



West Bengal Highway Development Corporation Ltd
(A Wholly Owned Company of Government of West Bengal)

Request for Proposal (RFP)

FOR

“Financial consultancy services for Strengthening and Widening of Barrackpore-Kalyani Expressway from Moragacha Crossing (Ch 0.00 Km) to Kampa Crossing (Ch 30.00 Km) to Four lane Phase-1 on Hybrid Annuity Model.”

NIT No. : WBHDCL/e-NIT-16/2017 Date: 25.07.2017

OPEN TO ALL QUALIFIED BIDDERS AS PER THIS RFP DOCUMENT

By E Tender Mode

West Bengal Highway Development Corporation Limited
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July - 2017

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Key Dates

Sl. No	Particulars	Date & Time
1	Date of uploading of Bid Documents (online)	25-07-2017 from 16:25 Hrs.
2	Pre-bid meeting at WBHDCL Office Kolkata/ Bidder Request for Clarification latest by	31-07-2017 at 15:30 Hrs.
3	Bid proposal submission start date (online)	25-07-2017 from 16:30 Hrs.
4	Bid proposal submission end date (online)	17-08-2017 till 17:00 Hrs.
5	Last date of submission of refundable bid security in this office in separate sealed cover	17-08-2017 till 17:00 Hrs.
6	Last date of submission of one original and one copy of Technical proposal (Offline Document) in this office in separate sealed cover	16-08-2017 till 15:00 Hrs.
7	Bid opening date for Technical bid (online) i.e., Bid Due Date	18-08-2017 till 15:30 Hrs.
8	Bid opening date for Financial bid (online) i.e., Bid Due Date	22-08-2017 till 11:30 Hrs.
9	Date of uploading the successful bidder	To be notified on WBHDCL portal and e-tender portal
10	Letter of Award (LOA)	To be notified on WBHDCL portal and e-tender portal
11	Submission of Performance Security by the successful bidder and Acknowledgement of LOA	To be notified on WBHDCL portal and e-tender portal
12	Signing of Contract	To be notified on WBHDCL portal and e-tender portal

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1. Introduction

- 1.1 West Bengal Highway Development Corporation Limited, hereinafter stated as WBHDCL (i.e “Authority”) intends to appoint a Financial Consultant to assist in all matters related project from project financing strategy, prequalification to Financial Close of the Project including the warranties and undertakings required to be obtained from various project players at various stages and carrying out the "Due diligence" on behalf of WBHDCL as the Project Owner's Consultant. The entire ranges of activities given in Section 2 hereinafter are required to be carried out by the Financial Consultant.

2. Background

2.1 Project Features

- 2.1.1 WBHDCL invites proposals for engaging a financial Consultant on the basis of national Competitive Bidding for the project of Financial consultancy services for Strengthening and Widening of Barrackpore-Kalyani Expressway from Moragacha Crossing (Ch 0.00 Km) to Kampa Crossing (Ch 30.00 Km) to Four lane Phase-I under PPP concept on Hybrid Annuity Model.

2.2 Project Process

- 2.2.1 At the Project Development Strategy stage, five distinct packaging exercises are identified in order to materialize the award and successful Financial Close on the Hybrid Annuity basis, consisting of the following:
- 2.2.2 Physical Packaging is ready in the hand of the engineering Consultants who prepared the Detailed Project Report & the same has to be implemented on a private sector investment (PSI) option study.
- 2.2.3 Strategic Packaging largely pertains to tolling strategy, traffic count, tolling technology selection, and optimization modeling. Key players in this stage are DPR Consultants, who have carried out tolling strategy, traffic count and optimization modeling. The Financial Consultant now proposed to be engaged by WBHDCL for inviting PSI in the Project will Review Detail Project Reports prepared by the engineering consultants and conduct any further detailed studies if required.
- 2.2.4 Investment Packaging is a two-stage exercise. The first part of this packaging exercise has been completed by the DPR consultants in which the projects have been prepared as an investment proposition. This exercise concluded that bidders may require a front-end grant of a definite percent of construction cost. The Financial Consultant will prepare relevant documents such as Project Information Memorandum, Project Financial Plan, Project Risk Allocation Structures and possible GOI/WBHDCL support strategies on the basis of final designs and cost estimates which are available from Consultants. The second stage of Investment Packaging rests in the hands of the concessionaire after the Project has been awarded. This second stage results in the Project Financial Close.
- 2.2.5 Process Packaging will be based upon the WBHDCL model concession agreement and other standard bidding documents. Various changes or additions may be required to the draft bidding documents including concession agreement together with the selection criteria of bidders. The Financial Consultant will be responsible for finalization of these documents in consultation with the WBHDCL.
- 2.2.6 Delivery System Packaging revolves around creating of control, monitoring and regulatory structures. The regulatory structures evolved by WBHDCL in its Concessioner system are all contractually established. Monitoring and supervision by independent external agencies named in the Concession Agreement sets up the control mechanism. An appropriate Dispute Resolution Mechanism also has been prescribed in the Concession Agreements. External monitoring is generally placed in the hands of independent engineer, independent auditor and construction supervision consultants.
- 2.2.7 While the extent of involvement by the financial Consultant will differ from stage to stage, the scope of the work for the financial Consultant is defined in Section 5: Scope of Services, of this request for proposals.

3 Project Objectives

- 3.1 The objective of this project is to successfully develop a comprehensive Public- Private Partnership structure and its attendant legal, commercial and financial guidance documents, to assist WBHDCL in selection of private sector partner by adopting the Public-Private Partnership structure on Hybrid Annuity basis and to continue to assist WBHDCL through the Concession signing, negotiation, concession implementation process till Financial Close of the Project.

4 Eligibility Criteria and Minimum Qualification of Consultants

- 4.1 The prospective Consultants should be registered under the Companies Act, 2013 or LLP or Firm including One Person Company/Solo Firm with registered offices in India, as on 31st March 2017. However Joint ventures/consortium of firms will not be considered for engagement as financial consultants, through legal services can be outsourced to qualified key personnel.
- 4.2 The service provider should not have been blacklisted by any Govt. Organization, undertaking, Corporation etc. Undertaking for same should be submitted along with bid document as per Appendix 5.
- 4.3 The prospective Consultants should have experience as financial consultants for financial closer of one highway project of Four/Six laning in hybrid annuity model in NHAI or should be an Empaneled financial consultant in NHAI.
- 4.4 All the prospective Consultants shall have qualification and experience as prescribed for them and shall have sufficient qualified personnel and resources to accomplish all the services described herein within the prescribed time. A 12 month time frame is estimated for completion of this assignment. The Consultant shall be capable of furnishing all necessary professional, technical, and expert services as required to complete all the elements of Consultancy assignment described in the Scope of Work. WBHDCL is seeking prime consultant for this project, which can bring together a team of professionals and sub-professionals capable of completing all aspects of the Consultancy assignment. The project will require a high degree of management and technical expertise and experience directly related to structuring of Public-Private partnership for said project. To ensure that the consultants are capable of providing an acceptable level of service to WBHDCL on this project, the following minimum requirements must be met.
- 4.5 The proposed project team should consist of the following minimum personnel:
- 4.5.1 A Team Leader cum Senior Financial Analyst who should be familiar with the requirements for hybrid annuity road projects from the perspective of both the government and the investors. Familiarity with Indian/West Bengal investment environment and regulations is an essential qualification for the engagement of the financial Consultant. The Team Leader cum Senior Financial Analyst shall have one or more of the following qualifications:
- CA, CFA, CS with B.Com/M.Com or MBA (Finance). Team Leader cum Senior Financial Analyst shall have a minimum of Ten years of experience in the field of financial analysis of any type of project (project financing, debt funding etc), out of which five years shall be in financing of infrastructure projects. The Experience of Concession Agreements in other infrastructure sector projects under PPP mode may also be considered. Team Leader cum Senior Financial Analyst must have had direct relevant experience as senior financial analyst with at least three BOT/hybrid annuity projects /Annuity concession contract for which financial closure has been achieved.
- 4.5.2 A Financial Analyst who shall hold a CA, CFA CS with B.Com/M.Com or MBA (Finance). A minimum of five years professional experience with financial analysis is required. A sound knowledge of revenue, cost and taxation issues related to road infrastructure is required. The Financial Analyst must have performed financial analysis for at least three toll road projects/BOT/ hybrid annuity Road projects for which financial closure has been achieved.
- 4.5.3 A Legal Specialist with a LLB is required with five year post-qualification experience. The proposed Specialist must have minimum of five year experience related to infrastructure related legislation, legal procedures and toll road projects/hybrid annuity Concession Agreements. The Legal Specialist must have performed as legal expert for at least one hybrid annuity/BOT/Toll Road projects for which financial closure has been achieved.

- 4.5.4 The personnel proposed for Team Leader cum Sr. Fin. Analyst & Fin, Analyst should be the employees of the firm as on the date of application. Since, the assignment requires close interaction with WBHDCL, so the team may be consists those personnel who are either located in West Bengal or can be located in West Bengal. However, for legal expert (Third member of the team), WBHDCL may consider the induction either inside the firm or from an outside legal firm but legal specialist cannot be associated with more than one financial consultants firm.
- 4.5.5 CV/details of one team required to be submitted in form 6 & 7. If required, interactions with the key professionals would be held.
- 4.5.6 The qualification of the personnel would be evaluated. At the time of the award of the services if Personnel are not meeting the minimum qualification and experience requirements consultant would replace those personnel with other personnel having equal or higher qualification and experience.

