

KERALA ROAD FUND BOARD

AGREEMENT FOR PROVIDING PROFESSIONAL SERVICES OF INDEPENDENT ENGINEER FOR OPERATION & MAINTENANCE OF THIRUVANANTHAPURAM CITY ROAD IMPROVEMENT PROJECT

Between

Kerala Road Fund Board (KRFB)

And

Dated:

Memorandum of Agreement

MEMORANDUM OF AGREEMENT MADE ON THIS:

Dtd

BETWEEN:

1. Kerala Road Fund Board, (KRFB), having its principal office at TC 4/1654, Mayooram, No.7, Belhavan Gardens, Kowdiar P.O, Thiruvananthapuram -695003 represented by the Chief Executive Officer, KRFB hereinafter referred to as the client or 'First Party' and
2.
.....
..... hereinafter referred to as 'Consultant' or the 'Second Party'.

Memorandum of Agreement

RECITAL

Whereas

The "First Party" wishes to engage the Consultant to provide professional services in connection with the operation and maintenance of Thiruvananthapuram City Road Improvement Project as per the Terms of Reference and Addendum thereof attached as Annexure-1 and the Consultant has agreed to such engagement upon and subject to the terms and conditions of this Agreement.

ARTICLES

ARTICLE 1 - DEFINITIONS

Defined terms referred to in this Agreement have the meanings assigned to them in the general conditions of engagement and thereto.

ARTICLE 2 - THE AGREEMENT

The following documents, listed in the order of precedence, shall constitute the Agreement between KRFB and the Consultant and each shall be read and construed as an integral part of the Agreement:

- A. Work Order
- B. Annexure - 1 Request for Proposal
- C. Memorandum of Agreement
- D. General Conditions of Engagement
- E. Annexure 2 - Addendums

ARTICLE 3 - CONSULTANT'S OBLIGATIONS

Upon, and subject to, the terms of the Agreement, the Consultant shall, for the consideration mentioned in Article 4 perform and complete the Services and undertake all other obligations and risks to be performed and undertaken by the Consultant as set out in the Agreement.

ARTICLE 4 - MONTHLY AGREEMENT PRICE

(a) The Kerala Road Fund Board hereby agrees to pay to the Consultant the Monthly Agreement Price in consideration of the performance by the Consultant of its obligations under the Agreement. The Monthly Agreement Price covers all the Consultant's obligations under the Agreement and all

Memorandum of Agreement

equipment necessary for the proper execution and completion of the Services. The Monthly Agreement Price shall be a maximum of Indian rupees.....
..... excluding Service Tax as applicable under Government regulations, and Consultant's claim will be as per actual man months/consumption of Personnel engaged for each month and also based on the quantum of expenses incurred by the consultant towards fixed costs, travel costs etc., mentioned in offer letter.

(b) The Monthly Agreement Price shall be a lump sum amount not subject to any alteration except in the event of a change or as otherwise expressly provided in or referred to in the Agreement. KRFB shall have no liability for increases in the Consultant's costs of performing the assignment of any nature whatsoever caused by currency fluctuations, changes in taxation, inflation or otherwise, except as otherwise provided for or referred to in the Agreement.

(c) The Consultant shall be deemed to have satisfied himself as to the correctness and sufficiency of the Monthly Agreement Price.

IN WITNESS WHEREOF the Parties have executed this Memorandum of Agreement on the date written above.

For and on behalf of:

CLIENT

Kerala Road Fund Board (KRFB)

Signature:

Stamp KRFB Seal here

Name:

Title:

In the presence of:

Witness Signature:

Witness Name:

Memorandum of Agreement

Witness Title: _____

Date: _____

For and on behalf of:

CONSULTANT

Consultant

Stamp Company Seal here

Signature: -----

Name: -----

Title: -----

In the presence of:

Witness Signature: _____

Witness Name: _____

Witness Title: _____

Date, month, and year: _____

General Conditions of Engagement

PROFESSIONAL SERVICE AGREEMENT **GENERAL CONDITIONS OF ENGAGEMENT**

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CLAUSE 1: GENERAL PROVISIONS

1.1 Definitions

- 1.1.1 **"Additional Services"** shall mean any services carried out under the Agreement pursuant to a Change instructed pursuant to Sub-Clause 7.2.
- 1.1.2 **"Agreement"** shall mean this agreement together with the Work Order, Annexure-1 (RFP), Memorandum of Agreement, General Conditions of Engagement, Applications, the Schedules, and Appendices.
- 1.1.3 **"Agreement Period"** shall mean, subject to the provision of Sub-Clause 1.9, the period from the Commencement Date until the Completion Date.
- 1.1.4 **"Appendix (Appendices)"** shall mean the appendices attached to the Memorandum of Agreement and forming part of the Agreement.
- 1.1.5 **"KRFB"** shall mean the Kerala Road Fund Board, represented by the Chief Executive Officer or his authorized delegate.
- 1.1.6 **"Change"** shall mean any change or amendment to any document constituting the Agreement or to the Services, which is instructed pursuant to Sub-Clause 7.2.
- 1.1.7 **"Commencement Date"** shall mean the date identified as the Commencement Date to the General Conditions of Engagement. The Commencement date for the commencement of services under the agreement shall be that date of issue of Work Order.
- 1.1.8 **"Completion Date"** shall mean the date upon which the Consultant has completed in full the Services to the KRFB's satisfaction.
- 1.1.9 **"Conditions of Particular Applications"** shall mean the document so titled forming part of the Agreement.
- 1.1.10 **"Consultant"** shall mean the person, persons, firm or firms identified as the Consultant in the Memorandum of Agreement and include any other person or persons taken in to partnership or association and means the surviving member or members of such a partnership or association.
- 1.1.11 **"Consultant's Documents"** shall mean all documents to be provided by the Consultant in accordance with the Agreement.

