

SCHEDULE-2  
*(See Clause 2.1.3 of RFP)*

**FORM OF AGREEMENT**

**FOR**

**APPOINTMENT OF PROJECT MANAGEMENT AGENCY (PMA) FOR PROVIDING CONSULTANCY SERVICES FOR PLANNING, DEVELOPMENT, MARKETING, MANAGEMENT AND IMPLEMENTATION OF INDIA INTERNATIONAL HORTICULTURE MARKET (IIHM) AT GANAUR, DISTRICT- SONEPAT, STATE-HARYANA (INDIA)**

## **CONTENTS**

### **1. General**

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

### **2. Commencement, Completion and Termination of Agreement**

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

### **3. Obligations of the PMA**

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

### **4. PMA's Personnel and Sub-Consultants**

- 4.1 General
- 4.2 Deployment of Personnel

- 4.3 Approval of Personnel
- 4.4 Substitution of Key Personnel
- 4.5 Working hours, overtime, leave etc.
- 4.6 Resident Team Leader cum PPP Expert and Project Manager
- 4.7. Sub-Consultants

**5. Obligations of the Client**

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

**6. Payment to the PMA**

- 6.1 Cost estimates and Agreement Value
- 6.2 Currency of payment
- 6.3 Terms of Payment

**7. Performance Security, damages and penalties**

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

**8. Fairness and Good Faith**

- 8.1 Good Faith
- 8.2 Operation of the Agreement

**9. Settlement of Disputes**

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

**ANNEXES**

- Annex-1: Terms of Reference
- Annex-2: Deployment of Personnel
- Annex-3: Estimate of Personnel Costs
- Annex-4: Approved Sub-Consultant (s)
- Annex-5: Cost of Services
- Annex-6: Payment Schedule
- Annex-7: Bank Guarantee for Performance Security

## AGREEMENT

### For Appointment of Project Management Agency (PMA) for providing Consultancy Services for Planning, Development, Marketing, Management and Implementation of India International Horticulture Market (IIHM) at Ganaur (Sonapat), Haryana

This AGREEMENT (hereinafter called the “**Agreement**”) is made on the ..... day of the month of ..... 201\_\_

#### BETWEEN

Haryana State Agricultural Marketing Board (HSAMB) having its head office at Mandi Bhawan, C-6, Sector-6, Panchkula, Haryana-134109, acting through its Chief Administrator (hereinafter called the “**Client**” which expression shall include its successors and permitted assigns, unless the context otherwise requires);

#### AND

[M/s \_\_\_\_\_ (hereinafter called the “**Project Management Agency (PMA)**”)<sup>1</sup> having its office at \_\_\_\_\_ acting through Mr./ Ms. \_\_\_\_\_ presently holding the designation of \_\_\_\_\_ which expression shall include its successors and permitted assigns).

#### WHERE AS

- (A) The Client vide its Request for Proposal bearing No. \_\_\_\_\_ dated \_\_\_\_\_ had invited proposals for Selection and Appointment of Project Management Agency (PMA) for providing consultancy services (hereinafter called the “**Consultancy**”) in respect of Planning, Development, Marketing, Management and Implementation of India International Horticulture Market (IIHM) at Ganaur (Sonapat), Haryana (hereinafter called the “**Project**”) through international competitive bidding process;
- (B) Various interested firms submitted their proposals for the aforesaid work, whereby they represented to the Client that they had the requisite professional skills, expertise and technical resources, and in their said proposals they also agreed to provide the Consultancy to the Client on the terms and conditions as set forth in the RFP and this Agreement;
- (C) Upon evaluation of the proposals submitted by various firms, the Client accepted the proposal of the PMA hereinabove and awarded the Consultancy to the PMA vide its

<sup>1</sup> In case the selected applicant is a consortium or joint venture then the following shall be inserted :  
“M/s....., (name of the JV) a Joint Venture consisting of the following entities, each member of which will be jointly and severally liable to the Client for all the PMA’s obligations under this Agreement, namely, [name of member] and [name of member] (hereinafter called the “**Project Management Agency (PMA)**”).”]

Letter of Award dated ..... (the “**LOA**”); and

- (D) In pursuance of the afore-stated LOA, the parties have agreed to enter into this Agreement.

**NOW THEREFORE** in consideration of the foregoing and the respective covenants set forth in this Agreement, the sufficiency and adequacy of which is hereby acknowledged, the Parties, intending to be legally bound, hereby agree as follows:

## **1. GENERAL**

### **1.1 Definitions and Interpretation**

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

- (a) “**Agreement**” means this Agreement, together with all the Annexes;
- (b) “**Agreement Value**” shall have the meaning set forth in Clause 6.1.2;
- (c) “**Applicable Laws**” means all laws, brought into force and effect by Government of India or the State Government including rules, regulations and notifications made thereunder, and judgements, decrees, injunctions, writs and orders of any court of record, applicable to this Agreement and the exercise, performance and discharge of the respective rights and obligations of the Parties hereunder, as may be in force and effect during the subsistence of this Agreement;
- (d) “**Associate**” means, in relation to either Party {and/or Consortium Members}, a person who controls, is controlled by, or is under the common control with such Party {or Consortium Member} (as used in this definition, the expression “control” means, with respect to a person which is a company or corporation, the ownership, directly or indirectly, of more than 50% (fifty per cent) of the voting shares of such person, and with respect to a person which is not a company or corporation, the power to direct the management and policies of such person, whether by operation of law or by contract or otherwise);
- (e) “**Confidential Information**” shall have the meaning set forth in Clause 3.3;
- (f) “**Conflict of Interest**” shall have the meaning set forth in Clause 3.2 read with the provisions of RFP;
- (g) “**Dispute**” shall have the meaning set forth in Clause 9.2.1;
- (h) “**Effective Date**” means the date on which this Agreement comes into force and effect pursuant to Clause 2.1;

- (i) **“Expatriate Personnel”** means such persons who at the time of being so hired had their domicile outside India;
- (j) **”Expiration”** means expiry of Agreement pursuant to Clause 2.4;
- (k) **“INR, Re. or Rs.”** means Indian Rupees;
- (l) {**“Lead Member”** shall, in the case of a consortium, mean the member of such consortium who shall have the authority to bind the PMA and each member of the Consortium; and shall be deemed to be the PMA for the purposes of this Agreement;}<sup>§</sup>
- (m) {**“Member”** in case the PMA consists of a consortium of more than one entity, means any of these entities, and **“Members”** means all of these entities;}<sup>§</sup>
- (n) **“Party”** means the Client or the PMA, as the case may be, and Parties means both of them;
- (o) **“Personnel”** means persons hired by PMA or by any Sub-Consultant of PMA as employees and assigned to the performance of the Services or any part thereof;
- (p) **“Resident Personnel”** means such persons who at the time of being so hired had their domicile inside India;
- (q) **“RFP”** means the Request for Proposal document in response to which the PMA’s proposal for providing Services was accepted;
- (r) **“Services”** means the services to be performed by the PMA pursuant to this Agreement, as described in the Terms of Reference hereto;
- (s) **“State Government”** means the Government of State of Haryana;
- (t) **“Sub-Consultant”** means any entity to which the PMA subcontracts any part of the Services in accordance with the provisions of Clause 4.7;
- (u) **“Termination”** means termination of Agreement pursuant to Clause 2.3 and / or 2.9; and
- (v) **“Third Party”** means any person or entity other than the State Government, the Client, the PMA or a Sub-Consultant.

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

1.1.2 The following documents along with all addenda issued thereto shall be deemed to form and be read and construed as integral parts of this Agreement and in case of any contradiction between or among them the priority in which a document would

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*§ This definition may be omitted if the Contractor is not a Consortium.*

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prevail over another would be as laid down below beginning from the highest priority to the lowest priority:

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

## **1.2 Relation between the Parties**

Nothing contained herein shall be construed as establishing a relation of master and servant or of agent and principal as between the Client and the PMA. The PMA shall, subject to this Agreement, have complete charge of its 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 Client and the PMA shall be as set forth in the Agreement, in particular:

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

## **1.4 Governing law and jurisdiction**

This Agreement shall be construed and interpreted in accordance with and governed by the laws of India, and the courts at Panchkula, Haryana in which the Client has its headquarters shall have exclusive jurisdiction over matters arising out of or relating to this Agreement.

## **1.5 Language**

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

## **1.6 Table of contents and headings**

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

## 1.7 Notices

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

- (a) in the case of the PMA, be given by e-mail and by letter delivered by hand to the address given and marked for attention of the PMA's Representative set out below in Clause 1.10 or to such other person as the PMA may from time to time designate by notice to the Client; provided that notices or other communications to be given to an address outside the city specified in Sub-clause (b) below may, if they are subsequently confirmed by sending a copy thereof by registered acknowledgement due, air mail or by a recognized courier, be sent by e-mail to the PMA;
- (b) in the case of the Client, be given by e-mail and by letter delivered by hand and be addressed to the Client with a copy delivered to the Client Representative set out below in Clause 1.10 or to such other person as the Client may from time to time designate by notice to the PMA; provided that if the PMA does not have an office in the same city as the Client's office, it may send such notice by e-mail and by registered acknowledgement due, air mail or by a recognized courier; and
- (c) any notice or communication by a Party to the other Party, given in accordance herewith, shall be deemed to have been delivered when in the normal course of post it ought to have been delivered and in all other cases, it shall be deemed to have been delivered on the actual date and time of delivery; provided that in the case of e-mail, it shall be deemed to have been delivered on the working day following the date of its delivery.

## 1.8 Location

The Services shall be performed at the site of the Project in accordance with the provisions of RFP and at such other locations as may be incidental thereto, including the office(s) of the PMA and the Client.

## 1.9 Authority of Member-in-charge

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

## 1.10 Authorised Representatives

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



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

\*\*\*\*\*  
\*\*\*\*\*  
\*\*\*\*\*  
\*\*\*\*\*

Tel: \*\*\*\*\* Mobile: \*\*\*\*\* Email: \*\*\*\*\*

1.10.3 The PMA may designate one of its employees as PMA's Representative. Unless otherwise notified, the PMA's Representative shall be:

\*\*\*\*\*  
\*\*\*\*\*  
\*\*\*\*\*  
\*\*\*\*\*

Tel: \*\*\*\*\* Mobile: \*\*\*\*\* Email: \*\*\*\*\*

## 1.11 Taxes and duties

Unless otherwise specified in the Agreement, the PMA shall pay all such taxes, duties, fees and other impositions as may be levied under the Applicable Laws and the Client shall perform such duties in regard to the deduction of such taxes as may be lawfully imposed on it. Provided however, the Service Tax shall be reimbursed by the Client at the prevailing rates over and above the Consultancy fee.

## 2. COMMENCEMENT, COMPLETION AND TERMINATION OF AGREEMENT

### 2.1 Effectiveness of Agreement

This Agreement shall come into force and effect on the date of execution of this Agreement (the "Effective Date").

### 2.2 Commencement of Services

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

### 2.3 Termination of Agreement for failure to commence Services

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

### 2.4 Expiry of Agreement

Unless terminated earlier pursuant to Clauses 2.3 or 2.9 hereof, this Agreement shall, unless extended by the Parties by mutual consent, expire upon the earlier of (i) expiry of a period of 90 (ninety) days after the delivery of the final deliverable to the Client; or (ii) the expiry of 52 (fifty two) months and 15 (fifteen) days from the Effective Date. Upon Termination, the Client shall make payments of all amounts due to the PMA hereunder for Services satisfactorily rendered upto the date of Termination.

## **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 PMA arising out of the provisions of the RFP shall continue to subsist and shall be deemed to form part of this Agreement.
- 2.5.2 Without prejudice to the generality of the provisions of Clause 2.5.1, on matters not covered by this Agreement, the provisions of RFP shall apply.

## **2.6 Modification of Agreement**

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

## **2.7 Force Majeure**

### **2.7.1 Definition**

- (a) For the purposes of this Agreement, “Force Majeure” means an event which is beyond the reasonable control of a Party, and which makes a Party’s performance of its obligations hereunder impossible or so impractical as reasonably to be considered impossible in the circumstances, and includes, but is not limited to, war, riots, civil disorder, earthquake, fire, explosion, storm, flood or other adverse weather conditions, strikes, lockouts or other industrial action specifically affecting the Project (except where such strikes, lockouts or other industrial action are within the power of the Party invoking Force Majeure to prevent), confiscation or any other action by government agencies.
- (b) Force Majeure shall not include (i) any event which is caused by the negligence or intentional action of a Party or such Party’s Sub-Consultant or agents or employees, nor (ii) any event which a diligent Party could reasonably have been expected to both (A) take into account at the time of the execution 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 14 (fourteen) days following the occurrence of such event, providing evidence of the nature and cause of such event, and shall similarly give notice of the restoration of normal conditions as soon as possible.
- (c) The Parties shall take all reasonable measures to minimise the consequences of any event of Force Majeure.

#### 2.7.4 Extension of time

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

#### 2.7.5 Payments

During the period of its inability to perform the Services as a result of an event of Force Majeure, the PMA shall be entitled to be reimbursed such expenses 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, as determined by the Client.

#### 2.7.6 Consultation

Not later than 30 (thirty) days after the PMA 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 Client may, by written notice of suspension to the PMA, suspend all payments to the PMA hereunder if the PMA 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 PMA to remedy such breach or failure within a period not exceeding 30 (thirty) days after receipt by the PMA of such notice of suspension.

## **2.9 Termination of Agreement**

### **2.9.1 By the Client**

In addition to occurrence of any particular event(s) leading to termination specified elsewhere in this Agreement, the Client may terminate this Agreement in case of occurrence of any of the events specified in paragraphs (a) through (h) of this Clause. Upon such an occurrence, the Client shall give at least thirty (30) calendar days' written notice of termination to the PMA in case of the events referred to in (a) through (g); at least sixty (60) calendar days' written notice in case of the event referred to in (h), if :

- (a) the PMA fails to remedy any breach hereof or any failure in the performance of its obligations hereunder, as specified in a notice of suspension pursuant to Clause 2.8 hereinabove, within 30 (thirty) days of receipt of such notice of suspension or within such further period as the Client may have subsequently granted in writing;
- (b) the PMA 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 PMA fails to comply with any final decision reached as a result of arbitration proceedings pursuant to Clause 9 hereof;
- (d) the PMA submits to the Client a statement which has a material effect on the rights, obligations or interests of the Client and which the PMA knows to be false;
- (e) any document, information, data or statement submitted by the PMA in its Proposals, based on which the PMA was considered eligible or successful, is found to be false, incorrect or misleading;
- (f) as the result of Force Majeure, the PMA is unable to perform a material portion of the Services for a period of not less than 60 (sixty) days;
- (g) the PMA fails to renew the validity/replenish the Performance Security Bank Guarantee any time during the term of this Agreement; or
- (h) the Client, in its sole discretion and for any reason whatsoever, decides to

terminate this Agreement.

#### 2.9.2 By the PMA

The PMA may, by not less than 30 (thirty) days' written notice to the Client, 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 Client fails to pay any money due to the PMA pursuant to this Agreement which is not subject to dispute pursuant to Clause 9 hereof within 45 (forty five) days after receiving written notice from the PMA that such payment is overdue;
- (b) the Client is in material breach of its obligations pursuant to this Agreement and has not remedied the same within 45 (forty five) days (or such longer period as the PMA may have subsequently granted in writing) following the receipt by the Client of the PMA's notice specifying such breach;
- (c) as the result of Force Majeure, the PMA is unable to perform a material portion of the Services for a period of not less than 60 (sixty) days; or
- (d) the Client fails to comply with any final decision reached as a result of arbitration pursuant to Clause 9 hereof.

#### 2.9.3 Cessation of rights and obligations

Upon termination of this Agreement pursuant to Clauses 2.3 or 2.9 hereof, or upon expiration of this Agreement pursuant to Clause 2.4 hereof, all rights and obligations of the Parties hereunder shall cease, except (i) such rights and obligations as may have accrued on the date of Termination or Expiration, or which expressly survive such Termination or Expiration; (ii) the obligation of confidentiality set forth in Clause 3.3 hereof; (iii) the PMA's obligation to permit inspection, copying and auditing of such of its accounts and records set forth in Clause 3.6, as relate to the PMA's Services provided under this Agreement; and (iv) any right or remedy which a Party may have under this Agreement or the Applicable Law.

#### 2.9.4 Cessation of Services

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

#### 2.9.5 Payment upon Termination

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

- (i) remuneration pursuant to Clause 6 hereof for Services satisfactorily performed prior to the effective date of Termination, as assessed by the Client;
- (ii) reimbursable expenditures pursuant to Clause 6 hereof for expenditures actually incurred prior to the date of Termination; and
- (iii) except in the case of termination pursuant to sub-clauses (a) through (g) of Clause 2.9.1 hereof, reimbursement of any reasonable cost incidental to the prompt and orderly termination of the Agreement, as assessed mutually by the Parties.

#### 2.9.6 Termination by Client to be final and binding upon PMA

Since the Project is in the nature of a public utility project, in the event of termination by the Client under Clause 2.9.1, the termination shall be deemed final and binding upon PMA. PMA agrees that it shall not have any right to challenge and/or to seek any legal action/ injunction against such termination by the Client and/ or against appointment of any substitute PMA by the Client upon such termination.

### **3. OBLIGATIONS OF THE PMA**

#### **3.1 General**

##### 3.1.1 Standards of Performance

- i. The PMA 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 PMA shall always act, in respect of any matter relating to this Agreement or to the Services, as a faithful adviser to the Client, and shall at all times support and safeguard the Client's legitimate interests in any dealings with Sub-Consultants or Third Parties.
- ii. PMA shall employ and provide such qualified and experienced experts and Sub-consultants as are required to carry out the Services. Notwithstanding such approval, PMA shall retain full responsibility for the Services.

##### 3.1.2 Terms of Reference

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

### 3.1.3 Applicable Laws

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

## 3.2 Conflict of Interest

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

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

### 3.2.3 Prohibition of conflicting activities

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

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

### 3.2.4 PMA not to benefit from commissions, discounts, etc.

The remuneration of the PMA pursuant to Clause 6 hereof shall constitute the PMA's sole remuneration in connection with this Agreement or the Services and the PMA 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 PMA shall use its best efforts to ensure that any Sub-Consultant, as well as the Personnel and agents of either of them,

similarly shall not receive any such additional remuneration.

- 3.2.5 The PMA and its Personnel shall observe the highest standards of ethics and shall not have engaged in and shall not hereafter engage in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice (collectively the “**Prohibited Practices**”). Notwithstanding anything to the contrary contained in this Agreement, the Client shall be entitled to terminate this Agreement after giving fourteen (14) calendar days written notice to the PMA, without being liable in any manner whatsoever to the PMA, if it determines that the PMA 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 Client shall forfeit and appropriate the performance security, if any, as mutually agreed genuine pre-estimated compensation and damages payable to the Client towards, *inter alia*, the time, cost and effort of the Client, without prejudice to the Client’s any other rights or remedy hereunder or in law.
- 3.2.6 Without prejudice to the rights of the Client under Clause 3.2.5 above and the other rights and remedies which the Client may have under this Agreement, if the PMA is found by the Client 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 PMA shall not be eligible to participate in any tender or RFP issued during a period of 2 (two) years from the date the PMA is found by the Client 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 (i) 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 Client 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 Client, 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 Client 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 Client under this Agreement;
- (d) “**undesirable practice**” means (i) establishing contact with any person connected with or employed or engaged by the Client 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 PMA, its Sub-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 Client to the PMA, its Sub-Consultants and the Personnel; any information provided by or relating to the Client, its technology, technical processes, business affairs or finances or any information relating to the Client’s employees, officers or other professionals or suppliers, customers, or contractors of the Client; and any other information which the PMA 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 Client.

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

- (i) was in the public domain prior to its delivery to the PMA, its Sub-Consultants and the Personnel of either of them or becomes a part of the public knowledge from a source other than the PMA, its Sub-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 Applicable Laws or judicial or administrative or arbitral process or by any governmental instrumentalities, provided that for any such disclosure, the PMA, its Sub-Consultants and the Personnel of either of them shall give the Client, prompt written notice, and use reasonable efforts to

ensure that such disclosure is accorded confidential treatment; and

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

### **3.4 Liability of the PMA**

- 3.4.1 The PMA's liability under this Agreement shall be determined by the Applicable Laws and the provisions hereof.
- 3.4.2 The PMA shall, subject to the limitation specified in Clause 3.4.3, be liable to the Client for any loss or damage accrued or likely to accrue to the Client, due to any deficiency in Services rendered by it under this Agreement.
- 3.4.3 The Parties hereto agree that the PMA, shall not be liable to the Client for any loss or damage, caused by the PMA or any person or firm acting on behalf of the PMA in carrying out the Services, that exceeds : (a) 3 (three) times the Agreement Value set forth in Clause 6.1.2 of this Agreement, or (b) the proceeds the PMA may be entitled to receive from any insurance maintained by the PMA to cover such a liability in accordance with Clause 3.5.2, whichever of (a) or (b) is higher.
- 3.4.4 This limitation of liability specified in Clause 3.4.3 shall not affect the PMA's liability, if any, for damages to Third Parties caused by the PMA or any person or firm acting on behalf of the PMA in carrying out the Services. If on this account any claim is brought against the Client by such affected Third Party, the PMA shall be liable to fully indemnify the Client in respect of such claim made against the Client pursuant to any court order or arbitral award.

### **3.5 Insurance to be taken out by the PMA**

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

- (c) If the PMA fails to effect and keep in force the aforesaid insurances for which it is responsible pursuant hereto, the Client shall, apart from having other recourse available under this Agreement, have the option, without prejudice to the obligations of the PMA, to take out the aforesaid insurance, to keep in force any such insurances, and pay such premia and recover the costs thereof from the PMA, and the PMA shall be liable to pay such amounts on demand by the Client.
- (d) Except in case of Third Party liabilities, the insurance policies so procured shall mention the Client as the beneficiary of the PMA and the PMA shall procure an undertaking from the insurance company to this effect; provided that in the event the PMA 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 Client as the sole beneficiary of the PMA or require an undertaking to that effect.

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

- (a) Third Party liability insurance as required under Applicable Laws, with a minimum coverage of Rs. 1 (one) crore;
- (b) employer's liability and workers' compensation insurance in respect of the Personnel of the PMA and of any Sub-Consultant, in accordance with Applicable Laws; and
- (c) professional liability insurance for an amount no less than the Agreement Value.

The indemnity limit in terms of "Any One Accident" (AOA) and "Aggregate limit on the policy period" (AOP) should not be less than the amount stated in Clause 6.1.2 of the Agreement. In case of consortium, the policy should be in the name of Lead Member and not in the name of individual Members of the consortium.

### **3.6 Accounting, inspection and auditing**

The PMA shall:

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

### 3.7 PMA's actions requiring the Client's prior approval

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

- (a) appointing such Personnel as are not listed in Annex-2.
- (b) entering into a subcontract for the performance of any part of the Services, it being understood (i) that the selection of the Sub-Consultant and the terms and conditions of the subcontract shall have been approved in writing by the Client prior to the execution of the subcontract, and (ii) that the PMA shall remain fully liable for the performance of the Services by the Sub-Consultant and its Personnel pursuant to this Agreement; or
- (c) any other action that is specified in this Agreement.

### 3.8 Reporting obligations

The PMA shall submit to the Client the reports and documents specified in the Agreement, in the form, in the numbers and within the time periods set forth therein. Apart from the above said reports and documents, the PMA shall also submit the weekly status / progress reports.

### 3.9 Documents prepared by the PMA to be property of the Client

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

obligations in relation to securing the aforementioned rights of the Client.

### **3.10 Equipment and materials furnished by the Client**

Equipment and materials, if any, made available to the PMA by the Client for performing the Services under this Agreement shall be the property of the Client and shall be marked accordingly. Upon Termination or Expiration of this Agreement, the PMA shall furnish forthwith to the Client, an inventory of such equipment and materials and shall dispose of such equipment and materials in accordance with the instructions of the Client. While in possession of such equipment and materials, the PMA shall, unless otherwise instructed by the Client in writing, insure them in an amount equal to their full replacement value.

### **3.11 Providing access to Project Office and Personnel**

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

### **3.12. Accuracy of Documents**

The PMA 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 Client 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 PMA or arises out of its failure to conform to good industry practice. The PMA shall also be responsible for promptly correcting, at its own cost and risk, the drawings including any re-survey/investigations.

## **4. PMA'S PERSONNEL AND SUB-CONSULTANTS**

### **4.1 General**

The PMA 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 designations, names and the estimated periods of engagement in carrying out the Services by each of the PMA's Personnel are described in Annex-2 of this Agreement. The estimate of Personnel costs and man day rates are specified in Annex-3 of this Agreement.

4.2.2 Adjustments with respect to the estimated periods of engagement of Personnel set forth in the aforementioned Annex-3 may be made by the PMA by written notice to the

Client, provided that: (i) such adjustments shall not alter the originally estimated period of engagement of any individual by more than 20% (twenty per cent) or one month, whichever is lower, and (ii) the aggregate of such adjustments shall not cause payments under the Agreement to exceed the Agreement Value set forth in Clause 6.1.2 of this Agreement. Any other adjustments shall only be made with the written approval of the Client.

- 4.2.3 If any additional work is required beyond the scope of the Services specified in the Terms of Reference, the estimated periods of engagement of Personnel, set forth in the Annexes of the Agreement may be increased by agreement in writing between the Client and the PMA, 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.
- 4.2.4 The Client reserves the right to terminate the Agreement with the PMA or reduce the cost at any stage of the project, if the man-month input of the Personnel deployed for the Project does not match the man-month input proposed by the PMA in the manning schedule at the Bidding stage.

#### **4.3 Approval of Personnel**

- 4.3.1 The Personnel listed in Annex-2 of the Agreement are hereby approved by the Client. No other Professional Personnel shall be engaged without prior approval of the Client.
- 4.3.2 If the PMA hereafter proposes to engage any person as Personnel, it shall submit to the Client its proposal along with a CV of such person in the form provided at Appendix-I (Form-12) of the RFP. The Client may approve or reject such proposal within 14 (fourteen) days of receipt thereof. In case the proposal is rejected, the PMA may propose an alternative person for the Client's consideration. In the event the Client does not reject a proposal within 14 (fourteen) days of the date of receipt thereof under this Clause 4.3, it shall be deemed to have been approved by the Client.

#### **4.4 Substitution of Key Personnel**

The Client expects all the Key Personnel specified in the Proposal to be available during implementation of the Agreement. The Client will not consider any substitution of Key Personnel except under compelling circumstances beyond the control of the PMA and the concerned Key Personnel. Such substitution shall be limited to not more than two Key Personnel subject to equally or better qualified and experienced personnel being provided to the satisfaction of the Client. Without prejudice to the foregoing, substitution of one Key Personnel shall be permitted subject to reduction of remuneration equal to 20% (twenty per cent) of the total remuneration specified for the Key Personnel who is proposed to be substituted. In case of a second substitution, such reduction shall be equal to 50% (fifty per cent) of the total remuneration specified for the Key Personnel who is proposed to be substituted. The Parties agree that any further substitution may lead to termination of this Agreement.

#### **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 PMA's remuneration shall be deemed to cover these items. All leave to be allowed to the Personnel is excluded from the man days of service set forth in Annex-2. Any taking of leave by any Personnel for a period exceeding 7 (seven) days shall be subject to the prior approval of the Client, and the PMA shall ensure that any absence on leave will not delay the progress and quality of the Services.

#### **4.6 Resident Team Leader cum PPP Expert and Project Manager**

The person designated as the Team Leader cum PPP Expert of the PMA's Personnel shall be responsible for the coordinated, timely and efficient functioning of the Personnel. In addition, the PMA shall designate a suitable person as Project Manager (the "**Project Manager**") who shall be responsible for day to day performance of the Services. The Parties agree that any substitution of the Team Leader cum PPP Expert will not normally be considered and may lead to termination of this Agreement.

#### **4.7 Sub-Consultants**

Sub-Consultants listed in Annex-4 of this Agreement are hereby approved by the Client. The PMA may, with prior written approval of the Client, engage additional Sub-Consultants or substitute an existing Sub-Consultant. The hiring of Personnel by the Sub-Consultants shall be subject to the same conditions as applicable to Personnel of the PMA under this Clause 4.

Notwithstanding any such approval granted by the Client, the PMA shall retain full responsibility for the Services.

### **5. OBLIGATIONS OF THE CLIENT**

#### **5.1 Assistance in clearances etc.**

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

- (a) provide the PMA, its Sub-Consultants and Personnel with work permits and such other documents as may be necessary to enable the PMA, its Sub-Consultants or Personnel to perform the Services;
- (b) facilitate prompt clearance through customs of any property required for the Services; and
- (c) issue to officials, agents and representatives of the Government all such instructions as may be necessary or appropriate for the prompt and effective implementation of the Services.

## **5.2 Access to land and property**

The Client warrants that the PMA 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 PMA as and when so required, the Parties shall agree on the time extension, as may be appropriate, for the performance of Services.

## **5.3 Change in Applicable Law**

If, after the date of this Agreement, there is any change in the Applicable Laws with respect to taxes and duties (excluding Service Tax) which increases or decreases the cost or reimbursable expenses incurred by the PMA 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 PMA 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 PMA under this Agreement, the Client shall make to the PMA such payments and in such manner as is provided in Clause 6 of this Agreement.

## **6. PAYMENT TO THE PMA**

### **6.1 Cost estimates and Agreement Value**

6.1.1 An abstract of the cost of the Services payable to the PMA is set forth in Annex-5 of the Agreement.

6.1.2 Except as may be otherwise agreed under Clause 2.6 and subject to Clause 6.1.3, the payments under this Agreement shall not exceed the agreement value specified herein (the “**Agreement Value**”).

6.1.3 Notwithstanding anything to the contrary contained in Clause 6.1.2, if pursuant to the provisions of Clauses 2.6 and 2.7, the Parties agree that additional payments shall be made to the PMA in order to cover any additional expenditures not envisaged in the cost estimates referred to in Clause 6.1.1 above, the Agreement Value set forth in Clause 6.1.2 above shall be increased by the amount or amounts, as the case may be, of any such additional payments.

### **6.2 Currency of payment**

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



### 6.3 Terms of payment

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

- (a) The PMA shall be paid for its Services as per the Payment Schedule at Annex-6 of this Agreement. The PMA shall when the payment is due, submit to the Client in duplicate, itemized invoices for payment, accompanied by the receipts or other appropriate supporting documents. The Parties agree that no payment shall be due for the next deliverable/ milestone till the PMA completes, to the satisfaction of the Client, the work pertaining to the preceding deliverable/ milestone.
- (b) Once a particular milestone is completed, the PMA shall submit the requisite deliverable as specified in the Annex I (Terms of Reference) to the Client. The Client shall release the requisite payment upon acceptance of such deliverable after deduction of any amount payable towards damages/ penalties levied in terms of this Agreement. However, if the Client fails to intimate acceptance of the deliverables or its objections thereto, within 30 days of receipt of the same, the Client shall release the payment to the PMA without further delay. In case of any delay beyond the said period, interest at the rate of 10% (ten per cent) per annum shall become payable on the amount due, from the expiry of aforesaid 30 days period.
- (c) For the purpose of payment under Clause 6.3 (b) above, “acceptance” means approval of the deliverable by the Client, after submission by the PMA pursuant to the PMA having made presentation to the Client, with/ without modifications to be communicated in writing by the Client to the PMA.
- (d) If the deliverable submitted by the PMA is not acceptable to the Client/ State Government, reasons for such non-acceptance should be recorded in writing and communicated to the PMA within a period of 15 (fifteen) working days from receipt of the deliverable from the PMA; the Client shall not release the payment due to the PMA during such period. The payment will be released to the PMA only after it re-submits the deliverable, within 30 days from receipt of communication from the Client with regard to the non-acceptance of the deliverable or within such period as specified by the Client and upon acceptance of the re-submitted deliverable by the Client. In the event of any delay in re-submission of the deliverable by the PMA to the satisfaction of the Client, the PMA shall be liable to pay damages at the rate stipulated in Clause 7.2. Provided however, if the Client comes to the conclusion that the delay in accomplishing of a particular milestone is due to the delay on the part of any of the Institutes (as mentioned in Annex-1 (Terms of Reference)) to whom reference has been made by the PMA for approval/ vetting of structural design and drawings, then no such damages shall be leviable on the PMA.
- (e) With the exception of the final payment under sub-clause (f) below, the payments do not constitute acceptance of the Services nor relieve the PMA of any

obligations hereunder, unless the acceptance has been communicated by the Client to the PMA in writing and the PMA has made necessary changes as per the comments/ suggestions of the Client communicated to the PMA.

- (f) 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 PMA and approved as satisfactory by the Client. The Services shall be deemed completed and finally accepted by the Client and the final deliverable shall be deemed approved by the Client as satisfactory upon expiry of 90 (ninety) days after receipt of the final deliverable by the Client unless the Client, within such 90 (ninety) day period, gives written notice to the PMA specifying in detail, the deficiencies in the Services. The PMA shall thereupon promptly make any necessary corrections and/or additions, and upon completion of such corrections or additions, the foregoing process shall be repeated. The Client shall make the final payment upon acceptance or deemed acceptance of the final deliverable by the Client.
- (g) Any amount which the Client 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 PMA to the Client within 30 (thirty) days after receipt by the PMA of notice thereof. Any such claim by the Client for reimbursement must be made within 1 (one) year after receipt by the Client of a final report in accordance with sub-clause (f) above. Any delay by the PMA in reimbursement by the due date shall attract simple interest @ 10% (ten per cent) per annum.
- (h) All payments under this Agreement shall be made to such account of the PMA as may be notified to the Client by the PMA.

