

**Indian Highways Management Company Limited
(IHMCL)**

*2nd Floor, MTNL Building, Sector 19, Dwarka,
New Delhi-110075*

**PROVISION OF CONTROL CENTRE SERVICES FOR
TRAFFIC SURVEY ON HIGHWAYS**

Ref: No. IHMCL/TRAFFIC SURVEY/CC/2014

REQUEST FOR PROPOSAL (RFP)

May, 2014

TABLE OF CONTENTS

SECTION I	NOTICE INVITING TENDER
SECTION II	DEFNITIONS
SECTION III	INSTRUCTIONS TO BIDDERS
SECTION IV	CONDITIONS OF CONTRACT
SECTION V	SCOPE OF WORK
SECTION VI	BILL OF QUANTITIES & FORMAT FOR SUBMISSION OF FINANCIAL PROPOSAL
SECTION VII	FORMATS FOR SUBMISSION OF BIDS

SECTION - I

NOTICE INVITING TENDER

Bids are invited for the below mentioned work by Indian Highways Management Company Limited (IHMCL) from eligible bidders:

Name of the Work	EMD/ Bid Security	Document Fee(non refundable)	Contract period	Closing date and time
Provision of Control Centre Services for Traffic Survey on Highways	INR. 5,00,000/- (Indian Rupees Five Lakhs only)	INR. 5000/- (Indian Rupees One thousand only)	5 Years	Up to 1100 Hrs. (IST) on 16.6.2014

The RFP document to be downloaded from the NHAI/MoRTH's website indicated below. The Bids shall be liable for summarily rejection unless accompanied by the requisite EMD and bid document fee as indicated above. IHMCL shall not be responsible for any postal delay. Bids submitted after the closing date/time shall be summarily rejected.

The National Highways Authority of India reserves the right to accept or reject any or all bids without thereby incurring any financial or other liability to the affected bidders.

Address for communication and for bid submission:

**CEO
Indian Highways Management Co. Ltd. (IHMCL)
2nd Floor, MTNL Building,
Sector 19, Dwarka
New Delhi 110 075**

Phone: +91-11-25074100 Ext.1409

Email: palekar@nhai.org

Website: www.nhai.org

SECTION II

2.0 DEFINITIONS

In this document, the following terms shall have respective meanings as indicated:

- a. **“Authorized Representative”** means any person/agency authorized by IHMCL.
- b. **“Bidder”** means a firm or JV or Consortium which participates in the tender and submits its proposal.
- c. **Client / Employer / Purchaser** shall mean the Indian Highways Management Co. Ltd.
- d. **“Commencement date”** means the date upon which the Contractor receives the notice to commence the work issued by the Employer.
- e. **“Contract”** means the agreement entered into between the Employer and the Contractor, as recorded in the Contract documents signed by the parties, including all attachments and appendices thereto and all documents incorporated by references therein
- f. **“IHMCL”** means Indian Highways Management Co. Ltd.
- g. **“Law” or “Legislation”** - shall mean any Act, notification, bye law, rules and regulations, directive, ordinance, order or instruction having the force of law enacted or issued by the Government of India or State Government or regulatory authority or political subdivision of government agency.
- h. **“Letter of Award (LOA)”** means the issue of a signed letter by the Employer of its intention to accept the offer of successful bidder and awarding the work mentioning the total Contract Value.
- i. **“Local Currency”** means the Indian Rupees
- j. **“MoRTH”** means Ministry of Road Transport and Highways
- k. **“NHAI”** means National Highway Authority of India, New Delhi.
- l. **“Party”** shall mean IHMCL or Bidder individually and “Parties” shall mean IHMCL and Bidder collectively.
- m. **“Personnel”** means persons hired by the Contractors as employees and assigned to the performance of the Services or any part thereof.
- n. **“RFP”** shall mean Request for Proposal, Tender Document or Bidding Document including the written clarifications & Corrigendum/Addendum issued by IHMCL in respect of the RFP.
- o. **“Services”** means requirements defined in this Request for Proposal including all additional services associated thereto to be delivered by the Service Provider.

- p. **“Successful Bidder”** means the Bidder, who, after the complete evaluation process, gets the Letter of Award. The Successful Bidder shall be deemed as “Contractor” appearing anywhere in the document.

SECTION 3

INSTRUCTION TO BIDDERS

3.1 INTRODUCTION

The Ministry of Road Transport & Highways (MORT&H) is responsible for the development, maintenance and management of National Highways and for matters connected or incidental thereto.