5 Scope of Consulting Services:

The scope of the consulting services for each of the major areas includes but is not limited to the following activities:-

- 5.1 A Financial Consultant will be retained to develop an effective Hybrid annuity concession agreement based on available Model Concession Agreement for the sections of the proposed Project. The objective of this consultancy service is to produce a financially viable concession that would address the principal issues related to project risks and adequate returns to the concessionaire.
- 5.2. The Consultancy services will involve five components related to the five stages described in section 2 above. The tasks to be undertaken by the Financial Consultant are:
 - 5.2.1 Tasks relating to the physical packaging
 - a) Review of detailed project reports prepared by WBHDCL's consultants, with the objective of identifying issues that could have commercial, financial and fiscal implications.
 - b) Review the project cost estimate.
 - c) Review the project implementation schedule.
 - d) Examine the overall viability of the current way of packaging.
 - e) Any other work as relevant to successful completion of assignment.
 - 5.2.2 Tasks relating to the strategic packaging
 - a) Review the results of the traffic counts and analysis of toll rates proposed as part of draft toll policy of Government of West Bengal carried out by the consultants in order to establish revenue forecasts.
 - b) Review the tolling options which are to be developed by the consultants to ensure that the use and placement of barrier and exit tolling stations are to achieve a reasonable level of capture of traffic using the road.
 - c) Review the impacts of the tolling at each station to determine the likely impact on diversion.
 - d) Revise, if necessary, the estimate of toll revenues during the period of the concession.
 - e) Conduct risk assessment by: (i) reviewing the allocation of risks proposed by the Consultants (ii) proposing changes in the risk allocation that will make the concessions more attractive to the private sector without significantly increasing the liabilities of WBHDCL.
 - f) Finalize a framework for the bidding package which is essentially the combination of typical hybrid model concession with O&M in consideration of a variety of specific factors including: (i) the requirements for periodic maintenance based on a fixed time schedule and performance parameters, (ii) the terms for early termination.
 - g) The Financial Consultant shall define the project concept, establish project parameters and identify issues in developing the project. The obligations of concessionaires for the project and those WBHDCL would be crystallized.
 - h) Any other work as relevant to successful completion of assignment

Based on the exercise conducted above, the Financial Consultant shall review and update the Project Information Memorandum and related documents to be prepared by the consultants.

- 5.2.3 Tasks relating to the investment packaging

Based on the construction and O&M costs of project estimated by the DPR consultants and assumptions based on its experience with similar projects, the Financial Consultant shall develop a financial model under Hybrid Annuity basis for the Project. The objective of this exercise would be:

- a) To suggest measures, if any, required to improve the financial & commercial viability of the project; and
- b) To estimate the financial impact of various provisions in the proposed Concession Agreement. The consultant shall carefully assess the Major Maintenance Reserve Account (MMRA), Debt Service Reserve Account (DSRA), Operation and Maintenance (O&M) expenses including fixed and variable costs, periodic maintenance costs, taxation issues, working capital requirements to assess the probable Debt-Service Coverage Ratio (DSCR), Interest Coverage Ratio (ICR), Project and Equity IRR, etc.
- c) To optimize the project structure under various implementation options; and
- d) To estimate the values of basic bidding criteria such as grants and loans, for evaluation of the reasonableness of the financial proposals. The consultant shall also advise WBHDCL on possible avenues of securitizing toll revenues of the project that can be used for financing the upfront grant
- e) To develop the business plan under the selected project structure;
- f) Develop a total cash flow model.
- g) Any other work as relevant to successful completion of assignment.

Based on the exercise conducted as above, the Financial Consultant shall prepare a Financial Model and submit soft and hard copies of the same to WBHDCL.

5.2.4 Tasks relating to the process packaging

5.2.4.1 Finalization of bidding documents:-

The Financial Consultant shall review and assist WBHDCL to make necessary modifications to the draft concession documents with an aim to provide a concession that is more effective and less likely to require capital subsidy in finalizing the concession agreement and other bidding documents, i.e. the Request for Qualification (RFQ) and or the Request for Proposal (RFP). For this purpose the Financial Consultant shall:

- a) Review the documents prepared by the engineering consultants.
- b) Finalize the bidding process to be followed, the qualification parameters to be used and the criteria for evaluation of proposals in consultation with WBHDCL.
- c) Prepare draft RFQ and RFP and finalize the same in consultation with WBHDCL.
- d) Hold informal meetings with financiers, Consultants and relevant government officials to obtain their reaction to the proposed concession framework and further revise the concession documents.
- e) Update the model concession agreement (including schedules to the concession agreement) into a concession agreement to be signed between Concessionaire & WBHDCL.
- f) Incorporate clauses concerning diverse body of stakeholders if required. Aspects like bid parameter, change of ownership, grant and other payment schedule and methodology etc. should be carefully studied, and modification proposal shall be submitted to WBHDCL for discussion and decision on required changes.
- g) The consultant shall also appropriately look at the public finance aspects of the State to enable fiscal sustainability. The consultant may need to provide necessary presentations on this to relevant Government stakeholders.
- h) The Consultant shall also advise WBHDCL on the communication strategy to ensure that the project is well showcased to prospective bidders. This shall also include international best practices in transparency.
- i) The consultant shall ensure that the qualification criteria is appropriately devised to ensure participation from players with adequate technical and financial capacity. It should be kept in mind that the success of this project is based not only on award of the project, but also achieving

financial closure and construction of project within time, cost and quality. Therefore, selection of the right player is critical to ensure success.

Based on the exercise conducted as above, the Financial Consultant shall prepare RFQ & or RFP or post qualification documents and Concession Agreement Documents and submit them to WBHDCL.

- 5.2.4.2 Toll collection strategy: WBHDCL intends to toll the road to ensure revenue generation which will then be used to reduce upfront grant and annuity burden on State Government. However, it is expected that the traffic growth will be high on the stretch and therefore can lead to higher queuing times at toll plazas. In this direction, the consultant shall also provide a short term, medium term and long term strategy for collection of toll. The strategy should also include a roadmap for implementation of electronic toll collection with an objective to minimize queuing times as per statutory norms.
 - 5.2.4.3 Conduct a series of workshops to the targeted investors, particularly Consultants and financiers so as to generate interest in the proposed hybrid annuity model project. However cost of the workshop if conducted by Financial Consultants with the approval of WBHDCL shall be reimbursed separately.
 - 5.2.4.4 Assistance in evaluation of RFQ & or RFP:-The Financial Consultant shall provide necessary assistance to WBHDCL in the evaluation of RFQ & or RFP for the project and prepare and submit to WBHDCL an RFQ & or RFP Evaluation Report. RFQ & or RFP from firms will be invited as per prescribed procedure. The financial consultant will assist WBHDCL in the evaluation of RFQ & or RFP and scores will be awarded to single firms.
 - 5.2.4.5 Assistance in evaluation of financial proposals:-The Financial Consultant shall provide necessary assistance to WBHDCL in the evaluation of financial bids for the project and prepare and submit to WBHDCL a Financial Proposal Evaluation Report.
 - 5.2.4.6 Assistance in addressing bidders' queries:- The Financial Consultant shall assist WBHDCL in addressing bidders' queries relating to financial & commercial issues.
 - 5.2.4.7 Negotiation Assistance:- The Financial Consultant shall assist WBHDCL in negotiating the Concession Agreement with the preferred bidder. The scope of the Financial Consultants assistance would be limited to financial & commercial legal issues.
 - 5.2.4.8 Continued Assistance till Financial Closure:- The Financial Consultant would assist WBHDCL in responding to financial/commercial/legal issues raised by the Concessionaire or Consultants of the Concessionaire. This assistance would be provided till the date of Financial Closure or any earlier date agreed to between the Financial Consultant and WBHDCL. Financial Closure for the purpose of this offer would mean the date of receipt by the Concessionaire of the letter(s) of intent/sanctions for the debt component of financing for the Project.
- 5.2.5 Tasks relating to the delivery system packaging:

The responsibilities of the Financial Consultant in this stage shall be to review relevant documents, developing a project finance management information system, and obtaining all undertakings, submissions and warranties from the selected concessionaire as part of the financial due diligence.

The Financial Consultant will be required to maintain a close liaison with the key players in the Project development. The Financial Consultant may be required to respond to their queries and attend such meetings as may be called by the coordinator to discuss salient project features and to monitor progress. There are three key players in the whole process of the development of Hybrid Annuity Model packaging and bidding; WBHDCL, financial Consultant and the DPR consultants. Their works are interrelated with each other and thus they should work in a well-coordinated manner. WBHDCL shall conduct overall coordination and ensure the timely processing of all the activities. WBHDCL should assign a principal coordinator to oversee the whole process. Coordination meetings

will be held at the key stages of the project processing between WBHDCL, Financial Consultant and the consultants.

6 Duration of the Services:

The Financial Consultant will work for WBHDCL intermittently for a period of 12 months or till the financial closure whichever is earlier. The duration of the services have been estimated by WBHDCL as six man-months for the Team Leader cum Senior Financial Analyst, three man-months for the Financial Analyst and two man-months for a Legal Specialist. Moreover the consultants are required to be present in WBHDCL as and when required.

7 Payment Terms and Time Schedule

Financial Consultancy fees is restricted to Rs. 14,25,000/- (Rupees Fourteen Lakhs Twenty Five Thousands only) + GST. The prospective consultant free to quote any amount below Rs. 14,25,001/=.However, payment will be released based on the rate quoted by the successful bidder on percentage basis after completion of each stage as given below:-

Sl No.	Description	Payment in %	Submission/Completion Days from the date of order in days
1	On submission of draft Financial Model along with various options.	10	10
2	On submission of final Financial Model along with various options.	10	17
2	On Submission of RFP & Draft Concession Documents	25	25
4	On Submission of RFP Evaluation report and completion of signing of Concession	25	90
5	Achieving of Financial Closure (as defined in the Concession Agreement)	30	365
	Total	100	

Note:

- a) Payment terms shall remain strictly as indicated above. Conditional proposal or fees quoted more than stated above shall be summarily rejected.
- b) The fee to be quoted by the bidder should include all expenses such as legal fees and out of pocket expenses, travelling and administrative expenses etc. to be incurred to complete the assignment.
- c) In case of dropping of the project at a particular stage, no payment beyond that stage will be admissible. However, where there is a complete repetition of a stage, the Financial consultant may be compensated for the same to the extent of 50 % of the amount earmarked for the stage.
- d) A penalty of Rs. 1000/- per day for delay in submission of comments/reports will be imposed. However, per day penalty shall be capped @ 10% of the particular stages and further capped to 10% of total consultancy fees. For any material error in financial model, penalty of Rs. 25,000/- will be imposed.
- e) For specific assignments to Financial Consultancy firms per man day fee of Rs. 28,500/- + GST will be payable. GST will be paid separately on reimbursement basis.

