

उत्तर प्रदेश राज्य राजमार्ग प्राधिकरण

चतुर्थ तल किसान मण्डी भवन, विभूति खण्ड,

गोमती नगर, लखनऊ

पत्रांक: 716/प्रावि0-18(03 मार्ग के स्वतंत्र अभियंता चयन)/2022-23/उपशा/लखनऊ दि: 13.12.2023

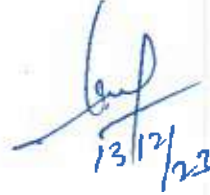
कार्यालय आदेश

प्राधिकरण के टेण्डर नोटिस सं0 701/Pravi-18(03 Roads I.E Sel. File)/2023-24/UPSHA/Lucknow dated 07-12-2023 के माध्यम से वाराणसी-शक्तिनगर मार्ग परियोजना के लिए स्वतंत्र अभियंता (Independent Engineer) के चयन हेतु ई-टेण्डर पोर्टल (www.etender.up.nic.in) पर Tender Id 2023_UPSHA_868906_1 के माध्यम से ई-निविदा आमंत्रित की गई थी। उक्त निविदा के टेण्डर डाक्यूमेंट में तकनीकी त्रुटि के कारण मात्र 49 पेज ही अपलोड हो पाये है जबकि पूर्ण टेण्डर डाक्यूमेंट 132 पेज का है। अतः उपरोक्त पेज सं0 50 से 132 तक अपलोड किये जा रहे है जो कि उक्त टेण्डर डाक्यूमेंट का भाग है।

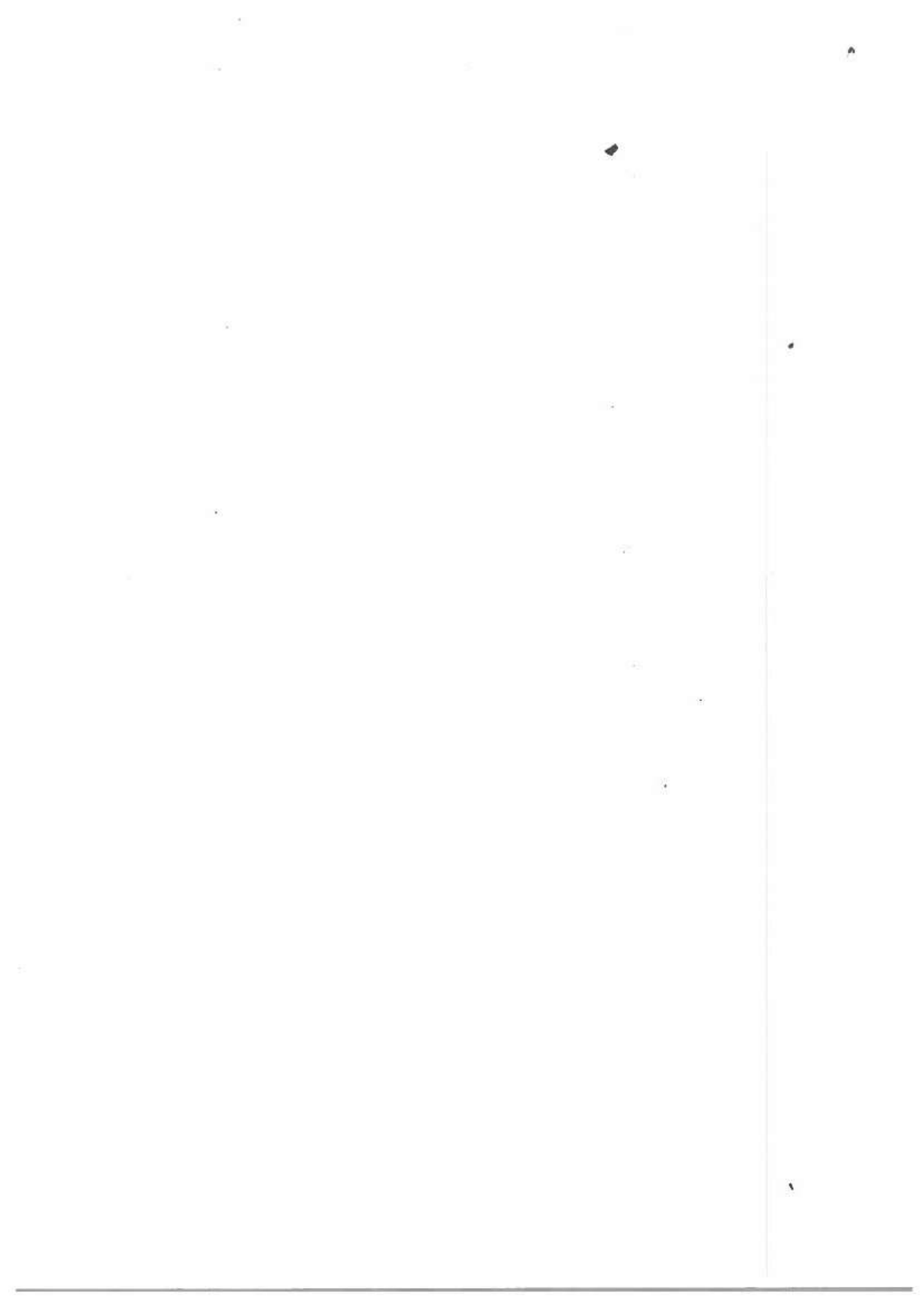


(अखिलेन्द्र प्रताप सिंह)

सदस्य (तकनीकी)



13/12/23



APPENDIX B-9: AFFIDAVIT FOR CORRECTNESS OF EXPERIENCE CLAIMED BY THE FIRMS

{To be submitted on non-judicial Stamp Paper}

I, the undersigned, on behalf of _____ (name of the Consultant submitting the proposal), do hereby certify that the details furnished in this proposal including experience claimed by the firm/firms are true and correct to the best of my knowledge and belief.

**Managing Director/Head of the Firm/
Authorised Representative of the firm***

Address

***Lead Member in case of JV**

APPENDIX B-10:

INTEGRITY PACT

(To be executed on plain paper and submitted along with Technical Bid/Tender documents for tenders having a value between Rs.5 Cr and 100 Cr. To be signed by the bidder and same signatory competent/ authorized to sign the relevant contract on behalf of the <UPSHA >)

Tender No. _____

This Integrity Pact is made at _____ on this _____ day of _____.

Between

(<UPSHA>), which has been entrusted with the responsibility of development, maintenance and management of <4th Floor Kisan Mandi Bhawan Vibhuti Khand Gomti nagar, Lucknow >, hereinafter referred to as "The Principal", which expression shall unless repugnant to the meaning or contract thereof include its successors and permitted assigns.

and

_____ hereinafter referred to as "The Bidder/Contractor /Concessionaire/Consultant" and which expression shall unless repugnant to be meaning or context thereof include its successors and permitted assigns.

Preamble

Whereas, the Principal intends to award, under laid down organizational procedures, contract/s for "Independent Engineer Services for the project of Varanasi-Shaktinagar Roads (SH-5A) in the State of Uttar Pradesh on DBFOT mode ". The Principal values full compliance with all relevant laws of the land, rules of land, regulations, economic use of resources and of fairness/ transparency in its relations with its Bidder(s) and/ or Contractor(s)/Concessionaire(s)/Consultant(s).

And whereas to meet the purpose aforesaid, both the parties have agreed to enter into this Integrity Pact (hereafter referred to as Integrity Pact) the terms and conditions of which shall also be read as integral part and parcel of the Tender documents and contract between the parties. Now, therefore, In consideration of mutual covenants stipulated in this pact, the parties hereby agree as follows and this pact witnesses as under:-

Article-1 Commitments of the Principal

- 1) The Principal commits itself to take all measures necessary to prevent corruption and to observe the following principles:-
 - a. No employee of the Principal, personally or through family members, will in connection with the tender for, or the execution of a contract, demand, take a promise for or accept, for self, or third person, any material or immaterial benefit which the person is not legally entitled to.
 - b. The Principal will, during the tender process treat all Bidder(s) with equity and reason. The Principal will in particular, before and during the tender process,

provide to all Bidder(s) the same information and will not provide to any Bidder(s) confidential/ additional information through which the Bidder(s) could obtain an advantage in relation to the tender process or the contract execution.

- c. The Principal will exclude all known prejudiced persons from the process, whose conduct in the past has been of biased nature.
- 2) If the Principal obtains information on the conduct of any of its employees which is a criminal offence under the IPC/PC Act or any other Statutory Acts or if there be a substantive suspicion in this regard, the Principal will inform the Chief Vigilance Officer and in addition can initiate disciplinary actions as per its internal laid down Rules/Regulations.

Article - 2 Commitments of the Bidder(s)/ Contractor(s)/ Concessionaire(s)/ Consultant(s).

The Bidder(s)/ Contractor(s)/ Concessionaire(s)/ Consultant(s) commit himself to take all measures necessary to prevent corruption. He commits himself to observe the following principles during his participation in the tender process and during the contract execution.

- a. The Bidder(s)/ Contractor(s)/ Concessionaire(s)/ Consultant(s) will not, directly or through any other person or firm, offer, promise or give to any of the Principal's employees involved in the tender process or the execution of the contract or to any third person any material or other benefit which he/she is not legally entitled to, in order to obtain in exchange any advantage of any kind whatsoever during the tender process or during the execution of the contract.
- b. The Bidder(s)/ Contractor(s)/ Concessionaire(s)/ Consultant(s) will not enter with other Bidders into any undisclosed agreement or understanding, whether formal or informal. This applies in particular to prices, specifications, certifications, subsidiary contracts, submission or non-submission of bids or any other actions to restrict competitiveness or to introduce cartelization in the bidding process.
- c. The Bidder(s)/ Contractor(s)/ Concessionaire(s)/ Consultant(s) will not commit any offence under the relevant IPC/PC Act and other Statutory Acts; further the Bidder(s)/ Contractor(s)/ Concessionaire(s)/ Consultant(s) will not use improperly, for purposes of completion or personal gain, or pass on to others, any information or document provided by the Principal as part of the business relationship, regarding plans, technical proposals and business details, including information contained or transmitted electronically.
- d. The Bidder(s)/ Contractor(s)/ Concessionaire(s)/ Consultant(s) of foreign-origin shall disclose the name and address of the Agents/ Representatives in India, if any. Similarly the Bidder(s)/ Contractor(s)/ Concessionaire(s)/ Consultant(s) of Indian Nationality shall furnish the name and address of the foreign principle, if any.
- e. The Bidder(s)/ Contractor(s)/ Concessionaire(s)/ Consultant(s) will, when presenting his bid, disclose any and all payments he has made, is committed to or

intends to make to agents, brokers or any other intermediaries in connection with the award of the contract. He shall also disclose the details of services agreed upon for such payments.