- 1.1.12 "**Consultant's Programme**" shall mean the detailed programme which will be submitted by the Consultant identifying proposed activities, commencement and duration times needed for the accomplishment of the Services.
- 1.1.13 "**Contractor**" shall mean any person, persons, firm, company, or other form of juristic entity, including his legal representatives, successors and assignees under contract with the KRFB to perform work in connection with the TOR.
- 1.1.14 "**Days**" shall mean calendar days including weekends and public holidays.
- 1.1.15 "**Determination**" shall mean the written decision of the KRFB on a matter of dispute under the Agreement.
- 1.1.16 "**Effective Date**" shall mean the date when all conditions pursuant to Sub-Clause 1.3.6 are fulfilled.
- 1.1.17 "**Force Majeure**" shall mean those circumstances so described in Sub-Clause 7.6 as constituting Force Majeure.
- 1.1.18 "**General Conditions of Engagement**" shall mean the document so titled forming part of the Agreement.
- 1.1.19 "**Good Design, Engineering and Construction Practices**" shall mean the best relevant international practices, standards and methods approved by MoRTH, with respect to the planning, survey, study, design, and other services mentioned in the Terms of Reference.
- A. In a sound and workmanlike manner, with reasonable skill, care and diligence and applying generally accepted engineering, construction and management practices and procedures;
 - B. With due expedition and without unnecessary or unreasonable delay; and
 - C. Using appropriate internationally accepted design standards for urban roads and workmanship applicable to works having characteristics comparable to those of the Project.
- 1.1.20 "**Key Personnel**" shall mean those of the Consultant's personnel identified as key personnel in Clause 13 of RFP. (Annexure-1)
- 1.1.21 "**Law(s)**" shall mean all national or state legislations, statutes, ordinances, rules and regulations, orders of state Public Works Department, decrees, decisions, guidelines and rulings applicable to the Government, the Consultant, the Services and/or the Project as issued within the State of Kerala.

- 1.1.22 **"Memorandum of Agreement"** shall mean the document so titled forming part of the Agreement as defined under Sub-Clause 1.3.1
- 1.1.23 **"Monthly Agreement Price"** shall mean the agreed amount stated in Clause 4 of the Memorandum of Agreement, for the execution of the Services in accordance with the terms of the Agreement.
- 1.1.24 **"Notary Public"** shall be a public official who is legally empowered to do the attestation of signatures and certification of validity of documents.
- 1.1.25 **"Notice of Dissatisfaction"** shall mean the written notice of the existence of a dispute under the Agreement.
- 1.1.26 **"Party"** shall mean KRFB or the Consultant as the context requires, and **"Parties"** shall mean together the KRFB and the Consultant.
- 1.1.27 **"Penalty for Delay"** shall mean those sums to be paid by the Consultant to the Kerala Road Fund Board as penalty for failure to complete the services within the Time for Completion as stated in the agreement.
- 1.1.28 **"Performance Security"** shall mean the performance security to be furnished in terms of the Clause 5 of the Work Order.
- 1.1.29 **"Project"** shall mean the project described in memorandum of Agreement.
- 1.1.30 **"Public Official"** shall mean that party as defined in Sub-Clause 1.4.2.
- 1.1.31 **"Schedule"** shall mean the schedules attached to the General Conditions of Engagement and forming part of the Agreement.
- 1.1.32 **"Services"** shall mean the services that will be provided by the Consultant as identified and described in RFP, and in the General Conditions of Engagement.
- 1.1.33 **"Standards"** shall mean those codes, regulations and technical specifications and standards as per MoRTH, applicable at the Base Date.
- 1.1.34 **"Time for Completion"** shall mean the time for completion of the works as stated in RFP (Annexure I) to the General Conditions of Engagement as may be extended from time to time in accordance with the terms of the Agreement, calculated from the Commencement Date.
- 1.1.35 **"Works"** shall mean all works, whether of a permanent or temporary nature, necessary for the achievement of the completion of scope of work in connection with the Agreement.

1.2 Interpretation

- 1.2.1 The section headings, marginal words and other headings in the Agreement shall not be taken into consideration in the interpretation of these General Conditions of Engagement.
- 1.2.2 The singular includes the plural; the masculine includes the feminine and vice-versa where the context requires.
- 1.2.3 Clauses and Sub-Clauses including the word "agree" or "agreed" require the agreement to be recorded in writing, and signed by the authorised representatives of both the parties.
- 1.2.4 Reference to "including" and "in particular" shall not be construed restrictively but shall mean "including but not limited to" and "in particular but without prejudice to the generality of the foregoing" respectively.
- 1.2.5 "Written" or "in writing" means hand-written, type-written, printed or electronically made; and resulting in a permanent record.

1.3 The Agreement

- 1.3.1 The following documents constitute the Agreement and shall be taken as mutually explanatory of one another. If there is a conflict between these documents, the order of precedence shall be as follows:
 - (i) Work Order
 - (ii) Annexure - 1 Request for Proposal
 - (iii) Memorandum of Agreement
 - (iv) General Conditions of Engagement
 - (v) Annexure 2 - Addendums
- 1.3.2 The Memorandum of Agreement is the document executed by the Consultant and the Representative of KRFB. The Appendices to the Memorandum of Agreement identifies the Agreement specifics which may vary from agreement to agreement in terms of commercial aspects and services to be provided.
- 1.3.3 The General Conditions of Engagement is a document that shall be incorporated into all agreements. The General Conditions of Engagement set out the terms and conditions governing the rights, responsibilities, and obligations of the Consultant and KRFB. The General Conditions of Engagement set out the terms and conditions governing the rights, responsibilities, and obligations of the Parties under the Agreement in relation to the Services.

1.3.4 The Agreement is to be executed by:

The authorized signatory of the Consultant, who retains the lawfully appointed power of attorney to enter into the Agreement on behalf of the Consultant; and the authorized signatory of Kerala Road Fund Board.

1.3.5 The Agreement is to be executed in triplicate and marked: "Original"; "Duplicate 1" and "Duplicate 2" of which the document marked "Original" shall prevail. KRFB shall retain the documents marked "Original" and "Duplicate 1" with the document marked "Duplicate 2" being retained by the Consultant. Each page of the Agreement shall be initialed by the duly authorised signatories.

1.3.6 The Agreement shall come into full force and become effective on the date the Agreement is executed subject to the following:

- A. The Consultant has provided a Power of Attorney duly notarised by a Notary Public empowering the signatory to the Agreement to sign on behalf of the Consultant;
- B. The Performance Security has been duly executed by all parties thereto and delivered to KRFB;
- C. Evidence that the insurances described in Sub-Clause 2.24 have been put in place and delivered to KRFB; and
- D. The Consultant has delivered to KRFB, valid certified copies of his registration certificate(s), issued by the "Committee for the Enrolment of Engineers & Engineering Consultancy Offices and Chamber of Commerce".

1.4 Corruption and Fraud

1.4.1 In the performance of their obligations under the Agreement, the Parties, their respective agents and relevant employees shall comply with all applicable Laws. The Parties hereby represent, warrant and covenant that they will neither receive nor offer, pay or promise to pay either directly or indirectly, bribes, gifts, commissions, considerations, inducements or rewards from or to a Public Official (as defined in Sub-Clause 1.4.2 hereinafter), or private property owner in connection with any business opportunities which may, or considered to without limit, be in connection with the Agreement. Furthermore, in the event that a Party receives a request from any Public Official requesting payments, bribes, gifts, commissions, considerations, inducements or rewards that Party shall disclose such to the other immediately in writing with full particulars.