8 Contents of the proposal

If your firm is qualified and would like to be considered, you are invited to submit a proposal in this regard. The contents of the proposal shall be complete in description, concise in volume and austere in form. The proposal shall be in the format given in Appendix —1 & 2 along with Bid Security to this document. Once submitted, the proposal, including the composition of the consulting team, cannot be altered without prior written consent of WBHDCL.

9 Submittal of Proposal

9.2 Detailed RFP may be downloaded from <https://wbtenders.gov.in> and the Application shall be submitted online following the instructions as per e-tender guidelines.

9.3 The following shall be the form of various documents in the Application:

A. Only Electronic Form (to be uploaded on the e-tender portal)

Technical proposal as indicated in Para-B below

B. Hard copy in Original is also required to be submitted in Sealed Envelope in addition to Uploading in electronic form in the e-tender portal in following manner :

Envelope 1 shall contain the HARD COPY OF TECHNICAL BID comprising of

- a) Envelope 1 A containing
 - i. Bid Security
- b) Envelope 1 B
 - i. Power of Attorney for signing the Application (As per the format enclosed as FORM 2 and same should be executed following the instructions provided in the notes thereunder).
 - ii. Technical proposal as per format prescribed in Appendix-1 of RFP.
 - iii. Copy of PAN
 - iv. Copy of GST Registration
 - v. Copy of Professional Tax Registration if Any
 - vi. Copy of Income Tax Return for the assessment year 2016-17
 - vii. Copy of Trade License
 - viii. Declaration as per Appendix 5
- ix. Documentary prove of NHAI empanelment as financial consultants for BOT (Toll)/BOT(Annuity)/Hybrid Annuity.

Envelope 1A and Envelope 1B together with their respective enclosures shall be sealed and put inside outer Envelope 1 and mark the envelope as “Technical Proposal for Financial consultancy services for Strengthening and Widening of Barrackpore-Kalyani Expressway from Moragacha Crossing (Ch 0.00 Km) to Kampa Crossing (Ch 30.00 Km) to Four lane Phase-I on Hybrid Annuity Model” & submitted to Chief General Manager, West Bengal Highway Development Corporation Limited, HRBC Bhavan ,4th & 5th Floor,Munshi Premchand Sarani ,Kolkata-700021 within Bid Due Date and Time. The envelope must be clearly marked “DO NOT OPEN, EXCEPT IN THE PRESENCE OF THE EVALUATION COMMITTEE” .

The Applicant shall upload scanned copies of the Technical Proposal in PDF Format in format provided as specified above in <https://wbtenders.gov.in> within Bid Due Date and Time.

The financial Proposal as per Appendix-2 should be uploaded in <https://wbtenders.gov.in> within Bid Due Date and Time only. Submission of financial proposal in other mode may liable to bid rejection.

10 **Proposal Evaluation:**

The Evaluation Committee appointed by the WBHDCL shall carry out its evaluation applying the evaluation criteria and point system specified hereby. Each responsive proposal shall be attributed a technical score (St.). If the any of the Personnel's in the Technical Bid, who are to be evaluated in Technical Bid evaluation Stage does not fulfill the minimum qualification related to experience, and then zero marks shall be assigned for that sub-criteria.

The Consultant /Bidder scoring highest technical & financial Score shall be declared as preferred Bidder for award of Contract.

10.2 Technical Evaluation Criteria

10.2.1 The points assigned to Technical Evaluation criteria are:

S. No.	Description	Marks
1	Firm's relevant experience for the assignment	7
2	The quality of methodology and work plan proposed	3
3	Qualifications and competence of the key staff for the assignment	90
	Total	100

10.2.2 Sub criteria for Relevant Experience of the firm for the assignment (For last 5 Years):-

1	Year of Establishment of the Firm	1
2	As a financial Consultant for Hybrid Annuity Model/BOT or as a transaction advisor for hybrid annuity model/BOT Highway Projects for civil works construction cost of not less than Rupees 200 (Crores) only	6
	Total Marks	7

10.2.3 Adequacy of the proposed work plan and methodology in responding to the RFP.

1	Quality of approach and methodology	2
2	Work Programmer	1
	Total Marks	3

NOTE:

- 1) Method of Marking: Applicants fulfilling Minimum Qualifying Criteria in terms of eligible project shall be awarded pass percentage of 75%. Applicants who exceed minimum criteria shall be awarded extra

percentage marks over 75% to upto a maximum of 100% on prorata basis considering maximum achieved qualifying criteria as 100% among the bidders whose technical bid is opened, responsive and evaluated.

- 2) Only those projects should be included, which are supported by the certificates of Principal Employer mentioning that the consultancy work has been completed satisfactory. Consultants should give details of the experience of completed projects. No Qualification/Experience etc. shall be considered without proof of experience issued by client's representative.

10.2.4 Qualification and competence of following Key professional staff for the assignment shall be evaluated. The weightage for various key staffs are as under:

Sl.No.	Staff Position	Marks
1	Team Leader /Senior Financial Analyst	40
2	Financial Analyst	25
3	Legal Specialist	25
		90

NOTE- Each Key Personnel will be marked on scale of 100 marks and will be assigned weightage as above.

A. General Qualifications	
i Mandatory Educational Qualification as per Criteria (For graduation, post-graduation or diploma course as mandatory criteria, Certificate from the Educational Institute must be provided. Provisional Certificate shall not be accepted.). Courses taken by correspondence shall not be considered eligible.	25
Total Marks (A)	25
B. Professional Experience	75
ii Total Professional Experience as per Section 4	20
iii Relevant Experience form the Project as per Section 4.	40
iv Whether person employed with the Firm for more than three years.	5
v Whether person working at Kolkata. *	10
Total Marks (B)	75
Total (A+B)	100

Note: Person for the post fulfilling Minimum Qualifying Criteria shall be awarded pass percentage of 75% in sub categories (i), & (ii). Those who exceed minimum criteria (i.e. having additional criteria shall be awarded extra percentage marks over 75% to up to a maximum of 100% on pro-rata basis considering

maximum achieved qualifying criteria as 100% among the bidders whose technical bid is opened, responsive and evaluated.

* It is encouraged to have more applicants who are working in Kolkata and regular employee of the applicant accordingly a special allotment of marks for this subhead (IV & V) has been awarded. It is to note that for these sub criteria's the marks shall be awarded between 0 % to 100% on pro-rata basis considering maximum achieved qualifying criteria as 100% among the bidders whose technical bid is opened, responsive and evaluated.

- 10.3 Financial Evaluation Criteria
- 10.3.1 Financial Bid should contain:
- 10.3.2 Rate should be quoted as per Appendix- 2
- 10.4 Total Marks
- 10.4.1 Technical Weightage-80%,Commercial Weightage-20%
- 10.4.2 $HS=TS*80\%+FS*20\%$
HS-Highest Score
TS-Technical Score
FS-Financial Score
FS=Lowest Price/Bidder Price*100

11 Cost of preparing and submitting Bid

Any cost or costs incurred by the Consultant /Bidder for preparing the proposal and negotiating for the contract, including visit to site, are not reimbursable and WBHDCL is not bound to accept any of the proposals received by it and reserves the right to annul the selection process at any time prior to contract award, without thereby incurring any liability to the Consultants.

12 Language of Proposal

The proposal shall be submitted in English Language and all correspondence would be in the same language

13 Number of Proposals

An applicant shall be entitled to submit only one Proposal, If an Applicant submits or participates in more than one proposal, proposals of such Applicants shall be disqualified.

14 Corruption and Fraud:

- 14.2 Consultant have an obligation to disclose any situation of actual or potential conflict that impacts their capacity to serve the best interest of their Client, or than may reasonably be perceived as having this effect. Failure to disclose said situations may lead to the disqualification of the Consultant or the termination of its Contract. It is the policy/practice of WBHDCL that the consultants observe the highest standard of ethics during the selection and execution of such contracts.

- 14.3 In pursuance to this policy, following defines, for the purpose of this paragraph, the terms set forth below as follows:

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

“**fraudulent practice**” means a misrepresentation or omission of facts in order to influence a selection process or the execution of a contract; “**collusive practices**” means a scheme or arrangement between two or more consultants with or without the knowledge of the Client, designed to establish prices at artificial, non-competitive levels;

“**Coercive practices**” means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in a procurement process, or affect the execution of a contract.

- 14.4 WBHDCL will reject a proposal for award if it determines that the Consultant recommended for award has, directly or through an agent, engaged in corrupt, fraudulent, collusive or coercive practices in competing for the contract in question;

- 14.5 WBHDCL will declare an applicant ineligible, either indefinitely or for a stated period of time, to be awarded a contract if it at any time determines that the applicant has engaged in corrupt or fraudulent practices in competing for, or in executing, a contract; and

Consultants and their associates shall not be under a declaration of ineligibility for corrupt and fraudulent practices. Furthermore, the Consultants shall be aware of the provisions on fraud and corruption stated in the specific clauses in the General Conditions of Contract.

15 **Bid validity**

The validity of the Proposals shall be for 120 days from the Proposal Due Date specified in the RFP. During this period, Consultants shall maintain the availability of Professional staff nominated in the Proposal.

16 **Bid Security**

- 16.1. The Applicant shall furnish as part of its Proposal, a bid security of Rs. 25,000 (Rupees Twenty Five Thousand only) in the form of a Demand Draft payable at Kolkata in favour of West Bengal Highway Development Corporation Limited. The Bid submitted without Bid Security will be summarily rejected by Authority as non-responsive. This Bid Security shall be refundable not later than 150 (one hundred and fifty) days from the due date of the Proposals (BDD), except in the case of the Selected Bidder whose Bid Security shall be returned when the Selected Bidder has signed the Contract Agreement with WBHDCL and has furnished the required Performance Guarantee as specified in this RFP. The WBHDCL shall not be liable to pay any interest on the Bid Security and the same shall be interest free.