- f. The Bidder(s)/ Contractor(s)/ Concessionaire(s)/ Consultant(s) will not instigate third persons to commit offences outlined above or be an accessory to such offences.
- g. The Bidder(s)/ Contractor(s)/ Concessionaire(s)/ Consultant(s) will not bring any outside influence through any Govt. bodies/quarters directly or indirectly on the bidding process in furtherance of his bid.

Article - 3 Disqualification from tender process and exclusion from future contracts.

1. If the Bidder(s)/ Contractor(s)/ Concessionaire(s)/ Consultant(s), before award or during execution has committed a transgression through a violation of any provision of Article-2, above or in any other form such as to put his reliability or credibility in question, the Principal is entitled to disqualify the Bidder(s)/ Contractor(s)/ Concessionaire(s)/ Consultant(s) from the tender process.
2. If the Bidder/ Contractor/ Concessionaire/ Consultant has committed a transgression through a violation of Article-2 such as to put his reliability or credibility into question, the Principal shall be entitled to exclude including blacklist and put on holiday the Bidder/ Contractor/ Concessionaire/ Consultant for any future tenders/ contract award process. The imposition and duration of the exclusion will be determined by the severity of the transgression. The severity will be determined by the Principal taking into consideration the full facts and circumstances of each case particularly taking into account the number of transgressions, the position of the transgressors within the company hierarchy of the Bidder/ Contractor/ Concessionaire/ Consultant and the amount of the damage. The exclusion will be imposed for a minimum of 1 year.
3. A transgression is considered to have occurred if the Principal after due consideration of the available evidence concludes that "On the basis of facts available there are no material doubts".
4. The Bidder/ Contractor/ Concessionaire/ Consultant with its free consent and without any influence agrees and undertakes to respect and uphold the Principal's absolute rights to resort to and impose such exclusion and further accepts and undertakes not to challenge or question such exclusion on any ground, including the lack of any hearing before the decision to resort to such exclusion is taken. This undertaking is given freely and after obtaining independent legal advice.
5. The decision of the Principal to the effect that a breach of the provisions of this Integrity Pact has been committed by the Bidder/ Contractor/ Concessionaire/ Consultant shall be final and binding on the Bidder/ Contractor/ Concessionaire/ Consultant.

6. On occurrence of any sanctions/ disqualification etc arising out from violation of Integrity pact, the Bidder/ Contractor/ Concessionaire/ Consultant shall not be entitled for any compensation on this account.
7. Subject to full satisfaction of the Principal, the exclusion of the Bidder/ Contractor/ Concessionaire/ Consultant could be revoked by the Principal if the Bidder/ Contractor/ Concessionaire/ Consultant can prove that he has restored/ recouped the damage caused by him and has installed a suitable corruption prevention system in his organization.

Article – 4 Compensation for Damages.

1. If the Principal has disqualified the Bidder(s) from the tender process prior to the award according to Article-3, the Principal shall be entitled to forfeit the Earnest Money Deposit/ Bid Security or demand and recover the damages equivalent to Earnest Money Deposit/ Bid Security (equivalent to 1% of Contract Price) apart from any other legal right that may have accrued to the Principal.
2. In addition to 1 above, the Principal shall be entitled to take recourse to the relevant provisions of the contract related to Termination of Contract due to Contractor/ Concessionaire/Consultant's Default. In such case, the Principal shall be entitled to forfeit the Performance Bank Guarantee of the Contractor/ Concessionaire/ Consultant and/ or demand and recover liquidated and all damages as per the provisions of the contract/concession agreement against Termination.

Article – 5 Previous Transgression

1. The Bidder declares that no previous transgressions occurred in the last 3 years immediately before signing of this Integrity Pact with any other Company in any country conforming to the anti corruption/ Transparency International (TI) approach or with any other Public Sector Enterprise/ Undertaking in India or any Government Department in India that could justify his exclusion from the tender process.
2. If the Bidder makes incorrect statement on this subject, he can be disqualified from the tender process or action for his exclusion can be taken as mentioned under Article-3 above for transgressions of Article-2 and shall be liable for compensation for damages as per Article-4 above.

Article-6 Equal treatments of all Bidders/ Contractors/ Concessionaires/ Consultants/ Subcontractors.

1. The Bidder(s)/ Contractor(s)/ Concessionaire(s)/ Consultant(s) undertake(s) to demand from all sub-contractors a commitment in conformity with this Integrity Pact, and to submit it to the Principal before contract signing.
2. The Principal will enter into agreements with identical conditions as this one with all Bidders/ Contractors/ Concessionaires/ Consultants and Subcontractors.
3. The Principal will disqualify from the tender process all Bidders who do not sign this Pact or violate its provisions.

Article - 7 Criminal charges against violating Bidder(s)/ Contractor(s)/ Concessionaire(s)/ Consultant(s)/ Sub-contractor(s).

If the Principal obtains knowledge of conduct of a Bidder/ Contractor/ Concessionaire/ Consultant or Subcontractor, or of an employee or a representative or an associate of a Bidder/ Contractor/ Concessionaire/ Consultant or Subcontractor, which constitutes corruption, or if the Principal has substantive suspicion in this regard, the Principal will inform the same to the Chief Vigilance Officer.

Article - 8 Pact Duration

This Pact begins when both parties have legally signed it (In case of EPC i.e. for projects funded by Principal and consultancy services). It expires for the Contractor/ Consultant 12 months after his Defect Liability period is over or 12 months after his last payment under the contract whichever is later and for all other unsuccessful Bidders 6 months after this Contract has been awarded. (In case of BOT Projects) It expires for the concessionaire 24 months after his concession period is over and for all other unsuccessful Bidders 6 months after this Contract has been awarded.

If any claim is made/ lodged during this time, the same shall be binding and continue to be valid despite the lapse of this pact as specified above, unless it is discharged/ determined by Chairman of <UPSHA >.

Article - 10 Other Provisions.

1. This pact is subject to Indian Law. Place of performance and jurisdiction is the Registered Office of the Principal, i.e. Uttar Pradesh
2. Changes and supplements as well as termination notices need to be made in writing.
3. If the Bidder/Contractor/Concessionaire/Consultant is a partnership or a consortium, this pact must be signed by all partners or consortium members.
4. Should one or several provisions of this agreement turn out to be invalid, the remainder of this agreement remains valid. In this case, the parties will strive to come to an agreement to their original intentions.
5. Any disputes/ differences arising between the parties with regard to term of this pact, any action taken by the Principal in accordance with this Pact or interpretation thereof shall not be subject to any Arbitration.
6. The actions stipulated in this Integrity Pact are without prejudice to any other legal action that may follow in accordance with the provisions of the extant law in force relating to any civil or criminal proceedings.

In witness whereof the parties have signed and executed this Pact at the place and date first done mentioned in the presence of following witness:-

(For & On behalf of the Principal)

(For & On behalf of the
Bidder/Contractor/ Concessionaire/
Consultant)

(Office Seal)

Place _____

Date _____

Witness 1 :

(Name & Address): _____

Witness 2 :

(Name & Address): _____

Name of Road -----

SECTION 5: FORMAT FOR SUBMISSION OF FINANCIAL PROPOSAL.

Appendix C-1 Financial proposal submission form

Appendix C-2 Summary of costs

Appendix C-3 Breakdown of local currency costs

APPENDIX C-1: FINANCIAL PROPOSAL SUBMISSION FORM

FROM : (Name of Firm)

TO :

**<Chief Executive Officer,
4th Floor Kisan Mandi Bhawan
Vibhuti Khand Gomti nagar,
Lucknow >**

Subject :

We, the undersigned, offer to provide the consulting services for the above in accordance with your Request for Proposal dated [Date], and our proposal. Our attached financial proposal is for the sum of [Amount in words and figures]. This amount is exclusive of the local taxes which we have estimated at [Amount in Words and Figures].

Our financial proposal shall be binding upon us, up to the expiration of the validity period of the proposal, i.e., [Date].

We undertake that, in competing for (and, if the award is made to us, in executing) the above contract, we will strictly observe the laws against fraud and corruption in force in India namely "Prevention of Corruption Act 1988".

Commission and gratuities, if any, paid or to be paid by us to agents relating to this proposal and contract execution, if we are awarded the contract, are listed below:

Name and Address of Agents	Amount and Currency	Purpose of Commission or Gratuity
.....
.....

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

We remain,

Yours sincerely,

Managing Director/Head of the firm/Authorised Representative of the firm*

Name of the firm

Address

*Lead Member in case of JV

APPENDIX C-3 : BREAKDOWN OF LOCAL CURRENCY COSTS

I. REMUNERATION FOR LOCAL PROFESSIONAL STAFF

For project length 0-100 km

No.	Position	Name	36 months		
			Rate	No. of man-months*	Amount
Professional Staff					
1.	Team Leader cum Senior Highway Engineer			9	
2.	Highway Maintenance Engineer			1x36	
3.	Bridge/Structural Engineer			9	
4.	Road Safety Expert			9	
Sub - Total					
Sub-professional					
1	Survey Engineer	TBN		1x12	
2.	Assistant Highway Maintenance Engineer	TBN		1x36	
3.	CAD Expert	TBN		0	
4.	Environmental Engineer	TBN		0	
5.	Assistant Bridge Engineer	TBN		00	
6.	Assistant Quality cum Material Engineer	TBN		0	
7.	Electrical Engineer	TBN		9	
8.	HTMS/Toll Expert	TBN		0	
9.	Quantity Surveyor	TBN		9	
10.	Horticulture cum Landscaping Expert	TBN		36	
Sub Total					
Total					

*The man-month against each key personnel/sub - professional shall be same as specified in Enclosure A of TOR.