1.4.2 A Public Official is:

- A. Any official or employee of KRFB or a Government owned or controlled enterprise; and

B. Any person performing a public function.

1.4.3 Failure to comply with the requirements of Sub-Clause 1.4.1 shall entitle KRFB the discretionary power to terminate the Agreement with immediate effect and without compensation in any form whatsoever.

1.5 Communications

1.5.1 Wherever the Agreement provides for the giving or issuing of approvals, certificates, consents, notices and requests, these communications shall be:

- A. In English; and
- B. In writing in accordance with Sub-Clause 1.2.5, (against written confirmation of receipt); and
- C. Delivered, sent, or transmitted to the address for the recipients as per the General Conditions of Engagement.

1.5.2 Notices served by email or facsimile shall be delivered to the addresses and be confirmed by the said notice being sent in hard copy to the addresses within three (3) Days of the transmission date of the email or facsimile. For the avoidance of doubt, only the received hard copy constitutes formal notice pursuant to the requirements of the Agreement, the contractual date of notice being the date of receipt of the hard copy.

1.6 Amendment

1.6.1 Without prejudice to the provisions of Clause 7 hereinafter, no modification, amendment, or change to the Agreement shall be effective or binding, unless made in writing and is signed by the duly authorised representatives of the Parties.

1.7 Waiver

1.7.1 Non-waiver

Subject to the provisions of Sub-Clause 1.7.2 herein, no relaxation, forbearance or delay by either Party in enforcing the terms and conditions of the Agreement will prejudice, affect or restrict the rights, responsibilities, and obligations of that Party nor shall any waiver by either Party of any such rights, responsibilities, and obligations or of any breach of the Agreement be deemed to be a waiver of any other right or of any later or continuing breach.

1.7.2 Waiver

Any waiver of a Party's rights, responsibilities, obligations, powers, or remedies under the Agreement must be in writing, dated and signed by an authorised signatory of the Party granting such waiver, and must specify the right and the extent to which obligation is being waived.

1.8 Severability

- 1.8.1 If any provision of the Agreement is held to be illegal, void or unenforceable in whole or in part be deemed expunged from the Agreement provided that this shall not affect the validity or enforceability of any other provisions of the Agreement.
- 1.8.2 Notwithstanding Sub-Clause 1.8.1, in the event that any provision or part thereof is held by any judicial or other competent authority to be illegal, void, or unenforceable, the KRFB shall issue an instruction pursuant to this agreement.

1.9 Agreement Period

- 1.9.1 The Agreement shall be for an initial period of 2 years from the Commencement Date, which is extendable depending on the requirement of the project and your performance.

1.10 Survival of Rights:

- 1.10.1 The severable provisions of the Agreement which are by their nature intended to survive the termination, cancellation, completion, or expiration of the Agreement shall continue as valid and enforceable obligations of the Parties, notwithstanding any such termination, cancellation, completion, or expiration.
- 1.10.2 The Agreement constitutes the entire Agreement between the Parties in relation to all matters contained herein, including all understandings, rights, responsibilities, and obligations and supersedes all prior arrangements, representations, communications, negotiations, agreements and contracts (whether written or oral) made between or entered into by the Parties with respect thereto prior to the date of the Agreement.

CLAUSE 2: OBLIGATIONS OF THE CONSULTANT

CLAUSE 2 (A): GENERAL REQUIREMENTS

- 2.1 The Consultant shall be deemed to have thoroughly considered all factors affecting his performance and execution of the Service stipulated in the Agreement and shall provide the Services identified and described in the Request For Proposal (Annexure-1) and in the General Conditions of Engagement. The Consultant shall perform all tasks that are necessary to carry out those services in accordance with Good Practices, and shall exercise all reasonable skill, care and diligence in the discharge of the Services.
- 2.2 The Consultant shall forward a copy of all correspondences with the Concessionaire to Chief Executive Officer, KRFB or his authorized representative.
- 2.3 All advice and reports given by the Consultant to KRFB shall be submitted and substantiated in writing.

- 2.4 If in the performance of the Services the Consultant is required to make any recommendations or decisions resulting from any assessment of matters between KRFB and or other consultants, then the Consultant shall make such recommendations with reasons. Where the Services include the exercise of powers or performance of duties authorised or required by the terms of a contract between KRFB and any third party, the Consultant shall:
- A. act in accordance with the contract, provided that the details of such powers and duties in the third party contract are known to the Consultant and agreed in writing between the Parties where they are not described in the Terms of Reference;
 - B. if authorised, pursuant to the Agreement, to certify, determine or exercise discretion, do so fairly between KRFB and the third party as an independent professional exercising his judgement with reasonable skill, care and diligence; and
 - C. if so authorised, pursuant to the Agreement, vary the obligations of any third party, subject to obtaining the prior approval of KRFB to any Change, modification or variation which can have an effect on costs and/or quality and/or time (except in an emergency when the Consultant shall inform KRFB as soon as practicable). In the event of any conflict or inconsistency between the terms of a contract between KRFB and any third party and the terms of the Agreement, the terms of the Agreement shall prevail.
- 2.5 The Consultant shall not have the benefit, directly or indirectly, of any royalty, gratuity, or commission in respect of any patented or protected material or process used on or for the purpose of the Agreement.
- 2.6 The Consultant shall indemnify and hold harmless KRFB, its personnel and agents, against all claims, damages, losses, fines and expenses which arises out of or in relation to:
- A. the Consultant's use in his specified methods, procedures or materials, copyrights or patents belonging to others;
 - B. the Consultant's execution of the Services;
 - C. bodily injury, sickness or death of any persons whatsoever arising out of or in the course of or by reason of the execution of the Services, unless to the extent attributable to any negligent or wilful act or omission or breach of the Agreement, his personnel or agents;
 - D. damage to or loss of any third party physical property, real or personal to the extent that such damage or loss:
 - i. Arises in the course of or by reason of the execution of the Services or arise out of the Consultant's breach of the Agreement; and
 - ii. Is not attributable to any negligent or wilful acts or omissions or breach of the Agreement by KRFB, it's personnel and agents;

- E. Damage to or loss of any physical property, real or personal belonging to KRFB to the extent that such damage or loss is attributable directly to the fraud, fraudulent misrepresentation or willful misconduct of the Consultant;
- F. The use of any element or the whole of the Project as provided by the Agreement; and
- G. Any breach by the Consultant of Sub-Clause 2.9.

