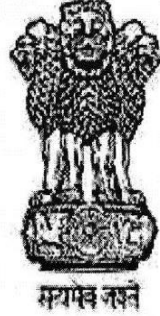


RFP dated 24.05.17



REQUEST FOR PROPOSAL (RFP)

FOR

CONSULTANCY SERVICES

FOR

SOCIAL IMPACT ASSESSMENT STUDY
FOR THE PURPOSES OF ACQUISITION OF LAND
FOR HIGHWAY PROJECTS
(Rate Contract)

Public Works Department
Government of Rajasthan

TABLE OF CONTENTS

Sr. No.	Particulars	Page No.
1.	Disclaimer	4
2.	Section 1: Letter of Invitation	6
3.	Section 2: Instructions to Consultants Part- I	10
4.	Instructions to Consultants Part-II (Data Sheet)	16
5.	Section 3: Proposal for Approach and Team Forms	17
6.	Section 4: Financial Proposal	23
7.	Section 5: Terms of Reference	26
8.	Section 6: Draft Form of Agreement	35-65

**Public Works Department
Government of Rajasthan**

DISCLAIMER

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

This RFP is not an agreement and is neither an offer nor invitation by the Employer to the prospective Applicants or any other person. The purpose of this RFP is to provide interested parties with information that may be useful to them in the formulation of their Proposals pursuant to this RFP. This RFP includes statements, which reflect various assumptions and assessments arrived at by the Employer in relation to the Consultancy. Such assumptions, assessments and statements do not purport to contain all the information that each Applicant may require. This RFP may not be appropriate for all persons, and it is not possible for the Authority, its employees or advisers to consider the objectives, technical expertise and particular needs of each party who reads or uses this RFP. The assumptions, assessments, statements and information contained in this RFP, may not be complete, accurate, adequate or correct. Each Applicant should, therefore, conduct its own investigations and analysis and should check the accuracy, adequacy, correctness, reliability and completeness of the assumptions, assessments and information contained in this RFP and obtain independent advice from appropriate sources.

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

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

The Employer also accepts no liability of any nature whether resulting from negligence or otherwise however caused arising from reliance of any Applicant upon the statements contained in this RFP.

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

The issue of this RFP does not imply that the Employer is bound to award an Applicant for the Consultancy and the Employer reserves the right to reject all or any of the Proposals without assigning any reasons whatsoever.

The Applicant shall bear all its costs associated with or relating to the preparation and submission of its Proposal including but not limited to preparation, copying, postage, delivery fees, expenses associated with any demonstrations or presentations which may be required by the Employer or any other costs incurred in connection with or relating to its Proposal. All such costs and expenses will remain with the Applicant and the Employer shall not be liable in any manner whatsoever for the same or for any other costs or other expenses incurred by an Applicant in preparation or submission of the Proposal, regardless of the conduct or outcome of this Process.

Section 1 – Letter of Invitation

No: 408

Dated- 24.05.2017

Letter of Invitation

To,

As per the list attached.

Subject: - Request For Proposal (RFP) for Providing Consultancy Services for Social Impact Assessment Study for the Purposes of Acquisition of Land for Highway Project in accordance with the Rajasthan RFCTLARR Rules 2016 (the “Land Acquisition Rules”)

Dear

The Governor of Rajasthan acting through the Additional Chief Engineer (PPP), Public Works Department, and Government of Rajasthan (hereinafter called “Employer”) has requested for proposal to assign the Social Impact Assessment Study for the purposes of acquisition of Land for highway project to the firm/Institute/NGO. The RFP document containing detailed terms & conditions prescribed for submission may be seen at Department’s website- www.pwd.rajasthan.gov.in.

2. The employer had invited an Expression of Interest (EOI) to empanel the firms/Institutes/NGOs for Social Impact Assessment Study. Your firm has been short-listed amongst others vide Office Order No. 238 dated 02.05.2017 and is now invited to submit their proposal as per the RFP document, also available on our departmental website.

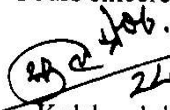
3. The parallel rate contracts shall be entered by the Employer having validity period of one year with an option to extend for further period on mutually agreed terms and conditions, with more than one firms without commitment of quantity, place and time for the required services at the same price offered by lowest or most advantageous bidder to ensure uninterrupted delivery but for this purpose, counter offer of price offered by lowest or most advantageous bidder will be given for acceptance to the bidders quoting higher rates.

4. The Work Order shall then be placed at the contracted price for carrying out the SIA Study for the Highway Project as and when needed.

5. The proposal duly completed in all respect should be submitted online on e-procurement portal of Government of Rajasthan having address <http://eproc.rajasthan.gov.in> following the prescribed procedure. A pre-bid meeting will be held on 6th June, 2017 at 11.00 A.M. in the conference hall of the PPP Division, PWD Jaipur.

Kindly confirm that you have received this letter of invitation and you are intend to submit a Proposal.

Yours sincerely,


24/5/2017

(Anoop Kulshreshtha)

Additional Chief Engineer (PPP)

Tel: - 0141-5110547

E mail: aceppp.pwd@rajasthan.gov.in

List of Empanelled Consultants

S. No.	Name of the Agency	Type of Organisation	Address
1	2	3	4
1	Feedback Infra Pvt Ltd, India	Company	15th floor, Tower 9B, DLF Cyber city Phase-III Gurgaon 122002 Ph 0124- 4169100; 4169155
2	Gujarat Environment Management Institute (GEMI)	State Government Organization; Society	3 rd Floor, Block No. 13, Dr. Jivraj Mehta Bhavan, Old Sachivalaya, Sector 10, Gandhinagar 382010 (Gujarat) Phone 9409223664
3	Evernore India Private Limited Company	Company	Suit 903, Level 9, Tolstoy House, Tolstoy Marg, Cannought Place, New Delhi 110001; 011-43596001, 43596003; www.evermore.co.in
4	Academy of Management Studies (AMS), Lucknow (AMS)	Society	AMS 15 Laxmanpuri, Faizabad Road, Lucknow 226016; 0522-2350825; 2351492; 2350466(F); www.amsindia.org
5	Overseas Min-Tech Consultants	Proprietorship	501, 5th Floor, Apex Tower, Tonk Road, Jaipur—302015 Tel: +91-141-2744509, Fax No. 0141-2744509
6	Entrepreneurship Development Institute of India	Society	P.O. Bhat 382 428, Dist. Gandhinagar, Gujarat Tel : +91-79-23969159, 23969161, 23969163 Fax : +91-79-23969164
7	NH Consulting Pvt Ltd	Company	N H Consulting Pvt. Ltd. 5E, 1st Floor, Lane No.5, Jungi House ShahpurJat, New Delhi-110049 Tel-91-11-26495662, F-91-11-2649 5663
8	Manavadhikar Samajik Manch	Society	240,Gound Floor, Sant Nagar, East of Kailash New Delhi 110065
9	Centre For Development Communication and Studies (CDECS)	Society	133, (First Floor), Devi Nagar, nannu Marg, New Sanganer Road, sodala, Jaipur 0141- 2294988; 2295533; 9950124028
10	IRG Systems South Asia Pvt. Ltd.	Limited Company	LGF, AADI Building, 2 Balbir Saxena marg, Hauz Khas, N. Delhi 110016
11	N. K. Buildcon Pvt Ltd	Company	B-62, UGANTA, University Marg, Bapu Nagar Jaipur 0141-2710841-44
12	Karvy Data management Services Limited	Company	Karvy House, 46, Avenue 4, Street No.1, Banjara Hills, Hyderabad - 500 034. T: +91-40-2331 2454/4467-7400
13	AFC INDIA Ltd	Deemed Government Company	B-1/9, Community Centre, Janakpuri, New Delhi-110058 Tel: +91 11 45791190-96, Fax: +91 11 45791189-96

Section 2- Instructions to the Consultants – Part-I

1. Introduction

- 1.1. The Employer invites proposal from short-listed consultants for carrying out Social Impact Assessment Study for the purposes of acquisition of Land for Highway Projects in accordance to this RFP and Rajasthan Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Rules 2016.
- 1.2. The detailed scope of the assignment/ job has been described under the Terms of Reference in Section 5.
- 1.3. The date, time and address for submission of the document in physical form have been given in Part II Data Sheet.
- 1.4. The short-listed Consultants are invited to submit their Proposal, for Consultancy assignment. The Proposal will be the basis for contract negotiations and ultimately for a signed Contract with the Consultant.
- 1.5. Consultants can download the RFP document from Department's website www.pwd.rajasthan.gov.in or www.sppp.rajasthan.gov.in or <https://eproc.rajasthan.gov.in> for preparing their Proposals. To obtain first-hand information on the assignment/ job, consultants are encouraged to meet the representative of the Employer. If any clarification is required on any clause/ condition of the RFP, the same may be forwarded within the prescribed time period to the Contact person of the Department and may attend the pre-bid meeting. However, attending the pre-bid meeting is optional.
- 1.6. The Employer shall provide at no cost to the Consultants the inputs and facilities specified in the TOR, assist the Consultants to carry out the Assignment/ job, and make available relevant project data and reports.
- 1.7. Consultants shall bear all costs associated with the preparation and submission of their proposals and contract negotiation. The Employer is not bound to accept any proposal and reserves the right to annul the selection process at any time prior to award of the Contract without thereby incurring any liability to the Consultants.

2. Clarification and Amendment of RFP Document

- 2.1. Consultants may request a clarification on any clause of the RFP document within the timeframe indicated in the Part II Data Sheet. Any request for clarification must be sent in writing or e-mail to the Employer's address indicated in the Part II Data Sheet. The Employer will respond in writing or by e-mail and post all such clarifications on the website of the Department.
- 2.2. At any time before the submission of proposals, the Employer may amend the RFP by issuing an addendum in writing or by announcing it through its website. The addendum shall be binding on all Consultants. Consultants shall acknowledge receipt of all such amendments. To give the Consultants reasonable time in which to take an amendment into

account in their proposals, the Employer may, if the amendment is substantial, extend the deadline for the submission of proposal.