In addition to other provisions contained in this RFP for forfeiture of Bid Security, the Bid Security shall be forfeited as damages without prejudice to any other right or remedy that may be available to the Client, under the following condition:

- (a) In the case of the Selected Applicant, fail within the specified time limit –
- (i) To execute the Agreement with the Client, or
 - (ii) To furnish the Performance Security within the period prescribed in the Agreement.

17 **Responsiveness of Proposal /Bid :**

WBHDCL shall examine the Bid to determine whether the bids are responsive to the requirements of the bid document. Bids shall be considered **non responsive** and liable for rejection for the following reasons

- a) Bid is not received by the due date and time including any extension thereof;
- b) Bid is not accompanied with Bid Security as specified in this RFP;
- c) Bid is not accompanied with the required documents as specified in this RFP;
- d) Original Bid is not signed, sealed, bound together in hard cover and marked;
- e) Bid is not accompanied by the documents as specified in the RFP in section 9

18 **Clarifications And Amendment of RFP Documents**

- 18.2 The eligible Consultants may request a clarification on of the RFP up to the pre-bid meeting date. Any request for clarification must be sent in writing by paper mail, or electronic mail to the Client's address up to the date of Pre-Bid meeting date specified. The Client may upload the reply to e-tendering portal of Govt. of West Bengal (<http://etender.wb.nic.in>) to such requests (including an explanation of the query but without identifying the source of inquiry). Clarification/ amendment will also be hosted on WBHDCL website
- 18.3 At any time before the submission of Proposals, the Client may for any reason, whether at its own initiative or in response to a clarification requested by a Consulting firm, modify the RFP by amendment /Corrigenda /Addenda. Any amendment shall be issued through Corrigendum/amendments/addenda /

amended documents which shall be hosted on WBHDCL website (www.wbhdcl.gov.in) and e-tendering portal of Govt. of West Bengal (<http://etender.wb.nic.in>) which will be binding on the consultants/Bidders. In order to afford the applicants a reasonable time for taking an amendment into account, or for any other reason, WBHDCL may, if deemed necessary in its sole discretion, extend the Proposal Due Date and the same shall also be uploaded on website only.

19 Confidentiality

- 19.2 Information relating to the examination, clarification, evaluation and recommendation for the selection of applicants shall not be disclosed to any person who is not officially concerned with the Selection Process or is not a retained professional adviser advising WBHDCL in relation to matters arising out of, or concerning the Selection Process. WBHDCL will treat all information, submitted as part of a Proposal, in confidence and will require all those who have access to such material to treat the same in confidence. WBHDCL may not divulge any such information unless it is directed to do so by any statutory entity that has the power under applicable law to require its disclosure or is to enforce or assert any right or privilege of any statutory entity and/or WBHDCL.

20 Clarifications

- 20.2 To facilitate evaluation of Proposals, WBHDCL may, at its sole discretion, seek clarifications from any applicant regarding its Proposal. Such clarification(s) shall be provided within the time specified by WBHDCL for this purpose. Any request for clarification(s) and all clarification(s) in response thereto shall be in writing.
- 20.3 If an applicant does not provide clarifications sought above within the specified time, its Proposal shall be liable to be rejected at the discretion of WBHDCL. In case the Proposal is not rejected, WBHDCL may proceed to evaluate the Proposal by construing the particulars requiring clarification to the best of its understanding, and the applicant shall be barred from subsequently questioning such interpretation of WBHDCL.

21 Award of Contract

- 21.2 After the completion of Evaluation Process the client will issue a “**Letter of Acceptance**” (LOA) to highest scoring bidder.
- 21.3 After receiving the Letter of Acceptance consultant has to submit the performance security of requisite amount within the stipulated time mentioned within 7 days.
- 21.4 The successful applicant with whom the contract is signed is expected to commence the assignment within 3 days. Format of the Contract will be as per Appendix-4.

22 Performance Security

- 22.2 Consultant shall be required to submit acceptable Bank Guarantee for an amount equal to 10 % of the consultancy cost towards Performance Security within 7 (Seven) days of LOA in the format specified in Appendix 3. The validity of the Bank Guarantee (s) shall cover entire duration of consultancy period plus three months of the claim period, at the beginning. In case Extension of Time is required to be extended, The Bank Guarantee (s) shall be released after satisfactory completion of the Assignment. For the avoidance of doubt, the submission of Performance Security shall be a condition precedent for signing of the Contract and non-submission of the same by the Consultant shall result in withdrawal of the award of the Contract and forfeiture of the Bid Security.
- The Consultant may also submit security deposit in form of Demand Draft/Pay order payable at Kolkata in place of Bank Guarantee in favour of “West Bengal Highway Development Corporation Limited”. WBHDCL will en-cash the Demand Draft/Pay Order submitted by the Consultant. WBHDCL will return this amount by issuing a cheque/DD/RTGS in favour of the Consultant without any interest after successful completion of the assignment to the satisfaction of the Competent Authority.

23 Proprietary data

All documents and other information provided by WBHDCL or submitted by an applicant to WBHDCL shall remain or become the property of WBHDCL. Applicants and the Consultant, as the case may be, are to treat all information as strictly confidential. WBHDCL will not return any Proposal or any information related thereto to any of the applicants. All information collected, analyzed, processed or in whatever manner provided by the applicants and/or the Selected Consultant, as the case may be, to WBHDCL in relation to the Consultancy shall be the property of WBHDCL.

24 Pre-Proposal Conference

24.2 Pre-proposal conference of the applicants shall be convened at the designated date, time as specified in RFP and at WBHDCL head office. All applicants shall be allowed to participate in the pre-proposal conference. A maximum of 2 (two) representatives of each applicant shall be allowed to participate on production of an authority letter from the concerned applicant.

24.3 During the course of the pre-proposal conference, the applicants will be free to seek clarifications and make suggestions for consideration of the Authority. The Client shall endeavor to provide clarifications and such further information as it may, in its sole discretion, consider appropriate for facilitating a fair, transparent and competitive Selection Process.

25 Other Terms of the services:

25.2 The bidders will propose one team as mentioned in the RFP

25.3 In case of non-availability of any team personnel, the project awarded to the team will be withdrawn and no payment for this project will be released.

25.4 WBHDCL shall provide to Financial Consultant the Project reports prepared by engineering consultants and other documents/information/reports in its possession and/or knowledge as it may consider relevant to the Services and the Project as and when such information is available with WBHDCL.

25.5 The Financial Consultant shall perform the Services based upon information furnished to it by WBHDCL, and its consultants. The Financial Consultant shall be entitled to rely upon such information as authentic. The Financial Consultant shall not be required to check the veracity of the information provided and therefore not liable for any deficiency in the services due to erroneous or incomplete information received.

25.6 Wherever required by applicable laws, WBHDCL shall deduct taxes at source, from the amounts payable, and shall provide to the Financial Consultant the appropriate tax deduction certificate evidencing payment of such taxes.

25.7 In the event WBHDCL desires the Financial Consultant to perform any additional services, which are not within the general scope of the Services. The Financial Consultant shall provide such additional services, on the terms and conditions as may be found mutually acceptable to the parties hereto.

25.8 The Financial Consultant shall have the discretion to adopt such methodology and procedure as it may deem fit for rendering the services. Output and delivery of output at each stage of bid award shall be made as defined by WBHDCL from time to time.

25.9 The Financial Consultant shall submit to WBHDCL approximately two (2) copies of the final output envisaged in the Scope of Services except the RFQ, RFP and the Concession Agreement. The Financial Consultant shall submit nine copies (3 copies each of the RFQ, RFP and the Concession Agreement). All the reports and agreements shall be submitted on CDs (2 sets) containing all basic as well as processed data. However, WBHDCL may reserve the right regarding the number of copies of RFP and RFQ required to be submitted by the financial consultant at the time of allocation of work.

25.10 The Financial Consultants should coordinate with WBHDCL up to final stage of agreement and submit at least 3 hard bound duly numbered copies of Concession Agreement as standardized by WBHDCL with the concessionaire.

25.11 Conflict of interest, if any, would require to be declared upfront by the Financial Consultants.

25.12 WBHDCL reserves the right to accept or reject any or all applications, without thereby incurring any liability to the affected Applicant(s) or any obligation to inform the Applicant(s) of the grounds for the action of WBHDCL. WBHDCL also reserves the right not to award or enter into any contract or agreement with any Applicant(s), and may terminate the procurement process at any time without thereby incurring

- any liability to any Applicant.
- 25.13 WBHDCL reserves the right to use and interpret the information it receives in its absolute discretion for evaluating these proposals.
- 25.14 Applicants are required to use the prescribed format only for their proposal submission.
- 25.15 WBHDCL does not assume any responsibility for variation in the information like traffic data, length and cost of project etc.
- 25.16 A Financial Consultant shall be liable for penalty disqualification and blacklisting, if they are engaged as any legal, financial or technical adviser by the bidders / concessionaire of the Authority in relation to the Project in any manner for matters related to or incidental to such Project during the Bidding Process or subsequent to the (i) issue of the LOA or (ii) execution of the Concession Agreement. In the event any such adviser is engaged by the Selected Bidder or Concessionaire, as the case may be, after issue of the LOA or execution of the Concession Agreement, then notwithstanding anything to the contrary contained herein or in the LOA or the Concession Agreement and without prejudice to any other right or remedy of the Authority, including the forfeiture and appropriation of the Bid Security or Performance Security, as the case may be, which the Authority may have thereunder or otherwise, the LOA or the Concession Agreement, as the case may be, shall be liable to be terminated without the Authority being liable in any manner whatsoever to the Selected Bidder or Concessionaire for the same.
- 25.17 Consultants who have been debarred by NHAI, MORT&H, Highway Corporations / Departments in other states of India and PWD, Government of West Bengal and the debarment is in force as on last date of submission of proposal, need not apply as their RFP Proposal will not be entertained.