2.7 The Consultant shall be responsible for the preparation of all documents required to complete the Services and shall obtain approval of the same from KRFB, and where relevant, Government departments and ministries. The approval of the Consultant of any part or phase of the Services shall not absolve or relieve the Concessionaire of any of his responsibilities or obligations under the Agreement.

2.8 The Consultant shall make himself familiar, and in the provision of the Services comply with all applicable Laws, regulations, standards, and instructions in force in India/Kerala and particularly with such Laws, regulations, standards and instructions that relate to survey, planning, design and construction.

2.9 All information acquired by the Consultant during the performance of the Services must be regarded as strictly private and confidential and should not be disclosed to a third party without the prior express approval of KRFB.

2.10 Any and all facilities, information, and services provided or paid by KRFB for the use of the Consultant shall remain the property of the KRFB unless otherwise expressly stated within the Agreement. Upon completion, or termination of the Services the Consultant shall deliver an inventory to the KRFB identifying what has been provided and the facilities, information and services that have not been consumed in the performance of the Services and shall return them to the KRFB. Such delivery remains an obligation under the Services.

2.11 Unless otherwise instructed by KRFB, the Consultant shall insure on terms acceptable to KRFB the Facilities, Information and Services provided by KRFB pursuant to Sub-Clause 3.1 against:

- A. Loss or damage; and
- B. Against liabilities arising out of the use of such property, save where KRFB has provided an indemnity for such use under the Agreement.

2.12 Co-ordination with Third Parties

The Consultant shall be responsible for coordinating all matters associated with, and including, the provision of the Services with any:

- A. government department or ministry;
- B. utility companies; and
- C. others, carrying out services / works / projects on any interfacing contracts, packages or projects for the resolution of all interfaces between the Services / Works / Project and the services / works / projects of the interfacing Government departments / ministries, utility companies and / or consultants. The Consultant shall make arrangements directly with such other Government departments / ministries, utility companies and other consultants carrying out such work as appropriate and report his activities to KRFB on a monthly basis or as otherwise instructed or appropriate. The Consultant shall use his best endeavours as assisted by the KRFB in accommodating the other consultants to resolve actual or potential difficulties and mitigate the effects of the same

CLAUSE 2 (B): EXECUTION OF THE SERVICES

- 2.14 Within seven (7) Days of execution of the Agreement, the Consultant shall submit to KRFB a draft Consultant's Programme and associated narrative providing details of the Consultant's personnel and resources to be employed.
- 2.15 The Consultant does not have the power to issue variation/ change of scope to the Concessionaire on its own. The Consultant shall review all variation/ change of scope submitted by the Concessionaire and recommend KRFB for a decision.
- 2.16 Save as provided otherwise in Annexure I, to the General Conditions of Engagement, the Consultant shall provide all the facilities needed to carry out the Services, including accommodation, transport, and secretarial support and all other resources. The Consultant's duly delegated representative shall be authorised to make decisions and accept commitments on behalf of the Consultant.
- 2.17 The Consultant shall obtain KRFB's written approval before any association with other practices, specialist, or professional organisations with regards to the provision of the Services.
- 2.18 The Consultant shall not assign, sublet or transfer any of his obligations under the Agreement without the prior written consent of KRFB.

CLAUSE 2 (C): CONSULTANT'S PERSONNEL

- 2.19 The Consultant shall provide the personnel identified in the RFP (Annexure - I) who shall be deemed to be approved by KRFB, and such other Key Personnel who shall be suitably qualified and experienced for their assigned duties to perform the Services. Where Additional Services are to be performed by personnel other than those already assigned to the Project the KRFB's prior approval shall be obtained. Such approval shall not relieve the Consultant of his obligations under the Agreement.

In the event that any of the Consultant's personnel are found to be incompetent and / or negligent and / or guilty of serious misconduct and/or fraudulent or corrupt and / or failing to comply with the Law in discharging their assigned duties, the Consultant shall upon receipt of the KRFB's written request immediately remove him and within twenty eight (28) Days provide a suitable replacement person with equivalent qualifications and competence acceptable to the KRFB. The cost of such replacement shall be borne entirely by the Consultant. In the event that the Consultant fails to provide a replacement within the specified time, KRFB shall have the right to make such replacement or take any necessary action at the expense of the Consultant until such time as the Consultant provides such replacement.

- 2.20 The Consultant shall ensure that all personnel engaged for the project shall perform and behave properly in accordance with the highest acceptable standards and practices. The Consultant shall, at no additional cost to KRFB, provide the replacement of key personnel who are on sick leave exceeding seven (7) Days, or on annual leave to ensure the continued and proper execution of the works during the absence of such key personnel. No additional charge to KRFB will be allowed for personnel assigned by the Consultant as temporary replacements for higher paid personnel.
- 2.21 The Consultant shall appoint their representative and shall give him all authority necessary to act on behalf of the Consultant under the Agreement. Prior to the Commencement date the Consultant shall notify the KRFB of the name and particulars of their representative and shall not, without prior consent, revoke the appointment or appoint a substitute. The Consultant's representative shall, on behalf of the Consultant, receive all instructions, notifications, other correspondence, and the like.

CLAUSE 2 (D): INSURANCES

- 2.22 The required insurances are described within this Sub-Clause:

2.22.1 Professional Indemnity Insurance

The Consultant shall provide and maintain a professional indemnity insurance policy in the name of the Consultant indemnifying the Consultant in relation to all claims, liabilities, loss or damage however arising under or out of the Services, except those solely attributable directly to KRFB. The said professional indemnity insurance policy shall be provided from the Commencement Date and be maintained for the duration of the Services, which shall include any delay, extension or variation thereto.

Such professional indemnity insurance policy shall be provided with Indian insurer(s). All costs and expenses incurred, and which may be incurred, in providing this professional indemnity insurance policy shall be deemed to be

included in the Monthly Agreement Price. The receipts for payment of all premiums shall be submitted by the Consultant to KRFB in advance of the premium payment deadline.

It is a precondition to the Agreement coming into effect that the professional indemnity insurance premiums are paid in advance and the professional indemnity insurance cover is to come in to force from the Commencement Date.

Prior to the commencement of the Services the Consultant shall submit written evidence that the professional indemnity insurance policy covers the following:

- A. The Services for the Project being carried out by the Consultant under the Agreement;
- B. The minimum professional indemnity insurance cover for any one incident and the total limit for all incidents occurring within the period of professional indemnity insurance, the said limits shall apply to any periods of Change, delay, extension or variation to the programme;
- C. Any Change, delay, variation and extension to the Services and / or the Project; and
- D. The benefits of the professional indemnity insurance policy are available to any party without restriction.

