

DRAFT FORM OF CONTRACT

CONTRACT FOR CONSULTANT'S SERVICES

Between

(Name of Client)

And

(Name of Consultant)

Dated:

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I. Form of Contract

This CONTRACT (hereinafter called the "Contract") is made the _____ day of the Month of ____, 20____, between, on the one hand _____ (hereinafter called the "Client) and, on the other hand _____, (hereinafter called the "Consultants").

[Note: If the Consultants consist of more than one entity, the above should be partially amended to read as follows:

".....(hereinafter called the "Client") and, on the other hand, a joint venture consisting of the following entities, each of which will be jointly severally liable to the Client for all the Consultants' obligations under this Contract, namely, ___ and _____ (hereinafter called "Consultants")]

WHEREAS

- (a) the Client has requested the Consultants to provide certain consulting services as defined in the General Conditions of Contract attached to this Contract (hereinafter called the "Services");
- (b) the Consultants, having represented to the Client that they have the required professional skills, and personnel and technical resources, have 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 (hereinafter called "GC");
 - (b) The Special Conditions of Contract (hereinafter called "SC");
 - (c) The following Appendices:

[Note: If any of these Appendices are not used, the words "Not Used" should be inserted below next to the title of the Appendix on the sheet attached hereto carrying the title of that Appendix]

- Appendix A: Description of the Services.
- Appendix B: Reporting Requirements
- Appendix C: Key Personnel and Sub-consultants

- Appendix D: Medical Certificate
- Appendix E: Hours of Work for Key Personnel
- Appendix F: Duties of the Client
- Appendix G: Cost Estimates
- Appendix H: Form of Performance Bank Guarantee
- Appendix I: Form of Bank Guarantee for Advance Payments
- Appendix J: Letter of invitation
- Appendix K: Letter of Award
- Appendix L: Minutes of pre-Bid Meeting
- Appendix M: Memorandum of Understanding (in case of JV)

2. The mutual rights and obligations of the Client and the Consultants shall be as set forth in the Contract; in particular
- (a) The Consultants shall carry out the Services in accordance with the provisions of the Contract; and
 - (b) The Client shall make payments to the Consultants 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
[NAME OF THE CLIENT]

By
(Authorised Representative)

FOR AND ON BEHALF OF
[NAME OF THE CONSULTANTS]

By
(Authorised Representative)

[Note: If the Consultants consist of more than one entity, all of these entities should appear as signatures, e.g. in the following manner]

FOR AND ON BEHALF OF EACH OF
THE MEMBERS OF THE CONSULTANTS

[NAME OF THE MEMBER]

By
(Authorised Representative)

[NAME OF THE MEMBER]

By
(Authorised Representative)

[NAME OF THE MEMBER]

By
(Authorised Representative)

etc.....

II. General Conditions of Contract

1.0 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 other instruments having the force of law in the Government's country [or in such other country as may be specified in the Special Conditions of Contract (SC)], as they may be issued and in force from time to time.
- b) "Contract" means the Contract signed by the Parties, to which these General Conditions of Contract are attached, together with all the documents listed in Clause 1 of such signed Contract;
- c) "Effective Date" means the date on which this Contract comes into force and effect pursuant to Clause GC 2.1;
- d) "Foreign currency" means any currency other than the currency of the Government;
- e) "GC" means these General Conditions of Contract;
- f) "Government" means the Government of Client's Country;
- g) "Local currency" means the Indian Rupees;
- h) "Consultant" wherever mentioned in this Contract Agreement means the "Employer Engineer (EE)" and includes sub-consultants engaged by the primary consultant.
- i) "Member", in case the Consultants consist of a joint venture of more than one entity, means any of these entities, and "Members" means all of these entities;
- j) "Party" means the Client or the Consultants, as the case may be, and Parties means both of them;
- k) "Personnel" means persons hired by the Consultants or by any Sub-Consultants and as Employees and assigned to the performance of the Services or any part thereof; "Foreign Personnel" means such persons who at the time of being so hired had their domicile outside the Government's Country, "Local Personnel" means such persons who at the time of being so hired had their domicile inside the Government's Country; and "key personnel" means the personnel referred to in Clause GC 4.2 (a).
- l) "PMNC" shall have the meaning set forth in Clause 1.11 of SCC.
- m) "SC" means the Special Conditions of Contract by which these General Conditions of Contract may be amended or supplemented;

- n) "Services" means the work to be performed by the Consultants pursuant to his contract, as described in Appendix A hereto. The scope of work will be strictly as given in various Clauses in TOR. The approach and methodology to be adopted by the Consultant for carrying out the assignment as Employer Engineer may be modified depending on the site requirements and work programme of the EPC Contractor after mutual discussions with Employer/PMNC, the EPC Contractor and the Employer Engineer. The work plan as indicated by the Consultant may be modified accordingly to the site requirements.
- o) "Sub-consultant" means any entity to which the Consultants subcontract any part of the Services in accordance with the provisions of Clause GC 3.7; and
- p) "Third Party" means any person or entity other than the Government, the Client, the Consultants or a Sub-consultant.

1.2 Relation between the Parties

Nothing contained herein shall be construed as establishing a relation of master and servant or of principal and agent as between the Client and the Consultants. The Consultants, subject to this Contract, have complete charge of Personnel and Sub-consultants, if any, performing the Services and shall be fully responsible for the Services performed by them or on their behalf hereunder.

1.3 Law Governing Contract

This Contract, its meaning and interpretation, and the relation between the Parties shall be governed by the Applicable Law.

1.4 Language

This Contract has been executed in the language specified in the SC, which shall be the binding and controlling language for all matters relating to the meaning or interpretation of this Contract.

1.5 Headings

The headings shall not limit, alter or affect the meaning of this Contract.

1.6 Notices

- 1.6.1 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 by registered mail, telegram or facsimile to such Party at the address specified in the SC.
- 1.6.2 Notice will be deemed to be effective as specified in the SC.
- 1.6.3 A Party may change its address for notice hereunder by giving the other Party notice of such change pursuant to the provisions listed in the SC with respect to Clause GC 1.6.2.

1.7 Location

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 whether in Government's Country or elsewhere, as the Client may approve.

1.8 Authority of Member in Charge

In case the Consultants consist of a joint venture of more than one entity, the Members hereby authorize the entity specified in the SC to act on their behalf in exercising all the Consultants' rights and obligations towards the Client under this Contract, including without limitation the receiving of instructions and payments from the Client.

1.9 Authorized Representatives

Any action required or permitted to be taken, and any document required or permitted to be executed, under this Contract by the Client or the Consultants may be taken or executed by the officials specified in the SC.

1.10 Taxes and Duties

Unless otherwise specified in the SC, the Consultants, Sub-consultants and Personnel shall pay such taxes, duties, fees and other impositions as may be levied under the Applicable Law. GST as applicable shall be paid to the consultant while making payment for services rendered. The consultants shall then deposit the same with the tax authorities and provide a proof of having done so within next 90 days in line with policy circulars issued by Employer.

2.0 Commencement, Completion, Modification and Termination of Contract

2.1 Effectiveness of Contract

This Contract shall come into force and effect on the date (the "Effective Date") of the Client's notice to the Consultants instructing the Consultants to begin carrying out the Services. This notice shall confirm that the effectiveness conditions, if any, listed in the SC have been met.

2.2 Termination of Contract for Failure to Become Effective

If this Contract has not become effective within such time period after the date of the Contract signed by the Parties as shall be specified in the SC, either Party may, by not less than four (4) Months written notice to the other Party, declare this Contract to be null and void, and in the event of such a declaration by either Party, neither Party shall have any claim against the other Party with respect hereto.

2.3 Commencement of Services

The Consultants shall begin carrying out the Services at the end of such time period after the Effective Date as shall be specified in the SC.

2.4 Expiration of Contract

Unless terminated earlier pursuant to Clause GC 2.9 hereof, this Contract shall expire

when services have been completed and all payments have been made at the end of such time period after the Effective Date as shall be specified in the SC.

2.5 Entire Agreement

This Contract contains all covenants, stipulations and provisions agreed by the Parties. No agent or representative of either Party has authority to make, and the Parties shall not be bound by or be liable for, any statement, representation, promise or agreement not set forth herein.

2.6 Modification

Modification of the terms and conditions of this Contract, including any modification of the scope of the Services, may only be made by written agreement between the Parties as the case may be, has been obtained. Pursuant to Clause GC 7.2 hereof, however, each Party shall give due consideration to any proposals for modification made by the other Party.

