced, shall be assumed to be included in the prices of other activities or items.
- Taxes**
- 3.7 The Consultant may be subject to Jamaican taxes (such as: value added or sales tax, social charges or income taxes on non-resident foreign Personnel or resident Personnel, duties, fees, levies) on amounts payable by the OUR under the Contract. The Consultant should take any such taxes into account when finalizing its Financial Proposal as it will be responsible for paying such taxes.
- 3.8 Consultants shall quote the price of their services and costs in the Financial Proposal in United States Dollars. Notwithstanding the foregoing, some or all payments under the Contract to a Consultant which is resident in Jamaica may be made in Jamaican dollars. In this case, the Contract price shall be converted to Jamaican dollars at the prevailing rate of exchange published by the Bank of Jamaica as at the date of execution of the Contract by the OUR and the successful Consultant.
- 3.9 Commissions and gratuities, if any, paid or to be paid by Consultants and related to the assignment will be listed in the Financial Proposal Form FIN-1 of Section 4.
- 4. Submission, Receipt, and Opening of Proposals**
- 4.1 The original proposal (Technical Proposal and Financial Proposal) shall contain no interlineations or overwriting, except as necessary to correct errors made by the Consultants themselves. The person who signs the proposal must initial such

corrections. Submission letters for both Technical and Financial Proposals should respectively be in the format of TECH-1 of Section 3, and FIN-1 of Section 4, respectively.

- 4.2 An authorized representative of the Consultants shall initial all pages of the original Technical and Financial Proposals. The authorization shall be in the form of a written power of attorney accompanying the Proposal or in any other form demonstrating that the representative has been duly authorized to sign. The signed Technical and Financial Proposals shall be marked "ORIGINAL".
- 4.3 The Technical Proposal shall be marked "**ORIGINAL**" or "**COPY**" as appropriate and in such number of copies and in such form as indicated in the Data Sheet. All required copies of the Technical Proposal are to be made from the original. If there are discrepancies between the original and the copies of the Technical Proposal, the original shall govern.
- 4.4 The original and all copies of the Technical Proposal shall be placed in a sealed envelope clearly marked "**TECHNICAL PROPOSAL**". Similarly, the original Financial Proposal shall be placed in a sealed envelope clearly marked "**FINANCIAL PROPOSAL**" followed by the name of the assignment, and with a warning "**DO NOT OPEN WITH THE TECHNICAL PROPOSAL.**" The envelopes containing the Technical and Financial Proposals shall be placed into an outer envelope and sealed. This outer envelope shall bear the submission address, reference number and title, and be clearly marked "**DO NOT OPEN BEFORE 11:00 A.M. EASTERN STANDARD TIME ON 2016 APRIL 28**". The OUR shall not be responsible for misplacement, losing or premature opening if the outer envelope is not sealed and/or marked as stipulated. This circumstance may be cause for Proposal rejection. Non-compliance with the requirements specified in this paragraph 4.4 may be a ground for rejection of the Proposal. If the Financial Proposal is not submitted in a separate sealed envelope duly marked as indicated above, this will constitute grounds for declaring the Proposal non-responsive.
- 4.5 The Proposals must be sent to the address indicated in the Data Sheet and deposited in the TENDER BOX provided at that address for this purpose no later than the time and the date indicated in the Data Sheet, or any extension to this date in accordance with paragraph 2.3. Any proposal received by the

OUR after the deadline for submission shall be returned unopened.

- 4.6 The OUR shall open the Technical Proposal immediately after the deadline for their submission, at the date, time and place indicated in the Data Sheet. The envelopes with the Financial Proposal shall remain sealed and securely stored.

**5. Proposal
Evaluation**

- 5.1 From the time the Proposals are opened to the time the Contract is awarded, the Consultants should not contact the OUR on any matter related to its Technical and/or Financial Proposal. Any effort by Consultants to influence the OUR in the examination, evaluation, ranking of Proposals, and recommendation for award of Contract may result in the rejection of the Consultants' Proposal.

Evaluators of Technical Proposals shall have no access to the Financial Proposals until the technical evaluation is concluded.

**Evaluation of
Technical
Proposals**

- 5.2 The evaluation committee established by the OUR (the "Evaluation Committee") shall evaluate the Technical Proposals on the basis of their responsiveness to the Terms of Reference, applying the evaluation criteria, subcriteria, and point system specified in the Data Sheet. Each responsive Proposal will be given a technical score (St). A Proposal shall be rejected at this stage if it does not respond to important aspects of the RFP, and particularly the Terms of Reference, or if it fails to achieve the minimum technical score indicated in the Data Sheet.

**Public Opening
and Evaluation
of Financial
Proposals**

- 5.3 After the technical evaluation is completed the OUR shall notify those Consultants whose Proposals did not meet the minimum qualifying mark or were considered non responsive to the RFP and TOR, that their Financial Proposals will be returned unopened after completing the selection process. Where possible the financial proposals should be opened publicly. In this case, the OUR shall simultaneously notify in writing Consultants that have secured the minimum qualifying mark, of the date, time and location for opening of their Financial Proposals. The opening date should allow Consultants sufficient time to make arrangements for attending the opening. Consultants' attendance at the opening of Financial Proposals is optional.

- 5.4 Financial Proposals shall be opened publicly in the presence of

the Consultants' representatives who choose to attend. The name of the Consultants, and the technical scores of the Consultants shall be read aloud. The Financial Proposal of the Consultants who met the minimum qualifying mark will then be inspected to confirm that they have remained sealed and unopened. These Financial Proposals shall then be opened, and the total prices read aloud and recorded. Copy of the record shall be sent to all Consultants.

5.5 The Evaluation Committee will correct any computational errors in the Financial Proposals. When correcting computational errors, in case of discrepancy between a partial amount and the total amount the partial amount will prevail, or between word and figures the amount in words will prevail. In addition to the above corrections, as indicated under paragraph 3.6, activities and items described in the Technical Proposal but not priced, shall be assumed to be included in the prices of other activities or items. In case an activity or line item is quantified in the Financial Proposal differently from the Technical Proposal, no corrections are applied to the Financial Proposal in this respect.

5.6 The OUR will select the Consultant that submitted the highest ranked Technical Proposal within the budget.

6. Negotiations

6.1 The date and address of negotiations will be notified to the Consultant whose Proposal has received the highest combined score as indicated in paragraph 5.6 above. The invited Consultant will, as a pre-requisite for attendance at the negotiations, confirm availability of all Professional staff indicated in its Proposal. Failure in satisfying such requirements may result in the OUR proceeding to negotiate with the next highest ranked Consultant. Representatives conducting negotiations on behalf of the Consultant must have written authority to negotiate and conclude a Contract.

Technical negotiations

6.2 Negotiations will include a discussion of the Technical Proposal, the proposed technical approach and methodology, work plan, and organization and staffing, and any suggestions made by the Consultant to improve the Terms of Reference. The OUR and the Consultants will finalize the Terms of Reference, staffing schedule, work schedule, logistics, and reporting. These documents will then be incorporated in the Contract as "Description of Services". Special attention will be paid to clearly defining the inputs and facilities required from the OUR

to ensure satisfactory implementation of the assignment. The OUR shall prepare minutes of negotiations which will be signed by the OUR and the Consultant.

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| Financial negotiations | 6.3 | It is the responsibility of the Consultant, before starting financial negotiations, to contact the local tax authorities to determine the local tax amount, if any, to be paid by the Consultant under the Contract. The financial negotiations will include a clarification (if any) of the firm's tax liability in Jamaica, and the manner in which it will be reflected in the Contract; and will reflect the agreed technical modifications in the cost of the services. Unless there are exceptional reasons, the financial negotiations will involve neither the remuneration rates for staff nor other proposed unit rates. |
| Availability of Professional staff/experts | 6.4 | Having selected the Consultant on the basis of, among other things, an evaluation of proposed Professional staff, the OUR expects to negotiate a Contract on the basis of the Professional staff named in the Proposal. Before contract negotiations, the OUR will require assurances that the Professional staff will be actually available. The OUR will not consider substitutions during contract negotiations unless both parties agree that undue delay in the selection process makes such substitution unavoidable or for reasons such as death or medical incapacity. If this is not the case and if it is established that Professional staff were offered in the Proposal without confirming their availability, the Consultant may be disqualified. Any proposed substitute shall have equivalent or better qualifications and experience than the original candidate and be submitted by the Consultant within the period of time specified in the letter of invitation to negotiate. |
| Conclusion of the negotiations | 6.5 | Negotiations will conclude with a review of the draft Contract. To complete negotiations the OUR and the Consultant will initial the agreed Contract. If negotiations fail, the OUR may invite the Consultant whose Proposal received the second highest combined score to negotiate a Contract. |
| 7. Award of Contract | 7.1 | After completing negotiations, the OUR shall award the Contract to the selected Consultant and publish notice of the award on its website. After Contract signature, the OUR shall promptly notify all other Consultants who have submitted proposals of the award and return the unopened Financial Proposals to the unsuccessful Consultants. |

- 7.2 The Consultant is expected to commence the assignment on the date and at the location specified in the Data Sheet.

8. Confidentiality

- 8.1 Information relating to evaluation of Proposals and recommendations concerning awards shall not be disclosed to the Consultants who submitted Proposals or to other persons not officially concerned with the process, until the publication of the award of Contract. The undue use by any Consultant of confidential information related to the process may result in the rejection of its Proposal.