MORT&H officiates from Transport Bhawan located at 1, Parliament Street, New Delhi. MORT&H also has Regional offices in most of the State Capitals. Issues relating to Planning for National Highways are being done by MORT&H and the execution of work at site are being done through agencies namely, National Highways Authority of India (NHAI), National Highway (NH) wing of State Public Works Department (PWD), Border Roads Organisation (BRO) etc.

NHAI got a new Company “Indian Highways Management Company Ltd. (IHMCL)” incorporated with equity participation of NHAI (25%), Concessionaires (50%) and Financial Institutions (25%) for implementation of Electronic Toll Collection (ETC) and other Intelligent Transportation System (ITS) / transportation related activities on highways in India.

MORT&H assigned IHMCL for conducting traffic survey at around 1600 locations on national highways in India. In that direction, IHMCL invited bids from eligible agencies to conduct traffic survey using portable Automatic Traffic Counter-cum-Classifiers (ATCC) on sections of 2/4/6/8 lane National Highways at identified locations on National Highways in India as given in Annexure-3.

Through this RFP, the agency is expected to collect traffic data from the traffic survey agencies, store, process/analyze data, generate various reports, hosting on webserver etc.

3.2 ELIGIBILITY CRITERIA

- 3.2.1 The applicant shall be a Company incorporated and registered in India under the Companies Act, 1956.

(Documentary proof (copy of certificate of incorporation) shall be submitted as part of the eligibility documents)

- 3.2.2 The average annual turnover should be more than Rs. 1 cr. in the last consecutive three financial years

(A certificate from the statutory auditor as proof for the above in the enclosed format)

- 3.2.3 The bidder should have experience of setting up/operation /maintenance of Control Centre.

The documentary proof in support of the experience(in the form of copy of work order/ completion certificate from its clients or a self-declaration indicating the names of projects undertaken, scope of work of each project, name of client, start date, date of completion, value of the project etc.) shall be submitted as part of the eligibility documents.

- 3.2.3.1 A subsidiary Company registered in India of a Foreign Company having requisite experience may also participate, however, for considering the experience of the Parent Company, the subsidiary Company registered in India should provide an undertaking from their Parent Company confirming thereby:

- (i) perpetual and unconditional access to expertise, personnel and facilities of the Parent Company to the Indian Company;
- (ii) sharing of risks and profits of the Indian Company by the Parent Company; and
- (iii) that the Parent Company has sufficient representation in the management of Indian Company to control the activities of the subsidiary.

In such case, only the experience and the details of the Parent Company will be considered, **otherwise** the details/ experience of Indian Company only will be considered.

- 3.3 The Applicant may be Joint Venture (JV)/ Consortium subject to fulfilling following conditions:

- (i) maximum number of partners in the JV or Consortium shall be **two**;
- (ii) the parties in a JV or Consortium shall be jointly and severally liable;
- (iii) the Lead Partner, shall be the most experienced firm amongst the parties in JV;
- (iv) the stakes of the Lead Partner in the JV or Consortium should not be less than fifty percent (50%);
- (v) the eligibility/ experience of each partner of JV or Consortium shall be considered in proportion to their stakes in the JV/ Consortium; and
- (vi) the eligibility/ experience of any partner of JV or Consortium shall be considered only if the partner is proposed to have at least twenty six percent (26%) stakes in the JV/ Consortium.

- 3.3.1 The documentary proof in support of fulfilling the eligibility criteria by the Consortium/ JV, along-with a copy of a MoU and Draft JV Agreement as per requirements under Para 3.3 above shall be submitted as part of the eligibility documents.

3.4 Power of Attorney

The Bidder should submit a notarised Power of Attorney authorizing the signatory of the Bid to commit the Bidder.

3.5 CONTENT OF TENDER DOCUMENT

3.5.1 The Tender document should be read in conjunction with any addenda or clarifications issued.

3.5.2 Bidders are advised to study the Bid Document carefully. Submission of the Bid will be deemed to have been done after careful study and examination of all instructions, eligibility norms, terms and requirement specifications in the tender document with full understanding of its implications. Bids not complying with all the given clauses in this tender document are liable to be rejected. Failure to furnish all information required in the tender Document or submission of a bid not substantially responsive to the tender document in all respects will be at the bidder's risk and may result in the rejection of the bid.