3. **Conflict of Interest**

- 3.1. The Employer requires that Consultants provide professional, objective, and impartial advice and at all times hold the Employer's interests paramount, strictly avoid conflicts with other assignment/ jobs or their own corporate interest and act without any consideration for future work.
- 3.2. Without limitation on the generality of the foregoing, Consultants, and any of their affiliates, shall be considered to have a conflict of interest and shall not be appointed, under any of the circumstances set forth below:

Conflicting Activities: A firm/NGO or any of its affiliates, selected to provide consulting assignment/ job for this project, shall be disqualified from subsequent downstream supply of goods or works or services resulting from or directly related to this project.

Conflicting Assignment/ job: A Consultant (including its affiliates) shall not be hired for any assignment/ job that, by its nature, may be in conflict with another assignment/ job of the Consultant to be executed for the same or for another Employer.

Conflicting Relationships: A Consultant that has a business or family relationship with a member of the Employer's staff who is directly or indirectly involved in any part of the project shall not be awarded the Contract, unless the conflict stemming from this relationship has been resolved in a manner acceptable to the Employer throughout the selection process and the execution of the Contract.

- 3.3. Consultants have an obligation to disclose any situation of actual or potential conflict that impacts their capacity to serve the best interest of their Employer, or that may reasonably be perceived as having this effect. Any such disclosure shall be made as per the forms of proposal provided herewith. If the consultant fails to disclose said situations and if the Employer comes to know about any such situation at any time, it may lead to the disqualification of the Consultant during bidding process or the termination of its contract during execution of the assignment.

4. **Unfair Advantage**

- 4.1. If a short-listed Consultant derives any undue advantage by using unfair means in their activities which are not defined in para 3 above, that would be treated as 'unfair advantage'.

5. **Proposal Validity**

- 5.1. **Part II Data Sheet** indicates how long Consultant's proposals must remain valid after the submission date. During this period, Consultants shall maintain that financial proposal remains unchanged. The Employer will make its best effort to complete negotiations within this period. Should the need arise; however, the Employer may request Consultants to extend the validity period of their proposals.

6. Preparation of Proposal

- 6.1. The Proposal as well as all related correspondence exchanged by the Consultants and the Employer shall be written in **English** language, unless specified otherwise.
- 6.2. Consultants are required to submit a description of the approach, methodology and work plan for performing the assignment as per the requirements of TOR. Consultants are encouraged to furnish comments and suggestions on the Terms of Reference (ToR) including workable suggestions that could improve the quality / effectiveness of the assignment. The detailed particulars of Professional staff team and other team members which shall most likely to be deployed by the consultant for accomplishment of the awarded work are to be provided. This may include their area of expertise, the position that would be assigned to each staff team member and tasks to be carried out. This shall form the basis for deployment in works to be awarded.

CVs of the proposed Professional staff signed by the staff themselves or by the authorized representative of the Professional Staff needs to be provided.

Financial Proposals:

The Financial Proposal shall be prepared using the prescribed Form (**Section 4**) be submitted in INR inclusive of all taxes etc. for completing the assignment complete in all respect.

Taxes -The Consultant shall fully familiarize themselves about the applicable domestic duties and taxes on amounts payable by the Employer under the Contract. All such duties and taxes must be included by the consultant in the financial proposal.

Currency – Consultants shall express the price of their Assignment/ job in Indian Rupees (INR) only.

- 6.3. The proposal shall contain no Interlineations or overwriting. Submission letter for Financial Proposals should be in the prescribed format.
- 6.4. An authorized representative of the Consultants shall initial all pages of the Financial Proposal. The signed Proposals duly scanned shall be uploaded on e-procurement portal of Government of Rajasthan.
- 6.5. The certain documents must be submitted in person to the addressee indicated in the Data sheet and received by the Employer not later than the time and the date indicated in the Data Sheet, or any extension to this date. Any proposal received by the Employer after the deadline for submission shall not be considered.
- 6.6. Bids comprising of the documents mentioned in **Part II Data Sheet** shall be submitted online through e-procurement portal <http://eproc.rajasthan.gov.in> on or before 1100 hrs IST on Bid Due Date. Certain documents mentioned in **Part II Data Sheet** of the RFP shall be physically submitted on or before 1130 hours IST on the Bid Due Date at the address provided in the manner and form as detailed in this RFP.

- 6.7. E-procurement portal shall not allow submission of any Bid after the Bid Due Date and time specified above. Physical receipt of documents listed above after the Bid Due Date and time specified in clause 6.6 shall not be considered and the Bid shall be summarily rejected.

7. Proposal Evaluation

- 7.1. After opening of financial proposals the lowest priced bid or most advantageous bid shall be accepted by the Competent Authority.

8. Negotiations

- 8.1. Negotiations, if considered necessary, shall be held only with the Consultant who shall be placed as L-1 bidder. Representatives conducting negotiations on behalf of the Consultant must have written the Employer to negotiate and conclude the Rate Contract.

9. Award of Contract

- 9.1. After completing negotiations the Employer shall issue a **Letter of Intent** to the selected Consultant and promptly notify all other Consultants who have submitted proposals about the decision taken.
- 9.2. The consultant will sign the Contract after fulfilling all the formalities/preconditions mentioned in the form of contract in Section-6, within 15 days of issuance of the letter of intent. The Consultant is expected to commence the assignment/ job on the date specified in work order.
- 9.3. In order to expedite the completion of assignment pertaining to each highway project, a consultant shall not be eligible for further assignment if it has more than 3 assignments of highway projects of the Employer in hand and are yet to be substantially completed.

10. Confidentiality

Information relating to evaluation of proposals and recommendations concerning awards shall not be disclosed to the Consultants who submitted the proposals or to other persons not officially concerned with the process, until the publication of the award of Contract. The undue use by any Consultant of any information related to the process may result in the rejection of its Proposal and may be subject to the provisions of the Employer's antifraud and corruption policy.

11. Payment Terms

The payment schedule would be linked with the deliverables as provided in ToR.

12. Cost of Bid Document

- 12.1. The bidder is required to pay by Demand Draft for non-refundable documentation charge amounting to Rs. 1000/- (Rupees One Thousand Only) in favour of Project Director PPP-I, PWD Jaipur and another Demand Draft for non-refundable bid processing fee amounting to Rs. 1,000/- (Rupees One Thousand Only) in favour of MD RISL along with supporting documents as appropriate. The Bidder is also required to furnish a bid security of Rs 25000/- (Rs Twenty five thousand) in the form of Demand Draft in favour of Project Director PPP-I, PWD Jaipur. **In the absence of such fees/bid security the bid of respective bidder will be considered as non-responsive and shall be rejected.**
- 12.2. Provisions of THE RAJASTHAN TRANSPARENCY IN PUBLIC PROCUREMENT ACT, 2012 and Rules, 2013 shall be applicable.

13. Procedure for e-tendering

- 13.1. It is mandatory for all the Bidders to have class-III Digital Signature Certificate (DSC) from any of the licensed Certifying Agency (CA). Bidder should do Online Enrolment in the e- procurement portal of Government of Rajasthan using the option Click Here to Enroll available in the Home Page. Then the Digital Signature enrollment has to be done with the e-token, after logging into the portal. The e-token may be obtained from one of the authorized Certifying Authorities such as eMudhra CA/ GNFC /IDRBT/ MtnlTrustline/ SafeScrip/ TCS.
- 13.2. DSC should be in the name of the authorized signatory as authorized in Appendix III of this RFP. It should be in corporate capacity (that is in Bidder capacity / in case of Consortium in the Lead Member capacity, as applicable). The Bidder shall submit document in support of the class III DSC.
- 13.3. The authorized signatory holding Power of Attorney or the person executing such Power of Attorney shall only be the Digital Signatory. In other cases, the Bid shall be considered non –responsive.
- 13.4. The Bidder is required to submit its Bid online following the instruction appearing on the screen. A Bidders Manual Kit containing the detailed guidelines for e-procurement is also available on e-procurement portal, which may be referred.
- 13.5. The requisite documents shall be prepared and scanned in different files (in PDF or JPEG format) and uploaded during the on-line submission of the Bid.
- 13.6. Bids to be submitted in electronic format shall conform with the procedure specified at the website “<http://eproc.rajasthan.gov.in>” of the Government of Rajasthan. Details of the Bid Security document submitted physically to the Authority and the scanned copies furnished at the time of Bid submission online should be the same otherwise the Bid shall be summarily rejected.

- 13.7. Bids must be submitted under E-Tendering system only, on or before the due date and time indicated. Bids will be opened on the scheduled date and time in the presence of bidders who wish to attend.

14. IMPORTANT DATES:

S. No.	Events	Date & Time	Location
1.	Date of issue of Bid document	25.05.2017	https://eproc.rajasthan.gov.in/
2.	Pre bidding Meeting	06.06.2017 1100hrs	Conference Hall, PPP Division ,PWD ,Jacob Road Civil Lines Jaipur.
3.	Last date & time for submission of Bid document online	14.06.2017 1100hrs	E-Procurement Portal https://eproc.rajasthan.gov.in/ .
3.	Last date & time for submission of supporting documents and Demand Drafts in original for (in physical form) (i) Tender document fee (ii) Tender processing Fee (iii) Bid Security	14.06.2017 1130hrs	E-Procurement Portal https://eproc.rajasthan.gov.in/ Office of the Addl. Chief Engineer (PPP) PPP Division , PWD ,Jacob Road Civil Lines Jaipur.
4.	Date of opening of bid	14.06.2017 at 1130hrs	Office of the Addl. Chief Engineer (PPP)PPP Division ,PWD ,Jacob Road Civil Lines Jaipur.