Instructions to Consultants

DATA SHEET

| Paragraph Reference | Modifications of/Additions to Instructions to Consultants |
|---------------------|---|
| 1.1 | Method of selection: Selection under a Fixed Budget (SFB) |
| 1.2 | <p>The Financial Proposal is to be submitted in a separate envelope from the Technical Proposal.</p> <p>Name of the assignment is: Consultancy for the Development of Guidelines Related to Unfair Contract Terms and the Assessment of Customer Contracts in the Telecommunications Sector</p> |
| 1.3 | There will be no pre-proposal conference. |
| 1.4 | <p>The OUR will provide at no cost to the Consultant the following inputs and facilities:</p> <p>When the Consultant is performing the Services at the OUR offices, the OUR shall provide office accommodation, internet access, photocopying, printing, facsimile, local and international telephone calls, lunch, and transportation to and from the airport.</p> <p>The performance of the Services may not necessarily require the physical presence of the Consultant in Jamaica.</p> |
| 1.6.1 | <p>An additional sub-paragraph (iv) shall be added to paragraph 1.6.1 of the Instructions to Consultants as follows:</p> <p>Contracts with Telecommunications Services Providers</p> <p>A Consultant (including its Personnel and Sub-Consultants) that is affiliated to, employed by or engaged in a contract for services, with any of the telecommunications service providers operating in Jamaica or any of their affiliated companies, whether operating in Jamaica or not, shall not be eligible for award of Contract.</p> |
| 1.9 | Consulting Services provided under the Contract may originate from any country. |

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| 1.11 | <p>Proposals must remain valid for <u>one hundred and twenty (120) days</u> after the Proposal submission date, i.e. until: 2016 April 28.</p> <p>Only if the final evaluation for contract award has not yet been completed will Consultants be permitted, in their confirmation of extension of validity of the Proposal, to submit new staff in replacement of the professional staff named on the Proposal. The new staff would then be considered in the final evaluation for contract award.</p> |
| 2.1 | <p>Clarifications may be requested no later than <u>seven (7) days</u> before the Proposal submission date.</p> <p>The address for requesting clarifications is:</p> <p>Office of Utilities Regulation 3rd Floor, PCJ Resource Centre 36 Trafalgar Road Kingston 10</p> <p><u>Attention: Cheryl Lewis</u></p> <p>Facsimile: (876) 929-3635 E-mail: ConsulDevGuidelines@our.org.jm</p> |
| 3.3(a) | <p>The indication as to the leader of the joint venture should be accompanied by any relevant Power of Attorney or other acceptable documentation evidencing the authority of the leader to act on behalf of the other members of the joint venture.</p> |
| 3.3 (b) | <p>An additional subparagraph (i) shall be added to Paragraph 3.3(b) of the Instructions to Consultants as follows:</p> <p>For fixed-budget-based assignments, the available budget is given in the Data Sheet, and the Financial Proposal shall not exceed this budget, while the estimated number of Professional staff-months shall not be disclosed.</p> <p>The available budget is Seventy-Five Thousand United States Dollars (US\$75,000.00).</p> |

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| 3.4 | <p>The format of the Technical Proposal to be submitted is the Full Technical Proposal (FTP). Information should therefore be provided in the formats indicated in Section 3: Technical Proposal Standard Forms:</p> <p>TECH-1 Technical Proposal Submission Form</p> <p>TECH-2 Consultant's Organization and Experience</p> <p> A Consultant's Organization</p> <p> B Consultant's Experience</p> <p>TECH-3 Comments or Suggestions on the Terms of Reference and on Counterpart Staff and Facilities to be Provided by the OUR</p> <p> A On the Terms of Reference</p> <p> B On the Counterpart Staff and Facilities</p> <p>TECH-4 Description of the Approach, Methodology and Work Plan for Performing the Assignment</p> <p>TECH-5 Team Composition and Task Assignments</p> <p>TECH-6 Curriculum Vitae (CV) for Proposed Professional Staff</p> <p>TECH-7 Staffing Schedule</p> <p>TECH-8 Work Schedule</p> |
| 3.4 (g) | Training is NOT a specific component of this assignment. |
| 3.6 | <p>The Financial Proposal shall include a breakdown of the following reimbursable expenses:</p> <p>(1) a per diem allowance in respect of Personnel of the Consultant for every day in which the Personnel shall be absent from its home office for purposes of the Services;</p> <p>(2) cost of necessary travel, including transportation of the Personnel by the most appropriate means of transport and the most direct practicable route;</p> <p>(3) other allowances where applicable and provisional or fixed sums (if any); and</p> <p>(4) cost of such further items required for purposes of the Services not covered in the foregoing.</p> <p>Additionally, Financial Proposals are to be based on a fixed fee and are to indicate how the proposed overall Project costs have been developed, including staff man-hours and the relevant hourly/daily rates; travel and</p> |

| | |
|----------------------|--|
| | accommodation expenses, office expenses; overheads, contingencies and all other relevant costs. |
| 3.7 | <ol style="list-style-type: none"> 1. Amounts payable by the OUR to the Consultant under the Contract may be subject to local taxation. 2. The Consultant shall ascertain its liability for Jamaican taxes, duties, fees or other impositions, and take any such taxes, duties, fees and other impositions, if any, into account when finalizing its Financial Proposal, as it will be responsible for paying such taxes. <u>The proposed Contract Sum shall be deemed to include all such taxes, duties, fees or other impositions.</u> 3. It should be noted that under Jamaican law, the OUR <u>may</u> be required to withhold taxes from certain payments made to non-resident/overseas-based Consultants (e.g. income tax) and resident/Jamaica based Consultants (e.g. General Consumption Tax). Consultants are therefore required to do their own due diligence regarding the potential tax liability that may arise from their activities under the Contract and take this into account in the final Contract Price submitted in the Financial Proposal. 4. All resident/Jamaican based Consultants are required to present a valid Tax Compliance Letter ("TCL") or a valid Tax Compliance Certificate ("TCC") issued by the Jamaican tax authorities with its Technical Proposal. For non-resident/overseas-based Consultants, a valid TCL or TCC will be required prior to execution of the Contract. |
| 4.3 | <ol style="list-style-type: none"> 1. Consultants must submit one (1) original Technical Proposal and one (1) electronic copy of same on portable media such as CD-ROM or USB Drive, and one (1) original of the Financial Proposal and one (1) electronic copy of same, in spreadsheet format, on portable media such as CD-ROM or USB Drive. 2. Proposals transmitted by electronic mail will not be accepted and this may result in the Consultant's disqualification from the procurement process. |
| 4.4 & 4.5 | The outer envelope of the Proposal submission shall be labelled and addressed as follows: |

| | |
|------------|---|
| | <p>Attention: Consultancy for the Development of Guidelines Related to Unfair Contract Terms and the Assessment of Customer Contracts in the Telecommunications Sector</p> <p>“DO NOT OPEN BEFORE 2016 APRIL 28</p> <p>Addressed to:</p> <p>Office of Utilities Regulation 3rd Floor, PCJ Resource Centre 36 Trafalgar Road Kingston 10 Jamaica</p> <p><u>Proposals shall be sent to the above address and placed in the Tender Box provided for this purpose.</u></p> <p>Proposals must be submitted no later than the following date and time:</p> <p>2016 April 28 at 11:00 a.m. Eastern Standard Time</p> |
| 4.6 | <p>Technical Proposals that are submitted by the deadline for submission will be opened on 2016 April 28 at 11:15 a.m. Eastern Standard Time at Office of Utilities Regulation, 3rd Floor, PCJ Resource Centre, 36 Trafalgar Road, Kingston 10. Consultants or their representatives are invited to attend the opening.</p> |
| 5.2 | <p>Criteria, sub-criteria, and point system for the evaluation of Full Technical Proposals are:</p> <p>(i) Specific experience of the Consultants relevant to the assignment:</p> <p style="text-align: right;">Total points for criterion (i): 20</p> <p>(ii) Adequacy of the proposed methodology and work plan in responding to the Terms of Reference:</p> <p style="margin-left: 40px;">a) Technical approach and methodology 30 points</p> <p style="margin-left: 40px;">b) Work plan 10 points</p> |

| | | | | | | | |
|----------------------------|--|-------------|----------|-----------------|-----------|----------------------------|-----------|
| | <p style="text-align: right;">Total points for criterion (ii): 40</p> <p>(iii) Key professional staff qualifications and competence for the assignment^Δ:</p> <table> <tr> <td>Team Leader</td><td>5 points</td></tr> <tr> <td>Attorney-at-law</td><td>20 points</td></tr> <tr> <td>Telecommunications Analyst</td><td>15 points</td></tr> </table> <p style="text-align: right;">Total points for criterion (iii): 40</p> <p>The number of points to be assigned to each of the above positions or disciplines in the key professional staff qualifications and competence criteria shall be determined considering the following three subcriteria and relevant percentage weights:</p> <p>1) Academic qualifications*up to 20% a) Master's degree and above.....up to 20% b) Bachelor's Degree only.....up to 15%</p> <p>2) Professional Experience in the telecommunications sector up to 30%</p> <p>3) Experience on similar projects.....up to 50% Total weight: 100%</p> <p style="text-align: right;">TOTAL POINTS FOR THE THREE CRITERIA: 100</p> <p>^Δ While the composition of the Consultant's team is expected to have the three (3) mentioned functional roles, the Consultant may assign more or less than three (3) persons if it desires. That is, the Consultant may indicate in its bid that a particular function will be carried out by more than one person or that one person will carry out more than one or all functions. Where more than one person is identified for a particular functional role, each person will be scored with an arithmetic average of the score taken to arrive at the final score for the functional role. Scoring will be based on the three (3) functional areas identified. As such, the scoring will depend on the ability and experience of the named person(s) to carry out the specific function.</p> <p>* Academic qualifications in law for the Attorney-at-law from a commonwealth jurisdiction is required. Post graduate qualification in areas</p> | Team Leader | 5 points | Attorney-at-law | 20 points | Telecommunications Analyst | 15 points |
| Team Leader | 5 points | | | | | | |
| Attorney-at-law | 20 points | | | | | | |
| Telecommunications Analyst | 15 points | | | | | | |

| | |
|------------|--|
| | <p>specific to contract law and telecommunications is an asset.</p> <p>The minimum technical score St required to pass is <u>80</u> Points.</p> |
| 5.6 | Proposals that exceed the indicated budget will be rejected. |
| 7.2 | <p>Expected date for commencement of the Services: 2016 July 1.</p> <p>The date and location for commencement of the Services will however be confirmed and specified in the Contract executed with the successful Consultant.</p> |