3.6 COST OF BIDDING:

The Bidder shall bear all costs associated with the preparation and submission of the Bid and IHMCL will in no case, be responsible or liable for those costs, regardless of the conduct or outcome of the bidding process.

3.7 CLARIFICATION ON TENDER DOCUMENT

3.7.1 All Bidders are required to go through the tender document (RFP document) and submit their queries/ clarifications to IHMCL in writing within 10 days from the date of publication of this tender. IHMCL will not respond to any queries received after this date.

3.7.2 Pre-Bid meeting will be held at NHAI, Sector-10, Dwarka, New Delhi on 27.05.2014 at 11.00 am

3.7.3 IHMCL will publish the clarifications to the bidders' queries on NHAI's website www.nhai.org only. No separate information will be sent to any individual Bidder in this regard.

3.8 AMENDMENT OF TENDER DOCUMENT

3.8.1 At any time prior to the deadline for submission of bids, IHMCL, for any reason, whether at its own initiative or in response to the clarifications requested by prospective Bidders may modify the bidding documents by issuing amendment(s).

3.8.2 Any Corrigendum /Addendum thus issued shall be part of the bidding documents and shall be communicated on website www.nhai.org only. No separate information will be passed to any individual Bidders in this regard.

3.9 LANGUAGE OF BID

The Bid prepared by the Bidder, as well as all correspondence and documents relating to the Bid exchanged by the Bidder and IHMCL shall be written in English.

3.10 SUBMISSION OF BID

3.10.1 The bids shall be submitted in a sealed envelope superscripted “Bid for conducting Traffic Survey using portable ATCC systems”, which should contain following sealed envelopes:

- (i) Application fee of Rs. 5,000
- (ii) EMD of Rs. 5,00,000 (Rupees Five Lakh only) in the form of DD
- (iii) Technical Bid
- (iv) Financial Bid

3.10.2 The technical bid shall contain the following:

- a. Index of documents with page number;
- b. A cover letter on the letter head of the Applicant in the prescribed format at 7.1
- c. Power of Attorney (in original) in favour of the authorized signatory of the bidder in the prescribed format at **7.4**; the Power of Attorney should be executed on a non-judicial stamp paper of appropriate denomination and should be registered or duly notarized by a notary public.
- d. Documents substantiating eligibility of the bidder.

3.11 BID PRICE

- a) The bidder shall indicate the prices in Indian Rupees only.
- b) Prices quoted by the bidder shall be fixed for the entire **Contract period**. Bids submitted with adjustable price quotations will be rejected.

3.12 BID VALIDITY

- a) Bids shall remain valid for a period of **180 days** from the last date of bid submission. Any Bid valid for a shorter period shall be rejected as non-responsive.
- b) In exceptional circumstances, IHMCL may solicit Bidder's consent to an extension of the period of validity. The request and the responses thereto shall be made in writing. A Bidder granting the request is neither required nor permitted to modify the Bid.

3.13 DOCUMENT FEE AND BID SECURITY

3.13.1 The Bidder shall furnish, as part of the Bid, Earnest Money Deposit (EMD) /Bid Security for an amount **INR 5,00,000/-**-(Rupees Five Lakhs only)

3.13.2 **Document fee:** The document fee (non-refundable) of Rs. 5000/- (Rupees Five thousand only) in the form of a demand draft / pay order drawn in favour of “Indian Highways Management Company Ltd.” on any Scheduled bank payable at New Delhi shall be submitted by the bidder.

3.13.2 The Earnest Money shall be in the form of a demand draft / pay order drawn in favour of “Indian Highways Management Company Ltd.” on any Scheduled bank payable at New Delhi.

The bid security in any other form shall not be accepted and the bid shall be rejected.

3.13.3 Any bid not accompanied by an acceptable Earnest Money Deposit shall be rejected by the Employer as non-responsive.

3.13.4 The Earnest Money of unsuccessful bidders will be returned as promptly as possible, after expiry of the period of Bid Validity prescribed by the Employer.

3.13.5 The Earnest Money of the **successful Bidder** will be discharged when the Bidder has furnished the required Performance Security and signed the Contract Agreement.

3.13.6 The Bid Security / Earnest Money will be forfeited:

- (i) if the Bidder withdraws or modifies the Bid during the period of Bid validity;
- (ii) if the Bidder does not accept the correction of the bid price, pursuant to [Clause 3.22](#); or
- (iii) in the case of a successful Bidder, if the Bidder fails within the specified time limit to
 - a. sign the Agreement; and/or
 - b. Furnish the required Performance Security.

3.14 ALTERNATIVE PROPOSALS BY BIDDERS

Bidder shall submit offers that fully comply with the requirement of the tender document including conditions of contract. **Conditional offer or alternate offer** will **not be** considered further in the process of tender evaluation.

3.15 FORMAT FOR SIGNING OF BID

3.15.1 The Bidders are required to fill up and submit all the formats.

- 3.15.2 The Bid shall be signed by a duly authorized person to sign on behalf of the bidder. All pages of the bid except any un-amended printed literature shall be signed and sealed by the person signing the bid.
- 3.15.3 The Bid shall contain no overwriting, alterations or additions. If it is necessary to correct errors made by the Bidder, in which case such corrections shall be made by scoring out the cancelled portion, **writing the correction and signing** by the authorised signatory of the Bid.

3.16 FORMAT FOR SUBMISSION OF PROPOSALS

- 3.16.1 All the Bids (Technical & Financial bids) will have to be submitted **ONLY in HARD BOUND** (Hard bound implies such binding between two covers through stitching or otherwise whereby it may not be possible to replace any paper without disturbing the document) form with all pages sequentially numbered either at the top or at the bottom right corner of each page. It should also have an index giving page wise information of above documents. **Bids without hard bound will summarily be rejected. The spiral bound document is not hard bound and will be summarily rejected.**
- 3.16.2 The outer envelope shall indicate the name and address of the bidder to enable the bid to be returned unopened in case it is declared “late”.
- 3.16.5 If these envelopes are not sealed and marked as required, IHMCL will assume no responsibility for the bid’s misplacement or premature opening.

3.17 DEADLINE FOR SUBMISSION OF BID

- 3.17.1 Complete Bid containing the entire Envelope as specified must be received by the Employer at the address specified in the NIT on or before **16.06.2014 up to 1100 Hrs(IST)**. In the event of the specified date for the submission of bids being declared a holiday for the Employer, the Bids will be received up to the specified time on the next working day.
- 3.17.2 The Employer may, at his discretion, extend the deadline for submission of bids by issuing an amendment in which case all rights and obligations of the Employer and the bidders previously subject to the original deadline will thereafter be subject to the deadline extended.
- 3.17.3 Offer by fax / e-mail will not be acceptable.

3.18 LATE SUBMISSION

Bids received after the deadline will be rejected and returned to the bidder unopened. This will be strictly followed.

3.19 MODIFICATION AND WITHDRAWAL OF BIDS

- 3.19.1 Bidders may modify or withdraw their bid before the deadline.
- 3.19.2 The modifications or withdrawal shall be submitted in a separate sealed envelope and marked as 'Modifications or withdrawal' as appropriate.
- 3.19.3 No bid shall be modified after the deadline for submission of Bids.

3.20 OPENING OF BIDS

- 3.20.1 Technical Bids will be opened at **1200Hrs(IST) on 16.06.2014** at the address mentioned in NIT.
- 3.20.2 Bidder's representative may attend the opening, and those who are present shall sign evidencing their attendance.
- 3.20.3 The Bidder's names, Bid modifications or withdrawals and such other details as IHMCL at its discretion, may consider appropriate, will be announced at the time of opening.

3.21 EXAMINATION AND EVALUATION OF BIDS

- 3.21.1 The Purchaser reserves the right to modify the Evaluation Process at any time during the Tender Process, without assigning any reason, whatsoever, and without any requirement of intimating the Bidders of any such change.
- 3.21.2 Any time during the process of evaluation, the Purchaser may seek for clarifications from any or all Bidders.
- 3.21.3 **Phase-1: Document Fee & EMD/Bid Security:** First, the envelope containing Document fee and Bid Security will be opened and if both are found furnished by the bidders in the prescribed manner, then the second envelope containing Technical Proposal documents shall be opened. At any stage during the evaluation, if the EMD is found invalid, the respective Bidder's bid will be summarily rejected.
- 3.21.4 **Phase-2: Technical Proposal Evaluation:**

The Bidder shall have to fulfil all the Eligibility Criteria as specified, in totality and submit all the required documents. These documents will be scrutinized in this phase of evaluation. Those bidders who do not fulfil the terms and conditions of Eligibility Criteria as specified in this tender will not be eligible for further evaluation.