## **7. PERFORMANCE SECURITY, DAMAGES AND PENALTIES**

### **7.1 Performance Security**

- 7.1.1 The PMA as a security towards the due and diligent performance of its Services under this Agreement has prior to signing of this Agreement furnished to the Client a bank guarantee bearing no.\*\*\*\*\* dated \*\*\*\*\* from \*\*\*\*\* Bank (with a branch in Panchkula) for an amount of Rs. \*\*\*\*\* (5% (five per cent)) of the Agreement Value) valid upto \*\*\*\*\*, in the form set out at Annex 7 (the “Performance Security”). The Client shall have the right to draw on the Performance Security bank guarantee and claim the amount guaranteed upon demand to the concerned Bank, to be appropriated by the Client against breach of any provision of this Agreement or for recovery of any damages and/ or liquidated damages as specified in Clause 7.2 herein.
- 7.1.2 The Performance Security bank guarantee shall be returned to the PMA at the end of 3 (three) months after the expiry of this Agreement pursuant to Clause 2.4 hereof, upon acceptance of final deliverable by the Client in terms of Clause 6.3 (f).

7.1.3 PMA shall maintain the Performance Security bank guarantee in full force and effect for the term specified in Clause 7.1.2 above. If the Performance Security bank guarantee is scheduled to expire prior to such period, then at least 30 (thirty) Days prior to the scheduled expiry of the Performance Security bank guarantee, PMA shall arrange for an extension or replacement of the same. If PMA fails to extend or replace the Performance Security bank guarantee, the Client shall be entitled to forfeit and draw the Performance Security bank guarantee. The amount so received upon such drawl, shall be treated as a cash retention and to the extent that there are no outstanding claims (of the Client) thereto, shall be released, without any interest on such amount, upon submission of a new Performance Security bank guarantee acceptable to the Client within 15 (fifteen) days of such drawl .

## **7.2 Damages**

### **7.2.1 Damages for error/variation**

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

### **7.2.2 Liquidated Damages for delay in achieving any milestone:**

- (i) If a particular deliverable is not submitted to the Client as per the milestones stipulated in Annex 1 and the same is not on account of a Force Majeure event or any act of omission or commission of the Client, the PMA shall be liable to pay liquidated damages for an amount equal to 2% (two percent) of the professional fee for that particular deliverable/ milestone mentioned in the Payment Schedule under Terms of Reference (Annex-I), for each week of delay beyond the time period specified for accomplishing such deliverable/ milestone.
- (ii) If a particular deliverable is not acceptable to the Client and the defects are not rectified to the satisfaction of the Client within a period of 30 (thirty) days, or such time period as specified by the Client, of receipt of the notice in this regard from the Client, the PMA shall be liable to pay liquidated damages for an amount equal to 3% (three percent) of the professional fee for that particular deliverable/ milestone mentioned in the Payment Schedule under Terms of Reference (Annex-I), for every week or part thereof for delay beyond 30 days.

Provided the damages being levied under this Clause 7.2.2 above, shall be subject to maximum of 10% (ten percent) of the Agreement Value. Once the maximum damages are reached, the Client shall become entitled to terminate this Agreement. Notwithstanding anything to the contrary contained elsewhere in this Agreement, upon termination of this Agreement due to delay in completion of Services, the PMA shall not be entitled to receive any payments in terms of this Agreement.

Provided further that the Client may, in its sole discretion, based on the facts and circumstances of the case, (i) waive off the liquidated damages, and/or (ii) grant suitable extension of time to the PMA, and/or (iii) not terminate the Agreement even after the maximum damages of 10% of the Agreement Value have been levied.

### 7.2.3 Encashment and appropriation of Performance Security

The Client shall have the right to invoke and appropriate the proceeds of the Performance Security bank guarantee, in whole or in part, without notice to the PMA in the event of breach of this Agreement or for recovery of damages, liquidated or otherwise, 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 PMA 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 Client, other penal action including debarring for a specified period may also be initiated as per policy of the Client.

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

## 9. SETTLEMENT OF DISPUTES

### 9.1 Amicable settlement

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

### 9.2 Dispute resolution

- 9.2.1 Any dispute, difference or controversy of whatever nature howsoever arising under or out of or in relation to this Agreement (including its interpretation) between the Parties, and so notified in writing by either Party to the other Party (the “**Dispute**”) shall, in the first instance, be attempted to be resolved amicably in accordance with the conciliation procedure set forth in Clause 9.3.
- 9.2.2 The Parties agree to use their best efforts for resolving all Disputes arising under or in respect of this Agreement promptly, equitably and in good faith, and further agree to provide each other with reasonable access during normal business hours to all non-privileged records, information and data pertaining to any Dispute.

### **9.3 Conciliation**

In the event of any Dispute between the Parties, either Party may call upon [Chief Administrator, HSAMB] and the Chairman of the Board of Directors of the PMA or a substitute thereof for amicable settlement, and upon such reference, the said persons shall meet no later than 10 (ten) days from the date of reference to discuss and attempt to amicably resolve the Dispute. If such meeting does not take place within the 10 (ten) day period or the Dispute is not amicably settled within 15 (fifteen) days of the meeting or the Dispute is not resolved as evidenced by the signing of written terms of settlement within 30 (thirty) days of the notice in writing referred to in Clause 9.2.1 or such longer period as may be mutually agreed by the Parties, either Party may refer the Dispute to arbitration in accordance with the provisions of Clause 9.4.

### **9.4 Arbitration**

- 9.4.1 Any Dispute which is not resolved amicably by conciliation, as provided in Clause 9.3, shall be finally decided by reference to arbitration by a Sole Arbitrator in accordance with Clause 9.4.2. Such arbitration shall be held in accordance with the provisions of the Arbitration and Conciliation Act, 1996, as amended from time to time. The venue of such arbitration shall be Panchkula, Haryana and the language of arbitration proceedings shall be English.
- 9.4.2 The Sole Arbitrator shall be any person appointed by [Additional Chief Secretary / Principal Secretary, Govt. of Haryana, Department of Agriculture].
- 9.4.3 The Sole Arbitrator shall make a reasoned award (the “**Award**”). Any Award made in any arbitration held pursuant to this Clause 9 shall be final and binding on the Parties as from the date it is made, and the PMA and the Client agree and undertake to carry out such Award without delay.
- 9.4.4 The PMA and the Client agree that an Award may be enforced against the PMA and/or the Client, as the case may be, and their respective assets wherever situated.
- 9.4.5 This Agreement and the rights and obligations of the Parties shall remain in full force and effect, pending the Award in any arbitration proceedings hereunder.

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

SIGNED, SEALED AND DELIVERED

For and on behalf of

Client

(Signature)

(Name)

(Designation)

(Address)

In the presence of:

1.

\_\_\_\_\_

SIGNED, SEALED AND DELIVERED

For and on behalf of

PMA

(Signature)

(Name)

(Designation)

(Address)

2.

**Annex -1**  
**TERMS OF REFERENCE**  
**{Terms of Reference (Scope of Work) as per Schedule 1 of RFP}**

**Annex -2**  
**DEPLOYMENT OF PERSONNEL**  
**{As provided by Selected Applicant in the Bid Submitted}**



**Annex -3**  
**ESTIMATE OF PERSONNEL COST**  
**{As provided by Selected Applicant in the Bid Submitted}**

**ANNEX – 4**  
**APPROVED SUB-CONSULTANT(S)**  
**{As provided by Selected Applicant in the Bid Submitted}**

**Annex - 5**  
**COST OF SERVICES**  
**{As provided by Selected Applicant in the Bid Submitted}**

**Annex - 6**  
**PAYMENT SCHEDULE**  
**{As per Schedule I (Terms of Reference) of RFP}**

**ANNEX – 7**  
**BANK GUARANTEE FOR PERFORMANCE SECURITY**

To  
[The \*\*\*\*\*]  
\*\*\*\*\*  
\*\*\*\*\*  
\*\*\*\*\*

In consideration of \*\*\*\*\* acting on behalf of the {\*\*\*\*\*} (hereinafter referred as the “**Client**”, which expression shall, unless repugnant to the context or meaning thereof, include its successors, administrators and assigns) having awarded to M/s....., having its office at ..... (Hereinafter referred as the “**PMA**” which expression shall, unless repugnant to the context or meaning thereof, include its successors, administrators, executors and assigns), vide Letter of Award no. .... dated..... valued at Rs..... (Rupees....), (hereinafter referred to as the “**Agreement**”) for rendering consultancy services in respect of \*\*\*\*\* (**name of project**) and the PMA having agreed to furnish a Bank Guarantee amounting to Rs. .... (Rupees.....) to the Client for performance of the said Agreement.

1. We, ..... (hereinafter referred to as the “**Bank**”) at the request of the PMA do hereby unconditionally and irrevocably undertake to pay to the Client an amount not exceeding Rs. .... (Rupees.....) against any loss or damage caused to or suffered or would be caused to or suffered by the Client by reason of any breach by the said PMA of any of the terms or conditions contained in the said Agreement.
2. We.....(Indicate the name of the Bank) do hereby undertake to pay the amounts due and payable under this Guarantee without any demur, merely on a demand from the Authority stating that the amount/claimed is due by way of loss or damage caused to or would be caused to or suffered by the Client by reason of breach by the said PMA of any the terms or conditions contained in the said agreement or by reason of the PMA’s failure to perform the said agreement. Any such demand made on the bank shall be conclusive as regards the amount due and payable by the Bank under this Guarantee. However, our liability under this Guarantee shall be restricted to an amount not exceeding Rs..... (Rupees.....).
3. We, .....(indicate the name of Bank) undertaking to pay to the Client any money so demanded notwithstanding any dispute or disputes raised by the PMA in any suit or proceeding pending before any court or tribunal relating thereto, our liability under this present being absolute and unequivocal. The payment so made by us under this bond shall be a valid discharge of our liability for payment thereunder and the PMA shall have no claim against us for making such payment.
4. We, .....(indicate the name of Bank) further agree that the Guarantee herein contained shall remain in full force and effect during the period that would be taken for the performance of the said agreement and that it shall continue to be enforceable till all the dues of the Authority under or by virtue of the said Agreement have been fully paid and its claims satisfied or discharged or till the Client certifies that the terms and conditions of the said Agreement have been fully and properly carried

out by the said PMA and accordingly discharges this Guarantee. Unless a demand or claim under this Guarantee is made on us in writing on or before a period of one year from the date of this Guarantee, we shall be discharged from all liability under this Guarantee thereafter.

5. We, .....(Indicate the name of Bank) further agree with the Client that the Client shall have the fullest liberty without our consent and without affecting in any manner our obligations hereunder to vary any of the terms and conditions of the said Agreement or to extend time of performance by the said PMA from time to time or to postpone for any time or from time to time any of the powers exercisable by the Client against the said PMA and to forbear or enforce any of the terms and conditions relating to the said Agreement and we shall not be relieved from our liability by reason of any such variation, or extension being granted to the said PMA or for any forbearance, act or omission on the part of the Client or any indulgence by the Authority to the said PMA or any such matter or thing whatsoever which under the law relating to sureties would, but for this provision, have the effect of so relieving us.
6. This Guarantee will not be discharged due to the change in the constitution of the Bank or the PMA(s).
7. We, .....(indicate the name of Bank) lastly undertake not to revoke this Guarantee during its currency except with the previous consent of the Client in writing.
8. For the avoidance of doubt, the Banks liability under this guarantee shall be restricted to Rs.\*\*\* Crore (Rupees \*\*\*\*\* Crore) only. The Bank shall be liable to pay the said amount or any part thereof only if the Client serves a written claim on the Bank in accordance with paragraph 2 hereof, on or before [\*\*\* (indicate date falling 90 days after the Guarantee)].

Dated, the ..... day of ..... 20  
For.....

(Name of Bank)

(Signature, name and designation of the authorised signatory)

Seal of the Bank:

**Notes:**

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