Appendix-1

FORMAT FOR SUBMISSION OF TECHNICAL PROPOSAL

Form-1	Letter of Proposal
Form-2	Power of Attorney of the Applicant
Form-3	Abstract of Eligible Assignments of the Applicant
Form-4	Comments And Suggestions on The RFP
Form-5	Description Of Approach, Methodology And Work Plan For Performing The Assignment
Form-6	Team Composition And Task Assignments
Form-7	Format Of Curriculum Vitae (CV) For Proposed Key Personnel

Forms for Technical Proposal

Form-1

Letter of Proposal

(On Applicant's letter head)

(Date and Reference)

To,

(Name and address of Client)

Sub: Appointment of Consultant for

Dear Sir,

1. With reference to your RFP Document vide I/We*, having examined all relevant documents and understood their contents, hereby submit our Proposal for selection as **“Financial consultancy services for Strengthening and Widening of Barrackpore-Kalyani Expressway from Moragacha Crossing (Ch 0.00 Km) to Kampa Crossing (Ch 30.00 Km) to Four lane Phase-I on Hybrid Annuity Model”**. The proposal is unconditional and unqualified.
2. All information provided in the Proposal and in the Appendices is true and correct and all documents accompanying such Proposal are true copies of their respective originals.
3. This statement is made for the express purpose of appointment as the Consultant for the aforesaid Project.
4. I/We shall make available to the Authority any additional information it may deem necessary or require for supplementing or authenticating the Proposal.
5. I/We acknowledge the right of the Authority to reject our application without assigning any reason or otherwise and hereby waive our right to challenge the same on any account whatsoever.
6. I/We certify that in the last three years, I/We have neither failed to perform on any contract, as evidenced by imposition of a penalty by an arbitral or judicial authority or a judicial pronouncement or arbitration award against the Applicant, nor been expelled from any project or contract nor have had any contract terminated for breach on our part.
7. I/We declare that:
 - (a) I/We have examined and have no reservations to the RFP Documents, including any Addendum issued by the Authority;
 - (b) I/We do not have any conflict of interest in accordance with the RFP Document;
 - (c) I/We have not directly or indirectly or through an agent engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice, as defined in RFP document, in respect of any tender or request for proposal issued by or any agreement entered into with the Authority or any other public sector enterprise or any government, Central or State; and
 - (d) I/We hereby certify that we have taken steps to ensure that in conformity with the provisions of the RFP, no person acting for us or on our behalf will engage in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice.
8. I/We understand that you may cancel the Selection Process at any time and that you are neither bound to accept any Proposal that you may receive nor to select the Consultant, without incurring any liability to the Applicants in accordance with the relevant Clause of the RFP document.
9. I declare that I am not a Member of any other Financial Consultant applying for Selection as a Consultant.**
10. I/We certify that in regard to matters other than security and integrity of the country, we have not been

convicted by a Court of Law or indicted or adverse orders passed by a regulatory authority which would cast a doubt on our ability to undertake the Consultancy for the Project or which relates to a grave offence that outrages the moral sense of the community.

11. I/We further certify that in regard to matters relating to security and integrity of the country, we have not been charge-sheeted by any agency of the Government or convicted by a Court of Law for any offence committed by us or by any of our Associates.
12. I/We further certify that no investigation by a regulatory authority is pending either against us or against our Associates or against our CEO or any of our Directors/Managers/employees.
13. I/We hereby irrevocably waive any right or remedy which we may have at any stage at law or howsoever otherwise arising to challenge or question any decision taken by the Authority [and/ or the Government of West Bengal] in connection with the selection of Consultant or in connection with the Selection Process itself in respect of the above mentioned Project.
14. I/We agree and understand that the proposal is subject to the provisions of the RFP document. In no case, shall I/we have any claim or right of whatsoever nature if the Consultancy for the Project is not awarded to me/us or our proposal is not opened or rejected.
15. I/We agree to keep this offer valid for 120(one hundred twenty) days from the Proposal Due Date specified in the RFP.
16. A Power of Attorney in favour of the authorised signatory to sign and submit this Proposal and documents is attached herewith as per the enclosed format.
17. I/We have studied RFP and all other documents carefully and also surveyed the Project site. We understand that except to the extent as expressly set- forth in the Agreement, we shall have no claim, right or title arising out of any documents or information provided to us by the Authority or in respect of any matter arising out of or concerning or relating to the Selection Process including the award of Consultancy.
18. I/We agree and undertake to abide by all the terms and conditions of the RFP Document. In witness thereof, I/we submit this Proposal under and in accordance with the terms of the RFP Document.

Yours faithfully,

(Signature, name and designation of the Authorised Signatory)

(Name and seal of the Applicant)

Note:

- (i) *We will be applicable only when any legal expert from an outside legal firm has been included in the consultancy team.
- (ii) ** will be applicable only when any legal expert from an outside legal firm has been included in the consultancy team.

Form-2

Power of Attorney

Know all men by these presents, We, _____ (insert name of applicant and address of the registered office of the applicant) do hereby constitute, nominate, appoint and authorise Mr./ Ms..... [son/daughter/wife] of _____ and presently residing at _____, who is presently employed with us and holding the position of _____ as our true and lawful attorney (hereinafter referred to as the “**Authorised Representative**”) to do in our name and on our behalf, all such acts, deeds and things as are necessary or required in connection with or incidental to submission of our Proposal for selection as the Consultant for _____, including but not limited to, signing and submission of all applications, proposals and other documents and writings, participating in pre-bid and other conferences and providing information/ responses to the Client, representing us in all matters before the Client, signing and execution of all contracts and undertakings consequent to acceptance of our proposal and generally dealing with the Client in all matters in connection with or relating to or arising out of our Proposal for the said Project and/or upon award thereof to us till the entering into of the Agreement with the Authority.

AND we do hereby agree to ratify and confirm all acts, deeds and things lawfully done or caused to be done by our said Authorised Representative pursuant to and in exercise of the powers conferred by this power of attorney and that all acts, deeds and things done by our said Authorised Representative in exercise of the powers hereby conferred shall and shall always be deemed to have been done by us.

Capitalised terms used herein shall have the meaning assigned to them in the RFP dated _____.

IN WITNESS WHEREOF WE, THE ABOVE NAMED PRINCIPAL HAVE EXECUTED THIS POWER OF ATTORNEY ON THIS DAY OF, 20**

For

(Signature, name, designation and address)

Witnesses:

1.

2.

Notarised

Accepted

.....
(Signature, name, designation and address of the Attorney)

Notes:

The mode of execution of the Power of Attorney should be in accordance with the procedure, if any, laid down under law and the charter documents of the executants(s) and when it is so required the same should be under common seal affixed in accordance with the required procedure.

Wherever applicable, the applicant should submit for verification the extract of the charter documents and other documents such as a resolution authorizing the issuance of this power of attorney and power of attorney in favour of the person executing this power of attorney for the delegation of power hereunder on behalf of the applicant.

Form-3

Abstract of Eligible Assignments of the Applicant

As a financial Consultant for Hybrid Annuity Model/BOT/Annuity Concession Contract or as a transaction advisor for hybrid annuity model/BOT/Annuity Concession Contract

Sl No.	Name of Financial Consultant/ Transaction Advisory Services	Type of services rendered including details scope of service	Length in (meter / Km)	Client with complete address, telephone no. & fax no.)	Approx. cost of project	Fee received in INR	Period (Start and Completion date)	Reference certificate attached vide page no .
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)

I certify that the information in the above Request for Proposal formats is true to the best of my knowledge.

(Signature, name and designation of the Authorised Signatory)

#

Note:

Highway Project - completed **in last five years** consultancy service for four lane /six lane projects each of length not less than 20 Km.

The applicant should provide details of only those projects that have been undertaken by it under its own name or any name previous to the existing name.

Copy of LOA, copy of signing of Agreement, copy of JV Agreement and Original/attested Copy of certificate of completion /substantial completion of the project with certificate of receipt of payment with values of such payment from the Employer must be enclosed.

Form- 4

COMMENTS AND SUGGESTIONS ON THE RFP

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

- 1.
- 2.
- 3.
- 4.
- 5.

.....
.....

(Signature, name and designation of the Authorised Signatory)

DESCRIPTION OF APPROACH, METHODOLOGY AND WORK PLAN FOR PERFORMING THE ASSIGNMENT

[Technical approach, methodology and work plan are key components of the Technical Proposal. Applicants are suggested to present their Technical Proposal divided into the following three chapters:

- a) Technical Approach and Methodology (not more than ten pages),
- b) Work Plan (not more than ten pages), and
- c) Organization and staffing (not more than five pages),

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

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

c) Organization and Staffing. The Applicant should propose the structure and composition of its team.

(Signature, name and designation of the Authorised Signatory)

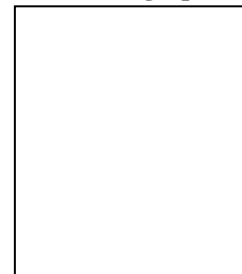
TEAM COMPOSITION AND TASK ASSIGNMENTS

Professional Staff				
Name of staff	Firm	Area of Expertise	Position Assigned	Task Assigned

(Signature, name and designation of the Authorised Signatory)

FORMAT OF CURRICULUM VITAE (CV) FOR PROPOSED Key Personnel

Photograph



Proposed Position:

Name of Firm:

Name of Staff:

Academic Qualification.....

Profession:

Date of Birth:

Years with applied Firm/Entity: (please enclose audited certificate).

Nationality:

Membership of Professional Societies:.....

Training Undertaken or conducted.....

Paper Published in National/ International Journals

Summary of Work Experience:

- Total experience in Financial Consultancy:.....

Summary of Qualification & Experience vis-a-vis the requirements

Requirements	Possessed by the Staff Member	Break-up of experience	
		Brief Description of Project	Man-months provided

Key Qualifications:

[Give an outline of staff member's experience and training most pertinent to tasks on assignment. Describe degree of responsibility held by staff member on relevant previous assignments and give dates and locations.]

Education :

[Summarise college/university and other specialized education of staff member, giving their names, dates attended, and degrees obtained.]

Employment Record:

[Starting with present position, list in reverse order every employment held. List all positions held by staff member since graduation, giving dates, name of employing organizations, titles of positions held, and locations of assignments. For experience, also give types of activities performed and client references, where appropriate.]