The Consultant shall maintain the professional indemnity insurance policy in full force and effect and shall not do, nor permit to be done, any action or inaction which may entitle the insurer(s) to repudiate the professional indemnity insurance policy or otherwise jeopardize the right of the Consultant to indemnity according to the professional indemnity insurance policy. The Consultant shall agree that it is not permitted, nor shall it permit, the professional indemnity insurance policy to be cancelled or modified in any way or by any person or entity without the prior written agreement of KRFB.

It shall be the obligation of the Consultant to notify the insurance company of any change, delay, extension or variation to the nature or extent of the programme for the extent of the Services or Project and to ensure that the coverage and adequacy of the professional indemnity insurance is maintained.

The burden of proof for any claim by KRFB under the professional indemnity insurance policy falls on the Consultant and under no circumstances whatsoever shall the Consultant delay advancement of such a claim to the insurer(s). The Consultant has an express obligation to fully pursue said claim(s) with his insurer(s) forthwith.

The Consultant shall maintain in force the insurances required throughout the duration of the Agreement or any other required duration.

CLAUSE 3: OBLIGATIONS OF AUTHORITY (KRFB)

3.1. Facilities, Information and Services of others provided by KRFB

KRFB shall provide the following counter parts : Field engineers – 2 nos : The Candidates shall be either Graduate in Civil Engineering with 7 years' experience in road projects or Diploma in Civil Engineering with 10 years' experience in road projects.

A. Available relevant information:

In the time, if any, stated in Annexure-1, and the General Conditions of Engagement. The Consultant shall review such facilities, information and services for completeness, errors and inconsistencies but shall not be required to verify the accuracy of such facilities, information and services.

3.2 The Chief Executive Officer or his authorized representative will act as chief representative to represent KRFB, for all purpose of the agreement.

3.3 KRFB shall reasonably assist the Consultant to obtain all necessary Government, passes, permits, approvals from Government and other documents required in association with the Services.

3.4. Indemnity

3.4.1 In so far as the law permits, KRFB shall indemnify and hold harmless the Consultant against all claims which arise:

- A. as a result of the use of any documents prepared by the Consultant as part of the Services being used by KRFB for a purpose other than that indicated by, or reasonably to be inferred from, the Agreement; and
- B. in conjunction with the facilities, information and services of others supplied by KRFB pursuant to Sub-Clause 3.1.

Except in so far as the above mentioned claims are:

- (a) covered by the insurances required to be provided by the Consultant under the Agreement; or
- (b) made after the expiry of the "run-off" period of liability referred to in Clause 2

- C. from deliberate default, reckless misconduct, negligent or wilful acts or omissions, or breach of the Agreement by the Consultant, his personnel or agents; or
- D. Otherwise than in connection with the performance of obligations under the Agreement.

CLAUSE 4: PAYMENT

4.1. Payment

- 4.1.1. The Consultant shall be paid in accordance with the procedure as follows:
 - A. Payments will be made to the Consultant according to the actual man months of key personnel deployed for the month and also based on the quantum of expenses incurred by the consultant towards fixed costs, travel costs etc mentioned in the offer letter.
 - B. The Consultant shall submit original invoice for each month, together with all supporting documents, specifying the amount due.
 - C. The representative of KRFB shall authorise the Consultant's application for payment within Twenty One (21) Days of receipt of such invoice; after satisfying that the consultant has met the conditions stipulated in the TOR and
 - D. Within Forty Five (45) Days of receipt of the authorised certificate of payment KRFB shall release the due payment.
- 4.1.2 The currency of payment shall be Indian Rupees.
- 4.1.3. Payment of the authorised amount shall be made into the bank account, nominated by the Consultant, in the State of Kerala. The receipt of a payment in to the nominated bank account shall constitute the complete discharge of the KRFB's obligations with regards to that payment.
- 4.1.4 The Consultant shall maintain up-to-date, records/invoice which clearly identifies relevant time and expenses of travel and other fixed costs mentioned in offer letter and shall make these available to KRFB on reasonable request.

CLAUSE 5: THE DRAWINGS, SPECIFICATIONS, QUANTITIES AND DOCUMENTATION

- 5.1 The Consultant shall not specify any firm, company, or proprietary product in any document in connection with the Services with the exception of the following:

- Where proprietary components or services are produced or supplied by a limited number of suppliers; the Consultant shall submit names of at least three suppliers, for approval of KRFB;
- Where proprietary components or services are produced or supplied by one specific supplier, then approval for the specification or use of such shall be obtained from KRFB. However, such approval shall only be given in exceptional circumstances when it can be demonstrated by the Consultant that no alternative components or services are available, or that positive economic advantage can be achieved by utilising such components.

5.2 The Consultant shall not modify any documents approved by KRFB.

5.3 The Consultant shall not show any favour to Concessionaire or any supplier in connection with the Services, or take personal advantage of any opportunity during the currency of the Services. Should such favour or advantage occur then KRFB shall be deemed to have suffered loss as a consequence and the KRFB may take action pursuant to Clause 8.3 without prejudice to any other rights of the Authority.

5.4 Subject to Sub-Clause 3.4 the requirements of all Government departments and ministries shall be incorporated into the Services. All necessary approvals shall be obtained by the Consultant from the concerned Government departments and ministries.

5.5 Consultant's Documents:

5.5.1 Where the Agreement requires that the Consultant makes a submission to seek the approval of KRFB, then such submission shall be submitted attached to a fully referenced notice. If no time for submission is stipulated, notice shall be provided promptly to allow KRFB to review and comment and to allow the Consultant to have the ability to review and respond to the KRFB comments. Unless the Agreement provides otherwise, each said review period(s) shall not exceed fourteen (14) Days, calculated from the date on which the KRFB receives the Consultant's submission attached to the referenced notice. The notice shall state that the Consultant's submission is considered sufficient, both for review in accordance with this Sub Clause, and if necessary for use. The notice shall also state that the Consultant's submission complies with the Agreement, or the extent to which it does not comply. KRFB may, within the review period, give notice that the Consultant's submission submitted for approval is:

- A. approved or
- B. rejected (to the extent stated).

5.5.2. If the Consultant's submission is rejected, it shall be rectified and resubmitted within seven (7) days of the receipt by the Consultant of KRFB's notice and reviewed in accordance with the terms of this Sub-Clause. Resubmissions shall not qualify as

additional Services and shall not give rise to any adjustment in the Agreement Price or qualify as basis for change or an extension to the Time for Completion. If KRFB fails, within the review period, to give notice of his approval or rejection to the Consultant within the specified period or any extended agreed period, KRFB's approval to the Consultant's submission submitted shall be deemed to have been given. No review, under this Sub-Clause or otherwise, or lack of review, nor any comments, approval or disapproval shall relieve the Consultant from any obligation, responsibility, risk or liability under the Agreement or be deemed to waive or limit the KRFB's rights or remedies.

- 5.5.3 If a Party becomes aware of an error, omission or defect of a technical nature in any Consultant's submission, which was prepared for use in executing the Services the Parties shall confer in good faith with a view to resolving the error or defect and, failing resolution within seven (7) Days, KRFB shall make an appropriate direction to the Consultant and the Consultant shall comply with such direction and resubmit the Consultant's submission to KRFB for approval in accordance with Sub-Clause 5.5.1, without any entitlement to any additional payment or extension to the Time for Completion.

CLAUSE 6: OWNERSHIP OF DOCUMENTS AND INTELLECTUAL PROPERTY RIGHTS

- 6.1 KRFB shall have the copyright of all documents prepared from the Commencement Date of the Agreement and provided specifically for the Services by the Consultant. Such documents shall remain the property of KRFB in perpetuity who shall have the sole right to make use of the same, in any way KRFB deems fit without the Consultant having the right to submit any claim for such use except as provided in the Agreement. In the exceptional circumstance where copyright of the Consultant's Documents cannot be transferred to KRFB, the Consultant grants to KRFB a perpetual, non-terminal, non-exclusive, royalty-free license, transferable, to copy, use and communicate such documents, including making and using modifications (including translations into other languages) of them.
- 6.2 The Consultant may, at its cost, copy, use and obtain communication of KRFB copyright documents solely for the purposes of the Agreement. Such copyrighted documents shall not, without the express consent of KRFB, be copied, used or communicated to a third party by the Consultant, except as necessary for the purposes of the Agreement, in which event the Consultant shall ensure that such third party shall be bound by the same confidentiality and other obligations as the Consultant.
- 6.2 The Consultant shall obtain the KRFB's prior written approval before publishing or transmitting any articles, photographs, illustrations or any other information related to the Project.

- 6.3 Except with the prior written consent of KRFB, the Consultant and their personnel shall not at any time communicate to any person or entity any confidential information acquired in the course of the Services, nor shall the Consultant and the personnel make public the recommendations formulated in the course of, or as a result of the services.

CLAUSE 7: CHANGES

- 7.1 The Agreement can be amended on application by either Party by the written agreement of the Parties in the form of an addendum in the specimen form agreed by both parties.

7.2 Changes

- 7.2.1 The Consultant shall give immediate effect to any instruction from KRFB unless otherwise stated within the Agreement. The Consultant shall issue an Impact Assessment to KRFB within three (3) Days, or any other such time mutually agreed, of receipt of the Instruction detailing any impact on time, cost or quality. KRFB shall within four (4) Days issue a Change Addendum. A Change Addendum shall describe KRFB's determination of the impact of the Change with regards to:

- A. Change to the Agreement;
- B. Agreement Price impact;
- C. Amendment to the Payment schedule
- D. Consultant's Programme impact; and
- E. Resource impact: or
- F. A statement of no time, cost, or quality impact.

Should the Consultant disagree with KRFB's determination of the impact of the Change he shall within seven (7) Days issue a Notice of Dissatisfaction and refer the dispute for settlement pursuant to Clause 13. Upon failure to issue the Notice of Dissatisfaction within the seven (7) Day period KRFB shall be discharged from all liability connected with the disputed element of the Change.

- 7.2.2 KRFB may, pursuant to the agreement, instruct a request for, and the Consultant shall submit within seven (7) Days of receipt of such request, or such other period as may be agreed, a written substantiated Change proposal describing the:

- A. Change to the Agreement;
- B. Monthly Agreement Price impact;
- C. Amendment to the Payment schedule.
- D. Consultant's Programme Impact; and
- E. Resource Impact; or
- F. A statement of no time, cost, or quality impact

Within fourteen (14) Days of receipt of the Consultant's Change proposal KRFB shall respond with acceptance, rejection, comments or determination pursuant to Sub-Clause 7.2.1. The preparation of such Change proposal is deemed to be included within the amounts payable to the Consultant under the Agreement.

7.3 Consultant Claims

7.3.1 The Consultant shall notify to KRFB within fourteen (14) Days from first becoming aware, or should have become aware, of changes or circumstances which may result in any Consultant's claim.

7.3.2 Within fourteen (14) Days of the notification pursuant to 7.3.1, or within such other period as may be proposed by the Consultant and approved by KRFB, the Consultant shall quantify and submit the claim details fully describing the changes or circumstances together with the impact, in the same manner as Sub-Clause 7.2.1.

7.3.3 Within twenty one (21) Days following receipt of the claim details pursuant to Sub-Clause 7.3.2 or within such other period as may be agreed between the Parties, KRFB shall approve or reject the claim and give its reasons for doing so. Notwithstanding the above, KRFB may also request further particulars and substantiation in which case the time for approval or rejection shall be a further twenty one (21) Days from the date of receipt of such further requested particulars and substantiation. Any such request for further particulars and substantiation must be provided within seven (7) Days by the Consultant or within such other period as may be agreed between the Parties. Should the Consultant fail to provide the requested particulars and substantiation within the time agreed KRFB shall be discharged from all liability in connection with the claim. Should KRFB fail to provide his response within the specified time period the Consultant shall within seven (7) Days issue a Notice of Dissatisfaction and refer the dispute for settlement pursuant to Clause 13. Upon failure to issue the Notice of Dissatisfaction within a period of seven (7) days, KRFB shall be discharged from all liability in connection with the claim.

7.3.4 If the Consultant fails to:

- A. give notice of a claim within the period of fourteen (14) Days pursuant to Sub-Clause 7.3.1; and/or
- B. submit the details of claim within a period of fourteen (14) Days from the notice pursuant to Sub-Clause 7.3.2 or any other agreed period between the Parties, the Completion Date shall not be extended and the Consultant shall not be entitled to additional payment and KRFB shall be discharged from all liability in connection with the claim.

7.3.5 Notwithstanding Sub-Clauses 7.3.1, 7.3.2 and 7.3.3 herein, the Consultant shall take all reasonable and practical steps to avoid or mitigate the changes or circumstances.

7.3.6 Notwithstanding Sub-Clauses 7.3.1, 7.3.2 and 7.3.3 herein, any and all claims, without exception, submitted and received by KRFB after the Completion Date or amended Completion Date will not be considered.

7.4 Changes to the Agreement shall be confirmed in writing by the signing and dating of an Addendum by KRFB and the Consultant.

7.5 Any Change proposed by the Consultant shall be subject to KRFB's written instruction pursuant to Sub-Clause 7.2.2 issued prior to the Consultant undertaking the provision of Services associated with the Change proposal. Without receipt of the written instruction KRFB shall retain no liability to the Consultant.

7.6 Force Majeure

7.6.1 Force Majeure means an exceptional event or circumstance which materially and adversely affects performance by a Party of its obligations under the Agreement:

- A. which is beyond the reasonable control of the affected Party.
- B. which the affected Party, despite all reasonable efforts could not have provided against before entering into the Agreement; and
- C. which could not have been prevented, overcome or remedied in whole or in part by the exercise of the affected Party of reasonable skill, care and diligence to a standard as would be exercised by a prudent employer or consultant but excluding such event that could be prevented but for either Party's breach of its obligations under the Agreement.

7.6.2 Force Majeure may include, but is not limited to, exceptional events or circumstances of the kind listed below:

- A. War, hostilities (whether war be declared or not), invasion, act of foreign enemies;
- B. Rebellion, terrorism, revolution, insurrection, military or usurped power, or civil war;
- C. Riot, commotion, disorder, strike or lockout by persons other than the Consultant's personnel and other employees of the Consultant and subconsultant;
- D. Munitions of war, explosive materials, ionising radiation or contamination by radioactivity, except as may be attributable to the Consultant's use of such munitions, explosives, radiation or radio-activity; and/or
- E. Natural catastrophes such as earthquake, hurricane, typhoon or volcanic activity.

7.6.3 Notice of Force Majeure

7.6.3.1 If a Party is or will be prevented from performing any of its obligations under the Agreement by Force Majeure, then it shall give notice to the other Party of the event or circumstances constituting the Force Majeure and shall specify the obligations, the performance of which is or will be prevented. The notice shall be given within seven (7) days of the Party became aware, of the relevant event or circumstance constituting Force Majeure.

7.6.3.2 The Party shall, having given notice, be excused performance of such obligations for so long as such Force Majeure prevents it from performing them.

7.6.3.3 Notwithstanding any other provision of the Agreement, Force Majeure shall not apply to obligations of either Party to make payments to the other Party under the Agreement.

7.6.4 Duty to minimise delay

7.6.4.1 Each Party shall at all times use all reasonable endeavors to minimise any delay in the performance of the Agreement as a result of Force Majeure.

7.6.4.2 A Party affected by the Force Majeure event shall give notice to the other Party when it ceases to be affected by the Force Majeure.

7.6.5 Consequences of Force Majeure

7.6.5.1 If the Consultant is prevented from performing any of his obligations under the Agreement by Force Majeure, of which notice has been given under Sub-Clause 7.6.3.

7.6.5.2 The Consultant shall be entitled to an extension to the Time for Completion, if completion is or will be delayed.

7.6.6 Optional Termination, Payment and Release

7.6.6.1 If the execution of substantially all the Services in progress is prevented for a continuous period of eighty four (84) days by reason of Force Majeure of which notice has been given under Section 7.6.3, or for multiple periods which total more than one hundred and forty (140) Days due to the same notified Force Majeure, then either Party may give to the other Party a notice of termination of the Agreement. In this event, the termination shall take effect seven (7) days after the notice is given and the Consultant shall promptly commence demobilisation.

7.6.6.2 Upon such termination, KRFB shall be liable only to pay to the Consultant:

- A. the amounts payable for any Services carried out in accordance with the Agreement; and
- B. demobilisation costs, as submitted with substantiation to, and certified by, KRFB, and no further payments or compensation shall be due.

CLAUSE 8: DEFAULT BY THE CONSULTANT

8.1 If it is required for the Consultant to carry out Services or to repeat Services as a result of any error, omission, delay, or misjudgement or any other relevant action / inaction by the Consultant, then the Consultant shall carry out such Services or repeated Services promptly and shall not be entitled to any additional sums or extension to the Time for Completion. At any time, the acceptance of the Services provided will not relieve the Consultant of the responsibility for subsequent correction of any errors and from the clarification of any ambiguity therein.

8.2 Penalties

On signing of the Agreement, KRFB expects all of the key personnel to be made available till the expiration or termination of the contract. KRFB will not consider substitutions during contract implementation except under exceptional circumstances. The replacement would be allowed only with Personnel meeting the minimum criteria for qualification and experience requirement of key personnel as given in Clause 13 of RFP.

In case the Consultant fails to replace the personnel in accordance with the Agreement within three weeks, KRFB is entitled to impose:

- i. 5 % reduction of the monthly remuneration of the concerned personnel till the end of the contract period.

or

- ii. KRFB shall be entitled to employ any of the required personnel and all expenses consequent thereon shall be recoverable from the Consultant.

8.2.1 Should the Consultant fail to:

- A. provide the personnel in accordance with the Agreement within Seven days (7) days of the Commencement Date; and/or
- B. provide the personnel in accordance with the Agreement;

then the penalties pursuant to this Clause shall be payable by the sole fact of failure to provide personnel without the need for any notification or warning or recourse to

judicial proceedings and without the need to prove the occurrence of damage or loss which will be considered existing in all cases.

Notwithstanding the provisions of Clause 8.2., the imposition of this penalty shall not prejudice the KRFB's rights to any other remedy arising out of or under the Agreement.

- 8.2.2. KRFB shall have the right, without prejudice to any other remedy to set-off the amount of penalties pursuant to Sub-Clause 8.2 from any monies due or which may become due to the Consultant. The payment or deduction of such penalties shall not relieve the Consultant from his obligation to complete the works or from any other of his obligations and liabilities under the Agreement.
- 8.3 If KRFB incurs any loss or expense as a result of errors or negligence by the Consultant, then KRFB may take action which may include, but may not be limited to the following:
 - A. deduction of such loss and expense from any payments due;
 - B. termination of the Services of the Consultant;
 - C. de-barring of the Consultant or his employees from any present or future projects; and
 - D. recourse to legal action.
- 8.4 The Consultant shall not be relieved of any liabilities or obligations arising either under the Agreement or the Law by any approval, acceptance, or payment by KRFB.
- 8.5 Notwithstanding any other section of the Agreement neither Party shall be liable to the other by way of indemnity or by reason of any breach of the Agreement or legal obligation for any loss of profit, loss of use, loss of production, loss of business, loss of contracts or for any indirect or consequential damage whatsoever that may be suffered by the other except in cases of deliberate default or reckless conduct on the part of either Party or on the part of any person acting on behalf of either Party, except to the extent such losses or costs would otherwise be recoverable under the Law.
- 8.6 The Consultant's cumulative liabilities to KRFB in excess of the coverage provided under the insurances effected by the Consultant pursuant to Clause 2(D).
 - A. Save for Sub-Clause 2.22.1, such cap on liability shall not apply in respect of any indemnity;
 - B. No claim made under an indemnity shall count towards such cap on liability;
 - C. The cap on liability shall not apply in respect of any claims arising out of death, personal injury or damage to property; and
 - D. Claims arising from deliberate default, fraud, fraudulent misrepresentation, or reckless misconduct are specifically excluded from the cap on liability.

Notwithstanding any penalties that may be enforced against the Consultant under Law, KRFB shall be entitled to terminate the Services without compensation in any form whatsoever should the Consultant be deemed by KRFB to have breached the conditions of the executed Conflict of Interest Statement.

CLAUSE 9: Commencement/Suspension/Termination

9.1 The appointment of the Consultant shall commence on the signing of the Agreement by both Parties. The Commencement Date for the commencement of Services under the Agreement shall be that date of issue of work order by KRFB.

9.2 KRFB reserves the right to instruct the Consultant to suspend or terminate any part or all of the Services. Such an instruction shall be issued in writing by the Authority.

9.3 Suspension by KRFB

9.3.1 KRFB may at any time instruct suspension of a part or all of the Services citing the cause, and the Consultant shall immediately comply with such instruction.

9.3.2 If the event that the Consultant considers that he has suffered loss, in time or expense, in complying with KRFB's instruction to suspend for reasons beyond his responsibility then the Consultant shall be entitled to proceed in accordance with Sub-Clause 7.3.

9.3.3 Save in the circumstance of Force Majeure pursuant to Sub-Clause 7.6, if KRFB instructs the Consultant to suspend the carrying out of the whole or part of the Services and if KRFB does not instruct the Consultant within sixty three (63) Days to resume the carrying out of the whole or part of the Services then the Consultant shall request KRFB to issue an instruction to resume or to terminate the whole or part of the Services. KRFB shall issue this instruction within twenty one (21) days, failing which the Services shall be deemed to be terminated by KRFB.

9.3.4 In the event that KRFB issues an instruction to extend the period of suspension beyond sixty three (63) Days then the Consultant shall be entitled to proceed in accordance with Sub-Clause 7.2.2.

9.4 If KRFB terminates carrying out of the whole of the Services then KRFB and the Consultant shall proceed as follows:

- A. Within seven (7) days of the termination, the Consultant shall vacate any office that has been made available to the Consultant and shall return to KRFB all facilities, information and services that have been made available to the Consultant;
- B. Within twenty eight (28) days of the termination the Consultant shall submit to KRFB either the original or a reproducible copy of every document associated with the Services;

- C. Within sixty three (63) days of the termination the Consultant shall submit to KRFB a statement of the total amount that the Consultant considers as payable within the terms of the Agreement until the date of termination less all amounts which may be due to KRFB in connection with penalties, compensation, and expenses in accordance with the terms of the Agreement.

CLAUSE 10: SERVICES TO BE PROVIDED

10.1 Consultants General Obligations

The Consultant shall be deemed to have scrutinized, prior to the Base Date all necessary aspects relating to the provision of the Services and shall be responsible for the completion of the Services described in Terms of Reference and addendums or else issued. The Consultant shall provide the Services and Consultant's Documents required by the Agreement, all personnel, consumables and other things and services, whether of a temporary or permanent nature, required in and for the execution, and completion of the Services. The Services shall include any works and activities which are necessary to satisfy the requirements of the Agreement or are implied by the Agreement.

10.2 Consultant's Documents

The Consultant shall prepare the Consultant's Documents pursuant to the Agreement and any other documents necessary for the efficient and safe performance of the Consultant's duties under the Agreement. If the Consultant wishes to modify any document which has previously been submitted for review, the Consultant shall immediately give notice to KRFB.

10.3 Consultant's Undertaking

The Consultant undertakes that the execution of the Services shall be in accordance with:

- A. Laws of the State of Kerala;
- B. The documents forming the Agreement, as altered or modified by Changes;
- C. Good Design, Engineering and Construction Practices; and
- D. Other undertakings as specified in the Agreement.

10.4 Technical Standards and Regulations

The Consultant's Documents, the study, survey, design, and execution of the Services and the completed Works shall comply with the approved Standards. The Consultant shall give notice to KRFB with particulars of all amendments or changes to the Standards after the Base Date as soon as is practicable after they come into force. If KRFB considers, at their sole discretion, that the Consultant shall comply with such amendments and changes to the Standards, details of which have been notified to it in accordance with the foregoing paragraph, they shall so instruct the Consultant in writing within fourteen (14) Days of the Consultant's notice in the preceding

paragraph. If KRFB fails to give such instruction, the Consultant shall not be obliged to apply such amendments and changes to the Standards.

10.5 Consultant's Errors

If errors, omissions, ambiguities, inconsistencies, inadequacies or other defects are found in the Consultant's Documents at any point in time, including that within the decennial liability period required under Law, they and the Services shall be corrected as soon as practicably possible at the Consultant's cost, notwithstanding any previous consent or approval given by KRFB or penalties or remedies imposed. If the Consultant fails to correct such errors, omissions, ambiguities, inconsistencies, inadequacies or other defects, KRFB shall be entitled to employ another consultant to correct the same and perform such work at the Consultant's cost and the Consultant shall remain liable to KRFB for any subsequent costs that may be incurred.

CLAUSE 11: LAW TO APPLY

11.1 The Agreement shall be applied, interpreted, and construed in accordance with the Law of the State of Kerala.

CLAUSE 12: LANGUAGE

12.1 The Agreement is drafted in English Language.

MODIFICATIONS

Any modifications that may be warranted in future to the said covenants of this agreement shall be undertaken according to the mutual consent of the parties aforesaid.

IN WITNESS WHEREOF the parties have executed this deed of agreement written, executed by the aforesaid parties on this st day of 2016 AD at Thiruvananthapuram, in the presence of witness as under.

(Authorized Signatory)

For Kerala Road Fund Board

(Authorized Signatory)

For

Witnesses:

1.

2.