II. Support Staff

No.	Position	Name	Staff Months	Billing Rate ()	Amount ()
1.	Office Manager	TBN	36		
2.	Accountent cum Cashier	TBN	36		
3.	Secretary cum Computer Operator	TBN	36		
4.	Office Boy cum Photocopy operator (1 no)	TBN	36		
				Total :	

Note. Billing rates as indicated above shall be increased in accordance of clause 6.2(a) Special Conditions of Contract for the personnel of all categories namely (i) key Personnel; (ii) sub-Professional personnel and (iii) Support staff. The increase as above shall be payable only on the remuneration part of Key Personnel, Sub-Professional Personnel and support staff. However, for evaluation of Bid proposals, the quoted initial rate shall be multiplied by the total time input for each position on this contract, i.e. without considering the increase in the billing rates

III. Transportation (Fixed rate on rental basis)

The vehicles provided by the Consultants shall include the cost for rental, drivers, operation, maintenance, repairs, insurance, etc. for all complete approx. 3000km/month run

S. No	Description of Vehicles	Qty. (No. of vehicle - month)	Total	Rate/ Vehicle- Month	Amount
1	Bolero or equivalent (01 Nos)	36			
2	Scorpio or equivalent (01 Nos)	36			
	Total				

IV. Duly Travel of Site- Nil

V. Office Rent (Fixed Costs)- Minimum 120 sqm area at site shall be rented

The rent cost includes electricity and water charges, maintenance, Cleaning, repairs, etc. complete.

Nos of Months	Rate/month	Amount
36		

The rent cost includes electricity and water charges, maintenance, Cleaning, repairs, etc. complete.

VI. Office Supplies, Utilities and Communication (Fixed Costs)

No	Item	Months	Monthly Rate	Amount in Rs.
1.	Office Supplies			
2.	Drafting Supplies			
3.	Computer Running Costs			
4.	Domestic and International Communication			

VII. Office Furniture and Equipment (Rental)

The cost shall include rental charge towards all such furniture and equipment as required for proper functioning of office. Office furniture shall include executive tables, chairs, visitor chairs, steel almirah's, computer furniture, conference table etc. PC's (latest version and configuration compatible with requirements of the Project etc.), laser printer (2 no.), binding machine (1 no.), AC/Water Coolers (as required) etc.

VIII. Reports and Document Printing

No.	Description	No. of Reports	No. of Copies per Report	Total Nos. of copies	Rate per Copy ()	Amount
1	Monthly reports (Design and Construction)	36	3	108		

2	Half yearly Reports	6	3	18	
3	Various others reports as provided in the Concession Agreement such as Completion Report			Nil	
				Total	

IX. Road Survey Equipment

Item

- Surface defects detection and roughness measurement using New or survey vehicle - 3 times
- Pavement strength measurement using FWD- 1 times
- Bridge inspection using Mobile Bridge Inspection Unit - 3 times
- Road signs inspection using Retro Reflectometer- 3 times

X. Contingencies

A fixed amount of Indian Rupees Two Lakhs shall be included in the Financial Proposal. The provisions of Contingency shall be operated with the specific approval from the Competent Authority in <Agency>

SECTION 6: TERMS OF REFERENCE FOR INDEPENDENT ENGINEER

TERMS OF REFERENCE FOR INDEPENDENT ENGINEER

1 Scope

- 1.1 These Terms of Reference for the Independent Engineer (the "TOR") are being specified pursuant to the Concession Agreement dated (the "Agreement"), which has been entered into between the Authority and (the "Concessionaire") for [Four-Laning] of the Varansi-Shaktinagar Road (SH-5A) in the State on design, build, finance, operate and transfer (DBFOT) basis, and a copy of which is annexed hereto and marked as Annex-A to form part of this TOR.
- 1.2 This TOR shall apply to construction, operation and maintenance of the [Four-Lane] Project Highway, and shall apply, *mutatis mutandis*, to [Four-Laning] thereof.

2 Definitions and interpretation

- 2.1 The words and expressions beginning with or in capital letters used in this TOR and not defined herein but defined in the Agreement shall have, unless repugnant to the context, the meaning respectively assigned to them in the Agreement.
- 2.2 References to Articles, Clauses and Schedules in this TOR shall, except where the context otherwise requires, be deemed to be references to the Articles, Clauses and Schedules of the Agreement, and references to Paragraphs shall be deemed to be references to Paragraphs of this TOR.
- 2.3 The rules of interpretation stated in Clauses 1.2, 1.3 and 1.4 of the Agreement shall apply, *mutatis mutandis*, to this TOR.

3 Role and functions of the Independent Engineer

- 3.1 The role and functions of the Independent Engineer shall include the following:
- (i) review of the Drawings and Documents as set forth in Paragraph 4;
 - (ii) review, inspection and monitoring of Construction Works as set forth in Paragraph 5;
 - (iii) conducting Tests on completion of construction and issuing Completion/ Provisional Certificate as set forth in Paragraph 5;
 - (iv) review, inspection and monitoring of O&M as set forth in Paragraph 6;
 - (v) review, inspection and monitoring of Divestment Requirements as set forth in Paragraph 7;
 - (vi) determining, as required under the Agreement, the costs of any works or services and/or their reasonableness;
 - (vii) determining, as required under the Agreement, the period or any extension thereof, for performing any duty or obligation;
 - (viii) assisting the Parties in resolution of disputes as set forth in Paragraph 9; and
 - (ix) Undertaking all other duties and functions in accordance with the Agreement.
- 3.2 The role and functions of the Independent Engineer shall not include construction works comprising Wayside Amenities.

- 3.3 The Independent Engineer shall discharge its duties in a fair, impartial and efficient manner, consistent with the highest standards of professional integrity and Good Industry Practice.

4 Development Period:- NOT APPLICABLE

- 4.1 During the Development Period, the Independent Engineer shall undertake a detailed review of the Drawings to be furnished by the Concessionaire along with supporting data, including the geotechnical and hydrological investigations, characteristics of materials from borrow areas and quarry sites, topographical surveys and traffic surveys. The Independent Engineer shall complete such review and send its comments/observations to the Authority and the Concessionaire within 15 (fifteen) days of receipt of such Drawings. In particular, such comments shall specify the conformity or otherwise of such Drawings with the Scope of the Project and Specifications and Standards.
- 4.2 The Independent Engineer shall review any modified Drawings or supporting Documents sent to it by the Concessionaire and furnish its comments within 7 (seven) days of receiving such Drawings or Documents.
- 4.3 The Independent Engineer shall review the Drawings sent to it by the Safety Consultant in accordance with Schedule-L and furnish its comments thereon to the Authority and the Concessionaire within 7 (seven) days of receiving such Drawings. The Independent Engineer shall also review the Safety Report and furnish its comments thereon to the Authority within 15 (fifteen) days of receiving such report.
- 4.4 The Independent Engineer shall review the detailed design, construction methodology, quality assurance procedures and the procurement, engineering and construction time schedule sent to it by the Concessionaire and furnish its comments within 15 (fifteen) days of receipt thereof.
- 4.5 Upon reference by the Authority, the Independent Engineer shall review and comment on the EPC Contract or any other contract for construction, operation and maintenance of the Project Highway, and furnish its comments within 7 (seven) days from receipt of such reference from the Authority.

5 Construction Period:- NOT APPLICABLE

- 5.1 In respect of the Drawings, Documents and Safety Report received by the Independent Engineer for its review and comments during the Construction Period, the provisions of Paragraph 4 shall apply, *mutatis mutandis*.
- 5.2 The Independent Engineer shall review the monthly progress report furnished by the Concessionaire and send its comments thereon to the Authority and the Concessionaire within 7 (seven) days of receipt of such report.
- 5.3 The Independent Engineer shall inspect the Construction Works and the Project Highway once every month, preferably after receipt of the monthly progress report from the Concessionaire, but before the 20th (twentieth) day of each month in any case, and make out a report of such inspection (the "Inspection Report") setting forth an overview of the status, progress, quality and safety of construction, including the work methodology adopted, the materials used and their sources, and conformity of Construction Works with the Scope of the Project and the Specifications and Standards. In a separate section of the Inspection Report, the Independent Engineer shall describe in reasonable detail the lapses, defects or deficiencies observed by it in the construction of the Project Highway. The Inspection Report shall also contain a review of the maintenance of the existing lanes in conformity with the provisions of the Agreement. The Independent Engineer shall send a copy of its Inspection Report to the Authority and the Concessionaire within 7 (seven) days of the inspection.
- 5.4 The Independent Engineer may inspect the Project Highway more than once in a month if any lapses,

defects or deficiencies require such inspections.

- 5.5 For determining that the Construction Works conform to Specifications and Standards, the Independent Engineer shall require the Concessionaire to carry out, or cause to be carried out, tests on a sample basis, to be specified by the Independent Engineer in accordance with Good Industry Practice for quality assurance. For purposes of this Paragraph 5.5, the tests specified in the IRC Special Publication-11 (Handbook of Quality Control for Construction of Roads and Runways) and the Specifications for Road and Bridge Works issued by PWD (the "Quality Control Manuals") or any modification/substitution thereof shall be deemed to be tests conforming to Good Industry Practice for quality assurance. The Independent Engineer shall issue necessary directions to the Concessionaire for ensuring that the tests are conducted in a fair and efficient manner, and shall monitor and review the results thereof.
- 5.6 The sample size of the tests, to be specified by the Independent Engineer under Paragraph 5.5, shall comprise 10% (ten per cent) of the quantity or number of tests prescribed for each category or type of tests in the Quality Control Manuals; provided that the Independent Engineer may, for reasons to be recorded in writing, increase the aforesaid sample size by up to 10% (ten per cent) for certain categories or types of tests.
- 5.7 The timing of tests referred to in Paragraph 5.5, and the criteria for acceptance/ rejection of their results shall be determined by the Independent Engineer in accordance with the Quality Control Manuals. The tests shall be undertaken on a random sample basis and shall be in addition to, and independent of, the tests that may be carried out by the Concessionaire for its own quality assurance in accordance with Good Industry Practice.
- 5.8 In the event that the Concessionaire carries out any remedial works for removal or rectification of any defects or deficiencies, the Independent Engineer shall require the Concessionaire to carry out, or cause to be carried out, tests to determine that such remedial works have brought the Construction Works into conformity with the Specifications and Standards, and the provisions of this Paragraph 5 shall apply to such tests.
- 5.9 In the event that the Concessionaire fails to achieve any of the Project Milestones, the Independent Engineer shall undertake a review of the progress of construction and identify potential delays, if any. If the Independent Engineer shall determine that completion of the Project Highway is not feasible within the time specified in the Agreement, it shall require the Concessionaire to indicate within 15 (fifteen) days the steps proposed to be taken to expedite progress, and the period within which the Project Completion Date shall be achieved. Upon receipt of a report from the Concessionaire, the Independent Engineer shall review the same and send its comments to the Authority and the Concessionaire forthwith.
- 5.10 If at any time during the Construction Period, the Independent Engineer determines that the Concessionaire has not made adequate arrangements for the safety of workers and Users in the zone of construction or that any work is being carried out in a manner that threatens the safety of the workers and the Users, it shall make a recommendation to the Authority forthwith, identifying the whole or part of the Construction Works that should be suspended for ensuring safety in respect thereof.
- 5.11 In the event that the Concessionaire carries out any remedial measures to secure the safety of suspended works and Users, it may, by notice in writing, require the Independent Engineer to inspect such works, and within 3 (three) days of receiving such notice, the Independent Engineer shall inspect the suspended works and make a report to the Authority forthwith, recommending whether or not such suspension may be revoked by the Authority.
- 5.12 If suspension of Construction Works is for reasons not attributable to the Concessionaire, the Independent Engineer shall determine the extension of dates set forth in the Project Completion Schedule, to which the Concessionaire is reasonably entitled, and shall notify the Authority and the

Concessionaire of the same.

- 5.13 The Independent Engineer shall carry out, or cause to be carried out, all the Tests specified in Schedule-I and issue a Completion Certificate or Provisional Certificate, as the case may be. For carrying out its functions under this Paragraph 5.13 and all matters incidental thereto, the Independent Engineer shall act under and in accordance with the provisions of Article 14 and Schedule-I.
- 5.14 Upon reference from the Authority, the Independent Engineer shall make a fair and reasonable assessment of the costs of providing information, works and services as set forth in Article 16 and certify the reasonableness of such costs for payment by the Authority to the Concessionaire.
- 5.15 The Independent Engineer shall aid and advise the Concessionaire in preparing the Maintenance Manual.

6 Operation Period

- 6.1 In respect of the Drawings, Documents and Safety Report received by the Independent Engineer for its review and comments during the Operation Period, the provisions of Paragraph 4 shall apply, *mutatis mutandis*.
- 6.2 The Independent Engineer shall review the annual Maintenance Programme furnished by the Concessionaire and send its comments thereon to the Authority and the Concessionaire within 15 (fifteen) days of receipt of the Maintenance Programme.
- 6.3 The Independent Engineer shall review the monthly status report furnished by the Concessionaire and send its comments thereon to the Authority and the Concessionaire within 7 (seven) days of receipt of such report.
- 6.4 The Independent Engineer shall inspect the Project Highway once every month, preferably after receipt of the monthly status report from the Concessionaire, but before the 20th (twentieth) day of each month in any case, and make out an O&M Inspection Report setting forth an overview of the status, quality and safety of O&M including its conformity with the Maintenance Requirements and Safety Requirements. In a separate section of the O&M Inspection Report, the Independent Engineer shall describe in reasonable detail the lapses, defects or deficiencies observed by it in O&M of the Project Highway. The Independent Engineer shall send a copy of its O&M Inspection Report to the Authority and the Concessionaire within 7 (seven) days of the inspection.
- 6.5 The Independent Engineer may inspect the Project Highway more than once in a month, if any lapses, defects or deficiencies require such inspections.
- 6.6 The Independent Engineer shall in its O&M Inspection Report specify the tests, if any, that the Concessionaire shall carry out, or cause to be carried out, for the purpose of determining that the Project Highway is in conformity with the Maintenance Requirements. It shall monitor and review the results of such tests and the remedial measures, if any, taken by the Concessionaire in this behalf.
- 6.7 In respect of any defect or deficiency referred to in Paragraph 3 of Schedule-K, the Independent Engineer shall, in conformity with Good Industry Practice, specify the permissible limit of deviation or deterioration with reference to the Specifications and Standards and shall also specify the time limit for repair or rectification of any deviation or deterioration beyond the permissible limit.
- 6.8 The Independent Engineer shall determine if any delay has occurred in completion of repair or remedial works in accordance with the Agreement, and shall also determine the Damages, if any, payable by the Concessionaire to the Authority for such delay.
- 6.9 The Independent Engineer shall examine the request of the Concessionaire for closure of any lane(s)

of the carriageway for undertaking maintenance/repair thereof, keeping in view the need to minimise disruption in traffic and the time required for completing such maintenance/repair in accordance with Good Industry Practice. It shall grant permission with such modifications, as it may deem necessary, within 3 (three) days of receiving a request from the Concessionaire. Upon expiry of the permitted period of closure, the Independent Engineer shall monitor the re-opening of such lane(s), and in case of delay, determine the Damages payable by the Concessionaire to the Authority under Clause 17.7.

- 6.10 The Independent Engineer shall monitor and review the curing of defects and deficiencies by the Concessionaire as set forth in Clause 19.4.
- 6.11 In the event that the Concessionaire notifies the Independent Engineer of any modifications that it proposes to make to the Project Highway, the Independent Engineer shall review the same and send its comments to the Authority and the Concessionaire within 15 (fifteen) days of receiving the proposal.
- 6.12 The Independent Engineer shall undertake traffic sampling, as and when required by the Authority, under and in accordance with Article 22 and Schedule-O.

7 Termination

- 7.1 At any time, not earlier than 90 (ninety) days prior to Termination but not later than 15 (fifteen) days prior to such Termination, the Independent Engineer shall, in the presence of a representative of the Concessionaire, inspect the Project Highway for determining compliance by the Concessionaire with the Divestment Requirements set forth in Clause 39.1 and, if required, cause tests to be carried out at the Concessionaire's cost for determining such compliance. If the Independent Engineer determines that the status of the Project Highway is such that its repair and rectification would require a larger amount than the sum set forth in Clause 40.2, it shall recommend retention of the required amount in the Escrow Account and the period of retention thereof.
- 7.2 The Independent Engineer shall inspect the Project Highway once in every 15(fifteen) days during a period of 90 (ninety) days after Termination for determining the liability of the Concessionaire under Article 40, in respect of the defects or deficiencies specified therein. If any such defect or deficiency is found by the Independent Engineer, it shall make a report in reasonable detail and send it forthwith to the Authority and the Concessionaire.

8 Determination of costs and time

- 8.1 The Independent Engineer shall determine the costs, and/or their reasonableness, that are required to be determined by it under the Agreement.
- 8.2 The Independent Engineer shall determine the period, or any extension thereof, that is required to be determined by it under the Agreement.

9 Assistance in Dispute resolution

- 9.1 When called upon by either Party in the event of any Dispute, the Independent Engineer shall mediate and assist the Parties in arriving at an amicable settlement.
- 9.2 In the event of any disagreement between the Parties regarding the meaning, scope and nature of Good Industry Practice, as set forth in any provision of the Agreement, the Independent Engineer shall specify such meaning, scope and nature by issuing a reasoned written statement relying on good industry practice and authentic literature.

10 Other duties and functions

The Independent Engineer shall perform all other duties and functions specified in the Agreement.

11 Miscellaneous

- 11.1 The Independent Engineer shall notify its programme of inspection to the Authority and to the Concessionaire, who may, in their discretion, depute their respective representatives to be present during the inspection.
- 11.2 A copy of all communications, comments, instructions, Drawings or Documents sent by the Independent Engineer to the Concessionaire pursuant to this TOR, and a copy of all the test results with comments of the Independent Engineer thereon shall be furnished by the Independent Engineer to the Authority forthwith.
- 11.3 The Independent Engineer shall obtain, and the Concessionaire shall furnish in two copies thereof, all communications and reports required to be submitted, under this Agreement, by the Concessionaire to the Independent Engineer, whereupon the Independent Engineer shall send 1 (one) of the copies to the Authority along with its comments thereon.
- 11.4 The Independent Engineer shall retain at least one copy each of all Drawings and Documents received by it, including 'as-built' Drawings, and keep them in its safe custody.
- 11.5 Upon completion of its assignment hereunder, the Independent Engineer shall duly classify and list all Drawings, Documents, results of tests and other relevant records, and hand them over to the Authority or such other person as the Authority may specify, and obtain written receipt thereof. Two copies of the said document shall also be furnished in micro film form or in such other medium as may be acceptable to the Authority.
- 11.6 Wherever no period has been specified for delivery of services by the Independent Engineer, the Independent Engineer shall act with the efficiency and urgency necessary for discharging its functions in accordance with Good Industry Practice.

12 Assistance to Authority in review of book of accounts

Upon receipt of copy of books of accounts from Authority, the Independent Engineer shall review the Escrow account statements with respect to the provisions of the Escrow agreement, books of accounts for information pertaining (a) the traffic count (b) Fee determination thereof, and (c) Project costs, and (d) such other information relating or resulting from other duties and functions of Independent Engineer in accordance with the Agreement, as the Authority may reasonably require and submit its report within 10 days.

13 PERFORMANCE CLAUSE

Independent Engineers shall be expected to fully comply with all the provisions of the 'Terms of Reference', and shall be fully responsible for supervising the Designs, Construction and maintenance and operation of the facility takes place in accordance with the provisions of the Concession Agreement and other schedules. Any failure of the Independent Consultant in notifying to <AGENCY> and the Concessionaire on non-compliance of the provisions of the Concession Agreement and other schedules by the Concessionaire, non-adherence to the provision of ToR and non-adherence to the time schedule prescribed under ToR shall amount to non-performance.

The Independent Engineer shall appoint its authorized representative, who shall issue on behalf of the IE, the Provisional Completion Certification and Completion Certificate along with the Team Leader and shall carry out any such task as may be decided by <AGENCY>. The IE shall take prior approval of <AGENCY> before issuing Provisional Completion Certification and Completion Certificate. The proposal submitted shall also include the name of the authorized representative along with the authorization letter and power of attorney.

14. CONSULTANT'S PROPOSAL

- 14.1** List of key personnel to be fielded by the Consultants shall be as below:
- i. Team Leader cum Senior Highway Engineer
 - ii. Resident cum Highway Engineer
 - iii. Bridge/Structural Engineer
 - iv. Senior Pavement Specialist
 - v. Senior Quality cum Material Expert
 - vi. Road Safety Expert
- 14.2** Broad job-description and minimum qualification for ***** mentioned above is enclosed as Enclosure-B. However, higher marks shall be accorded to the Candidate with higher relevant qualification and experience. The Consultant should feel free to submit their proposal on the basis of the man-months which they consider to be necessary to undertake the assignment. All the CV's of the personals mentioned in Para 5.3 (iii) of Data Sheet shall be evaluated at the time of evaluation of technical proposal. The age of the Key Personnel should not be more than 65 years on the date of submission of proposal. Consultants are advised in their own interest to frame the technical proposal in an objective manner as far as possible so that these could be properly assessed in respect of points to be given as part of evaluation criteria. The bio-data of the key personnel should be signed on every sheet by the personnel concerned and the last sheet of each bio-data should also be signed by the authorised signatory for the Consultant. The key personnel shall also certify at the end of their bio-data proforma that they have not left any of the <AGENCY> works without completing of their assignment and have not accepted any other offer at the time of signing of the bio-data and as such shall be available to work with the Independent Consultant, if the Project is awarded. In case the key personnel leaves the assignment without approval of <AGENCY>, <AGENCY> would be at liberty to take any appropriate action against that key personnel including debarment.
- 14.3** In addition to above, consultants are required to propose other key personnel, sub-professional staff and other field engineers as detailed in Enclosure-A and the minimum qualification requirements for the same is enclosed in Enclosure-B.

15 PERIOD OF SERVICES

- 15.1** The services of an Independent Engineer will be in phases as per Contract / Concession Agreement.
- 15.1.1** The appointment of the Independent Engineer shall initially be as per details given below.

The proposed manpower deployment for this period shall be matching the activities to be performed during the said period. The time frame for services during the deployment of key personnel during this period shall be as shown in Enclosure A.

Enclosure-A

**MAN MONTHS INPUT FOR KEY PROFESSIONAL STAFF
INDEPENDENT ENGINEER**

S. No.	Key Personnel	Suggested Man-days during O&M Stage (O&M for 36 Months)
A: Key Personnel		
1.	Team Leader cum Senior Highway Engineer	9
2.	Highway Maintenance Engineer	1x36
3.	Quality /Material Engineer	0
4.	Pavement Engineer	0
5.	Road Safety Expert	9
6.	Road / Structure Engineer	9
7.	Traffic Transportation Engineer	0
B.	HTMS/Toll Expert	0
B: Sub Professional Staff		
(a)	Survey Engineer	1x12
(b)	Asst. Highway Maintenance	1x36
(c)	CAD Expert	0
(d)	Electrical Engineer	9
(e)	Horticulture Expert	36
(f)	Quantity Surveyor	9

Note:

1. The other inputs like support staff shall be provided by the Consultant of an acceptable type commensurate with the roles and responsibilities of each position
 2. In case of project having different construction period, Man Month Input shall be adjusted proportionately
 3. The Financial Expert/Legal expert/Contract Specialist may be required for the project for specific needs. Their deployment shall be arranged by the Consultant on specific requisition from the Authority and the payment shall be made as per the actual deployment. The Financial Expert/Legal expert/Contract Specialist shall be paid at the rates quoted for Senior Pavement Specialist
-

Enclosure B

QUALIFICATION OF KEY PERSONNEL

TEAM LEADER CUM SENIOR HIGHWAY ENGINEER

This is the senior most position and the expert engaged as the team leader shall be responsible for reviewing the entire Project preparation and implementation activities of the Concessionaire. He shall check all the Designs being prepared by the Concessionaire, ensure execution of works on site as per specification and standards, and continuously interact with the <AGENCY> and the Concessionaire. He shall undertake Project site visits and shall guide, supervise, coordinate and monitor the work of other experts in his team as well as those of the Concessionaire. The candidate is required to be a Senior Highway Engineer, who should have a proven record of supervising, organising and managing of construction of highway projects and also of Project preparation of large magnitudes projects, as defined below, financed by international lending agencies and others. Knowledge of Project management shall be an added advantage.

He should have the following qualification / experience.

1. Essential Qualifications.

- a) Graduate in Civil Engineering from recognized university.
- b) Total Professional Experience of 12 years in handling Highway Projects.
- c) At least 5 years experience as Team Leader/Project Manager or similar capacity in Highway Development Project
- d) He should have handled as Team Leader/Project Manager or similar capacity of at least two projects in Construction Supervision / IC (of length 40% of project length or more of similar configuration (2/4/6 laning**)
- e) He should have handled as Team Leader or similar capacity of at least two Projects of project Preparation of major highway Project (of length 40% of project length or more of similar configuration (2/4/6 laning**).
- f) Experience as Team Leader/Project Manager or similar capacity in Operation and Maintenance of Major Highway Projects(of length 40% of project length or more of similar configuration (2/4/6 laning**).

2. Preferential Qualifications.

- a) Post Graduate Degree in Construction Management/Transportation/Highway Engineering//Structural Engineering/ any specialised stream of Civil Engineering.
- b) Highway Development Projects (of length 40% of project length or more of similar configuration (2/4/6 laning**)) taken up under PPP.
- c) Degree/Diploma/Certificate in Project Management

Note: (1) Similar Capacity includes the following positions

- i. On behalf of Consultant: Team Leader / Resident Engineer (Construction

Supervision/IE).

- ii. On behalf of Contractor : Project Manager (Construction/ Construction Supervision)
- iii. In Government Organizations : Superintending Engineer (or equivalent) and above

(2) Only those projects will be considered for evaluation at Sl. No. 1(d), 1(e) & 1(f) above, where the input of the personnel is 12 months, 9 months and 12 months respectively.

RESIDENT CUM HIGHWAY ENGINEER

The Resident cum Highway Engineer shall be responsible for supervising the works of highway to be constructed by the Concessionaire for this project. He shall also inspect the pavement rehabilitation and repair works to be undertaken by the Concessionaire.

He should have the following qualification / experience.

1. Essential Qualifications.

- a) Graduate in Civil Engineering from a recognized University.
- b) Professional Experience of 10 years in supervision of Highway Projects.
- c) 5 years experience in similar capacity in Highway Development Project.
- d) Should have handled at least 2 major projects(of length 40% of project length or more of similar configuration (2/4/6 laning**) and above).

2. Preferential Qualifications.

- a) Post Graduate Degree in Transportation/Highway Engineering/Structural Engineering/Geotechnical Engineering/any specialised stream of Civil Engineering.
- b) Experience of Highway Project (of length 40% of project length or more of similar configuration (2/4/6 laning**) and above) of Construction / Construction Supervision / IC on PPP Mode

BRIDGE & STRUCTURAL ENGINEER

The Bridge & Structural Engineer shall be responsible for checking the designs of bridges, ROBs, interchanges and any other structure to be constructed in the Project highway and supervising the works of bridges, interchanges and any other structure to be constructed by the Concessionaire for this project. He shall also inspect the bridge rehabilitation and repair works to be undertaken by the Concessionaire. He should have thorough understanding and experience with International 'best practices' of modern bridge construction technology.

He should have the following qualification / experience.

1. Essential Qualifications.

- a) Graduate in Civil Engineering from a recognized University.
- b) Professional Experience of 10 years in handling Highway/Bridge projects.

- c) 5 years experience in Construction / Construction Supervision of bridge / Interchange / any other structures.
- d) Experience in similar capacity in supervision of 2 Major Highway Bridges.
- e) Experience in supervision of Rehabilitation and repair of 2 nos Major Bridges.

2. Preferential Qualifications.

- a) Post Graduate Degree in Structural Engineering.

He should have thorough understanding and experience of modern bridge construction technology. viz., Precast Segmental, Balanced Cantilever Construction, Extradosed Bridge, Full Span Launching, Incremental Launching.

SENIOR PAVEMENT SPECIALIST

The expert shall be continuously interacting with the Concessionaire, for the review of highway designs and drawings using sophisticated computer software and also construction and O&M works and to ensure life cycle cost effectiveness and viable design of pavement including appropriate rehabilitation / strengthening of the existing two lane pavement which is significantly distressed. He shall also be responsible for ensuring complete adherence to maintenance standards during Construction and Operation period. Thus, the position requires a pavement specialist with thorough knowledge and understanding of international 'best practices' in the field of Design, Construction and maintenance of flexible/rigid type of pavements including latest Codal stipulations and specifications.

He should have the following qualification / experience.

1. Essential Qualifications.

- a) Graduate in Civil Engineering from a recognized University.
- b) Professional Experience of 10 years in Pavement Design / Pavement Construction / Pavement Maintenance of Highways / Roads / Airfield Runways
- c) Experience of 5 years in similar capacity in Construction / Construction Supervision of 2/4/6 laning** of major highway projects.
- d) Experience as Pavement / Geotechnical Engineer in Construction/Construction Supervision of at least 2 major highway projects(of length 40% of project length or more of similar configuration (2/4/6 laning**) and above).

2. Preferential Qualifications.

- a) Post Graduate Degree in Highway Engineering / Pavement Engineering /Transportation
- b) Experience in similar capacity in Highway Development Project in innovative/non traditional technology and design

Experience as a Pavement Specialist/Pavement Engineer in PPP project(of length 40% of project length or more of similar configuration (2/4/6 laning**) and above).

SENIOR QUALITY/MATERIAL EXPERT

The Quality/Material Expert shall review the test results of bore holes, quarry and borrow area material to find out their strength characteristics and suitability for using them in construction. He shall inspect the Concessionaire's field laboratories to ensure that they are adequately equipped and capable of performing all the specified testing requirements of the contract. He shall look into the quality assurance aspect of the construction works and supervise the setting-up of the various Concessionaire's rock crushers and bituminous mixing plants to ensure that the specified requirements for such equipment are fully met. Experience in latest Quality Management techniques in highway projects shall have added advantage.

He should have the following qualification / experience.

1. Essential Qualifications.

- a) Graduate in Civil Engineering from a recognized University.
- b) Professional Experience of 10 years in handling Highway projects.
- c) Experience of at least 5 years as Senior Quality/ Material Expert or in similar capacity in Construction / Construction Supervision /major highway projects
- d) Experience as Senior Quality/ Material Expert or in similar capacity in handling of at least 2 similar highway projects.(of length 40% of project length or more of similar configuration (2/4/6 laning**) and above)

2. Preferential Qualifications.

- a) Post Graduate Degree in Geotechnical Engineering / Foundation Engineering / Soil Mechanics.

Experience in similar capacity in Highway Development Project in innovative/non traditional technology.

ROAD SAFETY EXPERT

Shall be responsible for the overall Road Safety Aspect of the Project. He shall ensure that safety provisions as per relevant codes are strictly followed at site during Construction of Road and also during the Maintenance Period

1. Essential Qualifications.

- a) Graduate in Civil Engineering from a recognized University.
- b) Professional Experience of 10 years in handling Highway projects.
- c) Minimum 5 years experience in Road Safety works of Major Highway Projects (4 / 6 laning projects)
- d) Experience in similar capacity in Road Safety Audit of at least 2 nos 2/4/6 lane** highway / expressway project including 1 nos at design stage
- e) Experience in similar capacity in the field of Road Safety Management Plan.

2. Preferential Qualifications

- a) Post Graduate Degree in Traffic Transportation/Safety Engineering.
- b) Experience in similar capacity in identification and improvement of black spots on Major Highway Project.

Experience in similar capacity in Preparation of Road Safety Management Plan for inter urban Highways.

SUB PROFESSIONAL

SURVEY ENGINEER

The candidate should be Graduate in Civil Engineering Firm may field Survey Engineer with diploma in Civil Engineering/Survey having at least 5 years experience in the field of surveying out of which at least 3 years should be in highway projects and they should have also dealt with at least 1 project of similar nature. This position requires thorough understanding of modern computer based method of surveying with total station digital level etc.

ASSISTANT HIGHWAY ENGINEER

The Candidate should be Graduate in Civil Engineering.

CAD EXPERT

He should be Graduate in Civil Engineering/Computer Science having experience in computer related design method for highway engineering.

ENVIRONMENTAL ENGINEER

The Candidate should be Graduate in Civil Engineering/Environmental Engineering or other relevant qualification. He should have at least 6 years experience out of which 2 years in highway projects. He should have good knowledge of MOEF guidelines/requirements for mitigation measures.

ASSISTANT BRIDGE ENGINEER

The Candidate should be Graduate in Civil Engineering with 3 years experience. He should have handled at least 1 major bridge project.

ASSISTANT QUALITY CUM MATERIAL ENGINEER

The Candidate should be Graduate in Civil Engineering or diploma in Civil Engineering with 3 years experience.

ELECTRICAL ENGINEER

The Candidate should be Graduate in Electrical Engineering from recognised institute. He should have at least 6 years experience

HTMS/TOLLING SYSTEM EXPERT

The candidate should be a senior Systems Engineer having experience of at least 15 Years. He should be an expert in preparation of standards for projects of toll collection and HTMS. He should have bachelors degree in Civil Engineering/Electronics/Computer Science/other relevant areas. He should have experience of international latest practices in the field of HTMS and tolling. He should have work experience on at least 2 similar projects in similar capacity.

QUANTITY SURVEYOR

He should be Graduate or equivalent in Civil Engineering having Min. 5 years of professional experience in preparation of highway project estimates. He should have Min. 3 years experience in Preparation of Bill of Quantities/estimates for major highway projects costing Rs.100 Crore or above.

HORTICULTURE CUM LANDSCAPING SPECIALIST

He should be a Graduate in Agriculture with specialization in Horticulture/Arboriculture having minimum 5 year of field experience in Horticulture/Arboriculture and landscaping. He should have minimum 5 years field experience.ss

Note: Upto 2 sub-professional can be a fresh graduate (zero/ less than minimum required work experience) with first class in graduation stream. Eligibility requirement in terms of minimum years of experience shall not be applicable for this sub professional.

Annexure I- Daily Inspection Report during Construction Period

Component	Item Description	Description of Inspection work carried out	Results of lab tests conducted (Test conducted, Pass/Fail)	Name of key personnel inspecting the work
1. Road works including culverts, and minor bridges	Embankment/ Sub Grade/ GSB/ WMM/ DBM/ BC			
2. Major Bridge works, Flyovers, ROB, RUB, VUP, PUP	Foundation/ Sub structure/ Super structure		NA	
3. Approach to ROB/RUB/ Major Bridges/ Viaduct / RE wall	Foundation/ Sub structure/ Super structure			
4. Other Works				

Annexure II- Daily Inspection Report during O&M Period

Nature of defect/ deficiency	Defect found (Yes/No)	If defect found, Chainage & side	Compliance of previous defect (Yes/No/NA)	IE Remarks
ROADS				
Carriageway and paved shoulders				
Breach or blockade				
Pot holes				
Removal of debris				
Hard/earth shoulders, side slopes, drains and culverts				
Desilting of drains in urban/semi-urban areas				
Road side furniture including road signs and pavement marking				
Damage to shape or position; poor visibility or loss of retro-reflectivity				
Street lighting and telecom (ATMS)				
Any major failure of the system				
Faults and minor failures				
Trees and Plantation				
Obstruction in a minimum head-room of 5 m above carriageway or obstruction in visibility of road signs				
Rest areas				
Cleaning of toilets				
Defects in electrical, water and sanitary installations				
Toll plaza[s]				
Failure of toll collection equipment including ETC or lighting				
Other Project Facilities and Approach roads				
Damage or deterioration in Approach Roads, -{pedestrian facilities, truck lay-bys, bus-bays, bus-shelters, cattle crossings, Traffic Aid Posts, Medical Aid Posts and other works}				

Annexure III- Weekly Inspection Report during O&M Period

Nature of defect or deficiency	Defect found (Yes/No)	If defect found, Chainage & side	Compliance of previous defect (Yes/No/NA)	IE Remarks
ROADS				
(a) Carriageway and paved shoulders				
(i) Breach or blockade				
(ii) Roughness value exceeding 2,500 mm in a stretch of 1 km (as measured by a standardised roughometer/bump integrator)				
(iii) Pot holes				
(iv) Cracking in more than 5% of road surface in a stretch of 1 km				
(v) Rutting exceeding 10 mm in more than 2% of road surface in a stretch of 1 km (measured with 3 m straight edge)				
(vi) Bleeding/skidding				
(vii) Ravelling/Stripping of bitumen surface exceeding 10 sq m				
(viii) Damage to pavement edges exceeding 10 cm				
(ix) Removal of debris				
(b) Hard/earth shoulders, side slopes, drains and culverts				
(i) Variation by more than 2% in the prescribed slope of camber/cross fall				
(ii) Edge drop at shoulders exceeding 40 mm				
(iii) Variation by more than 15% in the prescribed side (embankment) slopes				
(iv) Rain cuts/gullies in slope				
(v) Damage to or silting of culverts and side drains during and immediately preceding the rainy season				
(vi) Desilting of drains in urban/semi-urban areas				

Nature of defect or deficiency	Defect found (Yes/No)	If defect found, Chainage & side	Compliance of previous defect (Yes/No/NA)	IE Remarks
(c) Road side furniture including road signs and pavement marking				
(i) Damage to shape or position: poor visibility or loss of retro-reflectivity				
(d) Street lighting and telecom (ATMS)				
(i) Any major failure of the system				
(ii) Faults and minor failures				
(e) Trees and plantation				
(i) Obstruction in a minimum head-room of 5 m above carriageway or obstruction in visibility of road signs				
(ii) Deterioration in health of trees and bushes				
(iii) Replacement of trees and bushes				
(iv) Removal of vegetation affecting sight line and road structures				
(f) Rest areas				
(i) Cleaning of toilets				
(ii) Defects in electrical, water and sanitary installations				
(g) Toll plaza(s)				
(i) Failure of toll collection equipment including ETC or lighting				
(ii) Damage to toll plaza				
(h) Other Project Facilities and Approach roads				
(i) Damage or deterioration in Approach Roads, [pedestrian facilities, truck lay-bys, bus-bays, bus-shelters, cattle crossings, Traffic Aid Posts, Medical Aid Posts and other works]				
BRIDGES				
(a) Superstructure of bridges				
(i) Cracks				
(ii) Spalling/scaling				
(b) Foundations of bridges				

Nature of defect or deficiency		Defect found (Yes/No)	If defect found, Chainage & side	Compliance of previous defect (Yes/No/NA)	IE Remarks
(i)	Scouring and/or cavitation				
(c)	Piers, abutments, return walls and wing walls of bridges				
(i)	Cracks and damages including settlement and tilting				
(d)	Bearings (metallic) of bridges				
(i)	Deformation				
(e)	Joints in bridges				
(i)	Loosening and malfunctioning of joints				
(f)	Other items relating to bridges				
(e)	Deforming of pads in elastomeric bearings				
(ii)	Gathering of dirt in bearings and joints; or clogging of spouts, weep holes and vent-holes				
(iii)	Damage or deterioration in parapets and handrails				
(iv)	Rain-cuts or erosion of banks of the side slopes of approaches				
(v)	Damage to wearing coat				
(vi)	Damage or deterioration in approach slabs, pitching, apron, toes, floor or guide bunds				
(vii)	Growth of vegetation affecting the structure or obstructing the waterway				

Annexure IV- Months of Survey for Equipment based Road Condition Assessment

Equipment based road inspection shall be done by the Consultant twice a year as per the month of the year defined in the following table.

However, since the first survey shall be conducted at the time of completion testing, the following modification to the schedule shall be adopted. For example, if majority of highway length (>50%) passes through a state, where defined survey months are May and November, if completion testing is conducted in April, then the first equipment based survey shall be conducted in the month of April. This shall be considered as the equipment based survey to be conducted in the month of May. The 2nd equipment based survey shall be conducted in the month of November, the 3rd survey shall be conducted in the month of May and so on. As regards FWD, the first test/survey shall be conducted at the time of completion in April. The 2nd test/survey shall be conducted in April of next year and so on.

Region	State	Survey before rains	Survey after rains
North	Uttar Pradesh	May	Nov

SECTION 7: DRAFT FORM OF CONTRACT

Note: This draft Agreement is a generic document and shall be modified based on particulars of the DBFOT Project.

CONTRACT FOR CONSULTANT'S SERVICES

Between

(Name of Client)

And

(Name of Consultant)

Dated:

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Remuneration and Reimbursable Expenditures

Currency of Payment

Mode of Billing and Payment

7. Fairness and Good Faith

Good Faith

Operation of the Contract

8. Settlement of Disputes

Amicable Settlement

Dispute Settlement

9. Fake CV

III. SPECIAL CONDITIONS OF CONTRACT

IV. APPENDICES

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 in Local Currency

Appendix H: Form of Performance Security

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

I. **FORM OF CONTRACT**

COMPLEX TIME BASED ASSIGNMENTS

This CONTRACT (hereinafter called the "Contract") is made the ____ day of the _____ Month of ____ 200 ____ 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 in Local Currency.....
Appendix H:	Form of Performance Security.....
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.....

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 local currency only 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

{Authorized Representative}

FOR AND ON BEHALF OF
[NAME OF THE CONSULTANTS]

By

{Authorized 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

{Authorized Representative}

[Name of the Member]

By

{Authorized Representative}

etc

II. GENERAL CONDITIONS OF CONTRACT

1. General Provisions

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

Definitions

- (a) "Applicable Law" means the laws and any other instruments having the force of law in India as they may be issued and in force from time to time.
- (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 "Independent Consultant (IE)" and includes and sub-consultants or Associates 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 or Associates 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) "SC" means the Special Conditions of Contract by which these General Conditions of Contract may be amended or supplemented;

- (m) "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 Independent Engineer may be modified depending on the site requirements and work programme of the Concessionaire after mutual discussions with <AGENCY>, the Concessionaire and the Independent Engineer. The work plan as indicated by the Consultant may be modified accordingly to the site requirements.
- (n) "Sub-consultant and or Associates " means any entity to which the Consultants subcontract any part of the Services in accordance with the provisions of Clause GC 3.7; and
- (o) "Third Party" means any person or entity other than the Government, the Client, the Consultants or a Sub-consultant.

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.

Law Governing Contract

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

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.

Headings

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

Notices

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.

Notice will be deemed to be effective as specified in the SC.

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.

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.

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.

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.

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. <AGENCY> shall reimburse only Goods and service tax on production of project specific proof of payment of Goods and service tax.

2. Commencement, Completion, Modification and Termination of Contract

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.

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) weeks' 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.

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.

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.

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.

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.

Force Majeure

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.

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.

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.

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.

Payments

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

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.

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.

Termination

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 Concessionaire represents to <AGENCY> that the Consultant is not discharging his duties in a fair, efficient and diligent manner and if the dispute remains unresolved, <AGENCY> may terminate this contract.

By the Consultants

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.

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:

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

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.

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 pursuant to Clause GC 6 hereof for Services satisfactorily performed prior to the effective date of termination;
- (b) reimbursable expenditures pursuant to Clause GC 6 hereof for expenditures actually incurred prior to the effective date of termination; and
- (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.

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. Obligation of the Consultants

General

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.

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 and or Associates, as well as the Personnel of the Consultants and any Sub-consultants and or Associates, 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.

Conflict of Interests

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 and or Associates, 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 (<AGENCY>) 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.

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 or Associates and any entity affiliated with such Sub-consultant and or Associates, 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.

Prohibition of Conflicting Activities

The Consultants shall not engage, and shall cause their Personnel as well as their Sub-consultants and or Associates 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.

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.

Liability of the Consultants

Subject to additional provisions, if any, set forth in the SC, the Consultants' liability under this Contract shall be as provided by the Applicable Law.

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.

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.

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 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

Reporting Obligations

The Consultants shall submit to the Client 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.

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.

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.

4. Consultants' Personnel and Sub-consultants and or Associates

General

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

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 clients 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.

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.

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.

Removal and/or Replacement of Personnel

Removal and/or replacement of Key Personnel shall be regulated as under:

In case notice to commence services pursuant to Clause 2.1 of this Contract is not ordered by Client within 120 days of signing of contract the key personnel can excuse themselves on valid grounds, e.g., selection on some other assignment, health problem developed after signing of contract, etc. In such a case no penalty shall be levied on the Firm or on the person concerned. The firm shall however be asked to

give a replacement by an equal or better scoring person, whenever mobilization is ordered.

In case notice to commence services is given within 120 days of signing of contract the, the Authority expects all the Key Personnel specified in the Proposal to be available during implementation of the Agreement. The Authority will not consider any substitution of Key Personnel except under compelling circumstances beyond the control of the Consultant and the concerned Key Personnel. Such substitution shall be limited to not more than three Key Personnel subject to equally or better qualified and experienced personnel being provided to the satisfaction of the Authority. Replacement of the Team Leader will not normally be considered and may lead to disqualification of the Applicant or termination of the Agreement. Replacement of one Key Personnel shall be permitted subject to reduction of remuneration equal to 5 % (five per cent) of the total remuneration specified for the Key Personnel who is proposed to be replaced. In case of second replacement the reduction in remuneration shall be equal to 10% (ten per cent) and for third and subsequent replacement, such reduction shall be equal to 15% (fifteen per cent) if the consultant finds that any of the personnel had made false representation regarding his qualification and experience, he may request the Employer for replacement of the personnel. There shall be no reduction in remuneration for such replacement. The replacement shall however be of equal or better score. The personnel so replaced shall be debarred from future projects for 2 years. The maximum age limit of replaced key personnel shall be 65 years as on the date of submission of proposal for such replacement.

Replacement after original contract period is over:

There shall be no limit on the replacements and no reduction in remunerations shall be made. The replacement shall however be of equal or better score.

If the Employer (i) finds that any of the Personnel has committed serious misconduct or has been charged with having committed a criminal action or (ii) has a reasonable ground to be dissatisfied with the performance of any of the Personnel, then the consultant shall, at the Employer's written request specifying the grounds therefore, forthwith provide a replacement with qualifications and experience acceptable to him. For such replacement there will be no reduction in remuneration.

If any member of the approved team of a consultant engaged by <Agency> leaves that consultant before completion of the job, he shall be barred for a period of 6 months to 24 months from being engaged as a team member of any other consultant working (or to be appointed) for any other <Agency>/ MoRTH projects. The maximum age limit of replaced key personnel shall be 65 years as on the date of submission of proposal for such replacement.

4.5 Resident Team Leader and Coordinator

The person designated as the Team Leader of the Consultant's Personnel shall be responsible for the coordinated, timely and efficient functioning of the Personnel. In addition, the Consultant shall designate a suitable person from its Head Office as Project Coordinator who shall be responsible for day to day performance of the Services.

5. Obligations of the Client

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 and or Associates 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 or Associates 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 or Associates and Personnel any such other assistance as may be specified in the SC.

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 Client will be responsible for any damage to such land or any property thereon resulting from such access and will indemnify the Consultants and each of the Personnel in respect of liability for any such damage, unless such damage is caused by the default or negligence of the Consultants or any Sub-consultant or the Personnel of either of them.

Change in the Applicable Law

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 or reimbursable expenses incurred by the Consultants in performing the Services, then the remuneration and reimbursable expenses otherwise payable to the Consultants under this Contract shall be increased or decreased accordingly by agreement between the Parties hereto, and corresponding adjustments shall be made to the ceiling amounts specified in Clause GC 6.1(b).

Services, Facilities and Property of the Client

The Client shall make available to the Consultants and the Personnel, for the purposes of the services and free of any charge, the 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.

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.

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 E. 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 are 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. Payments to the Consultants

Cost Estimates; Ceiling Amount

- (a) An estimate of the cost of the Services payable in local currency 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 in local currency specified in the SC. The Consultants shall notify the Client as soon as cumulative charges incurred for the Services have reached 75% of either 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 in local currency, 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, the ceiling or ceilings, as the case may be, set forth in Clause GC (b) above shall be increased by the amount or amounts, as the case may be, of any such additional payments.

Remuneration and Reimbursable Expenditures

- (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) reimbursable expenditures as set forth in Clause GC 6.2(c). If specified in the SC, said remuneration 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) Reimbursable expenditures actually and reasonably incurred by the Consultants in the performance of the Services, as specified in the SC .

Notwithstanding anything to the contrary stated in the GCC and SCC, it shall be mandatory to deploy the key personnel and sub-professional as per the Man-Months Input specified in the Terms of Reference.

Inadequate deployment of key personnel and sub-professional shall lead to deduction in the monthly payment as per following table. The key personnel and sub- professional shall be considered to be inadequately deployed if he/she is not present for atleast 90% of the time stipulated in the month, as per the Man Months Input in the Terms of Reference and the Deployment Schedule proposed by the firm.

Sr. No.	Personnel	% reduction in monthly payment
1	Team Leader cum Senior Highway Engineer	20%
2	Resident Engineer cum Highway Engineer	25%
3	Bridge/Structural Engineer	20%
4	Other Key Personnel	20%
5	Sub- Professional Staff	15%

For avoidance of doubt, in case the Team Leader cum Senior Highway Engineer has not been made available for 90% of the stipulated time in the month, then only 80 marks of the monthly payment shall be released. In the case of "Other Key Personnel (Sr. No. 4)" and "Sub – Professional Staff (Sr. No. 5)", the average availability across the group shall be considered for calculation.

Currency of Payment

- (a) Local currency payments shall be made in the currency of the Government.
- (b) The SC shall specify which items of remuneration and reimbursable expenditures shall be paid, respectively, in local currency.

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 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. Monthly statements shall be submitted in respect of amounts payable in local currency. Each such separate monthly statement shall distinguish that portion of the total eligible costs which pertains to remuneration from that portion which pertains to reimbursable expenditures.
- (c) 75% of bill raised by the consultant shall be paid within 72 Hrs and remaining bill may be paid after due scrutiny. The Client shall cause the payment of the Consultants periodically as given in schedule of payment above within thirty (30) days after the receipt by the Client of bills with supporting documents.
- (d) 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.

- (e) The final payment under this Clause shall be made only after the final report and a final statement, identified as such, shall have been submitted 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.
- (f) All payments under this Contract shall be made to the account of the Consultants specified in the SC.

7. Fairness and Good Faith

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.

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 Disputes

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.

Dispute Resolution

Any dispute, difference or controversy of whatever nature howsoever arising under or out of or in relation to this Agreement (including its interpretation) between the Parties, and so notified in writing by either Party to the other Party (the "Dispute") shall, in the first instance, be attempted to be resolved amicably in accordance with the conciliation procedure set forth in Clause 8.3.

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

Conciliation

In the event of any Dispute between the Parties, either Party may call upon CEO of UPSHA and the Chairman of the Board of Directors of the Consultant or a substitute thereof for amicable settlement, and upon such reference, the said persons shall meet no later than 10(ten) days from the date of reference to discuss and attempt to amicably resolve the Dispute. If such meeting does not take place within the 10(ten) day period or the Dispute is not amicably settled within 15(fifteen) days of the meeting or the Dispute is not resolved as evidenced by the signing of written terms of settlement within 30 (thirty) days of the notice in writing referred to in Clause 8.2.1 or such longer period as may be mutually agreed by the Parties, either Party may refer the Dispute to arbitration in accordance with the Provisions of Clause 8.4.

Arbitration

- 8.4.1. Any Dispute which is not resolved amicably by conciliation, as provided in Clause 8.3, shall be finally decided by reference to arbitration by an Arbitral Tribunal appointed in accordance with Clause 8.4.2. Such arbitration shall be held in accordance with the Rules of Arbitration of the International Centre for Alternative Dispute Resolution, New Delhi (the "Rules"), or such other rules as may be mutually agreed by the Parties, and shall be subject to the provisions of the Arbitration and Conciliation Act, 1996 as amended. The venue of such arbitration shall be Lucknow and the language of arbitration proceedings shall be English.

Each dispute submitted by a Party to arbitration shall be heard by a sole arbitrator to be appointed as per the procedure below

- f) Parties may agree to appoint a sole arbitrator or, failing agreement on the identity of such sole arbitrator 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 therefrom, and the last remaining nominee on the list shall be 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.

Substitute Arbitrator

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.

Qualifications of Arbitrator

The sole arbitrator selected pursuant to Clause 8.2.1 hereof shall be expert with extensive experience in relation to the matter in dispute.

The Arbitrators shall make a reasoned award (the "Award"). Any Award made in any arbitration held pursuant to this Clause 8 shall be final and binding on the Parties as from the date it is made, and the Consultant and the Authority agree and undertake to carry out such Award without delay.

The Consultant and the Authority agree that an Award may be enforced against the Consultant and/or the Authority, as the case may be, and their respective assets wherever situated.

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

Miscellaneous

In any arbitration proceeding hereunder:

- (a) Proceedings shall, unless otherwise agreed by the parties be held in Delhi.
- (b) The English language shall be the official language for all purposes;
- (c) The decision of sole arbitrator 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; and
- (d) The schedule of Expenses and Fee payable to the Arbitrator shall be as under

S.No.	Particulars of Fees and Expenses	Maximum amount payable per case
1	Fee	(i) Rs. 25,000/- per day (ii) 25% extra on fee at (i) above in case of fast-track procedure as per Section -29 (B) of A&C Act; Or 10% extra on fee at (i) above if award is published within 6 months from date of entering the reference by AT; Alternatively, the Arbitrator may opt for a lump-sum fee of Rs. 5.00 Lakh per case including counter claims.
2	Reading charges- One Time	Rs 25,000/- per case including counter claims.
3	One-time charges for Secretarial Assistance and Incidental charges (telephone, fax, postage etc.)	Rs. 25,000/- per case
4	One time Charges for publishing/declaration of the award	Rs. 40,000/-
5	Other expenses (As per actual against bills subject to ceiling given below	

S.No.	Particulars of Fees and Expenses	Maximum amount payable per case
	Travelling expenses	Economy class (by air), First class AC (by train) and AC Car (by road)
	Lodging and Boarding	1) Rs. 15,000/- per day (in metro cities); or 2. Rs. 8,000 per day (in other cities); or 3. Rs. 5,000/- per day if any Arbitrator makes their own arrangements.
6.	Local travel	Rs. 2,000/- per day
7	Extra charges for days other than meeting days (maximum for 2 X ½ days)	Rs. 5,000/- per day for outstation Arbitrator
Note	1) Lodging, boarding and travelling expenses shall be allowed only for those arbitrator who is residing 100 kms. Away from the venue of meeting, 2) Delhi, Mumbai, Chennai, Kolkata, Bangalore and Hyderabad shall be considered as Metro cities.	

In exceptional cases, such as cases involving major legal implications/wider ramifications/higher financial stakes etc a special fee structure could be fixed in consultation with the Contractor/Supervision Consultants and with the specific approval of the <Agency> before appointment of the Arbitrator.

9. Fake CV

If any case of fake/incorrect/inflated CV is found, it shall be dealt with very severely and would result in all possible penal action including blacklisting from future projects of <AGENCY>. This would also apply even when the consulting firm is not successful in getting the assignment. *In case CV of a person is turned out to be fake/incorrect/inflated during the assignment, the consultancy firms will have to refund the salary and perks drawn including interest @12% per annum in respect of the person apart from other consequences. In addition to above, 10% of the salary and perks to be refunded shall be recovered from the Firm as penalty.*

III.

SPECIAL CONDITIONS OF CONTRACT

GC Clause

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

The addresses are:

Client: <Agency Address>

Attention:

Cable address: _____

Telex: Fax:

Consultants:

Attention:

Cable address _____

Telex _____

Facsimile _____

{Note: Fill in the Blanks}

Notice will be deemed to be effective as follows:

- (a) In the case of personal delivery or registered mail, on delivery;**
- (b) in the case of telexes, 24 hours following confirmed transmission;**
- (c) in the case of telegrams, 24 hours following confirmed transmission; and**
- (d) in the case of facsimiles, 24 hours following confirmed transmission.**

The Member in Charge is:

(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)

The Authorised Representatives are:

For the Client:

For the Consultants: _____

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.

The effectiveness conditions are the following:

i) Approval of the Contract by the client

The time period shall be four months or such other time period as the parties may agree in writing.

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

The time period shall be 36 months (3 months for Development Period, 30 month for construction period and 3 months for O&M period)

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 <AGENCY> in a joint venture or 'in association', the policy must be procured and provided to <AGENCY> 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 mid-term without the consent of <AGENCY>. 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 five years.

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 "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 cum Sr. Highway Engineer in Appendix C shall serve in that capacity, as specified in Clause GC 4.6."

6.1(b) The ceiling in local currency is: _____

6.2(a) "Payments for remuneration and reimbursable items made in accordance with Clause GC 6.2 (a) in local currency shall be adjusted as follows :

- i) Consultants shall be paid 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-month basis . Billing rates of remaining items of the financial proposal, namely (i) transportation, (ii) Duty travel to site (iii) Office Rent, (iv) office supplies communication etc (v) reports & document printing and (vi) survey equipment etc shall be worked out month wise as per actual expenditure. Beginning 13th months from the last date of submission of bid, billing rates shall be increased to cover all items of contract i.e. remuneration, vehicle hire, office rent, consumables, furniture etc @ 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.
- (ii) Remuneration paid pursuant to the rates set forth in Appendix G shall be adjusted every twelve (12) months (and, the first time, with effect for the billing rates earned in the 13th calendar month after the last date of submission of bid) by 5% every 12month for personnel

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) Payment of Independent Engineer shall be released on approval of the monthly reports. Report shall be approved by the Authority only if it includes all the sections prescribed in the format and submitted as per specified timelines.
- (2) Payment shall be released as per rates quoted in Appendix C3- Breakup of Local currency costs
- (3) For equipment based road inspection to be conducted in O&M phase, payment shall be released as per actual use of equipment on road and rates quoted in Appendix C3- Breakup of Local currency costs.
- (4) If any of the report is found to be misleading or containing incorrect information as determined by the Authority, 10% of payment linked to that report shall be deducted as penalty
- (5) 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.

(6) Remuneration for periods of less than one month shall be calculated on an hourly basis for actual time spent in the Consultants' home office and directly attributable to the Services (one hour being equivalent to 1/240th of a month) and on a calendar-day basis for time spent away from home office (one day being equivalent to 1/30th of a month).

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

6.3(b)(i) Remuneration for local Personnel shall be paid in local currency.

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 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.

2) The bank guarantee shall be in the amount of the advance payment

3) Interest rate shall be 10% per annum (on outstanding amount) for local currency.

(d) The interest rate is 6% per annum for

local currency.6.4(e) The accounts are:

- For local currency:

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

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)*

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. ")

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 Gazetted Holidays of Government of India as Holidays. The Consultant shall work as per the work program of the concessionaire. 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.

Appendix F: Duties of the Client

1. Access to the quality control laboratory for performing various types of tests, which will be provided by the concessionaire including the testing personnel.
2. To provide Concessionaire's RFP, Bid submission, Concession Agreement, Data and information for field surveys and investigations
3. To ensure availability of the Detailed Work plan and Programme for Design and Construction of Project Highways from Concessionaire.
4. To ensure availability of the Quality Assurance Plan and Quality Control Procedures from the Concessionaire.
5. To provide relevant reports and necessary data as per the reporting obligation of concessionaire under the concession Agreement.

Appendix G: Cost Estimates in Local Currency

List hereunder cost estimate in local currency:

1. *Monthly rates for local Personnel (Key Personnel and other Personnel)*
2. *Reimbursable/Rental/Fixed expenditures as follows:*
 - a. *Cost of local transportation.*
 - b. *Cost of other local services, rentals, utilities, etc.*

Appendix H: Form of Performance Security

(PERFORMANCE BANK GUARANTEE)

(Clause-20 of TOR)

To

<AGENCY & ADDRESS>

WHEREAS _____ [Name and address of Consultants]² (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 "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]² _____ [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 presents 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 _____

² Give names of all partners if the Consultants is a Joint Venture.

_____. 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 38 months i.e. upto 2 months beyond the expiry
of contract of 36 month.

Signature and Seal of the Guarantor _____ in presence of

Name and Designation _____

1. _____ (Name, Signature & Occupation)

Name of the Bank _____

Address _____

2. _____ (Name & Occupation)

Date _____

Appendix 1: Form of Bank Guarantee for Advance Payments

(Reference 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, executors and assigns), a contract by issue of client's Contract Agreement No. _____ dated and the same having been 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 executors 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 demur, reservation, contest, recourse or protest and/or 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 forbear 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 upto 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 this guarantee has been given.

Dated this _____ day of _____ 200_____ 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

Appendix K: Letter of Award

Appendix L: Minutes of pre-bid meeting

Appendix M: Memorandum of Understanding

between

And

Whereas <AGENCY> (hereinafter called <AGENCY> has invited proposal for appointment of Independent 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 <AGENCY> as independent Engineer; and

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

3. _____ will be the lead partner and _____ will be the other JV partner/s.
4. _____ (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 <AGENCY>/Concessionaire if Consultancy work is awarded to JV.
5. 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.
6. 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 <AGENCY> (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