Sl. No.	Name of Firm	Work/Project Name	Position Held	Location and brief of work assigned	Duration of work in the project	Main Project features

Permanent Employment with this Firm _____ Yrs

If Yes, how many Years:

If no, what is the nature of employment:

Arrangement with the firm:

Languages:

[For English language indicate proficiency: excellent, good, fair, or poor; in speaking, reading, and writing]

Certification by the Candidate

I, the undersigned, (Name and Address) certify that I have not left any assignment with the consultants / contracting firm for any continuing work without completing my assignment. I will be available for the entire duration of the current project (named.....). If I leave this assignment in the middle of the completion of the work, WBHDCL would be at liberty to debar me from taking any assignment in any of WBHDCL works for appropriate period of time to be decided by WBHDCL. I have no objection if my services are extended by WBHDCL for this work in future and I will be liable to carry on assignment till completion otherwise my leaving without permission would be treated as breach of contract.

Signature of the candidate

Date : (Day/Month/Year)

Place :

For Key Personnel having intermittent inputs, add the following:

I further certify that I am associated with the following assignments as on date (as on 7 days prior to due date for submission of proposal) including those for which LOA has been received by the firm and the inputs in these assignments shall not affect the work of the current assignment.

Signature of the candidate

Date : (Day/Month/Year)

Place :

Certification by the firm

The undersigned on behalf of -----(name of consulting firm) certify that Shri ----- (name of the proposed personnel and address)..... has not left his assignment with any other consulting firm / Contracting firm for the ongoing projects. We understand that if the information about leaving the past assignment is known to WBHDCL, WBHDCL would be at liberty to remove the personnel from the present assignment and debar him for an appropriate period to be decided by WBHDCL for future project of WBHDCL.

Place

Date:.....(Day/Month/Year)

[Signature of authorized representative of the Firm]

Note:-

- a)** Each page of the CV shall be signed in ink by both the Personnel concerned and by the Authorised Representative of the Applicant firm along with the seal of the firm. Photocopies will not be considered for evaluation.
- b)** Personnel are to affix his recent photograph on first page of CV.
- c)** Complete address and phone number of the Personnel is to be provided.
- d)** Document for proof of age is to be enclosed.
- e)** Document for proof of qualification is to be enclosed.
- f)** Age of the personnel shall not be more than 65 years.

Appendix-2

FORMAT FOR SUBMISSION OF FINANCIAL PROPOSAL (To be Submitted in on-line mode only)

Sl. No.	Name of the Firm	No of Consultant Engaged by the Firm	Consultancy Fees (in Rs.) excluding Tax
1			
Total			

(Signature, name and designation of the Authorised Signatory)

Appendix-3

**FORM OF PERFORMANCE SECURITY
(PERFORMAMANCE BANK GUARANTEE)**

To

Chief General Manger

West Bengal Highway Development Corporation Ltd.

4th &5th Floor, HRBC Bhawan

Munshi Premchand Sarani

Kolkata -700 021

WHEREAS [Name and address of Consultants] (hereinafter called “the consultants”) has undertaken, in pursuance of LOA No.dated to provide the services on terms and conditions set forth in the RFP [Name of the work and the brief description of works) (hereinafter called the “Work”).

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

AND WHEREAS we,through our Branch at(the “Bank”) have agreed to furnish this Bank Guarantee by way of Performance Security . The Bank Guarantee issued shall be operative at Kolkata Branch _____ [Branch name] _____ [Branch Code]

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

NOW, THEREFORE, the Bank hereby, unconditionally and irrevocably, guarantees and affirms as follows:

1. The Bank hereby unconditionally and irrevocably guarantees the due and faithful performance of the Consultant’s obligations under and in accordance with the Agreement, and agrees and undertakes to pay to the Authority, upon its mere first written demand, and without any demur, reservation, recourse, contest or protest, and without any reference to the Consultant, such sum or sums upto and aggregate sum of the Guarantee Amount as the Authority shall claim, without the Authority being required to prove or to show grounds or reasons for its demand and/or for the sum specified therein.

2. A letter from the Authority, under the hand of an Officer not below the rank of Chief General Manager of West Bengal Highway Development Corporation Limited, that the Consultant has committed a default in the due and faithful performance of all or any of its obligations under and in accordance with the Agreement

shall be conclusive, final and binding on the Bank. The Bank further agrees that the Authority shall be the sole judge as to whether the Consultant is in default in due and faithful performance of its obligations under the Agreement and its decision that the Consultant is in default shall be final and binding on the Bank, notwithstanding any differences between the Authority and the Consultant, or any dispute between them pending before any court, tribunal arbitrators or any other authority or body, or by the discharge of the Consultant for any reason whatsoever.

3. In order to give effect to this Performance Security Bank Guarantee, the Authority shall be entitled to act as if the Bank were the principal debtor and any change in the constitution of the Consultant and/or the Bank, whether by their absorption with any other body or corporation or otherwise, shall not in any way or manner affect the liability or obligation of the Bank under this Guarantee.
4. It shall not be necessary, and the Bank hereby waives any necessity, for the Authority to proceed against the Consultant before presenting to the Bank its demand under this Guarantee.
5. The Authority shall have the liberty, without affecting in any manner the liability of the Bank under this Performance Security Bank Guarantee, to vary at any time, the terms and conditions of the Agreement or to extend the time or period for the compliance with, fulfilment and/ or performance of all or any of the obligations of the Consultant contained in the Agreement or to postpone for any time, and from time to time, any of the rights and power exercisable by the Authority against the Consultant, and either to enforce or forbear from enforcing any of the terms and conditions contained in the Agreement and/or the securities available to the Authority, and the Bank shall not be released from its liability and obligation under these presents by any exercise by the Authority of the liberty with reference to the matters aforesaid or by reason of time being given to the Consultant or any other forbearance, indulgence, act or omission on the part of the Authority or of any other matter or thing whatsoever which under any law relating to sureties and guarantors would but for this provision have the effect of releasing the Bank from its liability and obligation under this Performance Security Bank Guarantee and Bank hereby waives all of its rights under any such law.
6. This Guarantee is in addition to and not in substitution of any other Guarantee or Security now or which may hereafter be held by the Authority in respect of or relating to the agreement or for the fulfillment, compliance and /or performance of all or any of the obligations of the Consultant under the agreement.
7. Notwithstanding anything contained hereinbefore, the liability of the Bank under this Performance Security Bank Guarantee is restricted to the Guarantee Amount and this Guarantee will remain in force for a Period of fifteen months and unless a demand or claim in writing is made by the Authority on the Bank under this rights of the Authority under this Guarantee from the date of expiry of this Guarantee, all rights of the Authority under this Guarantee shall be forfeited and the Bank shall be relieved from its liabilities hereunder.
8. The Bank undertakes not to revoke this Guarantee during its currency, except with the previous express consent of the Authority in writing, and declares and warrants that it has the power to issue this Guarantee and the undersigned has full powers to do so on behalf of the Bank.
9. Any notice by way of request, demand or otherwise hereunder may be sent by post addressed to the Bank or by hand at its above referred Branch, which shall be deemed to have been duly authorised to receive such notice and to effect payment thereof forthwith, and if sent by post it shall be deemed to have been given at the time when it ought to have been delivered in due course of post and in proving such notice, when given by post, it shall be sufficient to prove that the envelope containing the notice was posted and certificate signed by an officer of the Authority that the envelope was so posted shall be conclusive.

10. This Performance Security Bank Guarantee shall come into force with immediate effect and shall remain in force and effect for a period of fifteen months or until it is released earlier by the Authority pursuant to the provisions of the Agreement.

Signed and sealed thisday of20.....at.....

DELIVERED

SIGNED, SEALED AND

For and on behalf of
the BANK by:

(Signature)

(Name)

(Designation)

(Code Number)

(Address)

NOTES:

- (i) The bank guarantee should contain the name, designation and code number or the officer(s) signing the guarantee.
- (ii) The address, telephone number 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.

Appendix-4

FORMAT OF CONTRACT

(Draft & will be finalized at the time of signing of agreement)

AGREEMENT

AGREEMENT No.

This AGREEMENT (hereinafter called the “Agreement”) is made on this the day of.....[month] of 2017,

BETWEEN,

West Bengal Highway Development Corporation Limited (WBHDCL) a Company having Corporate Identification Number U45203WB2012SGC180687 represented by the Chief General Manager and having its principal office at 4th &5th Floor, HRBC Bhawan, Munshi Premchand Sarani, Kolkata -700 021(hereinafter referred to as the “Authority” which expression shall and unless repugnant to the context or meaning thereof, includes its administrators, successors and assigns) of one part;

AND

..... [Name of the Financial Consultant] incorporated under the provisions of the Companies Act / LLP Act with CIN/Registration No.....[applicable only for the Companies /LLP] having its registered office at(hereinafter referred to as the “Consultant” which expression shall and unless repugnant to the context or meaning thereof, includes its successors and permitted assigns) of the other part.

WHEREAS

- (A) The Authority vide its Request for Proposal for
- (B) The Consultant submitted its proposals for the aforesaid work, whereby the Consultant represented to the Authority that it had the required professional skills, and in the said proposals the Consultant also agreed to provide the Services to the Authority on the terms and conditions as set forth in the RFP and this Agreement; and
- (C) The Authority, 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:

1.1 GENERAL

1.1.1 Definitions and Interpretation

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. "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;
- b. "Agreement" means this Agreement, together with all the Annexes; (c) "Agreement Value" shall have the meaning set forth in Clause 6.1.2;
- c. "Confidential Information" shall have the meaning set forth in Clause 3.3;
- d. "Conflict of Interest" shall have the meaning set forth in Clause 3.2 read with the provisions of RFP;
- e. "Dispute" shall have the meaning set forth in Clause 9.2.1;
- f. "Effective Date" means the date on which this Agreement comes into force and effect pursuant to Clause 2.1;
- g. "Government" means the [Government of West Bengal];
- h. "INR, Re., or Rs." means Indian Rupees;
- i. "Personnel" means persons hired by the Consultant or engaged by the Consultant as third party or as an employees, as the case may be, and assigned to the performance of the Services or any part thereof;
- j. "Party" means the Authority or the Consultant, as the case may be, and Parties means both of them;
- k. "Services" means the work to be performed by the Consultant pursuant to this Agreement, as described in the RFP;
- l. "RFP" means the Request for Proposal document in response to which the Consultant's proposal for providing Services was accepted;
- m. "Third Party/ any entity affiliated with the Consultant" means any legal expert from an outside legal firm who has been included in the consultancy team other than the Government, the Authority, the 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 Integrated Contract:

The following documents shall constitute the entire agreement between WBHDCL and the Consultant, and each shall be read and construed as an integral part of the Agreement:

- (1) This Agreement;
- (2) the letter of award dated; and
- (3) The RFP bearing reference no.