Section 3. Technical Proposal - Standard Forms

The Technical Proposal shall be submitted in the accordance with the forms and formats attached to this section as listed below:

- TECH-1 Technical Proposal Submission Form

- TECH-2 Consultant's Organization and Experience
 - A Consultant's Organization
 - B Consultant's Experience

- TECH-3 Comments or Suggestions on the Terms of Reference and on Counterpart Staff and Facilities to be provided by the OUR
 - A On the Terms of Reference
 - B On the Counterpart Staff and Facilities

- TECH-4 Description of the Approach, Methodology and Work Plan for Performing the Assignment

- TECH-5 Team Composition and Task Assignments

- TECH-6 Curriculum Vitae (CV) for Proposed Professional Staff

- TECH-7 Staffing Schedule

- TECH-8 Work Schedule

Note that instructions included in square brackets are for your guidance only and should not be included in the Proposal submitted.

FORM TECH-1 TECHNICAL PROPOSAL SUBMISSION FORM

[Address, Date]

To: **Office of Utilities Regulation**
3rd Floor, PCJ Resource Centre
36 Trafalgar Road
Kingston 10

Attention: Consultancy: Development of Guidelines Related to Unfair Contract Terms the Assessment of Customer Contracts

Dear Sirs:

We, the undersigned, offer to provide the consulting services in connection with the **Consultancy for the Development of Guidelines Related to Unfair Contract Terms and the Assessment of Customer Contracts in the Telecommunications Sector** in accordance with your Request for Proposal **dated 2016 [***]**(the "RFP") and our Proposal. We are hereby submitting our Proposal, which includes this Technical Proposal, and a Financial Proposal sealed in a separate envelope.

[We are submitting our Proposal in association with: *[Insert a list with full name and address of each associated Consultant is applicable]*].

We hereby declare that all the information and statements made in this Proposal are true and accept that any misinterpretation contained in it may lead to our disqualification.

If negotiations are held during the period of validity of the Proposal, i.e., before the expiration of date indicated in Paragraph Reference 1.11 of the Data Sheet included in the RFP, we undertake to negotiate on the basis of the proposed staff. Our Proposal is binding upon us and subject to the modifications resulting from Contract negotiations.

We undertake, if our Proposal is accepted, to initiate the consulting services related to the assignment not later than the date indicated in Paragraph Reference 7.2 of the Data Sheet included in the RFP.

We understand you are not bound to accept any Proposal you receive.

Yours sincerely,

Authorized Signature: _____
Name and Title of Signatory: _____
Name of Firm: _____
Address: _____

FORM TECH-2 CONSULTANT'S ORGANIZATION AND EXPERIENCE

A - Consultant's Organization

[Provide here a brief description of the background and organization of your firm/entity and each associate for this assignment.]

B - Consultant's Experience

[Using the format below, provide information on each assignment for which your firm, and each associate for this assignment, was legally contracted either individually as a corporate entity or as one of the major companies within an association, for carrying out consulting services similar to the ones requested under this assignment.]

| | |
|--|--|
| Assignment name: | Approx. value of the contract (in current US\$): |
| Country: Location within country: | Duration of assignment (months): |
| Name of the procuring entity: | Total N° of staff-months of the assignment: |
| Address: | Approx. value of the services provided by your firm under the contract (in current US\$): |
| Start date (month/year): Completion date (month/year): | N° of professional staff-months provided by associated Consultants: |
| Name of associated Consultants, if any: | Name of Key Personnel involved and functions performed (indicate most significant profiles such as Project Director/Coordinator, Team Leader): |
| Was benchmark data used in this assignment | Yes ____ No ____ |
| Narrative description of Project: | |
| Description of actual services provided by your staff within the assignment: | |

Firm's Name: _____

**FORM TECH-3 COMMENTS AND SUGGESTIONS ON THE TERMS OF REFERENCE AND ON
COUNTERPART STAFF AND FACILITIES TO BE PROVIDED BY THE OUR**

A - On the Terms of Reference

[Present and justify here any modifications or improvement to the Terms of Reference you are proposing to improve performance in carrying out the assignment (such as deleting some activity you consider unnecessary, or adding another, or proposing a different phasing of the activities). Such suggestions should be concise and to the point, and incorporated in your Proposal.]

B - On Counterpart Staff and Facilities

[Comment here on counterpart staff and facilities to be provided by the OUR according to Paragraph Reference 1.4 of the Data Sheet including: administrative support, office space, local transportation, equipment, data, etc.]

[Technical approach, methodology and work plan are key components of the Technical Proposal. You are suggested to present your Technical Proposal (inclusive of charts and diagrams) divided into the following three chapters:

- a) Technical Approach and Methodology,*
- b) Work Plan, and*
- c) Organization and Staffing*

a) Technical Approach and Methodology. In this chapter you should explain your understanding of the objectives of the assignment, approach to the services, methodology for carrying out the activities and obtaining the expected output, and the degree of detail of such output. You should highlight the problems being addressed and their importance, and explain the technical approach you would adopt to address them. You should also explain the methodologies you propose to adopt and highlight the compatibility of those methodologies with the proposed approach.

b) Work Plan. In this chapter you should propose the main activities of the assignment, their content and duration, phasing and interrelations, milestones (including interim approvals by the OUR), and delivery dates of the reports. The proposed work plan should be consistent with the technical approach and methodology, showing understanding of the TOR and ability to translate them into a feasible working plan. A list of the final documents, including reports, drawings, and tables to be delivered as final output, should be included here. The work plan should be consistent with the Work Schedule of Form TECH-8.

c) Organization and Staffing. In this chapter you should propose the structure and composition of your team. You should list the main disciplines of the assignment, the key expert responsible, and proposed technical and support staff.]

Professional Staff

[illegible]

FORM TECH-6 CURRICULUM VITAE (CV) FOR PROPOSED PROFESSIONAL STAFF

1. Proposed Position *[Insert position assigned to the staff]:* _____

2. Name of Firm *[Insert name of firm proposing the staff]:* _____

3. Name of Staff *[Insert full name]:* _____

4. Date of Birth: _____ **Nationality:** _____

5. Education *[Indicate college/university and other specialized education of staff member, giving names of institutions, degrees obtained, and dates of obtainment]:* _____

6. Membership of Professional Associations: _____

7. Other Training *[Indicate significant training since degrees under 5 - Education were obtained]:* _____

8. Countries of Work Experience: *[List countries where staff has worked in the last ten years]:* _____

9. Languages *[For each language indicate proficiency: good, fair, or poor in speaking, reading, and writing]:* _____

10. Employment Record

[Starting with present position, list in reverse order every employment held by staff member since graduation, giving for each employment (see format here below): dates of employment, name of employing organization, positions held.]:

From [Year]: _____ To [Year]: _____

Employer: _____

Positions held: _____

| | |
|--|--|
| <p>11. Detailed Tasks Assigned</p> <p><i>[List all tasks to be performed under this assignment by the individual to which the Curriculum Vitae corresponds]</i></p> | <p>12. Work Undertaken that Best Illustrates Capability to Handle the Tasks Assigned</p> <p><i>[Among the assignments in which the staff has been involved, indicate the following information for those assignments that best illustrate staff capability to handle the tasks listed under point 11.]</i></p> <p>Name of assignment or project: _____</p> <p>Year: _____</p> <p>Location: _____</p> <p>CLIENT: _____</p> <p>Main project features: _____</p> <p>Positions held: _____</p> <p>Activities performed: _____</p> |
|--|--|

13. Certification:

I, the undersigned, certify that to the best of my knowledge and belief, this CV correctly describes myself, my qualifications, and my experience. I understand that any wilful misstatement described herein may lead to my disqualification or dismissal, if engaged.

[Signature of staff member or authorized representative of the staff]

Date: _____

Year/Month/Day

Full name of authorized representative: _____

FORM TECH-7 STAFFING SCHEDULE¹

| a. | Name of Staff | b. Staff input (in the form of a bar chart) ² | | | | | | | | | | | | | | | |
|----------------|---------------|---|---|---|---|---|---|---|---|---|----|----|----|---|------|--------------------|-------|
| | | 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 | 11 | 12 | n | Home | Field ³ | Total |
| Foreign | | | | | | | | | | | | | | | | | |
| 1 | | [Home] | | | | | | | | | | | | | | | |
| | | [Field] | | | | | | | | | | | | | | | |
| 2 | | | | | | | | | | | | | | | | | |
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| | | | | | | | | | | | Subtot | | | | | | | | |
| Local | | | | | | | | | | | | | | | | | | | |
| 1 | | [Home] | | | | | | | | | | | | | | | | | |
| | | [Field] | | | | | | | | | | | | | | | | | |
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| | | | | | | | | | | | Subtot | | | | | | | | |
| | | | | | | | | | | | Total | | | | | | | | |

- 1 For Professional Staff the input should be indicated individually; for Support Staff it should be indicated by category (e.g.: draftsmen, clerical staff, etc.).
- 2 Months are counted from the start of the assignment. For each staff indicate separately staff input for home and field work.
- 3 Field work means work carried out at a place other than the Consultant's home office.
 - Full time input
 - Part time input

Section 4. Financial Proposal - Standard Form

The Financial Proposal Standard Form shall be used for the preparation of the Financial Proposal according to the instructions provided under paragraph. 3.6 of Section 2.