INSTRUCTIONS TO CONSULTANTS Part-II

DATA SHEET (PROJECT SPECIFIC INFORMATION)

Clause No.		Particulars of Data Sheet
1.3	Office Address	Office of the Additional Chief Engineer(PPP) PPP Division, PWD Jacob Road Civil Lines Jaipur
1.5.		A pre-bid meeting will be held on:
	Date	06.06.2017
	Time:	1100Hrs.
	Venue:	Conference Hall PPP Division PWD Jaipur (venue subject to change)
2.1.	Clarification	Clarifications may be requested within 7 days of issue of the RFP
		The address for requesting clarifications is: Mr. Anoop Kulshreshtha, ACE(PPP) PWD PPP Division, PWD Jacob Road, Civil Lines, Jaipur-302006
	Telephone /Email	0141-5110547 / aceppp.pwd@rajasthan.gov.in
5.1	Proposal Validity	120 days
6.5. &6.6	Submission of Documents	<p>Documents to be submitted on line</p> <ol style="list-style-type: none"> 1. Financial Proposal (scanned Copy) as well as in prescribed Ms-excel format 2. DD for Bid Security amounting to Rs. 25000/- (scanned Copy) 3. DD for Tender Fee of Rs 1000/- (scanned Copy) 4. DD for Tender Processing Fee of Rs. 1000/- (scanned Copy) 5. Power of Attorney (scanned Copy) 6. Signed copy of Various Information asked as per RFP (scanned Copy) <p>Documents to be submitted in physical form</p> <ol style="list-style-type: none"> 1. DDs in original for Bid Security, Tender fee & Tender Processing Fee. 2. Power of Attorney in Original
6.2.		The formats of the Proposal to be submitted are:
		Form Tech 1 : Description of Consultant's Organization
		Form Tech 2 : Human Resource
		Form Tech 3 : Comments And Suggestions On ToR
		Form Tech 4 : Description Of Approach, Methodology & Work Plan

Section 3

Proposal for Approach and Team – Forms

FORM TECH – 1**DESCRIPTION OF CONSULTANT'S ORGANIZATION**

Name of the Firm/NGO	
Address	
Website	
Name of Contact Person	
Address of Contact Person	
Tel./Fax Nos.	
Email of Contact Person	

FORM TECH -2**Format 2 (i) Human Resource:-**

S. No.	Human Resource	In Head Office
1.	No. of permanent Technical staff	
2.	No. of hired/part time Technical staff	
3.	No. of permanent staff in Administration/ Management	
4.	No. of hired staff/part time in Administration/ Management	
5.	No. of permanent staff in Finance	
6.	No. of hired staff/part time in Finance	

Format 2 (ii) :- Available logistic and infrastructure with the Agency

Sr. No.	Office Area (in Sq. Mtr.)	No. of Rooms and Modern Training Halls	Other Infrastructure
1.			
2.			
3.			

Format 2 (iii):- CVs of Key Personnel (CVs to be separately attached as per Form Tech 2.1)

Sr.No.	Name (D.O.B.)	Educational Qualification	Field of Expertise	No. of years of experience in the field (preferably in the field of Study & Evaluation)	Date of joining Agency	Position held in the Agency	Regular or Part time

FORM TECH – 3 COMMENTS AND SUGGESTIONS ON TOR:

Sr. No.	Relevant Provision in ToR	Comments/Suggestion

FORM TECH – 4 DESCRIPTION OF APPROACH, METHODOLOGY & WORK PLAN:

Sr. No.	Description	Approach
1.	Technical Approach	
2.	Methodology	
3.	Work Plan	

Section – 4

Financial Proposal

FINANCIAL PROPOSAL

Form-1

Covering Letter

(On Applicant's letter head)

(Date and Reference)

To,

.....

.....

Subject: **Request for Proposal (RFP) for providing consultancy services for social impact assessment study for the purposes of acquisition of land for highway projects in accordance with the Rajasthan RFCTLARR Rules 2016 (land acquisition rules).**

I/We, _____ (Applicant's name) herewith enclose the Financial Proposal for selection of my/our firm as Consultant for above in accordance with your Request for Proposal dated [*Insert Date*]. This amount is inclusive of all taxes and duties. We hereby confirm that the financial proposal is unconditional and we acknowledge that any condition attached to financial proposal shall result in rejection of our financial proposal.

Our Financial Proposal shall be binding upon us subject to the modifications resulting from Contract negotiations, up to expiration of the validity period of the 120 days from the proposal due date or such further period as may be mutually agreed upon.

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

Yours faithfully,

(Signature, name and designation of the authorised signatory)

Financial Proposal

S. No.	Item	Rate per project affected family (Rs. in figures) (X)	Rate per project affected family (Rs. in words)
1	Providing Consultancy Services for Social Impact Assessment Study and preparation of Social Impact Management Plan for the purposes of acquisition of land for highway project in accordance to ToR.		

Note: -

- The above rate shall be applicable for the proposed acquisition land upto 5 hectare in the project. The above rate shall be enhanced further for the project if acquisition of area involved is more than 5 hectare and for every one hectare or part thereof, the rate shall be increased further by 1% of the quoted rate provided that such enhancement in rate shall not in any case exceed 25%.

Illustration:

Area proposed under Land acquisition in a Project Highway	Uniform Rate per unit project affected family
Upto 5 Ha.	= X
more than 5Ha. Say for 7 Ha	$X+(7-5)*1\%X = 1.02 X$
for 30 Ha.	$X+(30-5)*1\%X = 1.25 X$
More than 30Ha.	= 1.25 X

- Rates shall include all statutory taxes and all necessary/required activities/aspects, all type of documentation, preparation of reports/drawings/maps/survey/journeys/stays during meetings/printing charges/telephone, postal charges etc. for completing the assignment.

Section – 5

Terms of Reference

Contents

- 1. General**
- 2. Brief Description of The Project**
- 3. Objective**
- 4. Scope of Services**
- 5. Deliverables & Activity Schedule**
- 6. Payment Schedule**
- 7. Meetings**
- 8. Consultancy Team**
- 9. Data and software to be made available by the Employer**
- 10. Completion of Services**

Terms of Reference (TOR)

1. GENERAL

- 1.1. The Employer seeks the services from shortlisted qualified firms for carrying out a Social Impact Assessment Study including preparation of Social Impact Management Plan in connection with the proposed Land Acquisition for the Project briefly described below in accordance to the requirements of “The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act 2013” (RFCTLARR Act 2013) and Rules made thereunder by the State Government .The Terms of Reference (the “TOR”) for this assignment are specified below.
- 1.2. The Consultant shall be guided in its assignment by the procedure described in the “Rajasthan Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Rules 2016”.
- 1.3. The Consultant shall be responsible for preparing the draft of notifications and reports and for bringing out any special feature or requirement.
- 1.4. The Consultant shall assist the Employer by furnishing clarifications as required with regard to appraisal and legal scrutiny of the Study.
- 1.5. The Consultant shall also participate in the conferences/ meetings and assist the Employer in clarifying the various aspects arising from the SIA study & SIMP

2. BRIEF DESCRIPTION OF THE PROJECT

The Public Works Department resolved to augment the existing roads in the State of Rajasthan by widening to two lane that of on design built, operate and transfer (the DBOT) / EPC basis.It is proposed to acquire the land required for widening of the highways. In the Ist phase, 22 highways have been identified for which the SIA Study is required. The particular pertaining to extent of Land Proposed for land acquisition is as under:

S. No	Highway Project	Length (Km)	No. of Villages in which LA is proposed	Indicative Area of Private Land to be acquired (Ha)	Indicative No. of Project Affected Families by		
					Land Acquisition	Structures	Total
1	2	3	4	5	6	7	8
1	Jodhpur- Sojat Road	75.700	8	12.17	56	56	112

2	Bidasar - Sri Dungargarh - Kalu	82.200	7	11.1176	52	11	63
3	Sadulshahar - Sangaria - Chaiyan	95.300	33	18.805	830	0	830
4	Bhinmal - Pantheri Posana - Jeevana	51.580	15	11.41	113	7	120
5	Uniara – Indergarh	24.410	0	0.00	0	15	15
6	NH-12 – Laxmipura – Dora – Dabi –Ranaji Ka Guda (Mining)	49.500	0	0.00	0	32	32
7	Siwana - Samdari - Balesar	90.65	33	86.32	82	128	210
8	Beawar-Masuda-Goyla	67.01	20	11.95	343	121	464
9	Arain- sarwar	44.260	6	1.15	105	16	121
10	Nasirabad- Mangliyawas- Padukalan	62.960	4	1.65	60	0	60
11	Beawar-Pisangan- Tehla-Kot-Alniyawas	56.700	16	7.60	290	112	426
12	Khlood- Dataramgarh- Renwal	51.035	5	17.34	75	15	90
13	Palri-Makrana-Khatu including Parbatsar- Bidiyad-Makrana	74.300	27	79.50	522	24	561
14	Banar - Bhopalgarh - Kuchera	126.030	8	20.72	151	151	302
15	Bhavi-Pipad-Khinvsar	83.225	17	85.69	376	90	466
16	Jodhpur - Marwar Junction- Jojawar	118.360	7	25.29	7	7	14
17	Hurda-Banera	53.300	17	43.24	117	26	143
18	Sriganganagar - Bikaner (Padampur- Raisinghnagar & Sattasar-Bikaner Section)	92.950	0	0.00	0	5	5
19	Jhunjhunu - Rajgarh	62.880	21	5.70	155	42	
20	Neemkathana-Khetri- Singhana	53.220	19	42.19	350	102	452
21	Kishangarh- Arain- Malpura	66.980	3	1.66	13	13	13

22	Bhinmal - Raniwara section of Ramseen Bhinmal-Raniwara	33.414	5	3.12	9	7	16
----	--------------------------------------------------------	--------	---	------	---	---	----

3. OBJECTIVE

The objective of this Consultancy is to undertake preliminary investigation for determination of social impacts and public purpose in relation to proposed acquisition of land required for development & construction of the Projects and for preparation of Social Impacts Management Plan in order to establish that the potential benefits and the public purpose for the proposed acquisition shall outweigh the social costs and adverse social impact as determined by the Social Impact Assessment.