In the event of any ambiguity or conflict between the documents listed above, the order of precedence shall be the order in which the documents are listed above.

This Agreement and the documents listed above represent and constitute the entire understanding between the Parties and shall not be explained, modified or contradicted by any prior or contemporaneous negotiations or representations, either written or oral or minutes of any meeting (including pre-bid meeting/s) or conference(s) and correspondence between the Parties.

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 Authority 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 Authority 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 Authority shall make payments to the Consultant in accordance with the provisions of the Agreement or Provision of RFP.

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 Kolkata 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 is 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 and by letter delivered by hand to the address given and marked for attention of the Consultant's Representative set out below in Clause 1.9 or to such other person as the Consultant may from time to time designate by notice to the Authority, provided
- (b) in the case of the Authority, be given by facsimile and by letter delivered by hand and be addressed to the Authority with a copy delivered to the Authority Representative set out below in Clause 1.9 or to such other person as the Authority may from time to time designate by notice to the Consultant; provided that if the Consultant does not have an office in KOLKATA it may send such notice by facsimile 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.

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 AUTHORISED REPRESENTATIVES

1.9.1. Any action required or permitted to be taken, and any document required or permitted to be executed, under this Agreement by the Authority or the Consultant, as the case may be, may be taken or executed by the officials specified in this Clause 1.9.

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

Chief General Manager,
West Bengal Highway Development Corporation Limited
4th & 5th Floor, HRBC Bhawan, Munsii Premchand Sarani,
Kolkata – 700021
Ph: 033-22134345 / 033-22134346

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

Tel: ----- Fax: -----

1.10 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 Authority shall perform such duties in regard to the deduction of such taxes as may be lawfully imposed on it including Labour Cess. However, for GST, Consultant shall pay the GST at applicable Rates as per the GST Act and relevant Notification and same shall be reimbursed by the Authority on submission of documentary evidence of such deposit of Taxes.

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 3 (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 Authority may, by not less than 2 (two) weeks’ notice to the Consultant, declare this Agreement to be null and void.

2.4 EXPIRATION OF AGREEMENT

Unless terminated earlier pursuant to Clause 2.9 hereof, this Agreement shall expire when the Services have been completed and a period of 90 (ninety) days has elapsed after all payments due under this Agreement, have been made.

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 as 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 Clause 4.2.2 and Clause 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 Third Party 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 in so far 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 fourteen (14) days following the occurrence of such event, providing evidence of the nature and cause of such event, and shall similarly give notice of the restoration of normal conditions as soon as possible.
- (c) The Parties shall take all reasonable measures to minimize the consequences of any event of Force Majeure.

2.7.4. Extension of time

Any period within which a Party shall, pursuant to this 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

Payment will be made as per section 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 thirty (30) 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 Authority 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 thirty (30) days after receipt by the Consultant of such notice of suspension.

2.9 TERMINATION OF AGREEMENT

2.9.1. By the Authority

The Authority may, by not less than thirty (30) 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 thirty (30) days of receipt of such notice of suspension or within such further period as the Authority 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 Authority a statement which has a material effect on the rights, obligations or interests of the Authority 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 sixty (60) 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 thirty (30) 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 Authority fails to pay any money due to the Consultant pursuant to this Agreement and not subject to dispute pursuant to Clause 9 hereof within forty-five (45) days after receiving written notice from the Consultant that such payment is overdue;
- (b) the Authority is in material breach of its obligations pursuant to this Agreement and has not remedied the same within forty-five (45) days (or such longer period as the Consultant may have subsequently granted in writing) following the receipt by the Authority 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 sixty (60) days; or
- (d) The Authority 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, (ii) the obligation of confidentiality set forth in Clause 3.3 hereof, (iii) The Consultant's obligation to permit inspection, copying and auditing of its accounts and records set forth in Clause 3.6 (b) hereof, and 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 Clauses 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 Clauses 3.10 hereof.

2.9.5 Payment upon Termination

Upon termination of this Agreement pursuant to Clauses 2.9.1 or Clauses 2.9.2 hereof, the Authority 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. 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 advisor 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 Execution of Work

The work shall be executed as per the specifications made in the RFP. 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 the Personnel and agents of the 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 and any entity affiliated with the 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. 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 any entity affiliated with the 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 entity affiliated with the 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 have not 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 Authority 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 Authority shall forfeit and appropriate the performance security, if any, as mutually agreed genuine pre-estimated compensation and damages payable to the Authority towards, inter alia, 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 Authority under Clause 3.2.5 above and the other rights and remedies which the Authority may have under this Agreement, if the Consultant is found by the Authority 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 Authority 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 Authority 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 Authority 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 Authority under this Agreement;
- (d) "undesirable practice" means (i) establishing contact with any person connected with or employed or engaged by the Authority 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, any entity affiliated with the Consultant 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 Authority to the Consultant, any entity affiliated with the Consultant 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 Consultants 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, any entity affiliated with the Consultant 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, any entity affiliated with the Consultant and the Personnel of either of them or becomes a part of the public knowledge from a source other than the Consultant, any entity affiliated with the Consultant 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 Law or judicial or administrative or arbitral process or by any Governmental Instrumentalities, provided that for any such disclosure, the Consultant, any entity affiliated with the Consultant 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;
- (iv) is provided to the professional advisers, agents, auditors or representatives of the Consultant or any entity affiliated with the Consultant or Personnel of either of them, as is reasonable under the circumstances; provided, however, that the Consultant or any entity affiliated with the Consultant 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 Consultant's liability towards the Authority

The Consultant shall, subject to the limitation specified in **Clause 3.4.3**, be liable to the Authority 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 willful 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.

This limitation of liability 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.

3.5 INSURANCE TO BE TAKEN OUT BY THE CONSULTANT

3.5.1 (a) The Consultant shall take out and maintain insurance against the risks, and for the coverage, as shall be 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 premium 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 Authority 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 premium 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 Authority 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 Authority as the sole beneficiary of the Consultant or require an undertaking to that effect.

3.5.2 (a) Third Party liability Insurance as required may be taken by the Consultant as per Applicable Laws.

- (b) Employer's liability and workers' compensation insurance in respect of the Personnel of the Consultant and of any of the third party in accordance with the relevant provisions of the Applicable Law will be sole responsibility of the consultant.

3.6 ACCOUNTING, INSPECTION AND AUDITING

The Consultant shall:

- (a) keep accurate and systematic accounts and records in respect of the Services hereunder, in accordance with internationally accepted accounting principles and in such form and detail as will clearly identify all relevant time charges and cost, and the basis thereof (including the basis of the Consultant's costs and charges); and
- (b) permit the Authority 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.

3.7CONSULTANT'S ACTIONS REQUIRING THE AUTHORITY'S PRIOR APPROVAL

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

- (a) appointing such members of the Professional Personnel as are not listed in Annex-.....[Please insert the annex number]
- (b) any other action that may be specified in this Agreement.

3.8 REPORTING OBLIGATIONS

The Consultant shall submit to the Authority 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 prepared by the Consultant in performing the Services shall become and remain the property of the Authority, and the Consultant shall, not later than termination or expiration of this Agreement, deliver all such documents to the Authority, together with a detailed inventory thereof. The Consultant may retain a copy of such documents. Restrictions about the future use of these documents shall be as specified in the Agreement.
- 3.9.2. The Consultant shall not use these documents for purposes unrelated to this Agreement without the prior written approval of the Authority.

3.10 EQUIPMENT AND MATERIALS FURNISHED BY THE AUTHORITY

Equipment and materials made available to the Consultant by the Authority shall be the property of the Authority 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 Authority 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 Authority, and officials of the Authority having authority from the Authority, are provided unrestricted access to the Project Office and to all Personnel during office hours. The Authority's any such official shall have the right to inspect the Services in progress, interact with Personnel of the Consultant and verify the records 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 Authority 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 ANY ENTITY AFFILIATED WITH THE CONSULTANT

4.1 GENERAL

The Consultant shall employ and provide such qualified and experienced Personnel as may be required to carry out the Services.

4.2 DEPLOYMENT OF PERSONNEL

4.2.1. The deployment of personnel shall be as per RFP.

4.2.2. If additional work is required beyond the scope of the Services specified in the RFP, the estimated periods of engagement of Personnel, set forth in the RFP may be increased by agreement in writing between the Authority and the Consultant, provided that any such increase shall not, except as otherwise agreed, cause payments under this Agreement to exceed the Agreement Value set forth in Clause 6.1.2.

4.3 APPROVAL OF PERSONNEL

4.3.1 The Professional Personnel listed in Annex-.....[Please insert the annex number] of the Agreement are hereby approved by the Authority. No other Professional Personnel shall be engaged without prior approval of the Authority.

4.3.2 If the Consultant hereafter proposes to substitute any person as Professional Personnel as per Clause 4.4 , it shall submit to the Authority its proposal along with a CV of such person in the form provided at Appendix -.....[Please insert the appendix number] of RFP. The Authority may approve or reject such proposal within 14 (fourteen) days of receipt thereof. In case the proposal is rejected, the Consultant may propose an alternative person for the Authority's consideration. In the event the Authority does not reject a proposal within fourteen (14) days of the date of receipt thereof under this Clause 4.3, it shall be deemed to have been approved by the Authority.

4.4 SUBSTITUTION OF KEY PERSONNEL

The Consultant hereby undertakes that all the Key Personnel specified in its Proposal shall be available during implementation of this Agreement. The Authority will not consider any substitution of Key Personnel except under compelling circumstances beyond the control of the Consultant and the concerned Key Personnel. Such substitution shall be limited to not more than 2 (two) Key Personnel subject to equally or better qualified and experienced personnel being provided to the satisfaction of the Authority.