FIN-1 Financial Proposal Submission Form

FIN-2 Summary of Costs

FIN-3 Breakdown of Costs by Activity

FIN-4 Breakdown of Remuneration

FIN-5 Reimbursable expenses

Note that instructions included in square brackets are for your guidance only and should not be included in the Proposal submitted.

FORM FIN-1 FINANCIAL PROPOSAL SUBMISSION FORM

[Address, Date]

To: **Office of Utilities Regulation**
3rd Floor, PCJ Resource Centre
36 Trafalgar Road
Kingston 10

Attention: Consultancy: Development of Guidelines Related to Unfair Contract Terms the Assessment of Customer Contracts

Dear Sirs:

We, the undersigned, offer to provide the consulting services in connection with the **Consultancy for the Development of Guidelines Related to Unfair Contract Terms and the Assessment of Customer Contracts in the Telecommunications Sector** in accordance with your Request for Proposal dated 2016 [*** (the "RFP")] and our Technical Proposal. Our attached Financial Proposal is for the sum of *[Insert amount(s) in words and figures¹]*. This amount is inclusive of all taxes, for which we may be liable.

Our Financial Proposal shall be binding upon us subject to the modifications resulting from Contract negotiations, up to expiration of the validity period of the Proposal, i.e. before the date indicated in Paragraph Reference 1.11 of the Data Sheet included in the RFP.

Commissions and gratuities paid or to be paid by us to agents relating to this Proposal and Contract execution, if we are awarded the Contract, are listed below²:

| Name and Address of Agents | Amount and Currency | Purpose of Commission or Gratuity |
|-------------------------------|------------------------|--------------------------------------|
| _____ | _____ | _____ |
| _____ | _____ | _____ |
| _____ | _____ | _____ |

We understand you are not bound to accept any Proposal you receive.

Yours sincerely,

Authorized Signature: _____

Name and Title of Signatory: _____

Name of Firm: _____

Address: _____

-
- 1 Amounts must coincide with the ones indicated under Total Cost of Financial proposal in Form FIN-2.
 - 2 If applicable, replace this paragraph with: "No commissions or gratuities have been or are to be paid by us to agents relating to this Proposal and Contract execution."

FORM FIN-2 SUMMARY OF COSTS

| Item | Costs |
|--|-----------------------|
| | UNITED STATES DOLLARS |
| Total Costs of Financial Proposal ¹ | |

1 Indicate the total costs to be paid by the OUR. Such total costs must coincide with the sum of the relevant Subtotals indicated in all Forms FIN-3 provided with the Proposal.

FORM FIN-3 BREAKDOWN OF COSTS BY ACTIVITY¹

| | |
|--|--|
| Group of Activities (Phase):² <hr style="border: 0; border-top: 1px solid black; margin: 5px 0;"/> <hr style="border: 0; border-top: 1px solid black; margin: 5px 0;"/> | Description:³ <hr style="border: 0; border-top: 1px solid black; margin: 5px 0;"/> <hr style="border: 0; border-top: 1px solid black; margin: 5px 0;"/> |
| Cost component | Costs UNITED STATES DOLLARS |
| Remuneration ⁴ | |
| Reimbursable Expenses ⁴ | |
| Subtotals | |

- 1 Form FIN-3 shall be filled at least for the whole assignment. In case some of the activities require different modes of billing and payment (e.g.: the assignment is phased, and each phase has a different payment schedule), the Consultant shall fill a separate Form FIN-3 for each group of activities. The sum of the relevant Subtotals of all Forms FIN-3 provided must coincide with the Total Costs of Financial Proposal indicated in Form FIN-2.
- 2 Names of activities (phase) should be the same as, or correspond to the ones indicated in the second column of Form TECH-8.
- 3 Short description of the activities whose cost breakdown is provided in this Form.
- 4 Remuneration and Reimbursable Expenses must respectively coincide with relevant Total Costs indicated in Forms FIN-4, and FIN-5.

FORM FIN-4 BREAKDOWN OF REMUNERATION¹

| Name ² | Position ³ | Staff-month Rate ⁴ |
|----------------------|-----------------------|-------------------------------|
| Foreign Staff | | |
| | | [Home] |
| | | [Field] |
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| | | |
| Local Staff | | |
| | | [Home] |
| | | [Field] |
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- 1 Form FIN-4 shall be filled in for the same Professional and Support Staff listed in Form TECH-7.
- 2 Professional Staff should be indicated individually; Support Staff should be indicated per category (e.g.: draftsmen, clerical staff).
- 3 Positions of the Professional Staff shall coincide with the ones indicated in Form TECH-5.
- 4 Indicate separately staff-month rate and currency for home and field work.

FORM FIN-5 BREAKDOWN OF REIMBURSABLE EXPENSES

| N° | Description ¹ | Unit | Unit Cost ² |
|----|------------------------------------|------|------------------------|
| | Per diem allowances | Day | |
| | International flights ³ | Trip | |
| | Miscellaneous travel expenses | Trip | |
| | Local transportation costs | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |

- 1 Delete items that are not applicable or add other items according to Paragraph Reference 3.6 of the Data Sheet.
- 2 Indicate unit cost.
- 3 Indicate route of each flight, and if the trip is one- or two-way.

Section 5. Terms of Reference

Consultancy for the Development of Guidelines Related to Unfair Contract Terms and the Assessment of Customer Contracts in the Telecommunications Sector

A. BACKGROUND

A.1 Introduction

A.1.1 The Office of Utilities Regulation (OUR) wishes to engage the services of a suitably qualified Consultant to undertake a comprehensive assessment of contracts used by telecommunications licensees in the supply of facilities and specified services to consumers to determine whether there are any unfair contract terms. The Consultant will be expected to examine existing legislation and international best practice relative to current service level agreements (SLAs), standard and/or general terms and conditions of service and other forms of contracts with customers to determine those conditions that are to be considered unreasonable, unfair and should not be enforceable. The project is not limited to making a determination of contract terms which currently obtain, but also includes a more general assessment and determination of what terms and conditions are reasonable for inclusion in customer contracts. A part of the outcome of this project is the creation of a document that will serve as a guideline to licensees when formulating their SLAs and standard terms and conditions for their customer contracts. Also, to the extent necessary, directives will be issued to licensees to modify or remove clauses from their existing customer contracts that are determined to contain unfair contract terms.

A.2 Legal Framework

A.2.1 The OUR was established under the Office of Utilities Regulation Act (the “OUR Act”) to regulate certain utility services, as specified in the First Schedule to that Act, including the provision of telecommunication services.

A.2.2 In addition to its general powers to regulate the services specified in the OUR Act, the OUR also has specific powers and functions in relation to the regulation of the telecommunications sector under the Telecommunications Act, as amended by the Telecommunications (Amendment) Act, 2012 (hereinafter referred to as “the Telecommunications Act”). Among those powers and functions is the responsibility to promote the interests of customers, while having due regard to the interests of carriers and service providers. In the exercise of its various functions the OUR must assess market conditions and industry needs. It also has responsibility for ensuring that consumers are protected in their dealings with licensees, and are accorded with a level of service at or above an established minimum quality.

A.2.3 The legal framework governing consumer protection in the Telecommunications Act is set out at Sections 43 to 49 inclusive. Particularly, Section 44 of the Telecommunications Act deals specifically with quality of service to consumers and states:

“44 (1) Providers of facilities or specified services to consumers shall use reasonable endeavours to ensure that those facilities or specified services are-

- (a) reliable;*
- (b) provided with due care and skill; and*
- (c) rendered in accordance with the standards reasonably expected of a competent provider of those facilities or specified services.*

(2) A complaint may be made to the Office by any customer who is dissatisfied with the facilities or specified services provided to him by a carrier or service provider or who claims to be adversely affected by the actions of a carrier or service provider.

(3) The Office may -

(a) after consultation with the Minister, make rules prescribing quality standards for the provision of facilities or specified services in relation to all licensees, and relating to the administration and resolution of customer complaints; and

(b) direct the licensees to conduct all required associated measurements and to report to the Office thereon in such manner and at such intervals as the Office may determine.

(4) Rules made under subsection (3) regarding customer complaints shall be applicable to, and shall be observed by, all licensees.

(5) The Office may -

(a) examine customer contracts in respect of facilities or specified services; and

(b) direct the modification of any term of such a contract which appears to the Office to be unreasonable or unfair”.

A.2.4 Section 44(5) of the Telecommunications Act gives OUR the power to review customer contracts with respect to facilities or specified services and give instructions as to what modifications are needed to remove terms which the OUR deems to be unreasonable or unfair to the customer.

A.2.5 It should be noted that Jamaica has a Consumer Protection Act which provides general protection to consumer in their purchase of all goods and services. Sections 36 to 43 inclusive of that Act, in particular, address the issue of unfair contract terms.

A.3 Industry Background

-
- A.3.1 The Jamaican telecommunications landscape has undergone significant developments over the last seventeen years. The market has gone from one controlled by a monopoly firm to a liberalised environment. Before the opening up of the market only two telecommunications licences were issued. Since then, over four hundred service providers have been licensed to operate. However, many of them are no longer in operation.
- A.3.2 At present, there are approximately 256,269 fixed line subscribers for a penetration rate in the region of 9.41%. For mobile, there are approximately 3.0 million subscribers for a penetration rate of 110.0%. Prepaid subscribers account for approximately 95% of all mobile subscribers. There are approximately 1.46 million internet subscribers for a penetration rate of 54%. The majority of internet subscribers (89%) are mobile broadband consumers.
- A.3.3 The two main providers of fixed telecommunication and internet services are Cable & Wireless Jamaica Limited (“CWJ”) and Columbus Communications Jamaica Limited (“CCJ”). CWJ operates a traditional circuit switched copper based PSTN while CCJ offers its service using fibre to the curb and coaxial cable from the curb to the home. Digicel (Jamaica) Limited trading as Digicel also offers fixed telephony services using WiMAX wireless broadband technology which is marketed to business customers. Digicel in September 2013 launched a fixed home phone service using its GSM network. Digicel through its Digicel Play service aims to run fibre to the home to provide fixed line, internet, and television services. CWJ is the industry leader in fixed services with respect to market share, traffic, and revenue. With respect to fixed broadband service, there is a fairly even market share between CWJ and CCJ. The parent company of CWJ has recently acquired the parent company of CCJ. Both CWJ and CCJ are currently offering services in Jamaica under a merged brand name – “FLOW”. It is envisaged that there may eventually be a merging of the networks for efficiency purposes.
- A.3.4 There are two licensed mobile service providers operating in the telecommunications sector. These are Digicel and CWJ. Digicel is the industry leader in mobile telephony and mobile data services with respect to market share, traffic, and revenue.

B. OBJECTIVE

- B.1.1 The OUR’s position is that customers of specified services and facilities should be protected from contracts for service which contain clauses that are unreasonable and/or unfair. By virtue of section 44(5) of the Telecommunications Act, the OUR has the power to review customer contracts for facilities and specified services and mandate the modification of terms which, in the OUR’s opinion, are unreasonable or unfair to customers. The Telecommunications Act does not provide details as to what is to be considered unreasonable and unfair and instead leaves it to the judgment of the OUR. The main purpose of the project is therefore to retain the services of a Consultant to develop guidelines, in consultation with interested stakeholders, and taking into account local and international laws and best practices, as to what is to be

considered unreasonable and unfair contract terms with respect to customer contracts for telecommunications services and facilities.

- B.1.2 Through this project, the OUR aims to develop guidelines to be used by licensees when drafting their customer contracts. These guidelines will seek to limit the ability of licensees to take advantage of the weaker bargaining power of customers in their dealings.
- B.1.3 It is expected that the Consultant will review all existing customer contracts being used by licensees to develop an understanding of what currently exists and to determine where modifications may be required to eliminate unreasonable or unfair terms. At present, the OUR does not have copies of these customer contracts as there is no requirement for these to be filed with the OUR. However, as part of the data gathering process, the Consultant will be able to request, through the OUR, copies of these and any other documents that it requires from licensees in order to carry out its assessment.
- B.1.4 More generally, the Consultant will be expected to prepare detailed guidelines to be issued by the OUR to inform licensees as to what may or may not be included in customer contracts.

C. SCOPE OF SERVICES

C.1 Data Gathering

- C.1.1 The Consultant will be required to thoroughly review all pertinent legislation to develop an understanding of the legal parameters of what the OUR can mandate with respect to this project. It is also expected that the Consultant will gather relevant data from similar projects, practices and legislation in other jurisdictions, of which elements should be referenced in a Consultation Document to justify the reasonableness of what is being proposed by the OUR. Further, the Consultant will review all existing customer contracts being used by licensees to develop an understanding of what currently exists and to determine where modifications may be required.

C.2 Consultation Document

- C.2.1 The Consultant will be expected to develop a detailed Consultation Document which will form the basis of consultations with interested stakeholders on the type of clauses that should not be included in customer contracts on the grounds of unfairness or unreasonableness. The document should be exhaustive and assess all types of clauses that licensees may seek to include in their contracts with customers. Where the document proposes that certain types of clauses be excluded, it should provide clear justification for the position being taken. The Consultation Document should address the following:

-
- (i) The language used in customer contracts. That is, how easy it is for the average customer to read the contract and clearly understand what the clauses mean;
 - (ii) Whether service providers are allowed to include clauses to allow for a wide interpretation which could be potentially detrimental to a customer;
 - (iii) The appropriateness of the use of fine print and hidden terms in customer contracts; and
 - (iv) Whether it is fair to include in customer contracts subjecting clauses or company policies not specifically detailed in the customer contract. These may include references to a service provider's fair usage policy, in which case, such policies and their rationale should be assessed for appropriateness and fairness to customers.

In general, the OUR expects contracts to be fairly balanced so that licensees are not provided with greater rights or benefits than customers in equivalent circumstances.

C.2.2 The Consultation Document should include, but not be limited to, discussions in the following areas:

- A general discussion of what are fair and unfair contract terms in customer contracts and how this process intends to protect customers;
- The appropriateness of disclaimers and exemption clauses. Where these clauses are deemed appropriate, a discussion of how they should be structured so as not to limit the rights of consumers;
- Clauses that in effect have no legal basis but whose inclusion in a contract may cause customers to think that they are legally binding;
- Clauses that put a time limit on customers' ability to make a claim;
- Guarantees offering more limited rights than are available under the law;
- Terms that bind customers while allowing the service provider to provide no or substandard service;
- Clauses that address deposits, prepayments, and refunds;
- Clauses that give a right or benefit to the licensee without giving similar right or benefit to the customer in an equivalent circumstance;
- Terms that deal with penalties, financial and otherwise;
- Clauses that deal with cancellation;
- Terms that bind the customer to a service provider;
- Clauses that allow the licensee to vary the terms of the contract, including price;

-
- Terms that give the licensee the right to transfer its obligation to provide a service to another licensee;
 - Terms that limit remedies to customers or their right to redress;
 - Clauses that deal with arbitration and the settlement of disputes;
 - Any contract term that could have the effect of depriving customers of protection normally afforded to them under the law;
 - Terms that restrict the use of the product to compete with the service provider in the same or other markets; and
 - The process by which undesirable clauses should be removed from or modified in existing contracts.

C.3 **Decision Document**

C.3.1 As a result of the consultation with stakeholders, comments on the Consultation Document will likely be received. There will also be a further period allowed for stakeholders to respond to comments of other stakeholders. The Consultant will be expected to draft a Decision Document which outlines the final position of the OUR on the matters discussed in the Consultation Document. The Decision Document will serve as the guidelines to the industry on the preparation of fair and reasonable customer contracts. In preparing this Decision Document, the Consultant will evaluate any comments and responses received from stakeholders on the Consultation Document and ensure that each concern raised by stakeholders in their comments and responses is satisfactorily addressed.

C.4 **Review of Existing Customer Contracts**

C.4.1 Concurrently with the preparation of the Decision Document, the Consultant will use the guidelines it intends to finalise in the Decision Document to prepare a report for the OUR. The report should indicate existing provisions in customer contracts that are unreasonable and/or unfair and recommend the necessary remedial actions or modifications to remove the effects of such provisions. The suggested corrective measures should accord with the powers afforded to the OUR under the Telecommunications Act. The report should be organised in such a manner that each chapter is dedicated to a particular licensee and further segmented by type of customer contract.

D.1 **TEAM COMPOSITION**

D.1.1 The composition of the Consultant's team is expected to have the following three (3) functional roles. The Consultant may indicate more or less than three (3) persons if it desires. That is, the Consultant may indicate in its bid that a particular function will to be carried out by more than one person or that one person will carry out more than one or all functions. Where more than one person is identified for a particular functional role, each person will be scored and an arithmetic average of their scores

taken to arrive at the final score for the functional role. Scoring will be based on the three (3) functional areas identified. As such, the scoring will depend on the ability and experience of the named person(s) to carry out the specific function.

- 1) **Team Leader** – is the project manager with overall reporting responsibility to the OUR. The team leader is charged with coordinating the activities of the rest of the team to ensure the successful completion of the project. This person will be the OUR's point of contact/liaison and will be responsible for providing updates on the project's progress.
- 2) **Attorney-at-Law** – should have the appropriate qualifications and experience to assess the relevant legislations, international practice and current customer contracts and determine what is to be considered fair and reasonable, in keeping with applicable law and practice, with respect to customer contracts. Academic qualification in law from a Commonwealth jurisdiction is required. Post graduate qualifications in areas specific to contract law and telecommunications are an asset.
- 3) **Telecommunications Analyst** – should have the relevant qualification and telecommunications experience to understand issues peculiar to the industry and why licensees may have included or want to include certain terms in their customer contracts.

E.1 PHASES/DELIVERABLES

- E.1.1 The consultancy is expected to have three (3) distinct phases, each with its own set of deliverables. The First Phase will cover the project kick off and data collection. In this phase, the Consultant shall meet with the OUR to develop a further appreciation of what the OUR requires and get a better understanding of the OUR's consultative process. The Consultant may also use this period to seek clarification on any issue it may have. At the meeting with the OUR, the Consultant shall indicate what data it requires from the OUR to execute the project effectively. The deliverable from the First Phase is a written data request.
- E.1.2 The Second Phase will deal with the consultation with stakeholders. In this phase, the Consultant shall prepare the Consultation Document for publication by the OUR. This phase also covers the receipt of comments from stakeholders. The deliverable from the Second Phase is a Consultation Document.
- E.1.3 In the Third Phase, the Consultant will prepare the Decision Document for publication by the OUR, incorporating any comments received to the Consultation Document. This will serve as the guideline to the industry on the preparation of fair customer contracts. During this phase, the Consultant will also prepare a Report reviewing existing customer contracts being used by licensees to determine whether there are unfair contract terms and indicate what corrective measures are required. The basis of the review of the customer contracts will be the guidelines and principles which the

Consultant intends to outline in the Decision Document. The deliverables from the Third Phase are a Decision Document and a Report covering the review of existing customer contracts.

- E.1.4 It should be noted that the Consultant may propose a different phasing for the project in its proposal, with justification to support the suggested changes.

F.1 TIME SCHEDULE

- F.1.1 The OUR anticipates that this consultancy will last for at most seven (7) calendar months to be broken down as indicated. It should be noted that the OUR's process for consulting with stakeholders allows for a minimum of four (4) weeks to respond to the Consultation Document and a minimum of another two (2) weeks to comment on responses to the Consultation Document.

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|---|----------|
| ● Phase 1 – Kick off and data gathering | |
| → | 1 month |
| ● Phase 2 – Consultation with stakeholders | |
| → | 4 months |
| ● Phase 3 – Prepare decision and review contracts | |
| → | 2 months |
-

Section 6. Standard Form of Contract

STANDARD FORM OF CONTRACT

Consultants' Services

Lump-Sum



OFFICE OF UTILITIES REGULATION

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CONTRACT FOR CONSULTANTS' SERVICES

Lump-Sum

between

OFFICE OF UTILITIES REGULATION

and

[name of the Consultant]

Dated: _____

I. Form of Contract

LUMP-SUM

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

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

WHEREAS

- (a) the OUR has requested the Consultant to provide certain consulting services as defined in this Contract (hereinafter called the “**Services**”);
- (b) the Consultant, having represented to the OUR that it has the required professional skills, and personnel and technical resources, has agreed to provide the Services on the terms and conditions set forth in this Contract.

NOW THEREFORE the Parties hereto hereby agree as follows:

1. The following documents attached hereto shall be deemed to form an integral part of this Contract:
 - (a) The General Conditions of Contract;
 - (b) The Special Conditions of Contract;
 - (c) The following Appendices:
 - Appendix A: Description of Services
 - Appendix B: Reporting Requirements
 - Appendix C: Key Personnel and Sub-Consultants
 - Appendix D: Breakdown of Contract Price in Foreign Currency
 - Appendix E: Breakdown of Contract Price in Local Currency
 - Appendix F: Services and Facilities Provided by the OUR
 - Appendix G: Form of Advance Payment Guarantee
2. The mutual rights and obligations of the OUR and the Consultant shall be as set forth in the Contract, in particular:

- (a) the Consultant shall carry out the Services in accordance with the provisions of the Contract; and
- (b) the OUR shall make payments to the Consultant in accordance with the provisions of the Contract.

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

For and on behalf of the Office of Utilities Regulation:

[Authorized Representative]

For and on behalf of *[name of Consultant]*:

[Authorized Representative]

[Note: *If the Consultant consists of more than one entity, all these entities should appear as signatories, e.g., in the following manner:]*

For and on behalf of each of the Members of the Consultant

[name of member]

[Authorized Representative]

[name of member]

[Authorized Representative]

II. General Conditions of Contract

1. GENERAL PROVISIONS

1.1 Definitions

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

- a. **“Applicable Law”** means the laws and any instruments having the force of law in Jamaica.
- b. **“Consultant”** means *[insert names] of Consultant*.
- c. **“Contract”** means the Form of Contract signed by the Parties and all the attached documents listed in its Clause 1, that is, these General Conditions (GC), the Special Conditions (SC), and the Appendices.
- d. **“Contract Price”** means the price to be paid for the performance of the Services, in accordance with Clause 6;
- e. **“Effective Date”** means the date on which this Contract comes into force and effect pursuant to Clause GC 2.1.
- f. **“Foreign Currency”** means any currency other than the currency of Jamaica.
- g. **“GC”** means these General Conditions of Contract.
- h. **“Government”** means the Government of Jamaica.
- i. **“Local Currency”** means the currency of Jamaica.
- j. **“Member”** means any of the entities that make up the joint venture/consortium/association comprising the Consultant, and **“Members”** means all of these entities.
- k. **“Party”** means the OUR or the Consultant, as the case may be, and **“Parties”** means both of them.
- l. **“Personnel”** means persons hired by the Consultant or by any Sub-Consultants and assigned to the performance of the Services or any part thereof.

m. **“SC”** means the Special Conditions of Contract by which the GC may be amended or supplemented.

n. **“Services”** means the work to be performed by the Consultant pursuant to this Contract, as described in Appendix A hereto.

o. **“Sub-Consultants”** means any person or entity to whom/which the Consultant subcontracts any part of the Services.

p. **“Tax Compliance Certificate”** means a document issued by the Ministry with portfolio responsibility for finance in Jamaica to an individual or company as proof that the Jamaican tax liabilities and wage related statutory deductions of that individual or company have been duly paid.

q. **“Third Party”** means any person or entity other than the OUR, the Consultant or a Sub-Consultant.

r. **“In writing”** means communicated in written form.

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| <p>1.2 Law Governing Contract</p> | This Contract, its meaning and interpretation, and the relationship between the Parties shall be governed by the Applicable Law. |
| <p>1.3 Language</p> | This Contract has been executed in the English language, which shall be the binding and controlling language for all matters relating to the meaning or interpretation of this Contract. |
| <p>1.4 Notices</p> | |
| <p>1.4.1</p> | Any notice, request or consent required or permitted to be given or made pursuant to this Contract shall be in writing. Any such notice, request or consent shall be deemed to have been given or made when delivered in person to an authorized representative of the Party to whom the communication is addressed, or when sent to such Party at the address specified in the SC. |
| <p>1.4.2</p> | A Party may change its address for notice hereunder by giving the other Party notice in writing of such change to the address specified in the SC. |
| <p>1.5 Location</p> | The Services shall be performed at such locations as are specified in Appendix A hereto and, where the location of a particular task is not so specified, at such locations, as the OUR may approve. |

| | |
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| 1.6 Authority of Member in Charge | In case the Consultant consists of a joint venture/ consortium/ association of more than one entity, the Members hereby authorize the entity specified in the SC to act on their behalf in exercising all the Consultant's rights and obligations towards the OUR under this Contract, including without limitation the receiving of instructions and payments from the OUR. |
| 1.7 Authorized Representatives | Any action required or permitted to be taken, and any document required or permitted to be executed under this Contract by the OUR or the Consultant may be taken or executed by the officials specified in the SC. |
| 1.8 Taxes and Duties | The Consultant, Sub-Consultants, and their Personnel shall pay such taxes, duties, fees, and other impositions levied under the Applicable Law as specified in the SC, the amount of which is deemed to have been included in the Contract Price. For the duration of this Contract, the Consultant shall demonstrate that it has paid all applicable taxes, duties, fees and other impositions as may be levied in Jamaica by the submission to the OUR of a valid Tax Compliance Certificate whenever requested by the OUR. |
| 1.9 Fraud and Corruption | <p data-bbox="279 1198 510 1243">1.9.1 Definitions</p> <p data-bbox="510 1198 1447 1377">The OUR requires that its bidders, suppliers, contractors and consultants observe the highest standard of ethics during the procurement and execution of its contracts. In pursuit of this policy, the OUR:</p> <p data-bbox="542 1422 1447 1512">(a) defines, for the purpose of this provision, the terms set forth below as follows:</p> <p data-bbox="686 1556 1447 1780">(i) "corrupt practice" means the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence the action of an officer or servant of the OUR in the procurement process or in contract execution;</p> <p data-bbox="686 1825 1447 2083">(ii) "fraudulent practice" means a misrepresentation or omission of facts in order to influence a procurement process or the execution of a contract, to the detriment of the OUR and includes collusive practice among bidders (prior to or after bid submission) designed to establish bid prices at artificial non-competitive levels</p> |

and to deprive the OUR of the benefits of free and open competition;

(iii) “**collusive practice**” means a scheme or arrangement between two or more bidders, with or without the knowledge of the OUR, designed to establish bid prices at artificial non-competitive levels or to influence the action of any party in the procurement process or the execution of a contract; and

(iv) “**coercive practice**” means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the procurement process or affect the execution of a contract.

- 1.9.2 Commissions and Fees** The OUR requires the Consultant to disclose any commissions or fees that may have been paid or are to be paid to agents, representatives, or commission agents with respect to the selection process or execution of the contract. The information disclosed must include at least the name and address of the agent, representative, or commission agent, the amount and currency, and the purpose of the commission or fee.

2. COMMENCEMENT, COMPLETION, MODIFICATION AND TERMINATION OF CONTRACT

- 2.1 Effectiveness of Contract** This Contract shall come into effect on the date the Contract is signed by both Parties or such other later date as may be stated in the SC. The date the Contract comes into effect is defined as the Effective Date.
- 2.2 Commencement of Services** The Consultant shall begin carrying out the Services not later than the number of days after the Effective Date specified in the SC.
- 2.3 Expiration of Contract** Unless terminated earlier pursuant to Clause GC 2.6 hereof, this Contract shall expire at the end of such time period after the Effective Date as specified in the SC.
- 2.4 Modifications or Variations** Any modification or variation of the terms and conditions of this Contract, including any modification or variation of the scope of the Services, may only be made by written agreement between the

Parties.

2.5 Force Majeure

- 2.5.1 Definition** For the purposes of this Contract, “Force Majeure” means an event which is beyond the reasonable control of a Party and which makes a Party’s performance of its obligations under the Contract impossible or so impractical as to be considered impossible under the circumstances.
- 2.5.2 No Breach of Contract** The failure of a Party to fulfill any of its obligations under this Contract shall not be considered to be a breach of, or default under, this Contract insofar as such inability arises from an event of Force Majeure, provided that the Party affected by such an event (a) has taken all reasonable precautions, due care and reasonable alternative measures in order to carry out the terms and conditions of this Contract, and (b) has informed the other Party as soon as possible about the occurrence of such an event.
- 2.5.3 Extension of Time** Any period within which a Party shall, pursuant to this Contract, complete any action or task, shall be extended for a period equal to the time during which such Party was unable to perform such action as a result of Force Majeure.
- 2.5.4 Payments** During the period of its inability to perform the Services as a result of an event of Force Majeure, the Consultant shall not be entitled to payment under the terms of this Contract, except for the OUR’s payment liabilities incurred prior to the said suspension of the Contractor’s performance of the Services. On resumption of the Consultant’s performance of the Services, the OUR’s obligation to make payments under the terms of this Contract shall also resume.

2.6 Termination

- 2.6.1 By the OUR** The OUR may terminate this Contract in case of the occurrence of any of the events specified in paragraphs (a) through (f) of this Clause GC 2.6.1. With the exception of the event referred to in paragraph (f) of this Clause 2.6.1, the OUR shall give not less than thirty (30) days’ written notice of termination to the Consultant. The OUR shall give not less than sixty (60) days’ written notice in the case of the event referred to in paragraph (f) of this Clause 2.6.1.
- (a) If the Consultant does not remedy a failure in the performance of its obligations under the Contract, within thirty (30) days

after being notified or within any further period as the OUR may have subsequently approved in writing.

- (b) If the Consultant becomes insolvent or bankrupt.
- (c) If the Consultant, in the judgment of the OUR has engaged in corrupt or fraudulent practices in competing for or in executing the Contract.
- (d) If, as the result of Force Majeure, the Consultant is unable to perform a material portion of the Services for a period of not less than sixty (60) days.
- (e) If the Consultant fails to comply with any final decision reached as a result of arbitration proceedings pursuant to Clause GC 8 hereof.
- (f) If the OUR, in its sole discretion and for any reason whatsoever, decides to terminate this Contract.

2.6.2 By the Consultant

The Consultant may terminate this Contract, by not less than thirty (30) days' written notice to the OUR, such notice to be given after the occurrence of any of the events specified in paragraphs (a) through (c) of this Clause GC 2.6.2:

- (a) If the OUR fails to pay any money due to the Consultant pursuant to this Contract and not subject to dispute pursuant to Clause GC 8 hereof within forty-five (45) days after receiving written notice from the Consultant that such payment is overdue.
- (b) If, as the result of Force Majeure, the Consultant is unable to perform a material portion of the Services for a period of not less than sixty (60) days.
- (c) If the OUR fails to comply with any final decision reached as a result of arbitration pursuant to Clause GC 8 hereof.

2.6.3 Payment upon Termination

Upon termination of this Contract pursuant to Clauses GC 2.6.1 or GC 2.6.2, the OUR shall make the following payments to the Consultant:

- (a) payment pursuant to Clause GC 6 for Services satisfactorily performed prior to the effective date of termination;

- (b) except in the case of termination pursuant to paragraphs (a) through (c), and (e) of Clause GC 2.6.1, reimbursement of any reasonable cost incidental to the prompt and orderly termination of the Contract, including, if applicable, the cost of the return travel of the Personnel and their eligible dependents.

3. OBLIGATIONS OF THE CONSULTANT

3.1 General

3.1.1 Standard of Performance

The Consultant shall perform the Services and carry out its obligations hereunder with all due diligence, efficiency and economy, in accordance with generally accepted professional standards and practices, and shall observe sound management practices, and employ appropriate technology and safe and effective equipment, machinery, materials and methods. The Consultant shall always act, in respect of any matter relating to this Contract or to the Services, as faithful advisers to the OUR, and shall at all times support and safeguard the OUR's legitimate interests in any dealings with Sub-Consultants or Third Parties.

3.2 Conflict of Interests

The Consult shall hold the OUR's interests paramount, without any consideration for future work, and strictly avoid conflict with other assignments or its own corporate interests.

3.2.1 Consultants Not to Benefit from Commissions, Discounts, etc.

The payment of the Consultant pursuant to Clause GC 6 shall constitute the Consultant's only payment in connection with this Contract or the Services, and the Consultant shall not accept for its own benefit any trade commission, discount, or similar payment in connection with activities pursuant to this Contract or to the Services or in the discharge of its obligations under the Contract, and the Consultant shall use its best efforts to ensure that the Personnel, any Sub-Consultants, and

agents of either of them similarly shall not receive any such additional payment.

3.2.2 Consultant and Affiliates Not to be Otherwise Interested in Project

The Consultant agrees that, during the term of this Contract and after its termination, the Consultant and any entity affiliated with the Consultant, as well as any Sub-Consultants and any entity affiliated with such Sub-Consultants, shall be disqualified from providing goods, works or services (other than consulting services) resulting from or directly related to the Consultant's Services for the preparation or implementation of the project.

3.2.3 Prohibition of Conflicting Activities

The Consultant shall not engage, and shall cause its Personnel as well as its Sub-Consultants and their personnel not to engage, either directly or indirectly, in any business or professional activities which would conflict with the activities assigned to them under this Contract.

3.3 Confidentiality

Except with the prior written consent of the OUR, 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 performance 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 performance of the Services.

3.4 Insurance to be Taken Out by the Consultant

The Consultant (a) shall take out and maintain, and shall cause any Sub-Consultants to take out and maintain, at their (or the Sub-Consultants', as the case may be) own cost but on terms and conditions approved by the OUR, insurance against the risks, and for the coverage, as shall be specified in the SC; and (b) at the OUR's request, shall provide evidence to the OUR showing that such insurance has been taken out and maintained and that the current premiums have been paid.

3.5 Consultant's Actions Requiring OUR's Prior Approval

The Consultant shall obtain the OUR's prior approval in writing before taking any of the following actions:

- (a) entering into a subcontract for the performance of any part of the Services;
- (b) appointing such members of the Personnel not listed by name in Appendix C; and
- (c) any other action that may be specified in the SC.

3.6 Reporting Obligations

- (a) The Consultant shall submit to the OUR the reports and documents specified in Appendix B hereto, in the form, in the numbers and within the time periods set forth in the said Appendix.
- (b) Final reports shall be delivered in CD ROM in addition to the hard copies specified in the said Appendix B.

3.7 Documents Prepared by the Consultant to be the Property of the OUR

- (a) All plans, drawings, specifications, designs, reports, other documents and software submitted by the Consultant under this Contract shall become and remain the property of the OUR, and the Consultant shall, not later than upon termination or expiration of this Contract, deliver all such documents to the OUR, together with a detailed inventory thereof.
- (b) The Consultant may retain a copy of such documents and software. Restrictions about the future use of these documents, if any, shall be specified in the SC.

3.8 Accounting, Inspection and Auditing

The Consultant (i) shall keep accurate and systematic accounts and records in respect of the Services hereunder, in accordance with internationally accepted accounting principles and in such form and detail as will clearly identify all relevant time, charges and costs, and the bases thereof, and (ii) shall periodically permit the OUR or its designated representative and up to two years from the expiration or termination of this Contract, to inspect the same and make copies thereof as well as to have them audited by auditors appointed by the OUR, if so required by the OUR.

4. CONSULTANT'S PERSONNEL

- 4.1 Description of Personnel** The Consultant shall employ and provide such qualified and experienced Personnel and Sub-Consultants as are required to perform the Services. The titles, agreed job descriptions, minimum qualifications, and estimated periods of engagement in the performance of the Services of the Consultant's Key Personnel are described in Appendix C. The Key Personnel and Sub-Consultants listed by title as well as by name in Appendix C are hereby approved by the OUR.
- 4.2 Removal and/or Replacement of Personnel**
- (a) Except as the OUR may otherwise agree, no changes shall be made in the Key Personnel. If, for any reason beyond the reasonable control of the Consultant, such as retirement, death, medical incapacity, among others, it becomes necessary to replace any of the Key Personnel, the Consultant shall provide as a replacement a person of equivalent or better qualifications.
 - (b) If the OUR finds that any of the Personnel have (i) committed serious misconduct or have been charged with having committed a criminal act, or (ii) have reasonable cause to be dissatisfied with the performance of any of the Personnel, then the Consultant shall, at the OUR's written request specifying the grounds thereof, replace such person with a person possessing qualifications and experience acceptable to the OUR.
 - (c) The Consultant shall have no claim for additional costs arising out of or incidental to any removal and/or replacement of Personnel.
- 5. OBLIGATIONS OF THE OUR**
- 5.1 CHANGE IN THE APPLICABLE LAW RELATED TO TAXES AND DUTIES** If, after the date of this Contract, there is any change in the Applicable Law with respect to taxes and duties which increases or decreases the cost incurred by the Consultant in performing the Services, then the remuneration and reimbursable expenses otherwise payable to the Consultant under this Contract shall be increased or decreased accordingly by agreement between the Parties, and corresponding adjustments shall be made to the amounts referred to in Clauses GC 6.2 (a) or (b), as the case may be.
- 5.2 Services and Facilities** The OUR shall make available free of charge to the Consultant the Services and Facilities listed under Appendix F.

6. PAYMENTS TO THE CONSULTANT

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| 6.1 Lump-Sum Payment | The total payment due to the Consultant shall not exceed the Contract Price which is an all inclusive fixed lump-sum covering all costs required to perform the Services described in Appendix A. Except as provided in Clause 5.1, the Contract Price may only be increased above the amounts stated in Clause 6.2 if the Parties have agreed to additional payments in accordance with Clause 2.4. |
| 6.2 Contract Price | <p>(a) The price payable in foreign currency/currencies is set forth in the SC.</p> <p>(b) The price payable in local currency is set forth in the SC.</p> |
| 6.3 Payment for Additional Services | For the purpose of determining the remuneration due for additional services as may be agreed under Clause 2.4, a breakdown of the lump-sum price is provided in Appendices D and E. |
| 6.4 Terms and Conditions of Payment | Payments will be made to the Consultant according to the payment schedule stated in the SC. Unless otherwise stated in the SC, the first payment shall be made against the provision by the Consultant of an advance payment guarantee for the same amount, and shall be valid for the period stated in the SC. Such guarantee shall be in the form set forth in Appendix G hereto, or in such other form, as the OUR shall have approved in writing. Any other payment shall be made after the conditions listed in the SC for such payment have been met, and the Consultant has submitted an invoice to the OUR specifying the amount due. |

7. GOOD FAITH

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| 7.1 Good Faith | The Parties undertake to act in good faith with respect to each other's rights under this Contract and to adopt all reasonable measures to ensure the realization of the objectives of this Contract. |
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8. SETTLEMENT OF DISPUTES

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| 8.1 Amicable Settlement | The Parties agree that the avoidance or early resolution of disputes is crucial for a smooth execution of the Contract and the success of the assignment. The Parties shall use their best efforts to settle amicably all disputes arising out of or in connection with this Contract or its interpretation. |
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**8.2 Dispute
Resolution**

Any dispute between the Parties as to matters arising pursuant to this Contract that cannot be settled amicably within thirty (30) days after receipt by one Party of the other Party's request for such amicable settlement may be submitted by either Party for settlement in accordance with the provisions specified in the SC.

III. Special Conditions of Contract

(Clauses in brackets { } are optional; all notes should be deleted in final text)

| Number of GC Clause | Amendments of, and Supplements to, Clauses in the General Conditions of Contract |
|---------------------|---|
| 1.4.1 | <p>The addresses are as follows:-</p> <p>For the OUR:</p> <p>Office of Utilities Regulation 3rd Floor, PCJ Resource Centre 36 Trafalgar Road Kingston 10</p> <p>Attention: Facsimile:(876) 929-3635 E-mail:</p> <p>For the Consultant:</p> <p>Consultant:</p> <p>Attention: Facsimile: E-mail:</p> |
| {1.6} | <p>{The Member in Charge is <i>[insert name of member]</i>}</p> <p>Note: <i>If the Consultant consists of a joint venture/ consortium/ association of more than one entity, the name of the entity whose address is specified in Clause SC 1.6 should be inserted here. If the Consultant consists only of one entity, this Clause SC 1.6 should be deleted from the SC.</i></p> |
| 1.7 | <p>The Authorized Representatives are:</p> <p>For the OUR: _____</p> <p>For the Consultant: _____</p> |
| 1.8 | <p>(a). Any income tax, general consumption tax (GCT), customs and excise duties or other similar taxes and duties for which the Consultant may be liable under Applicable Law and all wage related statutory deductions in respect of the Consultant's Personnel who are domiciled in Jamaica for which the Consultant is liable under Applicable Law.</p> <p>(b). {Notwithstanding the foregoing, pursuant to section 40 of the Income Tax Act and the double taxation treaty between Jamaica and [] the OUR shall withhold []% of all payments made to the Consultant under this Contract for income tax, except for those payments made in respect of approved reimbursable expenditure, and shall remit such</p> |

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| | <p>withholding to the Jamaican taxing authorities on behalf of the Consultant.}</p> <p>(c).{Notwithstanding the foregoing, as a public body, the OUR is required to withhold any GCT which may be payable in respect of the supply of Services. In this regard, the OUR shall withhold and remit to the Jamaican taxing authorities the applicable GCT payable in respect of this Contract, and shall provide the Consultant with the requisite withholding certificate evidencing such payment to the taxing authorities.}</p> |
| 2.1 | The Effective Date of this contract is <i>[insert date]</i> . |
| 2.2 | The date for the commencement of Services is <i>[insert date]</i> . |
| 2.3 | The Contract shall expire [] after the Effective Date, that is <i>[insert date]</i> . |
| 3.4 | The OUR has no special requirements regarding insurance. |
| 3.5 (c) | The other actions are: Assigning the Contract to a Third Party. |
| 3.6(b) | Final reports shall be delivered on a portable media, such as CD ROM or USB Drive, in addition to the hard copies specified in Appendix B. |
| 3.7 (b) | The Consultant shall not use these documents and software for purposes unrelated to its performance of the Services under this Contract, without the prior written approval of the OUR. |
| 6.2(a) | The amount in foreign currency or currencies is <i>[insert amount]</i> . |
| 6.2(b) | The amount in local currency is <i>[insert amount]</i> . |
| 6.4 | <p>A. The Consultant's accounts for payment are: [for foreign currency or currencies: <i>[insert account]</i> for local currency: <i>[insert account]</i></p> <p>B. Payments of the Contract Price shall be made as follows:</p> <p><u>Reimbursable Expenses</u> Reimbursable expenses provided for under this Contract, up to a maximum of \$[], shall be paid by the OUR to the Consultant within thirty (30) days of submission of an invoice from the Consultant. The invoices shall be submitted with receipts evidencing that the said expenses have been incurred by the Consultant.</p> <p><u>Contract Fee</u> The remainder of the Contract Price less the Reimbursable Expenses, that is, the sum of \$[] (the "Contract Fee") shall be paid within thirty (30) days of submission of an invoice by the Consultant in accordance with the following schedule:</p> <p>(a) An advance payment in the amount of ten percent (10%) of the</p> |

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| | <p>Contract Fee (less the withholding for income tax and/or GCT, if applicable) shall be paid on the Effective Date against the submission by the Consultant to the OUR of a demand guarantee in the form set out in Appendix G covering the value of such payment.</p> <p>(b) Fifty-five percent (55%) of the Contract Fee (less the withholding for income tax and/or GCT, if applicable) shall be paid upon satisfactory completion of Phase 2 and submission of the Consultation Document.</p> <p>(c) Thirty-five percent (35%) of the Contract Fee (less the withholding for income tax and/or GCT, if applicable) shall be paid upon satisfactory completion of Phase 3 and submission of the OUR Decision Document and Report on Review of Customer Contracts.</p> <p>NOTE: The demand guarantee shall be valid for a period of six (6) months.</p> <p>A Consultant may opt not to provide a demand guarantee for the advance payment. However where such a variation is proposed, the OUR will not disburse an advance payment but is prepared to negotiate the payment schedule. In such an instance, the first payment under the Contract will be disbursed after the satisfactory completion of Phase 2.</p> |
| 8.2 | <p>Dispute Settlement – Arbitration</p> <p>(a) In the event of the failure of the Parties to amicably settle any dispute as to matters arising pursuant to this Contract, then the matter shall be submitted by either Party to arbitration before a single arbitrator. The arbitrator shall be selected and appointed with the mutual agreement of the Parties. In the event that the Parties fail to agree on the appointment of an arbitrator within thirty (30) days after receipt of notice by one Party from the other that the matter be submitted to arbitration, then the arbitrator shall be appointed by the President of the Jamaican Bar Association.</p> <p>(b) The seat of the arbitration shall be Jamaica and disputes shall be settled in accordance with the Arbitration Act of Jamaica. Rules of procedure to be adopted shall be those as published by the United Nations Commission on International Trade Law (UNCITRAL) <i>Arbitration Rules of 1976</i>.</p> <p>(c) During the dispute settlement process, the Contractor shall continue to perform the Services in accordance with this Contract as far as is possible. Failure to do so shall be considered a breach of contract.</p> |

IV. Appendices

APPENDIX A – DESCRIPTION OF SERVICES

APPENDIX B - REPORTING REQUIREMENTS

APPENDIX C - KEY PERSONNEL AND SUB-CONSULTANTS

APPENDIX D - BREAKDOWN OF CONTRACT PRICE IN FOREIGN CURRENCY

APPENDIX E - BREAKDOWN OF CONTRACT PRICE IN LOCAL CURRENCY

APPENDIX F - SERVICES AND FACILITIES PROVIDED BY THE OUR

When the Consultant is performing the Services at the OUR offices, the OUR shall provide:

- office accommodation
- internet access
- photocopying
- printing
- facsimile
- local and international telephone calls
- lunch
- transportation to and from the airport

APPENDIX G - FORM OF ADVANCE PAYMENTS GUARANTEE

Bank Guarantee for Advance Payment

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

Beneficiary: Office of Utilities Regulation
3rd Floor, PCJ Resource Centre
36 Trafalgar Road
Kingston 10

Date: _____

ADVANCE PAYMENT GUARANTEE No.: _____

We have been informed that *[name of Consulting Firm]* (hereinafter called "the Consultant") has entered into a contract for consultancy services dated *[insert date]* with you, for the Development of Guidelines Related to Unfair Contract Terms and the Assessment of Customer Contracts in the Telecommunications Sector (hereinafter called "the Contract"). Furthermore, we understand that, according to the conditions of the Contract, an advance payment in the sum of *[amount in figures]* (*[amount in words]*) is to be made against an advance payment guarantee.

At the request of the Consultant, we *[name of Bank]* hereby irrevocably undertake to pay you any sum or sums not exceeding in total an amount of *[amount in figures]* (*[amount in words]*)¹ upon receipt by us of your first demand in writing accompanied by a written statement advising that the Consultant is in breach of its obligation under the Contract because the Consultant has used the advance payment for purposes other than toward providing the Services under the Contract or has not otherwise complied with the conditions attached to the advance payment as specified in the Contract.

The maximum amount of this guarantee shall be progressively reduced by the amount of the advance payment repaid by the Consultant to the OUR or the value of work completed by the Consultant in accordance with the Contract as indicated in copies of monthly statements certified by the OUR which the Consultant shall present to us.

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

This guarantee shall expire, at the latest, upon our receipt of the monthly payment certificate indicating that the Consultant has made full repayment of the amount of the advance payment or has completed services in accordance with the Contract up to the value of the advance payment, or on the __ day of _____, 2____, whichever is earlier. Consequently, any demand for payment under this guarantee must be received by us at this office on or before that date.

[signature(s)]

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