4. SCOPE OF SERVICES

- 4.1 Review of literature including project specific details/history/reports/terms of Reference / similar Social Impact Assessment Reports etc.
- 4.2 Collecting demographic, population and land holding information in order to estimate affected project families. The Consultant shall use GPS enabled devices for census survey, consultations, photograph of assets affected along with the owner of the asset.
- 4.3 Preparation of schedules / questionnaires / check lists for carrying out Social Impact Assessment
- 4.4 Pre-testing of schedules / questionnaires / check lists for carrying out Social Impact Assessment (if need be)
- 4.5 Undertaking of process of conducting Social Impact Assessment as defined under Rule 5 to 9 of the aforesaid Rules.
- 4.6 Publishing of draft Social Impact Assessment Report and Social Impact Management Plan both in Hindi & English at least 3 weeks before the public hearing.
- 4.7 Distribution of draft reports among affected Municipal Offices, District Collector's Office, SDM Office, Tehsildar Office and Requiring Body etc.
- 4.8 Adequate copies of the report and summaries shall be made available on the day of public hearing.
- 4.9 Findings of the Social Impact Assessment report shall be shared through assessable displays & visuals on the day of public hearings.
- 4.10 Undertaking of process for conducting 'public hearings as defined under rule 8 of the aforesaid rules.
- 4.11 All the proceedings of the public hearings shall be held in Hindi language and video recorded. This recording shall be submitted along with the final Social Impact Assessment Report and Social Impact Management Plan.

- 4.12 After the conclusion of public hearing, the Social Impact Assessment Team shall analyse the entire feedback received and information gathered in the public meetings and incorporate the same in along with their analysis, in the revised Social Impact Assessment Report accordingly. Submission of Social Impact Assessment Report and Social Impact Management Plans per procedure laid down under rule 9 & 10 of the aforesaid rules.
- 4.13 Undertaking of consent process as per rule 13 to 15 of the aforesaid rules.

5. DELIVERABLES & ACTIVITY SCHEDULE

- 5.1 The whole exercise for undertaking Social Impact Assessment has to be completed as per schedule mentioned below:

S. No.	Activity	Actual completion period from the zero date of the issue of award of Social Impact Assessment (SIA).	Deliverables
1	Review of Literature	5 days	Mention all publications/books & reports consulted
2	Preparation of Questionnaires Schedules/ Checklist for Data	10 days	Two Sets to be provided to SIAU (Soft & Hard Copy)
3	Data Collection & Field Survey as per process given under rule 7 of the aforesaid Rules	30 days	Number of Questionnaires/ Schedules filled up (category wise)/ Participatory Rural Appraisal (PRA)/ Meetings/ consultations held & other details.
4	Analysis of information collected	45 days	Tables to be generated as per FORM-3 & FORM-4 of aforesaid rules.
5	Report Writing	65 days	Chapterisation as per FORM-3 & FORM-4 of aforesaid rules
6	Preparation of sufficient copies of draft report (both Hindi & English)	70 days	At least 20 copies (both Hindi & English) (including soft at least 3 weeks in advance from the copy.) date of public hearings
7	Submission sufficient copies of draft report (both Hindi & English) as per the provisions of Act/ Rules	75 days	Gram Sabha or Municipalities., SDM, Tehsildar, Collector's Office, Requiring Body, SIAU etc.
8	Announcement & Publicizing of Notice three	75 days	SIA team will ensure the process as per rules

	weeks in advance for conduct of Public hearings as per procedure mentioned in rule 7 of aforesaid rules.		
9	Preparation of Visuals/ Posters/ Pamphlets of findings /Summary of SIA report (both Hindi & English) for wide publicity during hearings	90 days	Multiple copies for wider publicity on the day of hearings both Hindi & English
10	Conduct of Hearings as per the provisions of Act/ Rules	96 days	i) Video recording of proceedings and transcribed accordingly. ii) Feedback on SIA & SIMP & additional information for incorporation in final report.
11	Incorporating of findings of Hearings in the Final Report	100 days	To be ensured by the SIA team
12	Involvement of SIA Team in consent process as per the provisions of the Act / Rules	Simultaneously along with conduct of SIA	To be ensured by the SIA team
13	Submission of Final SIA and SIMP Report as per FORM-3 & 4 (both Hindi & English) along as per the provisions of Act/ Rule along with video recording of hearing and soft copy of the report	120 days	At least 20 copies of Final Report for distribution amongst Gram Sabha or Municipalities, SDM, Tehsildar, Distt. Collector, Requiring Body, SIAU etc. The final report shall also be propagated in the form of posters in the affected areas by affixing on in conspicuous places and shall also be uploaded on the website of State Govt.
14	Submission of clear, concise and accessible SIA & SIMP Report (both Hindi & English) along with soft copy in single document containing all relevant information & analysis for distribution among members of affected families	120 days	At least 20 copies of the Report along with soft copy.
	Work Completion	150 days	

6. PAYMENT SCHEDULE

Time schedule for important Deliverables (the “**Key Dates**”) of the Consultancy and the payment schedule linked to the specified Deliverables is given below:

S. No.	Activity/Deliverable	Cumulative Days reckoned from commencement	Payment (%age of work order amount)
1	On Completion of Activities/ Deliverables Mentioned at Sr. No. 1 to 3	30	15%
2	On Completion of Activities/ Deliverables Mentioned at Sr. No. 4 to 7	75	25%
3	On Completion of Activities/ Deliverables Mentioned at Sr. No. 8 to 12	100	20%
4	On Completion of Activities/ Deliverables Mentioned at Sr. No. 13 & 14 and Report Accepted by the Government	120	30%
5	On acceptance of the report	180	10%

7. MEETINGS

The Employer may review with the Consultant, any or all of the documents and advice forming part of the Consultancy, in meetings and conferences which will be held at the Employer’s office.

8. CONSULTANCY TEAM

The Consultant shall form a multi-disciplinary team (the “SIA Team”) for undertaking this assignment which may include a combination of independent practitioners, qualified social activists, academics, technical experts, who are not directly connected with the requiring body and at least one woman member. A team leader shall be appointed from amongst the Social Impact Assessment team to liaison with the Social Impact Assessment Unit throughout the assessment period.

9. DATA AND SOFTWARE TO BE MADE AVAILABLE BY THE AUTHORITY

The Employer shall provide to the Consultant the following:

- (a) A copy of the Feasibility Report

- (b) A copy of the Rajasthan Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Rules 2016 .
- (c) Copy of Entitlement Matrix for R&R

Available data as may be required by the Consultant will be provided by the Employer on request. The Nodal Officer designated by the Employer shall facilitate handing over of such information to the Consultant.

10. COMPLETION OF SERVICES

All the study outputs including primary data shall be compiled, classified and submitted by the Consultant to the Employer in soft form apart from the reports indicated in the Deliverables. The study outputs shall remain the property of the Employer and shall not be used for any purpose other than that intended under these Terms of Reference without the permission of the Employer. The Consultancy shall stand completed on acceptance by the Employer.

AGREEMENT

FOR

**SOCIAL IMPACT ASSESSMENT STUDY
FOR THE PURPOSES OF ACQUISITION OF LAND FOR HIGHWAY
PROJECTS**

CONTENTS

**Page
no.**

1. General

- 1.1 Definitions and Interpretation
- 1.2 Relation between the Parties
- 1.3 Rights and Obligations
- 1.4 Governing law and jurisdiction
- 1.5 Language
- 1.6 Table of contents and headings
- 1.7 Notices
- 1.8 Location
- 1.9 Employer of Member-in-Charge
- 1.10 Authorised representatives
- 1.11 Taxes and duties

2. Commencement, Completion and Termination of Agreement

- 2.1 Effectiveness of Agreement
- 2.2 Commencement of Services
- 2.3 Termination of Agreement for failure to commence Services
- 2.4 Expiration of Agreement
- 2.5 Entire Agreement
- 2.6 Modification of Agreement
- 2.7 Force Majeure
- 2.8 Suspension of Agreement
- 2.9 Termination of Agreement

3. Obligations of the Consultant

- 3.1 General
- 3.2 Conflict of Interest
- 3.3 Confidentiality
- 3.4 Liability of the Consultant
- 3.5 Insurance to be taken out by the Consultant
- 3.6 Accounting, inspection and auditing
- 3.7 Consultant's actions requiring the Authority's prior approval
- 3.8 Reporting obligations
- 3.9 Documents prepared by the Consultant to be the property of the Authority
- 3.10 Equipment and materials furnished by the Authority
- 3.11 Providing access to the Project Office and Personnel
- 3.12 Accuracy of Documents

4. Consultant's Personnel and Sub-Consultant

- 4.1 General
- 4.2 Resident Project Manager

5. Obligations of the Authority

- 5.1 Assistance in clearances etc.
- 5.2 Access to land and property
- 5.3 Change in Applicable Law
- 5.4 Payment

6. Payment to the Consultant

- 6.1 Cost estimates and Agreement Value
- 6.2 Currency of payment
- 6.3 Mode of billing and payment

7. Liquidated damages and penalties

- 7.1 Performance Security
- 7.2 Liquidated Damages
- 7.3 Penalty for deficiency in Services

8. Fairness and Good Faith

- 8.1 Good Faith
- 8.2 Operation of the Agreement

9. Settlement of Disputes

- 9.1 Amicable settlement
- 9.2 Dispute resolution
- 9.3 Conciliation
- 9.4 Arbitration

ANNEXES

- Annex 1: Terms of Reference
- Annex 2: Cost of Services
- Annex 3: Payment Schedule
- Annex 4: Bank Guarantee for Performance Security

AGREEMENT
SOCIAL IMPACT ASSESSMENT STUDY FOR THE PURPOSES OF
ACQUISITION OF LAND FOR HIGHWAY PROJECT

AGREEMENT No. _____

This AGREEMENT (hereinafter called the “**Agreement**”) is made on the _____ day of the month of _____ 2017, between, on the one hand, the Governor of Rajasthan acting through Additional Chief Engineer (PPP) (hereinafter called the “**Employer**” which expression shall include their respective successors and permitted assigns, unless the context otherwise requires) and, on the other hand, _____ (hereinafter called the “**Consultant**” which expression shall include their respective successors and permitted assigns).

WHEREAS

- (A) The Employer vide its Request for Proposal for **Social Impact Assessment Study for the Purposes of Acquisition of Land for Highway Project** (hereinafter called the “**Consultancy**”) for Development of (hereinafter called the “**Project**”);
- (B) the Consultant submitted its proposals for the aforesaid work, whereby the Consultant represented to the Employer that it had the required professional skills, and in the said proposals the Consultant also agreed to provide the Services to the Employer on the terms and conditions as set forth in the RFP and this Agreement; and
- (C) the Employer, on acceptance of the aforesaid proposals of the Consultant, awarded the Consultancy to the Consultant vide its Letter of Award dated _____ (the “**LOA**”); and
- (D) in pursuance of the LOA, the parties have agreed to enter into this Agreement.

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

1. GENERAL

1.1 Definitions and Interpretation

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

- (a) “**Agreement**” means this Agreement, together with all the Annexes;
- (b) “**Agreement Value**” shall have the meaning set forth in Clause 6.1.2;
- (c) “**Applicable Laws**” means the laws and any other instruments having the force of law in India as they may be issued and in force from time to time;

- (d) “**Confidential Information**” shall have the meaning set forth in Clause 3.3;
- (e) “**Conflict of Interest**” shall have the meaning set forth in Clause 3.2 read with the provisions of RFP;
- (f) “**Dispute**” shall have the meaning set forth in Clause 9.2.1;
- (g) “**Effective Date**” means the date on which this Agreement comes into force and effect pursuant to Clause 2.1;
- (h) “**Government**” means the Government of Rajasthan;
- (i) “**INR, Re. or Rs.**” means Indian Rupees;
- (l) “**Member**”, in case the Consultant consists of a joint venture or consortium of more than one entity, means any of these entities, and “**Members**” means all of these entities;
- (m) “**Party**” means the Employer or the Consultant, as the case may be, and Parties means both of them;
- (n) “**Personnel**” means persons hired by the Consultant or by any Sub-Consultant as employees and assigned to the performance of the Services or any part thereof;
- (p) “**RFP**” means the Request for Proposal document in response to which the Consultant’s proposal for providing Services was accepted;
- (q) “**Services**” means the work to be performed by the Consultant pursuant to this Agreement, as described in the Terms of Reference hereto;
- (r) “**Sub-Consultant**” means any entity to which the Consultant subcontracts any part of the Services in accordance with the provisions of Clause 4.7; and
- (s) “**Third Party**” means any person or entity other than the Government, the Employer, the Consultant or a Sub-Consultant.

All terms and words not defined herein shall, unless the context otherwise requires, have the meaning assigned to them in the RFP.

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

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

1.2 Relation between the Parties

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

1.3 Rights and obligations

The mutual rights and obligations of the Employer and the Consultant shall be as set forth in the Agreement, in particular:

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

1.4 Governing law and jurisdiction

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

1.5 Language

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

1.6 Table of contents and headings

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

1.7 Notices

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

- (a) in the case of the Consultant, be given by facsimile or e-mail and by letter delivered by hand to the address given and marked for attention of the Consultant's Representative set out below in Clause 1.10 or to such other person as the Consultant may from time to time designate by notice to the Authority; provided that notices or other communications to be given to an address outside Jaipur may, if they are subsequently confirmed by sending a copy thereof by registered acknowledgement due, air mail or by courier, be sent by facsimile or e-mail to the number as the Consultant may from time to time specify by notice to the Authority;

- (b) in the case of the Authority, be given by facsimile or e-mail and by letter delivered by hand and be addressed to the Employer with a copy delivered to the Employer Representative set out below in Clause 1.10 or to such other person as the Employer may from time to time designate by notice to the Consultant; provided that if the Consultant does not have an office in Jaipur it may send such notice by e-mail and by registered acknowledgement due, air mail or by courier; and
- (c) any notice or communication by a Party to the other Party, given in accordance herewith, shall be deemed to have been delivered when in the normal course of post it ought to have been delivered and in all other cases, it shall be deemed to have been delivered on the actual date and time of delivery; provided that in the case of facsimile or e-mail, it shall be deemed to have been delivered on the working days following the date of its delivery.

1.8 Location

The Services shall be performed at the site of the Project in accordance with the provisions of RFP and at such locations as are incidental thereto, including the offices of the Consultant.

1.9 Employer of Member-in-charge

In case the Consultant consists of a consortium of more than one entity, the Parties agree that the Lead Member shall act on behalf of the Members in exercising all the Consultant’s rights and obligations towards the Employer under this Agreement, including without limitation the receiving of instructions and payments from the Authority.

1.10 Authorised Representatives

1.10.1 Any action required or permitted to be taken, and any document required or permitted to be executed, under this Agreement by the Employer or the Consultant, as the case may be, may be taken or executed by the officials specified in this Clause 1.10.

1.10.2 The Employer may, from time to time, designate one of its officials as the Employer Representative. Unless otherwise notified, the Employer Representative shall be:

Additional Chief Engineer (PPP)
PPP Division, Public Works Department, Jaipur
TelFax: 0141-5110547 E-mail: [.aceppp.pwd@rajasthan.gov.in](mailto:aceppp.pwd@rajasthan.gov.in)

The Consultant may designate one of its employees as Consultant’s Representative. Unless otherwise notified, the Consultant’s Representative shall be:

Tel: -----

Mobile: -----

Fax: -----

Email: -----

1.11 Taxes and duties

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

2. COMMENCEMENT, COMPLETION and TERMINATION OF AGREEMENT

2.1 Effectiveness of Agreement

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

2.2 Commencement of Services

The Consultant shall commence the Services within a period of 7 (seven) days from the Effective Date, unless otherwise agreed by the Parties.

2.3 Termination of Agreement for failure to commence Services

If the Consultant does not commence the Services within the period specified in Clause 2.2 above, the Employer may, by not less than 2 (two) weeks’ notice to the Consultant, declare this Agreement to be null and void, and in the event of such a declaration, the Bid Security of the Consultant shall stand forfeited.

2.4 Expiration of Agreement

Unless terminated earlier pursuant to Clauses 2.3 or 2.9 hereof, this Agreement shall, unless extended by the Parties by mutual consent, expire upon the earlier of (i) expiry of a period of 90 (ninety) days after the delivery of the final deliverable to the Authority; and (ii) the expiry of 1 (one) year from the Effective Date. Upon Termination, the Employer shall make payments of all amounts due to the Consultant hereunder.

2.5 Entire Agreement

2.5.1 This Agreement and the Annexes together constitute a complete and exclusive statement of the terms of the agreement between the Parties on the subject hereof, and no amendment or modification hereto shall be valid and effective unless such modification or amendment is agreed to in writing by the Parties and duly executed by persons especially empowered in this behalf by the respective Parties. All prior written or oral understandings, offers or other communications of every kind pertaining to this Agreement are abrogated and withdrawn; provided, however, that the obligations of the Consultant arising out of the provisions of the RFP shall continue to subsist and shall be deemed to form part of this Agreement.

2.5.2 Without prejudice to the generality of the provisions of Clause 2.5.1, on matters not covered by this Agreement, the provisions of RFP shall apply.

2.6 Modification of Agreement

Modification of the terms and conditions of this Agreement, including any modification of the scope of the Services, may only be made by written agreement between the Parties. Pursuant to Clauses 4.2.3 and 6.1.3 hereof, however, each Party shall give due consideration to any proposals for modification made by the other Party.

2.7 Force Majeure

2.7.1 Definition

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

2.7.2 No breach of Agreement

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

2.7.3 Measures to be taken

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

of such event, and shall similarly give notice of the restoration of normal conditions as soon as possible.

- (c) The Parties shall take all reasonable measures to minimise the consequences of any event of Force Majeure.

2.7.4 Extension of time

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

2.7.5 Payments

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

2.7.6 Consultation

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

2.8 Suspension of Agreement

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

2.9 Termination of Agreement

2.9.1 By the Authority

The Employer may, by not less than 30 (thirty) days' written notice of termination to the Consultant, such notice to be given after the occurrence of any of the events specified in this Clause 2.9.1, terminate this Agreement if:

- (a) the Consultant fails to remedy any breach hereof or any failure in the performance of its obligations hereunder, as specified in a notice of suspension pursuant to Clause 2.8 hereinabove, within 30 (thirty) days of receipt of such notice of suspension or within such further period as the Employer may have subsequently granted in writing;

- (b) the Consultant becomes insolvent or bankrupt or enters into any agreement with its creditors for relief of debt or take advantage of any law for the benefit of debtors or goes into liquidation or receivership whether compulsory or voluntary;
- (c) the Consultant fails to comply with any final decision reached as a result of arbitration proceedings pursuant to Clause 9 hereof;
- (d) the Consultant submits to the Employer a statement which has a material effect on the rights, obligations or interests of the Employer and which the Consultant knows to be false;
- (e) any document, information, data or statement submitted by the Consultant in its Proposals, based on which the Consultant was considered eligible or successful, is found to be false, incorrect or misleading;
- (f) as the result of Force Majeure, the Consultant is unable to perform a material portion of the Services for a period of not less than 60 (sixty) days; or
- (g) the Authority, in its sole discretion and for any reason whatsoever, decides to terminate this Agreement.

2.9.2 By the Consultant

The Consultant may, by not less than 30 (thirty) days' written notice to the Authority, such notice to be given after the occurrence of any of the events specified in this Clause 2.9.2, terminate this Agreement if:

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

2.9.3 Cessation of rights and obligations

Upon termination of this Agreement pursuant to Clauses 2.3 or 2.9 hereof, or upon expiration of this Agreement pursuant to Clause 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, or which expressly survive such Termination; (ii) the obligation of confidentiality set forth in Clause 3.3 hereof; (iii) the Consultant's obligation to permit inspection, copying and auditing of such of its accounts and records set forth in Clause 3.6, as relate to the Consultant's Services provided under

this Agreement; and (iv) any right or remedy which a Party may have under this Agreement or the Applicable Law.

2.9.4 Cessation of Services

Upon termination of this Agreement by notice of either Party to the other pursuant to Clauses 2.9.1 or 2.9.2 hereof, the Consultant 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 Consultant and equipment and materials furnished by the Authority, the Consultant shall proceed as provided respectively by Clauses 3.9 or 3.10 hereof.

2.9.5 Payment upon Termination

Upon termination of this Agreement pursuant to Clauses 2.9.1 or 2.9.2 hereof, the Employer shall make the following payments to the Consultant (after offsetting against these payments any amount that may be due from the Consultant to the Authority):

- (i) remuneration pursuant to Clause 6 hereof for Services satisfactorily performed prior to the date of termination;
- (ii) reimbursable expenditures pursuant to Clause 6 hereof for expenditures actually incurred prior to the date of termination; and
- (iii) except in the case of termination pursuant to sub-clauses (a) through (e) of Clause 2.9.1 hereof, reimbursement of any reasonable cost incidental to the prompt and orderly termination of the Agreement including the cost of the return travel of the Consultant's personnel.

2.9.6 Disputes about Events of Termination

If either Party disputes whether an event specified in Clause 2.9.1 or in Clause 2.9.2 hereof has occurred, such Party may, within 30 (thirty) days after receipt of notice of termination from the other Party, refer the matter to arbitration pursuant to Clause 9 hereof, and this Agreement shall not be terminated on account of such event except in accordance with the terms of any resulting arbitral award.

3. OBLIGATIONS OF THE CONSULTANT

3.1 General

3.1.1 Standards of Performance

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

3.1.2 Terms of Reference

The scope of services to be performed by the Consultant is specified in the Terms of Reference (the “**TOR**”) at Annex-1 of this Agreement. The Consultant shall provide the Deliverables specified therein in conformity with the time schedule stated therein.

3.1.3 Applicable Laws

The Consultant shall perform the Services in accordance with the Applicable Laws and shall take all practicable steps to ensure that any Sub-Consultant, as well as the Personnel and agents of the Consultant and any Sub-Consultant, comply with the Applicable Laws.

3.2 Conflict of Interest

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

3.2.2 Consultant and Affiliates not to be otherwise interested in the Project

The Consultant agrees that, during the term of this Agreement and after its termination, the Consultant or any Associate thereof and any entity affiliated with the Consultant, as well as any Sub-Consultant and any entity affiliated with such Sub-Consultant, shall be disqualified from providing goods, works, services, loans or equity for any project resulting from or closely related to the Services and any breach of this obligation shall amount to a Conflict of Interest; provided that the restriction herein shall not apply after a period of five years from the completion of this assignment or to consulting assignments granted by banks/ lenders at any time; provided further that this restriction shall not apply to consultancy/ advisory services provided to the Employer in continuation of this Consultancy or to any subsequent consultancy/ advisory services provided to the Employer in accordance with the rules of the Authority. For the avoidance of doubt, an entity affiliated with the Consultant shall include a partner in the Consultant’s firm or a person who holds more than 5% (five per cent) of the subscribed and paid up share capital of the Consultant, as the case may be, and any Associate thereof.

3.2.3 Prohibition of conflicting activities

Neither the Consultant nor its Sub-Consultant nor the Personnel of either of them shall engage, either directly or indirectly, in any of the following activities:

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

3.2.4 Consultant not to benefit from commissions, discounts, etc.

The remuneration of the Consultant pursuant to Clause 6 hereof shall constitute the Consultant's sole remuneration in connection with this Agreement or the Services and the Consultant shall not accept for its own benefit any trade commission, discount or similar payment in connection with activities pursuant to this Agreement or to the Services or in the discharge of its obligations hereunder, and the Consultant shall use its best efforts to ensure that any Sub-Consultant, as well as the Personnel and agents of either of them, similarly shall not receive any such additional remuneration.

- 3.2.5 The Consultant and its Personnel shall observe the highest standards of ethics and shall not have engaged in and shall not hereafter engage in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice (collectively the "**Prohibited Practices**"). Notwithstanding anything to the contrary contained in this Agreement, the Employer shall be entitled to terminate this Agreement forthwith by a communication in writing to the Consultant, without being liable in any manner whatsoever to the Consultant, if it determines that the Consultant has, directly or indirectly or through an agent, engaged in any Prohibited Practices in the Selection Process or before or after entering into of this Agreement. In such an event, the Employer shall forfeit and appropriate the performance security, if any, as mutually agreed genuine pre-estimated compensation and damages payable to the Employer towards, *inter alia*, the time, cost and effort of the Authority, without prejudice to the Authority's any other rights or remedy hereunder or in law.
- 3.2.6 Without prejudice to the rights of the Employer under Clause 3.2.5 above and the other rights and remedies which the Employer may have under this Agreement, if the Consultant is found by the Employer to have directly or indirectly or through an agent, engaged or indulged in any Prohibited Practices, during the Selection Process or before or after the execution of this Agreement, the Consultant shall not be eligible to participate in any tender or RFP issued during a period of 2 (two) years from the date the Consultant is found by the Employer to have directly or indirectly or through an agent, engaged or indulged in any Prohibited Practices.
- 3.2.7 For the purposes of Clauses 3.2.5 and 3.2.6, the following terms shall have the meaning hereinafter respectively assigned to them:
- (a) "**corrupt practice**" means the offering, giving, receiving or soliciting, directly or indirectly, of anything of value to influence the actions of any person connected with the Selection Process (for removal of doubt, offering of employment or employing or engaging in any manner whatsoever, directly or indirectly, any official of the Employer who is or has been associated in any manner, directly or indirectly with Selection Process or LOA or dealing with matters concerning the Agreement before or after the execution thereof, at any time prior to the expiry of one year from the date such official resigns or retires from or otherwise ceases to be in the service of the Authority, shall be deemed to constitute influencing the actions of a person connected with the Selection Process); or (ii) engaging in any manner whatsoever, whether during the Selection Process or after the issue of LOA or after the execution of the Agreement, as the case may be, any person in respect of any matter relating to the Project or the LOA or the Agreement, who at any time has been or is a legal, financial or technical adviser the Employer in relation to any matter concerning the Project;

- (b) “**fraudulent practice**” means a misrepresentation or omission of facts or suppression of facts or disclosure of incomplete facts, in order to influence the Selection Process;
- (c) “**coercive practice**” means impairing or harming, or threatening to impair or harm, directly or indirectly, any person or property to influence any person’s participation or action in the Selection Process or the exercise of its rights or performance of its obligations by the Employer under this Agreement;
- (d) “**undesirable practice**” means (i) establishing contact with any person connected with or employed or engaged by the Employer with the objective of canvassing, lobbying or in any manner influencing or attempting to influence the Selection Process; or (ii) having a Conflict of Interest; and
- (e) “**restrictive practice**” means forming a cartel or arriving at any understanding or arrangement among Applicants with the objective of restricting or manipulating a full and fair competition in the Selection Process.

3.3 Confidentiality

The Consultant, its Sub-Consultants and the Personnel of either of them shall not, either during the term or within two years after the expiration or termination of this Agreement disclose any proprietary information, including information relating to reports, data, drawings, design software or other material, whether written or oral, in electronic or magnetic format, and the contents thereof; and any reports, digests or summaries created or derived from any of the foregoing that is provided by the Employer to the Consultant, its Sub-Consultants and the Personnel; any information provided by or relating to the Authority, its technology, technical processes, business affairs or finances or any information relating to the Authority’s employees, officers or other professionals or suppliers, customers, or contractors of the Authority; and any other information which the Consultant is under an obligation to keep confidential in relation to the Project, the Services or this Agreement (“**Confidential Information**”), without the prior written consent of the Authority.

Notwithstanding the aforesaid, the Consultant, its Sub-Consultants and the Personnel of either of them may disclose Confidential Information to the extent that such Confidential Information:

- (i) was in the public domain prior to its delivery to the Consultant, its Sub-Consultants and the Personnel of either of them or becomes a part of the public knowledge from a source other than the Consultant, its Sub-Consultants and the Personnel of either of them;
- (ii) was obtained from a third party with no known duty to maintain its confidentiality;
- (iii) is required to be disclosed by Applicable Laws or judicial or administrative or arbitral process or by any governmental instrumentalities, provided that for any such disclosure, the Consultant, its Sub-Consultants and the Personnel of either of them shall give the Authority, prompt written notice, and use reasonable efforts to ensure that such disclosure is accorded confidential treatment; and

- (iv) is provided to the professional advisers, agents, auditors or representatives of the Consultant or its Sub-Consultants or Personnel of either of them, as is reasonable under the circumstances; provided, however, that the Consultant or its Sub-Consultants or Personnel of either of them, as the case may be, shall require their professional advisers, agents, auditors or its representatives, to undertake in writing to keep such Confidential Information, confidential and shall use its best efforts to ensure compliance with such undertaking.

3.4 Liability of the Consultant

- 3.4.1 The Consultant's liability under this Agreement shall be determined by the Applicable Laws and the provisions hereof.
- 3.4.2 The Consultant shall, subject to the limitation specified in Clause 3.4.3, be liable to the Employer for any direct loss or damage accrued or likely to accrue due to deficiency in Services rendered by it.
- 3.4.3 The Parties hereto agree that in case of negligence or wilful misconduct on the part of the Consultant or on the part of any person or firm acting on behalf of the Consultant in carrying out the Services, the Consultant, with respect to damage caused to the Authority's property, shall not be liable to the Authority:
 - (i) for any indirect or consequential loss or damage; and
 - (ii) for any direct loss or damage that exceeds (a) the Agreement Value set forth in Clause 6.1.2 of this Agreement, or (b) the proceeds the Consultant may be entitled to receive from any insurance maintained by the Consultant to cover such a liability in accordance with Clause 3.5.2, whichever of (a) or (b) is higher.
- 3.4.4 This limitation of liability specified in Clause 3.4.3 shall not affect the Consultant's liability, if any, for damage to Third Parties caused by the Consultant or any person or firm acting on behalf of the Consultant in carrying out the Services subject, however, to a limit equal to 3 (three) times the Agreement Value.

3.5 Insurance to be taken out by the Consultant

- 3.5.1 (a) The Consultant shall, for the duration of this Agreement, take out and maintain, and shall cause any Sub-Consultant to take out and maintain, at its (or the Sub-Consultant's, as the case may be) own cost, but on terms and conditions approved by the Authority, insurance against the risks, and for the coverages, as specified in the Agreement and in accordance with good industry practice.
- (b) Within 15 (fifteen) days of receiving any insurance policy certificate in respect of insurances required to be obtained and maintained under this clause, the Consultant shall furnish to the Authority, copies of such policy certificates, copies of the insurance policies and evidence that the insurance premia have been paid in respect of such insurance. No insurance shall be cancelled, modified or allowed to expire or lapse during the term of this Agreement.

- (c) If the Consultant fails to effect and keep in force the aforesaid insurances for which it is responsible pursuant hereto, the Employer shall, apart from having other recourse available under this Agreement, have the option, without prejudice to the obligations of the Consultant, to take out the aforesaid insurance, to keep in force any such insurances, and pay such premia and recover the costs thereof from the Consultant, and the Consultant shall be liable to pay such amounts on demand by the Authority.
- (d) Except in case of Third Party liabilities, the insurance policies so procured shall mention the Employer as the beneficiary of the Consultant and the Consultant shall procure an undertaking from the insurance company to this effect; provided that in the event the Consultant has a general insurance policy that covers the risks specified in this Agreement and the amount of insurance cover is equivalent to 3 (three) times the cover required hereunder, such insurance policy may not mention the Employer as the sole beneficiary of the Consultant or require an undertaking to that effect.

3.5.2 The Parties agree that the risks and coverages shall include but not be limited to the following:

- (a) Third party motor vehicle liability in respect of motor vehicles operated by the Consultant or their personnel.;
- (b) employer's liability and workers' compensation insurance in respect of the Personnel of the Consultant and of any Sub-Consultant, in accordance with Applicable Laws; and
- (c) professional liability insurance for an amount no less than the Agreement Value for a period of one year beyond the consultancy period or as per Applicable Law, whichever is longer after the completion of consultancy services.

In case of consortium, the policy should be in the name of Lead Member and not in the name of individual Members of the consortium.

3.6 Accounting, inspection and auditing

The Consultant shall:

- (a) keep accurate and systematic accounts and records in respect of the Services provided under this Agreement, in accordance with internationally accepted accounting principles and in such form and detail as will clearly identify all relevant time charges and cost, and the basis thereof (including the basis of the Consultant's costs and charges); and
- (b) permit the Employer or its designated representative periodically, and up to one year from the expiration or termination of this Agreement, to inspect the same and make copies thereof as well as to have them audited by auditors appointed by the Authority.

3.7 Consultant's actions requiring the Authority's prior approval

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

- (a) appointing members of the Professional Personnel
- (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 Employer prior to the execution of the subcontract, and (ii) that the Consultant shall remain fully liable for the performance of the Services by the Sub-Consultant and its Personnel pursuant to this Agreement; or
- (c) any other action that is specified in this Agreement.

3.8 Reporting obligations

The Consultant shall submit to the Employer the reports and documents specified in the Agreement, in the form, in the numbers and within the time periods set forth therein.

3.9 Documents prepared by the Consultant to be property of the Authority

- 3.9.1 All plans, drawings, specifications, designs, reports and other documents (collectively referred to as “**Consultancy Documents**”) prepared by the Consultant (or by the Sub-Consultants or any Third Party) in performing the Services shall become and remain the property of the Employer, and all intellectual property rights in such Consultancy Documents shall vest with the Employer. Any Consultancy Document, of which the ownership or the intellectual property rights do not vest with the Employer under law, shall automatically stand assigned to the Employer as and when such Consultancy Document is created and the Consultant agrees to execute all papers and to perform such other acts as the Employer may deem necessary to secure its rights herein assigned by the Consultant.
- 3.9.2 The Consultant shall, not later than termination or expiration of this Agreement, deliver all Consultancy Documents to the Employer, together with a detailed inventory thereof. The Consultant may retain a copy of such Consultancy Documents. The Consultant, its Sub-Consultants or a Third Party shall not use these Consultancy Documents for purposes unrelated to this Agreement without the prior written approval of the Employer.
- 3.9.3 The Consultant shall hold the Employer harmless and indemnified for any losses, claims, damages, expenses (including all legal expenses), awards, penalties or injuries (collectively referred to as ‘claims’) which may arise from or due to any unauthorised use of such Consultancy Documents, or due to any breach or failure on part of the Consultant or its Sub-Consultants or a Third Party to perform any of its duties or obligations in relation to securing the aforementioned rights of the Authority.

3.10 Equipment and materials furnished by the Authority

Equipment and materials made available to the Consultant by the Employer shall be the property of the Employer and shall be marked accordingly. Upon termination or expiration of this Agreement, the Consultant shall furnish forthwith to the Authority, an inventory of

such equipment and materials and shall dispose of such equipment and materials in accordance with the instructions of the Authority. While in possession of such equipment and materials, the Consultant shall, unless otherwise instructed by the Employer in writing, insure them in an amount equal to their full replacement value.

3.11 Providing access to Project Office and Personnel

The Consultant shall ensure that the Employer, and officials of the Employer having authority from the Employer, are provided unrestricted access to the Project Office and to all Personnel during office hours. The Employer's official, who has been authorised by the Employer in this behalf, shall have the right to inspect the Services in progress, interact with Personnel of the Consultant and verify the records relating to the Services for his satisfaction.

3.12. Accuracy of Documents

The Consultant shall be responsible for accuracy of the data collected by it directly or procured from other agencies/authorities, the designs, drawings, estimates and all other details prepared by it as part of these services. Subject to the provisions of Clause 3.4, it shall indemnify the Employer against any inaccuracy in its work which might surface during implementation of the Project, if such inaccuracy is the result of any negligence or inadequate due diligence on part of the Consultant or arises out of its failure to conform to good industry practice. The Consultant shall also be responsible for promptly correcting, at its own cost and risk, the drawings including any re-survey / investigations.

4. CONSULTANT'S PERSONNEL AND SUB-CONSULTANTS

4.1 General

The Consultant shall employ and provide such qualified and experienced Personnel as may be required to carry out the Services. The designations, names and the estimated periods of engagement in carrying out the Services by each of the Consultant's Personnel shall be as per the requirement of works. Prior approval of the Employer/ Employer's representative shall be obtained for engaging the Professional Personnel for the services.

4.2 Resident Project Manager

Consultant shall designate a suitable person as Project Manager (the "**Project Manager**") who shall be responsible for day to day performance of the Services.

5. OBLIGATIONS OF THE AUTHORITY

5.1 Assistance in clearances etc.

Unless otherwise specified in the Agreement, the Employer shall make best efforts to ensure that the Government shall:

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

- (b) facilitate prompt clearance through customs of any property required for the Services; and
- (c) 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.

5.2 Access to land and property

The Employer warrants that the Consultant shall have, free of charge, unimpeded access to the site of the project in respect of which access is required for the performance of Services; provided that if such access shall not be made available to the Consultant as and when so required, the Parties shall agree on the time extension, as may be appropriate, for the performance of Services,

5.3 Change in Applicable Law

If, after the date of this Agreement, there is any change in the Applicable Laws with respect to taxes and duties which increases or decreases the cost or reimbursable expenses incurred by the Consultant in performing the Services, by an amount exceeding 2% (two per cent) of the Agreement Value specified in Clause 6.1.2, then the remuneration and reimbursable expenses otherwise payable to the Consultant under this Agreement shall be increased or decreased accordingly by agreement between the Parties hereto, and corresponding adjustments shall be made to the aforesaid Agreement Value.

5.4 Payment

In consideration of the Services performed by the Consultant under this Agreement, the Employer shall make to the Consultant such payments and in such manner as is provided in Clause 6 of this Agreement.

6. PAYMENT TO THE CONSULTANT

6.1 Cost estimates and Agreement Value

- 6.1.1 An abstract of the cost of the Services payable to the Consultant is set forth in Annex-3 of the Agreement.
- 6.1.2 Except as may be otherwise agreed under Clause 2.6 and subject to Clause 6.1.3, the payments under this Agreement shall not exceed the agreement value specified herein (the “**Agreement Value**”).
- 6.1.3 Notwithstanding anything to the contrary contained in Clause 6.1.2, if pursuant to the provisions of Clauses 2.6 and 2.7, the Parties agree that additional payments shall be made to the Consultant in order to cover any additional expenditures not envisaged in the cost estimates referred to in Clause 6.1.1 above, the Agreement Value set forth in Clause 6.1.2 above shall be increased by the amount or amounts, as the case may be, of any such additional payments.

6.2 Currency of payment

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

6.3 Mode of billing and payment

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

- (a) The Consultant shall be paid for its services as per the Payment Schedule at Annex-6 of this Agreement, subject to the Consultant fulfilling the following conditions:
 - (i) No payment shall be due for the next stage till the Consultant completes, to the satisfaction of the Authority, the work pertaining to the preceding stage.
 - (ii) The Employer shall pay to the Consultant, only the undisputed amount.
- (b) The Employer shall cause the payment due to the Consultant to be made within 30 (thirty) days after the receipt by the Employer of duly completed bills with necessary particulars (the “**Due Date**”). Interest at the rate of 10% (ten per cent) per annum shall become payable as from the Due Date on any amount due by, but not paid on or before, such Due Date.
- (c) 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 Consultant and approved as satisfactory by the Authority. The Services shall be deemed completed and finally accepted by the Employer and the final deliverable shall be deemed approved by the Employer as satisfactory upon expiry of 90 (ninety) days after receipt of the final deliverable by the Employer unless the Authority, within such 90 (ninety) day period, gives written notice to the Consultant specifying in detail, the deficiencies in the Services. The Consultant shall thereupon promptly make any necessary corrections and/or additions, and upon completion of such corrections or additions, the foregoing process shall be repeated. The Employer shall make the final payment upon acceptance or deemed acceptance of the final deliverable by the Authority.
- (d) Any amount which the Employer has paid or caused to be paid in excess of the amounts actually payable in accordance with the provisions of this Agreement shall be reimbursed by the Consultant to the Employer within 30 (thirty) days after receipt by the Consultant of notice thereof. Any such claim by the Employer for reimbursement must be made within 1 (one) year after receipt by the Employer of a final report in accordance with Clause 6.3 (d). Any delay by the Consultant in reimbursement by the due date shall attract simple interest @ 10% (ten per cent) per annum.
- (e) 10% (ten per cent) of the Agreement Value has been earmarked as Final Payment to be made to the Consultant upon receiving recommendation of the State Government as per rule 12 of Rajasthan RFCTLARR Rules 2016. In the event the recommendation does not get received within 1 (one) year of the Effective Date the Final Payment shall not become due to the Consultant.
- (f) All payments under this Agreement shall be made to the account of the Consultant as may be notified to the Employer by the Consultant.

7. LIQUIDATED DAMAGES AND PENALTIES

7.1 Performance Security

7.1.1 The Employer shall retain by way of performance security (the “**Performance Security**”), 5% (five per cent) of all the amounts due and payable to the Consultant, to be appropriated against breach of this Agreement or for recovery of liquidated damages as specified in Clause 7.2 herein. The balance remaining out of the Performance Security shall be returned to the Consultant at the end of 3 (three) months after the expiration of this Agreement pursuant to Clause 2.4 hereof.

7.1.2 The Consultant may, in lieu of retention of the amounts as referred to in Clause 7.1.1 above, furnish a Bank Guarantee substantially in the form specified at Annex-7 of this Agreement.

7.2 Liquidated Damages

7.2.1 Liquidated Damages for error/variation

In case any error or variation is detected in the reports submitted by the Consultant and such error or variation is the result of negligence or lack of due diligence on the part of the Consultant, the consequential damages thereof shall be quantified by the Employer in a reasonable manner and recovered from the Consultant by way of deemed liquidated damages, subject to a maximum of 50% (fifty per cent) of the Agreement Value.

7.2.2 Liquidated Damages for delay

In case of delay in completion of Services, liquidated damages not exceeding an amount equal to 0.2% (zero point two per cent) of the Agreement Value per day, subject to a maximum of 10% (ten per cent) of the Agreement Value will be imposed and shall be recovered by appropriation from the Performance Security or otherwise. However, in case of delay due to reasons beyond the control of the Consultant, suitable extension of time shall be granted.

7.2.3 Encashment and appropriation of Performance Security

The Employer shall have the right to invoke and appropriate the proceeds of the Performance Security, in whole or in part, without notice to the Consultant in the event of breach of this Agreement or for recovery of liquidated damages specified in this Clause 7.2.

7.3 Penalty for deficiency in Services

In addition to the liquidated damages not amounting to penalty, as specified in Clause 7.2, warning may be issued to the Consultant for minor deficiencies on its part. In the case of significant deficiencies in Services causing adverse effect on the Project or on the reputation of the Authority, other penal action including debarring for a specified period may also be initiated as per policy of the Authority.

8. FAIRNESS AND GOOD FAITH

8.1 Good Faith

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

8.2 Operation of the Agreement

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

9. SETTLEMENT OF DISPUTES

9.1 Amicable settlement

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

9.2 Dispute resolution

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

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

9.3 Conciliation

In the event of any Dispute between the Parties, either Party may call upon Secretary, Public Works Department of Rajasthan 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 9.2.1 or such longer period as may be mutually agreed by the Parties, either Party may refer the Dispute to arbitration in accordance with the provisions of Clause 9.4.

9.4 Arbitration

- 9.4.1 Any Dispute which is not resolved amicably by conciliation, as provided in Clause 9.3, shall be finally decided by reference to arbitration by an Arbitral Tribunal appointed in accordance with Clause 9.4.2. Such arbitration shall be held in accordance with the Rules of Arbitration of the International Centre for Alternative Dispute Resolution, New Delhi (the “**Rules**”), or such other rules as may be mutually agreed by the Parties, and shall be subject to the provisions of the Arbitration and Conciliation Act,1996. The venue of such arbitration shall be Jaipur and the language of arbitration proceedings shall be English.
- 9.4.2 There shall be a sole arbitrator whose appointment shall be made in accordance with the Rules.
- 9.4.3 The arbitrators shall make a reasoned award (the “**Award**”). Any Award made in any arbitration held pursuant to this Clause 9 shall be final and binding on the Parties as from the date it is made, and the Consultant and the Employer agree and undertake to carry out such Award without delay.
- 9.4.4 The Consultant and the Employer 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.
- 9.4.5 This Agreement and the rights and obligations of the Parties shall remain in full force and effect, pending the Award in any arbitration proceedings hereunder.

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

SIGNED, SEALED AND DELIVERED

SIGNED, SEALED AND DELIVERED

For and on behalf of
Consultant:

For and on behalf of
Employer

(Signature)
(Name)
(Designation)
(Address)
(Fax No.)

(Signature)
(Name)
(Designation)
(Address)
(Fax No.)

In the presence of:

1.

2.

Annex-1

Terms of Reference

(Refer Clause 3.1.2)

(Reproduce Schedule-1 of RFP)

Annex-2

Cost of Services
(Refer Clause 6.1)

(Reproduce as per Financial Proposal)

Annex-3

Payment Schedule
(Refer Clause 6)

Annex- 4

Bank Guarantee for Performance Security*(Refer Clause 7.1.2)*

To

The Governor of Rajasthan
 acting through the Additional Chief Engineer (PPP)
 PPP Division, PWD
 Jaipur.

In consideration of acting on behalf of the Governor of Rajasthan (hereinafter referred as the “**Employer**”, which expression shall, unless repugnant to the context or meaning thereof, include its successors, administrators and assigns) awarding to, having its office at (hereinafter referred as the “**Consultant**” which expression shall, unless repugnant to the context or meaning thereof, include its successors, administrators, executors and assigns), vide the Authority’s Agreement no. dated valued at Rs. (Rupees), (hereinafter referred to as the “**Agreement**”) the assignment for consultancy services in respect of the Project, and the Consultant having agreed to furnish a Bank Guarantee amounting to Rs. (Rupees) to the Authority for performance of the said Agreement.

We, (hereinafter referred to as the “**Bank**”) at the request of the Consultant do hereby undertake to pay to the Authority an amount not exceeding Rs. (Rupees) against any loss or damage caused to or suffered or would be caused to or suffered by the Authority by reason of any breach by the said Consultant of any of the terms or conditions contained in the said Agreement.

2. We, (indicate the name of the Bank) do hereby undertake to pay the amounts due and payable under this Guarantee without any demur, merely on a demand from the Authority stating that the amount/claimed is due by way of loss or damage caused to or would be caused to or suffered by the Authority by reason of breach by the said Consultant of any of the terms or conditions contained in the said Agreement or by reason of the Consultant’s failure to perform the said Agreement. Any such demand made on the bank shall be conclusive as regards the amount due and payable by the Bank under this Guarantee. However, our liability under this Guarantee shall be restricted to an amount not exceeding Rs. (Rupees).

3. We, (indicate the name of the Bank) do hereby undertake to pay to the Authority any money so demanded notwithstanding any dispute or disputes raised by the Consultant in any suit or proceeding pending before any court or tribunal relating thereto, our liability under this present being absolute and unequivocal. The payment so made by us under this bond shall be a valid discharge of our liability for payment thereunder and the Consultant shall have no claim against us for making such payment.

4. We, (indicate the name of Bank) further agree that the Guarantee herein contained shall remain in full force and effect during the period that would be required for

the performance of the said Agreement and that it shall continue to be enforceable till all the dues of the Authority under or by virtue of the said Agreement have been fully paid and its claims satisfied or discharged or till the Authority certifies that the terms and conditions of the said Agreement have been fully and properly carried out by the said Consultant and accordingly discharges this Guarantee. Unless a demand or claim under this Guarantee is made on us in writing on or before a period of one year from the date of this Guarantee, we shall be discharged from all liability under this Guarantee thereafter.

5. We, (indicate the name of Bank) further agree with the Authority that the Authority shall have the fullest liberty without our consent and without affecting in any manner our obligations hereunder to vary any of the terms and conditions of the said Agreement or to extend time of performance by the said Consultant from time to time or to postpone for any time or from time to time any of the powers exercisable by the Authority against the said Consultant and to forbear or enforce any of the terms and conditions relating to the said Agreement and we shall not be relieved from our liability by reason of any such variation, or extension being granted to the said Consultant or for any forbearance, act or omission on the part of the Authority or any indulgence by the Authority to the said Consultant or any such matter or thing whatsoever which under the law relating to sureties would, but for this provision, have the effect of so relieving us.

6. This Guarantee will not be discharged due to the change in the constitution of the Bank or the Consultant(s).

7. We, (indicate the name of Bank) lastly undertake not to revoke this Guarantee during its currency except with the previous consent of the Authority in writing.

8. For the avoidance of doubt, the Bank’s liability under this Guarantee shall be restricted to Rs. (Rupees) only. The Bank shall be liable to pay the said amount or any part thereof only if the Authority serves a written claim on the Bank in accordance with Paragraph 2 hereof, on or before (indicate the date falling 60 days after the date of this Guarantee).

For

Name of Bank:

Seal of the Bank:

Dated, theday of, 20.....

(Signature, name and designation of the authorised signatory)

NOTES:

- (i) The Bank Guarantee should contain the name, designation and code number of the officer(s) signing the Guarantee.
- (ii) The address, telephone no. and other details of the Head Office of the Bank as well as of issuing Branch should be mentioned on the covering letter of issuing Branch.