4.5 WORKING HOURS, OVERTIME, LEAVE, ETC.

The Personnel shall not be entitled to be paid for overtime nor to take paid sick leave or vacation leave except as specified in the Agreement, and the Consultant's remuneration shall be deemed to cover these items. All leave to be allowed to the Personnel is excluded from the mandays of service set forth in Annex-.....-.....[Please insert the annex number] of the Agreement. Any taking of leave by any Personnel for a period exceeding 7 days shall be subject to the prior approval of the Authority, and the Consultant shall ensure that any absence on leave will not delay the progress and quality of the Services.

4.6 TEAM LEADER

The person designated as the Team Leader of the Consultant's Personnel shall be responsible for the coordinated, timely and efficient functioning of the Personnel.

5 OBLIGATIONS OF THE AUTHORITY

5.1 ASSISTANCE IN CLEARANCES ETC.

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

- (a) provide the Consultant, any entity affiliated with the Consultant and Personnel with work permits and such other documents as may be necessary to enable the consultant, any entity affiliated with the Consultant or Personnel to perform the Services;
- (b) 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 Authority 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 (i) the time extension, as may be appropriate, for the performance of Services, and (ii) the additional payments, if any, to be made to the Consultant as a result thereof pursuant to Clause 6.1.3.

5.3 CHANGES 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 Authority 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

(c) 6.1.1 An abstract of the cost of the Services payable to the Consultant is set forth in Annex-.....[Please insert the annex number] of the Agreement.

6.1.2 Except as may be otherwise agreed under Clause 2.6 and subject to 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"). The Parties agree that the Agreement Value is (Rs.....),

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.

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 the Services as per the payment schedule at Annexure-.....[Please insert the annex number] of this Agreement, subject to the Consultant fulfilling the following conditions:

(i) No payment shall be due for the next stage of the Services till the Consultant completes to the satisfaction of the Authority the work pertaining to the preceding stage of the Services.

(ii) The Authority shall pay to the Consultant, only the amount in respect of which there is no dispute between the Parties.

(b) 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 Authority and the final report and final statement shall be deemed approved by the Authority as satisfactory upon expiry of 90 (ninety) days after receipt of the final report and final statement by the Authority unless the Authority, within such 90 (ninety) day period, gives written notice to the Consultant specifying in detail, the deficiencies in the Services, the final report or final statement, as the case may be. The Consultant shall thereupon promptly make any necessary corrections and/or additions/deletions, and upon completion of such corrections or additions/deletions, the foregoing process shall be repeated.

(c) Any amount which the Authority 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 Authority within 30 (thirty) days after receipt by the Consultant of notice thereof. Any such claim by the Authority for

reimbursement must be made within 2 (two) months after receipt by the Authority of a final report and a final statement in accordance with Clause 6.3 (b) above. Any delay by the Consultant in reimbursement by the due date shall attract simple interest at the rate of 10% (ten percent) per annum and the Authority shall be entitled to recover such amounts by forfeiting the Performance Security.

(d) All payments under this Agreement shall be made to the account of the Consultant as may be notified to the Authority by the Consultant.

7. PERFORMANCE SECURITY AND PENALTIES

7.1 PERFORMANCE SECURITY

7.1.1. Consultant shall be required to submit acceptable Bank Guarantee for an amount equal to 10 % of the consultancy cost towards Performance Security within 7 (Seven) days of award of the Contract in the format specified in Appendix-.....[Please insert the annex number] of RFP. The validity of the Bank Guarantee (s) shall cover entire duration of consultancy period plus three months of the claim period, at the beginning. In case Extension of Time is required to be extended, The Bank Guarantee (s) shall be released after satisfactory completion of the Assignment. For the avoidance of doubt, the submission of Performance Security shall be a condition precedent for signing of the Contract and non-submission of the same by the Consultant shall result in withdrawal of the award of the Contract and forfeiture of the Bid Security.

7.1.2. The Performance Security may be appropriated by the Authority against breach of this Agreement or for recovery of liquidated damages as specified in Clause 7.2 herein.

7.1.3. The balance remaining out of the Performance Security shall be returned to the Consultant at the end of three months after the expiration of this Agreement pursuant to Clause 2.4 hereof.

7.1.4 The Consultant shall furnish the Performance Security substantially in the form specified at Appendix -[Please insert the appendix number] of RFP. The validity period of the Performance Security shall be for the entire term of this Agreement plus 3 (three) months. The Authority may, at its sole discretion, instruct the Consultant to extend the said validity period of the Performance Security and such instruction shall be binding on the Consultant. The Performance Security shall be returned to the Consultant after the expiry of 3 (three) months after the date of termination/ expiration of this Agreement pursuant to Clause 2.4 hereof.

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 Authority in a reasonable manner and recovered from the Consultant by way of liquidated damage, for material error (as per the accepted accounting principles) in financial model, penalty of Rs. 25,000/- will be imposed.

7.2.2 Liquidated Damages for delay

A penalty of Rs. 1000/- per day for delay in submission of comments/reports will be imposed. However, per day penalty shall be capped @ 10% of the particular stages and further capped to 10% of total consultancy fees and shall be recovered by appropriation from the Performance Security or otherwise.

7.2.3 Encashment and appropriation of Performance Security

The Authority 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 the terms and/or conditions of this Agreement or for recovery of liquidated damages or over-payment made to the Consultant or as 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.

In the event of any Dispute between the Parties, either Party may call the appropriate authority 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 if 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 9.3.

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 Clause 9.1.

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 ARBITRATION

- (a) Any dispute which is not resolved amicably by conciliation shall be settled through arbitration. Such arbitration shall be held in accordance with the Rules of Arbitration of the International Centre for Alternative Dispute Resolution, New Delhi 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 (including any statutory modifications thereof for the time being in force and as may be enacted from time to time). The venue of such arbitration shall be Kolkata and the language of arbitration proceedings shall be English.
- (b) There shall be Board of three arbitrators, of whom each party shall select one, and the third arbitrator shall be appointed by the two arbitrators so selected and in the event of disagreement between the two arbitrators, the appointment shall be made in accordance with the Rules.
- (c) The proceedings of the Arbitration shall be held in English language and shall be held only at Kolkata. The award of the Arbitration shall be final and binding on both the parties to the Contract.
- (d) Pending resolution of any dispute pursuant to Arbitration, under all circumstances the Consultant shall continue to remit the agreed instalments of money to WBHDCL as prescribed in this Agreement including when the dispute is about the amount to be remitted.
- (e) The Agreement shall be governed by and construed in accordance with the laws of India and the Courts at Kolkata shall have the exclusive jurisdiction over all disputes arising under, pursuant to and/ or in connection with the Agreement

10. SEVERABILITY

If any provision of this Agreement is prohibited by law or held to be invalid, illegal, or unenforceable, the remaining provisions hereof shall not be affected, unless the same materially affects the performance of the obligation of the parties under this Agreement and this Agreement shall continue in full force and effect to the fullest extent possible as if such prohibited, illegal or invalid provision had never constituted a part thereof.

11. BREACH

Any breach of the terms and conditions herein contained in this Contract, which may or may not, cause any financial loss to WBHDCL shall entitle WBHDCL to terminate this Contract at WBHDCL discretion, notwithstanding anything contrary contained in any of the Clauses in this Contract.

12. WAIVER

Failure or neglect by either of the Parties to enforce at any time any of the provisions hereof shall not be deemed to be a waiver of the right. In such an event, the same shall neither affect the validity of the whole or any part of this Agreement nor prejudice the rights of Parties from taking subsequent action.

13. ASSIGNMENT

The Consultant undertakes not to assign any right and/or obligation of this Agreement to any other person without prior consent of WBHDCL in writing.

14. INDEMNITY

The Consultant agrees to assume liability for and agrees to indemnify and hold harmless WBHDCL and its officers, agents and authorized representatives against all liabilities, damages and expenses arising from any claims for damages, suits, proceedings, recoveries, judgments or executions (including, but not limited to

litigation costs and expenses and reasonable User Fees) which may be made or recovered from or be asserted against WBHDCL by reason of any acts, omissions (whether negligent or otherwise) or due to misconduct or breach of applicable laws or breach of the provisions of this Agreement by the Consultant including its agents, survivors and personnel.

15. TERMINATION FOR CONVENIENCE

- (a) WBHDCL shall be entitled to terminate this Agreement at any time after giving notice to the Consultant as under in writing and in that event, the Consultant shall not be entitled to any claim, or any compensation whatsoever on account of such termination.
- (b) No Pre-mature termination of the Agreement by the Consultant will be allowed.

16. DECISION OF AUTHORITY: FINAL AND BINDING

Except where otherwise provided or specified in this Agreement and subject also to such powers as may be delegated by the State Government to WBHDCL from time to time, any decision of WBHDCL for the time being on all questions and matters whatsoever arising out of or in relation to or in connection with this Agreement or as to the interpretation of any of its conditions whether during the subsistence of this Agreement or at any time thereafter, shall be final and binding on the parties to this Contract.

IN WITNESS WHEREOF the parties hereto through their duly authorised representatives have set their hands and seal on the day, month and year first above mentioned.

For and on behalf of
(Signature)
Name:-
Designation:-
Place:-

For and on behalf of
(Signature)
Name:-
Designation:-
Place:-

In the presence of
1. Signature:
Name:
Address:
2. Signature:
Name:
Address:

In the presence of
1. Signature:
Name:
Address:
2. Signature:
Name:
Address:

Appendix-5

(Declaration stating that any Public Sector Enterprise /Govt. Organisation/Statutory Corporation etc. have not black listed)

(Original signed copy on company letterhead)

Letter No:

Date:

To
Chief General Manager,
West Bengal Highway Development Corporation Limited
HRBC Bhavan
4th & 5th Floor, Munshi Premchand Sarani
Kolkata-700021

Dear Sir,

We declare that our Company / LLP / Partnership / Society / Proprietorship/Sole firm (name of the service provider)/suppliers has not been blacklisted by any Govt. Organisation/Statutory Corporation/PSU etc.

Sincerely,

Signature of authorized person with seal

Full Name:

Date:

Place: