



Appendix-B, Draft Consultancy Services Contract

Culture, Tourism & Antiquities Department

**CONSULTANCY SERVICES FOR LAB-E-MEHRAN TOURISM
PROJECT**

DRAFT CONSULTANCY SERVICES CONTRACT

DRAFT CONSULTANCY SERVICES CONTRACT

This Consultancy Services Contract ("Contract") is entered into at Karachi on this the -
-- day of -----, 2017

By and between:

1. **THE CULTURE, TOURISM & ANTIQUITIES DEPARTMENT OF THE GOVERNMENT OF SINDH**, having its offices at _____
_____ represented by the Secretary, Culture, Tourism & Antiquities Department (hereinafter referred to as "**GoS**"); and
2. _____, a company incorporated under the laws of the Islamic Republic of Pakistan and having its principal place of business at _____
Pakistan (hereinafter referred to as "**Lead Advisor**") (GoS and the Lead Advisor are hereinafter referred to individually as a "**Party**" and collectively as the "**Parties**").

WHEREAS:

- A. The GoS is desirous of establishing Lab-e-Mehran Tourism Project ("**Project**").
- B. In order to proceed further, GoS is desirous of engaging qualified consultants in relation to the Project in accordance with the terms of reference listed in **Schedule A** of this Contract ("**Assignment**").
- C. The Advisory Consortium (defined below), led by the Lead Advisor, participated in, and was selected for the Assignment in a competitive bidding process by the issuance of a Request for Proposals (RFP) on [●], 2017 and scope clarification issued by GoS on [●].
- D. The Lead Advisor in collaboration with _____, have confirmed to GoS that they have the requisite experience and resources to undertake the Assignment for such consideration and terms given herein below.
- E. GoS has agreed to accept the offer of the Lead Advisor for undertaking the Assignment.

NOW THEREFORE, the parties hereto agree as follows:

1. Definition

In this Contract, unless the contrary intention appears:

"Advisory Consortium" means collectively the members of advisory team for the Project comprising of (i) _____
(ii) _____ (iii) _____ (iv) _____ for

the Advisory Consortium, as listed in more detail in **Schedule B**, attached hereto;

“Contract” means this contract executed between GoS, through Culture, Tourism & Antiquities Department and the Lead Advisor;

“Terms of Reference” means work required to be carried out by the Advisory Consortium in relation to the Project, as listed and detailed in **Schedule A** attached hereto;

“Consortium Members” means and includes members of the Advisory Consortium, appointed under specific terms and to whom, a portion or a part, of the Terms of Reference is allocated or assigned by the Lead Advisor for the purposes of this Contract;

“Technical Proposal” means the technical proposal in connection with the Assignment submitted by the Advisory Consortium on [●],[●], 2017.

2. Terms of Reference

- 2.1 GoS hereby appoints the Lead Advisor for the purpose of carrying out of the Assignment and the provision of the services stated in the Terms of Reference and the Lead Advisor agrees to such appointment for such consideration as set out in Clause 3 below. GoS agrees that specified portions of the Terms of Reference may be delegated by the Lead Advisor to members of the Advisory Consortium. It is further agreed between the Parties that unless the Terms of Reference is amended in writing with the mutual agreement of the Parties, the work to be undertaken by the Advisory Consortium will be restricted to Work as set out in Contract.
- 2.2 The approach and methodology outlined in the Technical Proposal submitted by the Advisory Consortium shall be applied for the purposes of any interpretation of the Terms of Reference. If any issue arises regarding interpretation of approach and methodology outlined in the Technical proposal then the Parties will discuss and resolve so as to fulfill the requirement of Assignment.

3. Fee and Commencement Date

3.1 Fee

- 3.1.1 In consideration of the Advisory Consortium providing the services to GoS in terms of this Contract, GoS shall pay an **“Advisory Fee”** of PKR _____ (Pak Rupees _____ Only) to the Advisory Consortium. The Advisory Fee due and payable to the Advisory Consortium shall be made within a period of thirty (30) days from the date of completion of the milestone and approval of the same by the GoS, specified in **Schedule C** attached hereto.
- 3.1.2 Any amendment to the Terms of Reference shall only become effective once the Parties have agreed to amendments/changes (if any) to the Advisory Fee subject to relevant SPPRA rules 2010 (amended from time to time), which may occur as a result of such amendment in the Terms of Reference. For avoidance of doubt it is

clarified that the agreement between the Parties in relation to the adjustment in the Advisory Fee as a result of any amendment in the Terms of Reference is a condition precedent to the effectiveness of such amended Terms of Reference.

- 3.1.3 The Advisory Fee due and payable by GoS to the Advisory Consortium shall be a fixed advisory fee, subject to any amendments and/or adjustments in the same as a result of a change in the Terms of Reference in accordance with Section 3.1.

3.2 Commencement Date

- 3.2.1 For the purposes of this Contract and the services to be provided hereunder, the commencement date for the Assignment shall be *the date of signing of this Consultancy Services Contract*.

4. Warranties

- 4.1 GoS hereby represents and warrants to the Lead Advisor that it has all the necessary authorization, mandate and capacity to award the Terms of Reference to the Advisory Consortium pursuant to this Contract.
- 4.2 The Lead Advisor warrants that:
- (a) It has, in collaboration with its Consortium Partners, all necessary knowledge base, human and material resources to undertake the Assignment according to the best international practices;
 - (b) It has all necessary warranties from Consortium Partners confirming that they have the necessary professional, intellectual and material resources to undertake their respective parts of the Terms of Reference in connection with the Assignment; and
 - (c) It has all necessary consent from Consortium Partners to accept the Assignment, abide by the terms of the Contract and that they shall perform their respective parts of work professionally and according to the international best practices.

5. Communication

- 5.1 All the significant communication between the Parties shall be in writing delivered through some established credible medium which will include email but deliverables shall be in hard and also in soft copy form.
- 5.2 All of the substantive nature communication between the Parties shall be sent to the following persons without fail in addition to any other person(s) or official(s) the Parties to the agreement may notify each other or the person(s) or official(s) to whom it is necessary and obligatory to send that communication. The respective key contact persons for communication shall be:

<p>For GoS Communication/Deliverable/report address to:</p> <p>Name: Designation: Director General, Culture, Tourism & Antiquities Department, Government of Sindh Address: ,.....</p> <p>Telephone: +92(21) +92(21) Email:</p>	<p>For Lead Advisor</p> <p>Name: Designation: Address:</p> <p>Telephone: +92(21) +92(21) Email:</p>
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6. Reporting/Deliverables

- 6.1 The Lead Advisor shall provide GoS with the following deliverables during the course of the Assignment:-

As given under the RFP Document

- 6.2 The outcome of the Project is to complete the Assignment as per the Terms of Reference.
- 6.3 Whilst each submission of the work products shall address different aspects of the Assignment that the Advisory Consortium shall perform.
- 6.4 In order to confirm that the Advisory Consortium's reports address all the matters within the agreed Terms of Reference, the Lead Advisor will submit a draft of its reports/plans/models to the GoS for its comments prior to issuing it in final form. If the GoS does not revert with any comments within a period of three (3) weeks from the date of submission by the Lead Advisor of its draft reports/plans/models (as the case may be), the same will be deemed to be accepted by the GoS for the purposes of achievement of the milestones as set down in **Schedule C**, and the Lead Advisor will be entitled to (i) issue the final versions of the relevant deliverables; and (ii) payment for completion of such milestone in accordance with **Schedule C**.

7. Access

- 7.1 For undertaking the Assignment the Advisory Consortium will have the access to and the GoS will make all efforts to provide to it all the relevant and necessary information and documents wherever applicable and possible, which would facilitate the Advisory Consortium in connection with the Assignment.

8. Assignment and Charges

The Lead Advisor shall not assign this Contract or any part hereof except with prior

consent in writing of the GoS, which consent the GoS shall be entitled to decline without assigning any reason whatsoever. Notwithstanding the generality of this clause, nothing herein shall restrict the ability of the Lead Advisor to delegate part of the Terms of Reference to members of the Advisory Consortium, possessing relevant expertise.

9. Law Governing Contract and Language

The Contract shall be governed by the laws of Islamic Republic of Pakistan or the Provincial Government and the language of the Contract shall be English.

10. Term, Termination and Survival

10.1 Term

- i. The appointment of the Lead Advisor in terms of this Contract shall automatically terminate upon completion of the services as per the Terms of Reference. During the stated period the Advisory Consortium shall endeavor to facilitate the GoS in the timely completion of all services relating to the Project.

10.2 Termination

10.2.1 By the GoS

The GoS may terminate this Contract in case of the occurrence of any of the events specified in paragraphs (a) through (f) of this clause. In such an occurrence the GoS shall give not less than thirty (30) days' written notice of termination to the Lead Advisor, and sixty (60) days' in the case of the event referred to in (e).

- a) If the Lead Advisor does not remedy the failure in the performance of their obligations under the Contract, within thirty (30) days after being notified or within any further period as the GoS may have subsequently approved in writing.
- b) If the Lead Advisor becomes insolvent or bankrupt.
- c) If the Lead Advisor, in the judgment of the GoS has engaged in corrupt or fraudulent practices in competing for or in executing the Contract.
- d) If, as the result of Force Majeure, the Advisory Consortium are unable to perform a material portion of the services for a period of not less than sixty (60) days.
- e) If the GoS, in its sole discretion and for any reason whatsoever, decides to terminate this Contract.
- f) If the Advisory Consortium fails to comply with any final decision reached as a result of arbitration proceedings.

In case of the event referred to in (a), the Lead Advisor shall be liable to the GoS for the performance of the Assignment. Failure in the performance of obligations may lead to termination of Contract along with performance security forfeiture and / or black-listing of Lead Advisor.

10.2.2 By the Lead Advisor:

The Lead Advisor may terminate this Contract, by not less than thirty (30) days' written notice to the GoS, such notice to be given after the occurrence of any of the events specified in paragraphs (a) through (c) of this clause:

- a) If the GoS fails to pay any money due to the Advisory Consortium pursuant to this Contract without Advisory Consortium fault.
- b) Pursuant to clause 27 (Good Faith) hereof within forty-five (45) days after receiving written notice from the Lead Advisor that such payment is overdue.
- c) If, as the result of Force Majeure, the Advisory Consortium is unable to perform a material portion of the Assignment for a period of not less than sixty (60) days.
- d) If the GoS fails to comply with any final decision reached as a result of arbitration proceedings.

10.2.3 Payment upon Termination

Upon termination of this Contract, the GoS shall make the following payment to the Lead Advisor:

- i. Payment for milestones satisfactorily performed as per Contract prior to the effective date of termination;

10.3 Survival

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

11. Amendments

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

12. Notices

Unless otherwise stated, notices to be given under this Contract including but not limited to a notice of waiver of any term, breach of any term of this Contract and termination of this Contract, shall be in writing and shall be given by hand delivery, recognized courier, mail, telex or facsimile transmission and delivered or transmitted to the Parties at their respective addresses set forth below:

<p><i>For GoS</i></p> <p>Director General Culture, Tourism & Antiquities Department, Government of Sindh,</p> <p><u>Karachi.</u></p> <p>Telephone: +92(0) 21-992 Fax: +92(0) 21-992</p>	<p><i>For Advisory Consortium</i></p> <p>-----</p> <p>Telephone: +92 +92 Fax: +92 Email:</p>
<p><i>For PPP Unit</i></p> <p>Director Finance Public Private Partnership (PPP) Unit, Finance Department, Government of Sindh</p> <p><u>Karachi.</u></p> <p>Telephone: +92(0) 21-992 Fax: +92(0) 21-992</p>	

Or such mail address, telephone number, telex number, or email address as may be duly notified by the respective Parties from time to time.

13. Severability

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

14. Fraud and Corruption

- A. If the GoS determines that the Lead Advisor and/or its Personnel, sub-contractors, Consortium Members, services providers and suppliers has engaged in corrupt, fraudulent, collusive, coercive, or obstructive practices, in competing for or in executing the Contract, then the GoS may, after giving 14 days notice to the Lead Advisor, terminate the Consultant's employment under

the Contract, and may resort to other remedies including blacklisting/disqualification as provided in SPPR 2010. Any personnel of the Advisory Consortium, who engages in corrupt, fraudulent, collusive, coercive, or obstructive practice during the execution of the Contract, shall be removed in accordance with clause 26.

Integrity Pact

B. If the Advisory Consortium or any of his Consortium Members, agents or servants is found to have violated or involved in violation of the Integrity Pact signed by the Lead Advisor as **Appendix – A** to this Contract, then the GoS shall be entitled to:

- a) recover from the Lead Advisor an amount equivalent to ten times the sum of any commission, gratification, bribe, finder's fee or kickback given by the Consultant or any of his Sub-consultant, agents or servants;
- b) terminate the Contract; and
- c) recover from the Lead Advisor any loss or damage to the GoS as a result of such termination or of any other corrupt business practices of the Lead Advisor or any of his Sub-consultant, agents or servants.

On termination of the Contract under Sub-Para (b) of this Sub-Clause, the Lead Advisor shall proceed in accordance with Sub-Clause 15 A. Payment upon such termination shall be made under Sub-Clause 15 A after having deducted the amounts due to the Client under 15 B Sub-Para (a) and (c).

15. Performance Standard

The Lead Advisor undertakes to perform the Assignment with the highest standards of professional and ethical competence and integrity. The Lead Advisor shall promptly replace any employees assigned under this Contract that the GoS considers unsatisfactory.

16. Confidentiality

The Lead Advisor shall not, during the term of this Contract and within two years after its expiration, disclose any proprietary or confidential information relating to the Assignment, this Contract or the GoS's business or operations without the prior written consent of the GoS.

17. Ownership of Material

Any studies, reports or other material, graphic, software or otherwise, prepared by the Advisory Consortium for the GoS under the Contract shall belong to and remain the property of the GoS. The Lead Advisor may retain a copy of such documents and software.

18. Advisory Consortium Not to be Engaged in Certain Activities

The Lead Advisor agrees that, during the term of this Contract and after its

termination, the Lead Advisor and any entity affiliated with the Advisory Consortium, shall be disqualified from providing goods, works or services (other than the Assignment or any continuation thereof) for any project resulting from or closely related to the services specified in the agreement.

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

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

20. Prohibition of Conflicting Activities

The Lead Advisor shall not engage, and shall cause their Personnel as well as their Consortium Members and their Personnel not to engage, either directly or indirectly, in any business or professional activities which would conflict with the activities assigned to them under this Contract.

21. 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 under this Contract shall be increased or decreased accordingly by agreement between the Parties.

22. Force Majeure

The failure on the part of the parties to perform their obligation under the Contract will not be considered a default if such failure is the result of natural calamities, disasters and circumstances beyond the control of the parties.

23. No Breach of Contract

The failure of a Party to fulfill any of its obligations under the 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.

24. Extension of Time

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

25. Lead Advisor's Actions Requiring GoS's Prior Approval

The Lead Advisor shall obtain the GoS'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 Assignment;
- b) appointing such members of the Personnel not listed by name in **Schedule-B** (Project Team);

26. Removal and / or Replacement of Personnel

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

27. 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.

28. Settlement of disputes

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

The Parties agree that:

- (a) All arbitration proceedings will take place in the jurisdiction of Sindh Province.
- (b) Except as may be required by law, neither a party nor its representatives may disclose the existence, content or results of any arbitration hereunder without the prior written consent of all Parties.

29. Arbitration

The language of the arbitration shall be English.

- (a) It is the intent of the Parties that, barring extraordinary circumstances, arbitration proceedings will be concluded within 120 days from the date the arbitrator is appointed. The arbitral tribunal may extend this limit in the interests of justice. Failure to adhere to this time limit shall not constitute a basis for challenging the award.
- (b) The decision of such arbitration to award or awards made by such arbitrators
 - i. and Umpire shall be final and binding upon the Parties hereto without appeal to any court or other party (s),
- (c) Pending the decision or award, the Parties shall continue to perform their obligations pursuant to the Contract;
- (d) This clause shall continue in force notwithstanding the termination of this Contract; and
- (e) Resort to arbitration shall be a condition precedent to any legal proceedings through a court of Law.

Should arbitration occur between the parties relating to the provisions of this Contract, each Party shall bear its arbitration expenses, witness and representation fees.

30. Schedules to the Contract

The following schedules shall form the integral part of this Contract:

- Schedule A - Terms of Reference
- Schedule B -Project Team
- Schedule C -Deliverables and Payments
- Schedule D -Time Plan

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

[Signature Page Follows]

For and on behalf of: Culture, Tourism & Antiquities Department GOVERNMENT OF SINDH		
<div style="text-align: right;">(Signature)</div> <div style="border-bottom: 1px solid black; width: 150px; margin: 5px 0;"></div> Secretary Culture, Tourism & Antiquities Department		In presence of the following witnesses: Signature: Name:..... CNIC No:
		Signature: Name: CNIC No:
For and on behalf of: Consortium		
<div style="text-align: right;">(Signature)</div>		In presence of the following witnesses: Signature: Name:..... CNIC No:
		Signature: Name: CNIC No:

SCHEDULE A- TERMS OF REFERENCE

1.1 Terms of Reference

Please refer terms of reference given in the RFP

SCHEDULE B - PROJECT TEAM

NAME	DESIGNATION	ORGANIZATION
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The engagement will be carried out under the overall supervision of the Lead Advisor, who will be the Engagement Partner for the project.

The principal GoS contact for this engagement will be the Lead Advisor, who has been given overall responsibility for the performance of the obligations under this Contract and coordinating with the Lead Advisor in the performance of their Assignment.

SCHEDULE C - DELIVERABLES AND PAYMENTS

S. No	Activities and Milestones	Mode of Payment	
		% age	PRs.
<u>As given in RFP Document</u>			

Notes:

- a. Payment is due on achievement of each milestone as per Contract, (shown in bold above), however, milestones do not directly relate to the actual cost of the activity stated.
- b. In case any delay occurs in proceeding with the consultancy services for more than two months, beyond the control of consultants, then payments for the completed components of the milestones are to be made by the GoS.

SCHEDULE D- TIME PLAN

To be provided by the winning bidder.

INTEGRITY PACT

**DECLARATION OF FEES, COMMISSION AND BROKERAGE ETC. PAYABLE BY THE
SUPPLIERS OF GOODS, SERVICES & WORKS IN CONTRACTS WORTH RS 10.00
MILLION OR MORE**

Contract No. _____ Dated _____

Contract Value: _____

Contract Title: _____

..... [name of Supplier] hereby declares that it has not obtained or induced the procurement of any contract, right, interest, privilege or other obligation or benefit from Government of Sindh (GoS) or any administrative subdivision or agency thereof or any other entity owned or controlled by GoS through any corrupt business practice.

Without limiting the generality of the foregoing, [name of Supplier] represents and warrants that it has fully declared the brokerage, commission, fees etc. paid or payable to anyone and not given or agreed to give and shall not give or agree to give to anyone within or outside Pakistan either directly or indirectly through any natural or juridical person, including its affiliate, agent, associate, broker, consultant, director, promoter, shareholder, sponsor or subsidiary, any commission, gratification, bribe, finder's fee or kickback, whether described as consultation fee or otherwise, with the object of obtaining or inducing the procurement of a contract, right, interest, privilege or other obligation or benefit in whatsoever form from GoS, except that which has been expressly declared pursuant hereto.

[name of Supplier] certifies that it has made and will make full disclosure of all agreements and arrangements with all persons in respect of or related to the transaction with GoS and has not taken any action or will not take any action to circumvent the above declaration, representation or warranty.

[name of Supplier] accepts full responsibility and strict liability for making any false declaration, not making full disclosure, misrepresenting facts or taking any action likely to defeat the purpose of this declaration, representation and warranty. It agrees that any contract, right, interest, privilege or other obligation or benefit obtained or procured as aforesaid shall, without prejudice to any other rights and remedies available to GoS under any law, contract or other instrument, be voidable at the option of GoS.

Notwithstanding any rights and remedies exercised by GoS in this regard, [name of Supplier] agrees to indemnify GoS for any loss or damage incurred by it on account of its corrupt business practices and further pay compensation to GoS in an amount equivalent to ten times the sum of any commission, gratification, bribe, finder's fee or kickback given by [name of Supplier] as aforesaid for the purpose of obtaining or inducing the procurement of any contract, right, interest, privilege or other obligation or benefit in whatsoever form from GoS.

Name of Buyer:

Name of Seller/Supplier:

Signature:

Signature:

[Seal]

[Seal]