2.7 Force Majeure

2.7.1 Definition

- (a) 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 hereunder impossible or so impractical as reasonably to be considered impossible in the circumstances, and includes, but is not limited to, war, riots, civil disorder, earthquake, fire, explosion, storm, flood or other adverse weather conditions, strikes, lockouts or other industrial action (except where such strikes, lockouts or other industrial action are within the power of the Party invoking Force Majeure to prevent), confiscation or any other action by government agencies.
- (b) Force Majeure shall not include (i) any event which is caused by the negligence or intentional action of a party or such Party's Sub-consultants or agents or employees, nor (ii) any event which a diligent Party could reasonably have been expected to both (A) take into account at the time of the conclusion of this Contract and (B) avoid or overcome in the carrying out of its obligations hereunder.
- (c) Force Majeure shall not include insufficiency of funds or failure to make any payment required hereunder.

2.7.2 No Breach of Contract

The failure of a Party to fulfill any of its obligations hereunder 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 has taken all reasonable precautions, due care and reasonable alternative measures, all with the objective of carrying out the terms and conditions of this Contract.

2.7.3 Measures to be taken

- (a) A Party affected by an event of Force Majeure shall take all reasonable measures to remove such Party's inability to fulfill its obligations hereunder with a minimum of delay.

- (b) A Party affected by an event of Force Majeure shall notify the other Party of such event as soon as possible, and in any event not later than fourteen (14) days following the occurrence of such event, providing evidence of the nature and cause of such event, and shall similarly give notice of the restoration of normal conditions as soon as possible.
- (c) The Parties shall take all reasonable measures to minimize the consequences of any event of Force Majeure.

2.7.4 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 without any cost implication to other party.

2.7.5 Deleted

2.7.6 Consultation

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

2.8 Suspension

The Client may, by written notice of suspension to the Consultants, suspend all payments to the Consultants hereunder if the Consultants fail to perform any of their obligations under this Contract, including the carrying out of the Services, provided that such notice of suspension (i) shall specify the nature of the failure, and (ii) shall request the Consultants to remedy such failure within a period not exceeding thirty (30) days after receipt by the Consultants of such notice of suspension.

2.9 Termination

2.9.1 By the Client

The Client may, by not less than thirty (30) days' written notice of termination to the Consultants (except in the event listed in paragraph (f) below, for which there shall be a written notice of not less than sixty (60) days, such notice to be given after the occurrence of any of the events specified in paragraphs (a) through (h) of this Clause GC 2.9.1, terminate this Contract.

- (a) if the Consultants fail to remedy a failure in the performance of their obligations hereunder, as specified in a notice of suspension pursuant to Clause GC 2.8 hereinabove, within thirty (30) days of receipt of such notice of suspension or within such further period as the Client may have subsequently approved in writing;
- (b) if the Consultants become (or, if the Consultants consist of more than one entity, if any of their Members becomes) insolvent or bankrupt or enter into any agreements with their creditors for relief of debt or take advantage of any law for the benefit of debtors or go into liquidation or receivership whether

compulsory or voluntary;

- (c) if the Consultants fail to comply with any final decision reached as a result of arbitration proceedings pursuant to Clause GC 8 hereof;
- (d) if the Consultants submit to the Client a statement which has a material effect on the rights, obligations or interests of the Client and which the Consultants know to be false;
- (e) if, as the result of Force Majeure, the Consultants are unable to perform a material portion of the Services for a period of not less than sixty (60) days; or
- (f) if the Client, in its sole discretion and for any reason whatsoever, decides to terminate this Contract.
- (g) if the consultant, in the judgment of the Client has engaged in corrupt or fraudulent practices in competing for or in executing the Contract. For the purpose of this clause:

"corrupt practice" means the offering, giving, receiving or soliciting of anything of value to influence the action of a public official in the selection process or in contract execution.

"fraudulent practice" means a misrepresentation of facts in order to influence a selection process or the execution of a contract to the detriment of the Borrower, and includes collusive practice among consultants (prior to or after submission of proposals) designed to establish prices at artificial non-competitive levels and to deprive the Borrower of the benefits of free and open competition.

- (h) if EPC Contractor represents to Employer that the Consultant is not discharging his duties in a fair, efficient and diligent manner and if the dispute remains unresolved, Employer may terminate this contract.

2.9.2 By the Consultant

The Consultants may, by not less than thirty (30) days' written notice to the Client, such notice to be given after the occurrence of any of the events specified in paragraphs (a) through (d) of this Clause GC 2.9.2, terminate this Contract:

- (a) if the Client fails to pay any money due to the Consultants pursuant to this Contract and not subject to dispute pursuant to Clause 8 hereof within forty-five (45) days after receiving written notice from the Consultants that such payment is overdue;
- (b) if the Client is in material breach of its obligations pursuant to this Contract and has not remedied the same within forty-five (45) days (or such longer period as the Consultants may have subsequently approved in writing) following the receipt by the Client of the Consultants' notice specifying such breach;
- (c) if, as the result of Force Majeure, the Consultants are unable to perform a material portion of the Services for a period of not less than sixty (60) days; or
- (d) if the Client fails to comply with any final decision reached as a result of

arbitration pursuant to Clause GC 8 hereof.

2.9.3 Cessation of Rights and Obligations

Upon termination of this Contract pursuant to Clauses GC 2.2 or GC 2.9 hereof, or upon expiration of this Contract pursuant to Clause GC 2.4 hereof, all rights and obligations of the Parties hereunder shall cease, except:

- (a) such rights and obligations as may have accrued on the date of termination or expiration;
- (b) the obligation of confidentiality set forth in Clause GC 3.3 hereof;
- (c) the Consultants' obligation to permit inspection, copying and auditing of their accounts and records set forth in Clause GC 3.6 (ii) hereof; and
- (d) any right which a Party may have under the Applicable Law.

2.9.4 Cessation of Services

Upon termination of this Contract by notice of either Party to the other pursuant to Clauses GC 2.9.1 or GC 2.9.2 hereof, the Consultants shall, immediately upon dispatch or receipt of such notice, take all necessary steps to bring the Services to a close in a prompt and orderly manner and shall make every reasonable effort to keep expenditures for this purpose to a minimum. With respect to documents prepared by the Consultants and equipment and materials furnished by the Client, the Consultants shall proceed as provided, respectively, by Clauses GC 3.9 or GC 3.10 hereof.

2.9.5 Payment upon Termination

Upon termination of this Contract pursuant to Clauses GC 2.9.1 or GC 2.9.2 hereof, the Client shall make the following payments to the Consultants {after offsetting against these payments any amount that may be due from the Consultant to the Client}:

- (a) Remuneration and Expenditure on account of other items @ 60 % as defined at SC 6.2 for Services satisfactorily performed till final date of cessation of services, being periodic payments.
- (b) Remuneration and Expenditure on account of other items @ 40 % as defined at SC 6.2 till final date of cessation of services, being payments linked to percentage progress achieved and incurred prior to the effective date of termination;
 - (i) In the event the contract is terminated before or the Employer determines no extension of contract after completion of specified contract period or any extension granted no such payment of 40 % as at (ii) above shall be made by the employer for non-completion of balance milestones. However, the last payment shall be made for part of such 10 % progress achieved for each project.
- (c) except in the case of termination pursuant to paragraphs (a) through (d) of Clause GC 2.9.1 hereof, reimbursement of any reasonable cost incident to the prompt and orderly termination of the Contract including the cost of the return travel of the Consultants' personnel and their eligible dependents.

2.9.6 Disputes about Events of Termination

If either Party disputes whether an event specified in paragraphs (a) through (e) of Clause GC 2.9.1 or in Clause GC 2.9.2 hereof has occurred, such Party may, within forty-five (45) days after receipt of notice of termination from the other Party, refer the matter to arbitration pursuant to Clause GC 8 hereof, and this Contract shall not be terminated on account of such event except in accordance with the terms of any resulting arbitral award.

3.0 Obligation of the Consultants

3.1 General

3.1.1 Standard of Performance

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

3.1.2 Law Governing Services

The Consultants shall perform the Services in accordance with the Applicable Law and shall take all practicable steps to ensure that any Sub-consultants, as well as the Personnel of the Consultants and any Sub-consultants, comply with the Applicable Law. The Client shall advise the Consultants in writing of relevant local customs and the Consultants shall, after such notifications, respect such customs.

3.2 Conflict of Interests

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

The Remuneration of the Consultants pursuant to Clause GC 6 hereof shall constitute the Consultants' sole remuneration in connection with this Contract or the Services and, subject to Clause GC 3.2.2 hereof, the Consultants 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 hereunder, and the Consultants shall use their best efforts to ensure that any Sub-consultants, as well as the Personnel and agents of either of them, similarly shall not receive any such additional remuneration.

If the Consultants, as part of the Services, have the responsibility of advising the Client on the procurement of goods, works or services, the Consultants shall comply with any applicable procurement guidelines of the Client (Employer) and or Associates Bank or of the Association, as the case may be, and other funding agencies and shall at all times exercise such responsibility in the best interest of the Client. Any discounts or commissions obtained by the Consultants in the exercise of such procurement responsibility shall be for the account of the Client.

3.2.2 Consultants and Affiliates Not to engage in Certain Activities

The Consultants agree that, during the term of this Contract and after its termination, the Consultants and any entity affiliated with the Consultants, as well as any Sub-consultant and any entity affiliated with such Sub-consultant, shall be disqualified from providing goods works or services (other than the Services and any continuation thereof) for any project resulting from or closely related to the Services.

3.2.3 Prohibition of Conflicting Activities

The Consultants shall not engage, and shall cause their Personnel as well as their Sub-consultant and their Personnel not to engage, either directly or indirectly, in any of the following activities:

- (a) during the term of this Contract, any business or professional activities in the Government's country which would conflict with the activities assigned to them under this Contract; and
- (b) after the termination of this Contract, such other activities as may be specified in the SC.

3.3 Confidentiality

The Consultants, their Sub-consultants and the Personnel of either of them shall not, either during the term or within two (2) years after the expiration of this Contract, disclose any proprietary or confidential information relating to the Project, the Services, this Contract or the Client's business or operations without the prior written consent of the Client.

3.4 Liability of the Consultants

The Consultant agrees to indemnify and hold harmless the client from and against any and all claims, actions, proceedings, lawsuits, demands, losses, liabilities, damages, fines or expenses (including interest, penalties, attorney's fees and other costs of defense or investigation to the extent related to or arising out of, whether directly or indirectly (a) the breach by the consultant of any obligations under the contract; (b) the alleged negligent, reckless or other wise wrongful act or omission of the consultant including professional negligence or mis-conduct of any nature whatsoever in relation to services rendered to the client; (c) death or bodily injury to any person(including any third party or any personnel of the client) or loss of or damage to any property of the client or any third party (Collectively "Indemnified Matter")

As soon as reasonably practicable after the receipt by the client of a notice of the commencement of any action by a third party, the client will notify the consultant of the commencement thereof; provided, however, that the omission so to notify shall not relieve the consultant from any liability which it may have to the client or the third party. The obligations to indemnify and hold harmless, or to contribute, with respect to losses, claims, actions, damages and liabilities relating to the indemnified matter shall survive till the final resolution of all claims for indemnification and/ or contribution.

The foregoing provisions are in addition to any rights which the client may have at common law, in equity or otherwise.

3.5 Insurance to be Taken Out by the Consultants

The Consultants (i) 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 Client, insurance against the risks, and for the coverages, as shall be specified in the SC, and (ii) at the Client's request, shall provide evidence to the Client showing that such insurance has been taken out and maintained and that the current premiums therefore have been paid.

3.6 Accounting, Inspection and Auditing

The Consultants (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 cost, and the bases thereof (including such bases as may be specifically referred to in the SC); (ii) shall permit the Client or its designated representative periodically, and up to one year 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 Client; and (iii) shall permit the client to inspect the Consultant's accounts and records relating to the performance of the Consultant and to have them audited by auditors appointed by the client.

3.7 Consultants' Actions Requiring Client's Prior Approval

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

- (a) appointing and Deployment of such members of the Personnel as are listed in Appendix C ("Consultants' Sub-consultants' Key Personnel") merely by title but not by name;
- (b) entering into a subcontract for the performance of any part of the Services, it being understood (i) that the selection of the Sub-consultant and the terms and conditions of the subcontract shall have been approved in writing by the Client prior to the execution of the subcontract, and (ii) that the Consultants shall remain fully liable for the performance of the Services by the Sub-consultant and its Personnel pursuant to this Contract; and
- (c) any other action that may be specified in the SC.

3.8 Reporting Obligations

The Consultants shall submit to the -PMNC/Employer 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.

3.9 Documents Prepared by the Consultants to Be the Property of the Client

All plans, drawings, specifications, designs, reports, other documents and software prepared by the Consultants for the Client under this Contract shall become and remain the property of the Client, and the Consultants shall, not later than upon termination or expiration of this Contract, deliver all such documents to the Client, together with a detailed inventory thereof. The Consultants may retain a copy of such documents and

software. Restrictions about the future use of these documents and software, if any, shall be specified in the SC.

3.10 Equipment and Materials Furnished by the Client

Equipment and materials made available to the Consultants by the Client, or purchased by the Consultants with funds provided by the Client, shall be the property of the Client and shall be marked accordingly. Upon termination or expiration of this Contract, the Consultants shall make available to the Client an inventory of such equipment and materials and shall dispose of such equipment and materials in accordance with the Client's instructions. While in possession of such equipment and materials, the Consultants, unless otherwise instructed by the Client in writing, shall insure them at the expense of the Client in an amount equal to their full replacement value.

3.11 The consultant shall install biometric attendance system for all key personal, sub-professional and other staff to monitor their attendance and the monthly payments shall be based on same. Any late coming due to any reason whatsoever up to maximum 1 hour any day needs to be compensated for the delayed period by the employee same day. Any delay more than 1 Hour shall attract remuneration deduction for ½ day. Any delay more than 4 hours shall be considered as absence for the day and shall be dealt with accordingly.

3.12 Any expenses incurred by Employer Engineer representative for inspection of equipment's/ materials anywhere in India shall be borne by Employer Engineer without any additional price & within total contract price. The matter regarding any inspection abroad shall be discussed by Employer Engineer with the Employer for appointing any third party inspection agency or by Employer Engineer and/or by Employer themselves, at additional cost to Employer.

3.13 It is clearly understood by the Consultant that time is essence of the contract. The Consultant shall make all out efforts to ensure that the progress by the contractors is achieved as per milestones/time lines/schedule defined in contract documents. However, in case of any delay in final completion of (any) project beyond the 23rd month of construction period of consultants contract and , where in no previously unconsumed man-months are available , the Consultant shall get the work completed as soon as possible and shall be paid at 60 % of original rates under all heads deployed for completion, subject to prior approval from Employer.

3.14 The contracts for the respective projects provide for Employer obligations regarding release of payments to contractor within certain time frame and any delay in releasing payments to contractors may attract financial liabilities on Employer. Therefore, it is essential that all such payments are processed and recommended to the PMNC/ Employer or returned to the contractor with observations within specified time frame well before payment due date as per respective contracts. In the event of any delay beyond specified time provided in respective contracts, for any reason not attributable to the Employer, the consultant shall be liable to pay penalty amount calculated @ 0.033 % per day of delay plus GST thereon to the Employer. The decision of the Employer shall be final regarding same.

3.15 It is essential that in the interest of the project all change of scope/variation order are processed on priority so that completion of same matches with completion of respective project. The matter needs to be taken by the Consultant in time bound manner with the Contractors by following procedure defined in the respective

contract. The such proposals require approval from Employer also and it is required that the such proposals must be complete in all respect as per contract. Any delay in processing such change of scope may have adverse effect on the project completion and disputes may arise. In the event of any delay beyond 20 calendar days in processing such change of scope proposal the employer shall, at their sole discretion, may apply penalty @ Rs 7000 plus GST on the Consultant and the same shall be recovered from Consultant invoices with intimation to the consultant. The decision of the Employer shall be final regarding same.

- 3.16 It is essential that in the interest of the project all Good for Construction Drawings (GFC drawings) /documents (All type of drawings including but not limited to GFC, architectural, shop drawing, structural drawing etc) are reviewed/ commented/ approved on priority and must me as per contract provisions of respective contract. The Employer Engineer shall be responsible and to ensure that the GFC drawings / documents are prepared in time; The matter needs to be taken by the Consultant in time bound manner with the Contractors following procedure defined in the respective contract. Any delay in reviewing/ commenting / approving such drawings / documents and errors may have adverse effect on the project completion and disputes may arise with the contractor. In the event of any delay in processing such / ignorance include works or intimation of errors to the contractor beyond 20 calendar days by the consultant, the employer shall, at their sole discretion, may apply penalty @ Rs 5000/- per event plus GST on the Consultant and the same shall be recovered from Consultant invoices with intimation to the consultant. The decision of the Employer shall be final regarding same. The construction work to be supervised by the consultant should be in conformity with the drawings/documents manuals/ Quality plans as approved by them on the basis of specifications given in the respective contracts. In case of any ambiguity between specifications, tender/information drawings / GFC, the same should be resolved as per the priority of documents mentioned in respective contract agreements in consultation with PMNC / EMPLOYER.

4.0 Consultants' Personnel and Sub-consultants

4.1 General

The Consultants shall employ and provide such qualified and experienced Personnel and Sub-consultants as are required to carry out the Services.

4.2 Description of Personnel

- (a) The titles, agreed job descriptions, minimum qualification and estimated periods of engagement in the carrying out of the Services of each of the Consultants' Key Personnel are described in Appendix C. If any of the Key Personnel has already been approved by the client, his/her name is listed as well.
- (b) If required to comply with the provisions of Clause GCC 3.1.1 hereof, adjustments with respect to the estimated periods' of engagement of Key Personnel set forth in Appendix C may be made by the Consultants by written notice to the Client, provided (i) that such adjustments shall not alter the originally estimated period of engagement of any individual by more than 10% or one week, whichever is larger, and (ii) that the aggregate of such adjustments shall not cause payments under this Contract to exceed the ceilings set forth in Clause GC 6.1(b) of this Contract. Any other such adjustments shall only be made with the Client's written approval.

- (c) If additional work is required beyond the scope of the Services specified in Appendix A, the estimated periods of engagement of Key Personnel set forth in Appendix C may be increased by agreement in writing between the Client and the Consultants, provided that any such increase shall not, except as otherwise agreed, cause payments under this Contract to exceed the ceilings set forth in Clause GC 6.1 (b) of this Contract.

4.3 Approval of Personnel

The Key Personnel i.e. Professional Staff and Sub-consultants listed by title as well as by name in Appendix C are hereby approved by the Client. In respect of other Key Personnel which the Consultants propose, to use in the carrying out of the Services, the Consultants shall submit to the client for review and approval a copy of their biographical data and (in the case of Key personnel to be used within the country of the Government) a copy of a satisfactory medical certificate in the form attached hereto as Appendix D. If the Client does not object in writing (stating the reasons for the objection) within thirty (30) calendar days from the date of receipt of such biographical data and (if applicable) such certificate, such Key Personnel shall be deemed to have been approved by the Client.

4.4 Working Hours, Overtime, Leave, etc.

- (a) Working hours and holidays for Key Personnel are set forth in Appendix E hereto. To account for travel time, foreign Personnel carrying out Services inside the Government's country shall be deemed to have commenced (or finished) work in respect of the Services such number of days before their arrival in (or after their departure from) the Government's country as is specified in Appendix E hereto.
- (b) The Personnel of all types engaged by Consultant to provide Services on this Contract shall not be entitled to be paid for overtime nor to take paid sick leave or vacation leave except as specified in Appendix E hereto, and except as specified.
- (c) In such Appendix, the Consultants' remuneration shall be deemed to cover these items. All leave to be allowed to the Personnel is included in the staff-months of service set for in Appendix C. Any taking of leave by Personnel shall be subject to the prior approval by the Client and the Consultants shall ensure that absence for leave purposes will not delay the progress and adequate supervision of the services.

4.5 Removal and/or Replacement of Personnel

- (a) Except as the Client may otherwise agree, no changes shall be made in the Key Personnel. If, for any reason beyond the reasonable control of the Consultants, it becomes necessary to replace any of the Personnel, the Consultants shall forthwith provide as a replacement a person of equivalent or better qualifications.
- (b) If the Client (i) finds that any of the Personnel has committed serious misconduct or has been charged with having committed a criminal action, or (ii) has reasonable cause to be dissatisfied with the performance of any of the Personnel, then the Consultants shall, at the Client's written request specifying the grounds therefore, forthwith provide as a replacement a person with qualifications and

experience acceptable to the Client.

2.9.2 Any of the Personnel provided as a replacement under Clauses (a) and (b) above, the rate of remuneration applicable to such person as well as any reimbursable expenditures (including expenditures due to the number of eligible dependents) the Consultants may wish to claim as a result of such replacement, shall be subject to the prior written approval by the Client. Except as the Client may otherwise agree, (i) the Consultants shall bear all additional travel and other costs arising out of or incidental to any removal and/or replacement, and (ii) the remuneration to be paid to any of the Key Personnel provided as a replacement shall be reduced by 2.50 % each time of initial deployed Key personal cost with maximum of 10 % of remuneration paid for that personal. Further no payment shall be made by Employer to the Employer Engineer for replacement, subject to prior approval, on any Key personal or Other professionals for first 30 days of deployment. However, no such deduction shall apply for reason i.e death/extreme medical ground for which requisite documents shall be furnished by Employer Engineer and shall be subject to approval by Employer for not applying any such deduction. Employer reserves its rights to refuse any such replacement or can initiate action of higher penalty/termination/debarment up to 2 years as considered appropriate.

2.9.3 The proposed CV at initial stage and subsequently as replacement must be signed by the candidate in all pages in candidate letter head or plain paper and not on Employer Engineer letter heads. In order to prevent the tendency of the personnel and consulting firm to submit incorrect and inflated CV, they should sign every page of CV before submission in order to authenticate that CV furnished by them is correct. The consulting firm and the personnel through consulting firm should be informed by Employer while accepting CV of the new personnel that if CV is found incorrect and inflated at a later date, the personnel accepted would be removed from his assignment and debarred from further Employer's works for an appropriate period to be decided by Employer and the new proposed personnel in place of removed personnel would be paid 15% less salary than the original personnel. 15% reduction in the salary will be imposed for submitting the incorrect information. This reduction will be imposed thrice for all positions together. If the same consulting firm submits incorrect information again, Employer reserves its right to black-list that firm.

4.6 Team Leader

If required by the SC, the Consultants shall ensure that at all times during the Consultants' performance of the Services in the Government's country a Team Leader acceptable to the Client, shall take charge of the performance of such Services.

5.0 Obligations of the Client

5.1 Assistance and Exemptions

Unless otherwise specified in the SC, the Client shall use its best efforts to ensure that the Government shall:

- (a) provide the Consultants, Sub-consultants and Personnel with work permits and such other documents as shall be necessary to enable the Consultants, Sub-consultants or Personnel to perform the Services;

- (b) assist for the Personnel and, if appropriate, their eligible dependents to be provided promptly with all necessary entry and exit visas, residence permits, exchange permits and any other documents required for their stay in Government's country;
- (c) facilitate prompt clearance through customs of any property required for the Services and of the personal effects of the Personnel and their - eligible dependents;
- (d) issue to officials, agents and representatives of the Government all such instructions as may be necessary or appropriate for the prompt and effective implementation of the Services;
- (e) assist the Consultants and the Personnel and any Sub-consultants employed by the Consultants for the Services from any requirement to register or obtain any permit to practice their profession or to establish themselves either individually or as a corporate entity according to the Applicable Law;
- (f) grant to the Consultants, any Sub-consultants and the Personnel of either of them the privilege, pursuant to the Applicable Law, of bringing into Government's country reasonable amounts of foreign currency for the purposes of the Services or for the personal use of the Personnel and their dependents and of withdrawing any such amounts as may be earned therein by the Personnel in the execution of the Services; and
- (g) Provide to the Consultants, Sub-consultants and Personnel any such other assistance as may be specified in the SC.

5.2 Access to Land

The Client warrants that the Consultants shall have, free of charge, unimpeded access to all land in the Government's country in respect of which access is required for the performance of the Services. The Consultant will not be responsible for any damage to such land or any property thereon resulting from such access, unless such damage is caused by the default or negligence of the Consultants or any Sub-consultant or the Personnel of either of them.

5.3 Change in the Applicable Law

If there is any change in the GST rate or some other major change in Applicable Law the same shall be to Employer account for any increase or decrease of same.

5.4 Services, Facilities and Property of the Client

The office space will be provided to Employer's Engineer of approximately 230 square meters in ABCD building, Dholera. The nominal rent including electricity and water will be charged by DICDL as per company policy. The rent will be informed to Employer's Engineer at a later date. Employer's Engineer shall pay rent to DICDL on monthly basis in advance and the same will be reimbursed to Employer's Engineer in their bills.

The Client shall make available to the Consultants and the Personnel, for the purposes of the services and free of any charge, the other services, facilities and property described in Appendix F at the times and in the manner specified in said Appendix F,

provided that if such services, facilities and property shall not be made available to the Consultants as and when so specified, the Parties shall agree on (i) any time extension that it may be appropriate to grant to the Consultants for the performance of the Services, (ii) the manner in which the Consultants shall procure any such services, facilities and property from other sources, and (iii) the additional payments, if any, to be made to the Consultants as a result thereof pursuant to Clause GC 6.1(c) hereinafter.

5.5 Payment

In consideration of the Services performed by the Consultants under this Contract, the Client shall make to the Consultants such payments and in such manner as is provided by Clause GC 6 of this Contract.

5.6 Counterpart Personnel

- (a) If so provided in Appendix F hereto, the Client shall make available to the Consultants, as and when provided in such Appendix F, and free of charge, such counterpart personnel to be selected by the Client, with the Consultants' advice, as shall be specified in such Appendix F. Counterpart personnel shall work under the exclusive direction of the Consultants. If any member of the counterpart personnel fails to perform adequately any work assigned to him by the Consultants which is consistent with the position occupied by such member, the Consultants may request the replacement of such member, and the Client shall not unreasonably refuse to act upon such request.
- (b) If counterpart personnel are not provided by the Client to the Consultants as and when specified in Appendix F, the Client and the Consultants shall agree on (i) how the affected part of the Services shall be carried out, and (ii) the additional payments, if any, to be made by the Client to the Consultants as a result thereof pursuant to Clause GC 6.1(c) hereof.

6.0 Payments to the Consultants

6.1 Cost Estimates; Ceiling Amount

- (a) An estimate of the cost of the Services payable is set forth in Appendix G.
- (b) Except as may be otherwise agreed under Clause GC 2.6 and subject to Clause GC 6.1(c), payments under this Contract shall not exceed the ceilings specified in the SC for the period specified. The Consultants shall notify the Client as soon as cumulative charges incurred for the Services have reached 80% of these ceilings.
- (c) Notwithstanding Clause GC 6.1(b) hereof, if pursuant to clauses GC 5.3,5.4 or 5.6 hereof, the Parties shall agree that additional payments shall be made to the Consultants in order to cover any necessary additional expenditures not envisaged in the cost estimates referred to in Clause GC 6.1(a) above, (except expenses on inspection visits which are included,) the ceiling or ceilings, as the case may be, set forth in Clause GC 6.1 (b) above shall be increased by the amount or amounts, as the case may be, of any such additional payments.

6.2 Remuneration and Expenditures on remaining/ other items

- (a) Subject to the ceilings specified in Clause GC 6.1 (b) hereof, the Client shall pay to the Consultants (i) remuneration as set forth in Clause GC 6.2(b), and (ii) Expenditure on Remaining items as set forth in Clause GC 6.2(c). If specified in the SC, said remuneration & expenditure on remaining / other items shall be subject to price adjustment as specified in the SC.
- (b) Remuneration for the Personnel shall be determined on the basis of time actually spent by such Personnel in the performance of the Services after the date determined in accordance with Clause GC 2.3 and Clause SC 2.3 (or such other date as the Parties shall agree in writing) (including time for necessary travel via the most direct route) at the rates referred to, and subject to such additional provisions as are set forth, in the SC.
- (c) Expenditure on Remaining items incurred by the Consultants as per breakup given in cost estimate in Schedule – G in the performance of the Services, as specified in Clause SC 6.3(b).
- (d) For detailed terms refer SC clause 6.2

6.3 Currency of Payment

All payments shall be made in Indian Rupees and shall be subjected to applicable Indian laws withholding taxes if any.

6.4 Mode of Billing and Payment

Billing and payments in respect of the Services shall be made as follows:

- (a) The Client shall cause to be paid to the Consultants an interest-bearing advance payment as rate specified in the SC, and as otherwise set forth below. The advance payment will be due after provision by the Consultants to the Client of a bank guarantee by a bank acceptable to the Client in an amount (or amounts) and in a currency (or currencies) specified in the SC, such bank guarantee (i) to remain effective until the advance payment has been fully set off as provided in the SC, and (ii) to be in the form set forth in Appendix I hereto or in such other form as the Client shall have approved in writing.
- (b) As soon as practicable and not later than fifteen (15 days) after the end of each calendar month during the period of the Services, the Consultants shall submit to the Client, in duplicate, itemized statements, accompanied by copies of receipted invoices, vouchers and other appropriate supporting materials, of the amounts payable pursuant to Clauses GC 6.3 and 6.4 for such month. Each monthly statement shall distinguish that portion of the total eligible costs which pertains to remuneration from that portion which pertains to reimbursable expenditures.
- (c) The Client shall cause the payment of the Consultants periodically as given in schedule of payment above within sixty (60) days after the receipt by the Client of bills with supporting documents. Only such portion of a monthly statement that is not satisfactorily supported may be withheld from payment. Should any discrepancy be found to exist between actual payment and costs authorized to be incurred by the Consultants, the Client may add or subtract the difference from any subsequent payments. Interest at the rate specified in the SC shall become payable as from the above due date on any amount due by, but not paid on, such

due date.

- (d) The Performance Bank Guarantee (PBG) shall be kept valid by the consultant and JV consultant till 90 days after submission of final report and a final statement by the Consultants and approved as satisfactory by the Client. The Services shall be deemed completed and finally accepted by the Client and the final report and final statement shall be deemed approved by the Client as satisfactory ninety (90) calendar days after receipt of the final report and final statement by the Client unless the Client, within such ninety (90)-day period, gives written notice to the Consultants specifying in detail deficiencies in the Services, the final report or final statement. The Consultants shall thereupon promptly make any necessary corrections, and upon completion of such corrections, the foregoing process shall be repeated. Any amount which the Client has paid or caused to be paid in accordance with this Clause in excess of the amounts actually payable in accordance with the provisions of this Contract shall be reimbursed by the Consultants to the Client within thirty, (30) days after receipt by the Consultants of notice thereof. Any such claim by the Client for reimbursement must be made within twelve (12) calendar months after receipt by the Client of a final report and a final statement approved by the Client in accordance with the above. The validity of the PBG shall be extended by the Employer Engineer as may be required.
- (e) All payments under this Contract shall be made to the account of the Consultants specified in the SC.

7.0 Fairness and Good Faith

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.

7.2 Operation of the Contract

The Parties recognize that it is impractical in this Contract to provide for every contingency which may arise during the life of the Contract, and the Parties hereby agree that it is their intention that this Contract shall operate fairly as between them, and without detriment to the interest of either of them, and that, if during the term of this Contract either Party believes that this Contract is operating unfairly, the Parties will use their best efforts to agree on such action as may be necessary to remove the cause or causes of such unfairness, but no failure to agree on any action pursuant to this Clause shall give rise to a dispute subject to arbitration in accordance with Clause GC 8 hereof.

8.0 Settlement of Disputes

8.1 Amicable Settlement

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

8.2 Dispute Settlement

Any dispute between the Parties as to matters arising pursuant to this Contract which 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

A. **Amendments of, and Supplements to, Clauses in the General Conditions of Contract**

1.1(a) The words "in the Government's country" are amended to read "in INDIA"

1.4 The language is: English

1.6.1 The addresses are:

Client: Address of Employer
Attention:
Fax, if:
EMail:

Consultant: Address of Consultant
Attention:
Fax, if:
EMail:

1.6.2 Notice will be deemed to be effective as follows:

- (a) in the case of personal delivery or registered/ Speed post mail (*Not Courier*) on delivery;
- (b) in the case of Fax - 24 hours following confirmed transmission;
- (c) in the case of Mail - 24 hours following confirmed transmission

1.8 The Member in Charge is: Member (P) Sh.

(Note: If the Consultants consist of a joint venture of more than one entity, the name of the entity whose address is specified in SC 1.6.1 should be inserted here. If the Consultants consist of one entity, this Clause 1.8 should be deleted from the SC).

1.9 The Authorised Representatives are:

For the Client: _____

For the Consultants: _____

1.10 The Consultants, Sub-consultants and the Personnel shall pay the taxes, duties, fees, levies and other impositions levied under the existing, amended or enacted laws during life of this contract and the client shall perform such duties in regard to the deduction of such tax as may be lawfully imposed.

1.11 To assist in due discharge of its obligations, the Employer has appointed AECOM as the Programme Manager for the Project (Programme Manager for New Cities, the "PMNC" . All communications relating to contract management on this contract shall be submitted to the PMNC for final approval of Employer.

2.1 The effectiveness conditions are the following:

i) Approval of the Contract by the Client.

2.3 The time period shall be one month or such other time period as the Parties may agree in writing.

2.4 The time period shall be 71 months (23 month for construction period and 48 months for Maintenance period).

3.4 Limitation of the Consultants' Liability towards the Client

(a) Except in case of gross negligence or willful misconduct on the part of the Consultants or on the part of any person or firm acting on behalf of the Consultants in carrying out the Services, the Consultants, with respect to damage caused by the Consultants to the Client's property, shall not be liable to the Client:

i) for any indirect or consequential loss or damage; and

ii) Consultant will maintain at its expenses; Professional Liability Insurance including coverage for errors and omissions caused by Consultant's negligence in the performance of its duties under this agreement, (A) For the amount not exceeding total payments for Professional Fees and Reimbursable Expenditures made or expected to be made to the Consultants hereunder OR (B) the proceeds, the Consultants may be entitled to receive from any insurance maintained by the Consultants to cover such a liability, whichever of (A) or (B) is higher.

iii) The policy should be issued only from an Insurance Company operating in India.

iv) The policy must clearly indicate the limit of indemnity in terms of "Any One Accident" (AOA) and "Aggregate limit on the policy period" (AOP) and in no case should be for an amount less than stated in the contract.

v) If the Consultant enters into an agreement with Employer in a joint venture or "in association", the policy must be procured and provided to Employer by the joint venture/in association entity and not by the individual partners of the joint venture/association.

vi) The contract may include a provision whereby the Consultant does not cancel the policy midterm without the consent of the Employer. The insurance company may provide an undertaking in this regard.

- (b) This limitation of liability shall not affect the Consultants' liability, if any, for damage to Third Parties caused by the Consultants or any person or firm acting on behalf of the Consultants in carrying out the Services.
- (c) Professional Liability Insurance may be accepted for initially one year which shall be extended annually for five years. PLI shall be uniformly taken for a period of Six years.
- (d) It is consultant responsibility to maintain continuity of insurances and shall be solely responsible for occurrence any incident. However, in the event the Consultant does not maintain continuity of such insurances & does not provide the renewed stipulated insurances, a sum equal to twice the proportionate premium amount along with GST to be determined from previous policy in force, shall be deducted from the running invoices.

3.5 The risks and the coverage shall be as follows

- (a) Third Party motor vehicle liability insurance as required under Motor Vehicles Act, 1988 in respect of motor vehicles operated in India by the Consultants or their Personnel or any Sub-consultants or their Personnel for the period of consultancy.
- (b) Third Party liability insurance with a minimum coverage, of Rs. 1.0 million for the period of consultancy.
- (c) Professional liability insurance as per 3.4 (a) (ii) of SC of the consultancy, with a minimum coverage equal to estimated remuneration and reimbursable.
- (d) Employer's liability and workers' compensation insurance in respect of the Personnel of the Consultants and of any Sub-consultant, in accordance with the relevant provisions of the Applicable Law, as well as, with respect to such Personnel, any such life, health, accident, travel or other insurance as may be appropriate; and
- (e) Insurance against loss of or damage to (i) equipment purchased in whole or in part with funds provided under this Contract, (ii) the Consultants' property used in the performance of the Services, and (iii) any documents prepared by the Consultants in the performance of the Services.

3.7(c) The other actions are:

- (i) taking any action under a civil works contract designating the Consultants as "Employer's Engineer", for which action, pursuant to such civil works contract, the written approval of the Client as "Employer" is required.

3.9 The Consultants shall not use these documents for purposes unrelated to this Contract without the prior written approval of the Client.

4.6 "The person designated as Team Leader in Appendix C shall serve in that capacity, as specified in Clause GC 4.6."

- 6.1(b) The amount payable Indian Rupee is: _____.
- 6.2 "Payments for remuneration and expenses on account of remaining / other items etc. made in accordance with Clause GC 6.2(a) in shall be paid as follows:
- (i) The monthly amount shall be computed based on billing rates for services rendered by the personnel of all categories namely (i) key Personnel (ii) sub-Professional personnel and (iii) Support staff on man-moth wise, (iv) transportation (v) Duty travel to site (vi) Arial survey (vii) Other expenses etc. as per cost estimate presented in Schedule - G.
 - (ii) The Monthly deployment of personnel / resources during construction period and maintenance period shall be jointly decided by Employer Engineer under approval of Employer depending upon volume of work since the 7 projects are having different timelines on monthly basis with monthly rolling program to be submitted time to time. The monthly amount so computed as above shall be based on actual deployment of resources subject to monthly limits of such personnel / resources as approved by the Employer.
 - (iii) Beginning 13th months from the first date following last date of Bid submission month, the rates shall be increased to cover all items of the contract i.e. remuneration, vehicle hire, office rent, consumables, furniture etc.at simple rate of @ 5% every 12 months. However, for evaluation and award of the Bid proposals, the quoted initial rate (as applicable for first 12 months from last date of submission of bid) shall be multiplied by the total time input for each position on this contract, i.e. without considering the increase in the billing rates. All payments shall be made in Indian Rupees and shall be subjected to applicable Indian laws withholding taxes if any.
 - (iv) 60 % amount for construction supervision projects as computed for man-months & resources as jointly arrived at shall be periodic and shall be released from month to month.
 - (v) Balance 40% amount for construction supervision projects as computed for man-months & resources as jointly arrived at shall be payable at every 10 % percentage progress intervals of individual projects (i.e at cumulative 10, 20, 30, 40, 50,.....,100.% progress) in proportion to Estimated cost of each project and shall be paid without any interest. Payments linked to financial percentage progress as admitted by the Employer shall be considered based on actual progress made by the respective contractor(s).
 - (vi) Payments pertaining to supervision during DLP and maintenance period shall be made in full for actual deployment of man-months and resources as per contracted rates based on actual deployment of resources subject to monthly limits of such personnel / resources as approved by the Employer.

Notwithstanding any other provisions in the agreement in this regard, this provision will prevail and override any other provision to the contrary in this agreement.

- 6.2(b)(i) (1) It is understood (i) that the remuneration rates shall cover (A) such salaries and allowances as the Consultants shall have agreed to pay to the Personnel

as well as factors for social charges and overhead, and (B) the cost of backstopping by home office staff not included in the Personnel listed in Appendix C, and (C) the Consultants' fee; (ii) that bonuses or other means of profit-sharing shall not be allowed as an element of overhead, and (iii) that any rates specified for persons not yet appointed shall be provisional and shall be subject to revision, with the written approval of the Client, once the applicable salaries and allowances are known.

- (2) Remuneration of Key personal or professional personal or support staff for periods of less than one month shall be calculated as follows:

If the number of actual working days including gazetted holidays are equal or more than 15 days in the billing month or previous month his such working days shall be multiplied by a factor 31/27 or 30/26 or 28/24 to arrive at month quantity depending on number of days in respective month for keeping margin for Weekly offs on normative basis and shall be paid. If however the number of such days are less than 15 days then payment shall be worked out based on monthly rate divided by 31 or 30 or 28 as the case may be to arrive at daily rate without any margin for Weekly offs and shall be paid for actual number of days. If the requirement of any person is for less than 8 hrs in a day the same shall be paid in proportion.

6.2(b)(ii) The rates for foreign and local Personnel are set forth in Appendix G.

6.4(a) The following provisions shall apply to the interest-bearing advance payment and the advance payment guarantee:

- 1) An advance payment of 10% of the contract price in proportion to the quoted Indian currency (INR) in the bid shall be made within 60 days after receipt and verification of advance payment bank guarantee. The advance payment along with interest will be set off by the Client in equal instalments against the statements for the first 12 months of the Service until the advance payment has been fully set off. The advance payment shall be in Indian Rupee.
- 2) The bank guarantee shall be in the amount and in the currency of the advance payment.
- 3) Interest rate shall be bank rate + 5% per annum on outstanding amount at each invoice.

6.4(e) The accounts are: _____

[Note: Insert account number, type of account and name and address of the Bank].

7. Fairness and Good Faith

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.

7.2 Operation of the Contract

The Parties recognize that it is impractical in this Contract to provide for every contingency which may arise during the life of the Contract, and the Parties hereby agree that it is their intention that this Contract shall operate fairly as between them, and without detriment to the interest of either of them, and that, if during the term of this Contract either Party believes that this Contract is operating unfairly, the Parties will use their best efforts to agree on such action as may be necessary to remove the cause or causes of such unfairness, but no failure to agree on any action pursuant to this Clause shall give rise to a dispute subject to arbitration in accordance with Clause GC 8 hereof.

8. Settlement of Dispute

8.1 Amicable Settlement

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

8.2 Dispute Settlement

Disputes shall be settled by arbitration in accordance with the following provisions:

8.2.1 Selection of Arbitrators

Each dispute submitted by a Party to arbitration shall be heard by a sole arbitrator or an arbitration panel composed of three arbitrators, in accordance with the following provisions:

- (a) Where the Parties agree that the dispute concerns a technical matter, they may agree to appoint a sole arbitrator or, failing agreement on the identity of such sole arbitrator or within thirty (30) days after receipt by the other Party of the proposal of a name for such an appointment by the Party who initiated the proceedings, either Party may apply to the President, Indian Roads Congress, New Delhi, for a list of not fewer than five nominees and, on receipt of such list, the Parties shall alternately strike names there from, and the last remaining nominee on the list shall be the sole arbitrator for the matter in dispute. If the last remaining nominee has not been determined in this manner within sixty (60) days of the date of the list, the President, Indian Roads Congress, New Delhi, shall appoint, upon the request of either Party and from such list or otherwise, a sole arbitrator for the matter in dispute.
- (b) Where the Parties do not agree that the dispute concerns a technical matter, the Client and the Consultants shall each appoint one arbitrator, and these two arbitrators shall jointly appoint a third arbitrator, who shall chair the arbitration panel. If the arbitrators named by the Parties do not succeed in

appointing a third arbitrator within thirty (30) days after the latter of the two arbitrators named by the Parties has been appointed, the third arbitrator shall, at the request of either Party, be appointed by Secretary, the Indian Council of Arbitration, New Delhi.

- (c) If, in a dispute subject to Clause SC 8.2.1 (b), one Party fails to appoint its arbitrator within thirty (30) days after the other Party has appointed its arbitrator, the Party which has named an arbitrator may apply to the Secretary, Indian Council of Arbitration, New Delhi, to appoint a sole arbitrator for the matter in dispute, and the arbitrator appointed pursuant to such application shall be the sole arbitrator for that dispute.

8.2.2 Rules of Procedure

Arbitration proceedings shall be conducted in accordance with procedures of the Arbitration & Conciliation Act 1996, of India unless the Consultant is a foreign national/firm, where arbitration proceedings shall be conducted in accordance with the rules of procedure for arbitration of the United Nations Commission on International Trade Law (UNCITRAL) as in force on the date of this Contract.

8.2.3 Substitute Arbitrators

If for any reason an arbitrator is unable to perform his function, a substitute shall be appointed in the same manner as the original arbitrator

8.2.4 Qualification of Arbitrators

The sole arbitrator or the third arbitrator appointed pursuant to paragraphs (a) through (c) of Clause 8.2.1 hereof shall be an internationally/nationally recognized legal or technical expert with extensive experience in relation to the matter in dispute.

8.2.5 Miscellaneous

In any arbitration proceeding hereunder:

- (a) Proceedings shall, unless otherwise agreed by the parties, be held in Ahmedabad.
- (b) The English language shall be the official language for all purposes; and
- (c) The decision of sole arbitrator or of a majority of the arbitrators (or of the third arbitrator if there is no such majority) shall be final and binding and shall be enforceable in any court of competent jurisdiction, and the Parties hereby waive any objections to or claims of immunity in respect of such enforcement.

- (d) Fee structure shall be as indicated below:

Sr.	Particulars	Maximum amount payable per Arbitrator/per
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1	Arbitrator fee	Rs. 15,000/- per day subject to a maximum 4 lacs Or Rs 2.5 lacs (lump sum) subject to publishing the award within 12 months.
2	Reading Charges	Rs 15,000/-
3	Secretarial Assistance and Incidental charges (telephone, fax, postage etc.)	Rs 20,000/-
4	Charges for Publishing /declaration of the Award	Maximum of Rs. 20,000/-
5	Other expenses (as per actuals against bills subject to the prescribed ceiling) Traveling Expenses Lodging and Boarding	Maximum ceiling Economy class (by air), First class AC (by train) and AC car (by road) 1. Rs 15,000/- per day (in metro cities). 2. Rs. 10,000/- per day (in other cities). 3. Rs. 3,000/- per day, if any Arbitrator make their own arrangements.
6	Local Travel	Rs. 1,500/- per day.
7	Extra charges for days other than hearing/meeting days (maximum for 2 days)	Rs. 3,500/- per day.
<p>Note: 1. Lodging, boarding and travelling expenses shall be allowed only for those members who are residing 100 kms. away from place of meeting.</p> <p>2. Delhi, Mumbai, Chennai, Kolkata, Bangalore and Hyderabad shall be considered as Metro Cities.</p>		

* *May be suitably modified, as per market rates.*

IV. Appendices

Appendix A Description of the Services

[Give detailed descriptions of the Services to be provided; dates for completion of various tasks, place of performance for different tasks; specific tasks to be approved by Client, etc.]

Details as per TOR

Appendix B Reporting Requirements

[List format, frequency, contents of reports and number of copies; persons to receive them; dates of submission, etc. If no reports are to be submitted, state here "Not applicable".]

Please refer TOR

Appendix C Key Personnel and Sub-consultants

[List under: C-1 Titles [and names, if already available], detailed job descriptions and minimum qualifications. experience of Personnel to be assigned to work in India, and staff- months for each.

C-2 Same information as C-1 for Key local Personnel.

C-3 Same as C-1 for Key foreign Personnel to be assigned to work outside India.

C-4 List of approved Sub-consultants [if already available]; same information with respect to their Personnel as in C-1 through C-4]

Please refer TOR

Appendix D Medical Certificate

[Show here an acceptable form of medical certificate for foreign Personnel to be stationed in India. If there is no need for a medical certificate, state here: "Not applicable".]

The form of Medical Certificate as required under the rules of Govt. of India

Appendix E Hours of Work for Key Personnel

The Consultants Key personnel and all other Professional/Sub Professional/Support Staff/Sub-Consultancy personnel shall work 6 days (Mondays through Saturday) every week and observe the Gazette Holidays of Government of India as Holidays. The Consultant shall work as per the work program of the EPC Contractor. In this context in case the work plan of the Consultant needs suitable modifications, the same shall be carried out and submitted to the client for consideration. The Consultants hours of work normally shall match with that of Contractor's activities on the site. No extra remuneration shall be claimed or paid for extra hours of work required in the interest of Project completion.

In respect of foreign personnel, one day per trip as travel time from and to the country of the Government shall be allowed.

Appendix F Duties of the Client

[List under: F-1 Services, facilities and property to be made available to the Consultants by the Client.

F-2 Counterpart personnel to be made available to the Consultants by the Client.]

Please refer TOR

Appendix G Cost Estimates

List hereunder cost estimate in INR :

1. *Monthly rates for Personnel (Key Personnel and sub-Professional)*
2. *Transportation*
3. *Duty travel*
4. *Airal Photography/ videography*
5. *Other Expenses*
6. *Contingencies*
7. *Taxes*

Appendix H -I

Form of Performance Security by Lead Bidder

(Performance Bank Guarantee)

(Clause-13 of TOR)

To

Address of Employer:

WHEREAS _____
[Name and address of Consultants]¹ (hereinafter called "the consultants") has undertaken, in pursuance of Contract No. _____ dated _____ to provides the services on terms and conditions set forth in this Contract _____ (Name of contract and brief description of works) (hereinafter called "the Contract").

AND WHEREAS it has been stipulated by you in the said Contract that the Consultants shall furnish you with a Bank Guarantee by a recognized bank for the sum specified therein as security for compliance with his obligations in accordance with the Contract;

AND WHEREAS we have agreed to give the Consultants such a Bank Guarantee;

NOW THEREOF we hereby affirm that we are the Guarantor and responsible to you, on behalf of the Consultants up to a total of _____ (amount of Guarantee) _____ [in words], such sum being payable in the types and proportions of currencies in which the Contract Price is payable, and we undertake to pay you, upon your first written demand and without cavil or argument, any sum or sums within the limits of _____ [amount of Guarantee] as aforesaid without your needing to prove or to show grounds or reasons for your demand for the sum specified therein.

We hereby waive the necessity of your demanding the said debt from the Consultants before presenting us with the demand.

We further agree that no change or addition to or other modification of the terms of the Contract or of the services to be performed there under or of any of the Contract documents which may be made between you and the Consultants shall in any way release us from any liability under this guarantee, and we hereby waive notice of any such change, addition or modification.

The liability of the Bank under this Guarantee shall not be affected by any change in the constitution of the consultants or of the Bank.

Notwithstanding anything contained herein before, our liability under this guarantee is restricted to Rs. _____ (Rs. _____) and the guarantee shall remain valid till _____. Unless a claim or a demand in writing is made upon us on or before _____ all our liability under this guarantee shall cease.

This guarantee shall be valid for a period of 74 months i.e. up to 3 months beyond the expiry of contract of 71 months.

¹ Give names of all partners if the Consultants is a Joint Venture

Signature and Seal of the Guarantor: _____

Name and Designation: _____

In presence of:

1.

2.

(Name, Signature and Occupation)

Name of the Bank: _____

Address of the Bank: _____

(Name and Occupation)

Date: _____

Appendix H -II

Form of Performance Security by JV Consultant

(Performance Bank Guarantee)

(Clause-13 of TOR)

To

Address of Employer:

WHEREAS _____
[Name and address of Consultants]² (hereinafter called "the consultants") Jointly with..... as Joint Venture Consultant has undertaken, in pursuance of Contract No. _____ dated _____ to provides the services on terms and conditions set forth in this Contract _____ (Name of contract and brief description of works) (hereinafter called "the Contract").

AND WHEREAS it has been stipulated by you in the said Contract that the JV Consultant shall furnish you with a Bank Guarantee by a recognized bank, in addition to Bank Guarantee being provided by Lead consultant, for the sum specified therein as security for compliance with his obligations in accordance with the Contract;

AND WHEREAS we have agreed to give the JV Consultants such a Bank Guarantee;

NOW THEREOF we hereby affirm that we are the Guarantor and responsible to you, on behalf of the JV Consultants up to a total of _____ (amount of Guarantee) _____ [in words], such sum being payable in the types and proportions of currencies in which the Contract Price is payable, and we undertake to pay you, upon your first written demand and without cavil or argument, any sum or sums within the limits of _____ [amount of Guarantee] as aforesaid without your needing to prove or to show grounds or reasons for your demand for the sum specified therein.

We hereby waive the necessity of your demanding the said debt from the JV Consultants before presenting us with the demand.

We further agree that no change or addition to or other modification of the terms of the Contract or of the services to be performed there under or of any of the Contract documents which may be made between you and the Consultants/ JV Consultant shall in any way release us from any liability under this guarantee, and we hereby waive notice of any such change, addition or modification.

The liability of the Bank under this Guarantee shall not be affected by any change in the constitution of the JV consultants or of the Bank.

Notwithstanding anything contained herein before, our liability under this guarantee is restricted to Rs. _____ (Rs. _____) and the guarantee shall remain valid till _____. Unless a claim or a demand in writing is made upon us on or before _____ all

our liability under this guarantee shall cease.

This guarantee shall be valid for a period of 74 months i.e. up to 3 months beyond the expiry of contract of 71 months.

Signature and Seal of the Guarantor: _____

Name and Designation: _____

In presence of:

1.

2.

(Name, Signature and Occupation)

Name of the Bank: _____

Address of the Bank: _____

(Name and Occupation)

Date: _____

Appendix I Form of Bank Guarantee for Advance Payments

(Refer Clause 6.4(a) of Contract)

(To be stamped in accordance with Stamp Act, if any, of the country of issuing bank)

Ref: _____

Bank Guarantee: _____

Date: _____

Dear Sir,

In consideration of M/s. _____ (hereinafter referred as the "Client", which expression shall, unless repugnant to the context or meaning thereof include its successors, administrators and assigns) having awarded to M/s. _____ (hereinafter referred to as the "Consultant" which expression shall unless repugnant to the context or meaning thereof, include its successors, administrators and assigns), a contract by issue of client's Contract Agreement No. _____ dated _____ and the same having being unequivocally accepted by the Consultant, resulting in a Contract valued at _____ for _____ Contract (hereinafter called the "Contract") (scope of work) and the Client having agreed to make an advance payment to the Consultant for performance of the above Contract amounting to _____ (in words and figures) as an advance against Bank Guarantee to be furnished by the Consultant.

We _____ (Name of the Bank) having its Head Office at _____ (hereinafter referred to as the Bank, which expression shall, unless repugnant to the context or meaning thereof include its successors, administrators and assigns) do hereby guarantee and undertake to pay the client immediately on demand any or, all monies payable by the Consultant to the extent of _____ as aforesaid at any time upto _____ @ _____ without any reference to the Consultant. Any such demand made by the Client on the Bank shall be conclusive and binding notwithstanding any difference between the Client and the Consultant or any dispute pending before any Court, Tribunal, Arbitrator or any other authority. We agree that the Guarantee herein contained shall be irrevocable and shall continue to be enforceable till the Client discharges this guarantee.

The Client shall have the fullest liberty without affecting in any way the liability of the Bank under this Guarantee, from time to time to vary the advance or to extend the time for performance of the contract by the Consultant. The Client shall have the fullest liberty without affecting this guarantee, to postpone from time to time the exercise of any powers vested in them or of any right which they might have against the Client and to exercise the same at any time in any manner, and either to enforce or to forebear to enforce any covenants, contained or implied, in the Contract between the Client and the Consultant any other course or remedy or security available to the Client. The bank shall not be relieved of its obligations under these presents by any exercise by the Client of its liberty with reference to the matters aforesaid or any of them or by reason of any other act or forbearance or other acts of omission or commission on the part of the Client or any other indulgence shown by the Client or by any other matter or thing whatsoever which under law would but for this provision have the effect of relieving the Bank.

The Bank also agrees that the Client at its option shall be entitled to enforce this Guarantee

against the Bank as a principal debtor, in the first instance without proceeding against the Consultant and notwithstanding any security or other guarantee that the Client may have in relation to the Consultant's liabilities.

Notwithstanding anything contained herein above our liability under this guarantee is limited to _____ and it shall remain in force up to and including _____ and shall be extended from time to time for such period (not exceeding one year), as may be desired by M/s. _____ on whose behalf the guarantee has been given.

Dated this _____ day of _____ 20__ at _____.

WITNESS:

Signature: _____

Signature: _____

Name: _____

Name: _____

(Official Address)

Designation (with Bank Stamp)

Attorney as per Power of Attorney No. _____

Dated: _____

Strike out, whichever is not applicable.

Note 1: The stamp papers of appropriate value shall be purchased in the name of bank who issues the "Bank Guarantee".

Note 2: The bank guarantee shall be from a Nationalized Indian Bank or reputed foreign commercial bank acceptable to client for Foreign Consultant with counter guarantee from Nationalized Bank. Bank guarantee furnished by Foreign consultant shall be confirmed by any Nationalized Bank in India.

Appendix J Letter of Invitation

(Letter of Invitation)

Appendix K Letter of Award

(Letter of Award)

Appendix L Minutes of pre-bid meeting

(Minutes of pre-bid meeting)

Appendix M Memorandum of Understanding

Memorandum of Understanding
between

_____ and _____

Whereas the "Name of SPV" (the "**Employer**") has invited proposal for appointment of Employer's Engineer for _____ (Name of project) hereinafter called the Project.

And Whereas _____ (Lead Partner) and _____ JV partner/s have agreed to form a Joint Venture to provide the said services to the Employer as Employer's Engineer; and

Now, therefore, it is hereby agreed by and on behalf of the partners as follows:

- (i) _____ will be the lead partner and _____ will be the other JV partner/s.
- (ii) _____ (lead partner) shall be the incharge of overall administration of contract and shall be authorised representative of all JV partners for conducting all business for and on behalf of the JV during the bidding process and subsequently, represent the joint venture for and on behalf of the JV for all contractual matters for dealing with the Employer/EPC Contractor if Consultancy work is awarded to JV.
- (iii) All JV partners do hereby undertake to be jointly and severally responsible for all the obligation and liabilities relating to the consultancy work and in accordance with the Terms of Reference of the Request for Proposal for the Consultancy Services.
- (iv) Subsequently, if the JV is selected to provide the desired consultancy services, a detailed MOU indicating the specific project inputs and role of each partner/s along with percentage sharing of cost of services shall be submitted to the Employer (Consultant may submit the detailed MOU along with percentage sharing of cost at the time of bidding also).

For _____ (Name of Lead Partner)

Managing Director / Head of the Firm
Address

For _____ (Name of JV Partner/s)

Managing Director / Head of the Firm
Address