Evaluation of Technical Proposals by IHMCL shall not be questioned by any of the Bidders. IHMCL may ask Bidder(s) for additional information, visit to Bidder's site and/ or arrange discussions with their professional, technical faculties to verify claims made in Technical Bid documentation from the Bidder on the already submitted Technical Proposal at any point of time before opening of the Financial Proposal.

- 3.21.5 **Phase-3:Financial Proposal Evaluation:**

The Financial Proposals of ONLY the Bidders who are short-listed in Phase-2 will be evaluated. The Financial Proposal Evaluation will be based on the "Total Cost", which would be the total payouts including all taxes etc.

If there is a discrepancy between the unit price & the total price, the unit price shall prevail and IHMCL shall correct the total price. If there is a discrepancy between words & figures, the amount in words shall prevail. If the bidder does

not accept the correction of errors, his bid shall be rejected and the EMD will be forfeited.

The Evaluation Committee shall determine if the financial proposal is complete and without computational errors. The proposal with the **lowest price** will be selected.

3.22 IMBALANCED BID

If the Bid of the successful Bidder is seriously imbalanced in relation to the **Employer's estimate** of the cost of work to be performed under the contract, the Employer may require the Bidder to produce detailed price analysis for any or all items of the Bill of Quantities, to demonstrate the internal consistency of the proposed System. After evaluation of the price analyses, the Employer may require that the amount of the performance security set forth in [Clause 3.30](#) be increased and an additional performance security may be obtained at the expense of the successful Bidder to a level sufficient to protect the Employer against financial loss in the event of default of the successful Bidder under the Contract. The amount of the additional increased performance security shall be equal to the seriously imbalanced amount, which shall be final, binding and conclusive on the bidder.

3.23 PROCESS TO BE CONFIDENTIAL

Information relating to the examination, clarification, evaluation, and comparison of bids and recommendations for the award of a contract shall not be disclosed to bidders or any other persons not officially concerned with such process until the award to the successful Bidder has been announced. Any attempt by a Bidder to influence the Employer's processing of bids or award decisions may result in the rejection of his Bid.

3.24 AWARD CRITERIA

Subject to [Clause 3.26](#), the Employer will award the Contract to the Bidder whose Bid has been determined to be responsive to the Tender documents and who quoted the lowest.

3.25 Deleted

3.26 IHMCL 'S RIGHT TO REJECT ANY OR ALL BIDS

IHMCL reserves the right to reject any Bid, and to annul the bidding process and reject all bids at any time, without thereby incurring any liability to the affected Bidder(s) or any obligation to inform the affected Bidder(s) of the grounds for such decision.

3.27 NOTIFICATION OF AWARD OF CONTRACT

3.27.1 Prior to the expiration of the Bid validity, the Employer will notify the successful bidder that his Bid has been accepted. The Employer will mention the contact value in the letter of acceptance (LOA).

- 3.27.2 The Contract Agreement will incorporate all agreements between the Employer and the successful Bidder. It will be signed by the Employer and the successful Bidder after the performance security is furnished. The Employer will issue notice to commence the work after signing of contract.
- 3.27.3 Upon furnishing of the Performance Security by the successful Bidder, the Employer will promptly notify the other Bidders that their Bids have been unsuccessful. EMDs of unsuccessful bidders will be returned back to them after signing of contract agreement with the successful bidder.

3.28 CONFIDENTIALITY

- 3.28.1 The Bidder shall keep confidential any information related to this tender with the same degree of care as it would treat its own confidential information. The Bidders shall note that the confidential information will be used only for the purposes of this tender and shall not be disclosed to any third party for any reason whatsoever.
- 3.28.2 As used herein, the term “Confidential Information” means any written information, including without intimation, information created by or for the other party, which relates to internal controls, computer or data processing programs, algorithms, electronic data processing applications, Source Code, routines, subroutines, techniques or systems, or information concerning the business or financial affairs and methods of operation or proposed methods of operation, accounts, transactions, proposed transactions or security procedures of either party or any of its affiliates, or any client of either party, except such information which is in the public domain at the time of its disclosure or thereafter enters the public domain other than as a result of a breach of duty on the part of the party receiving such information. It is the express intent of the parties that all the business process and methods used by the Bidder in rendering the services hereunder are the Confidential Information of the Bidder.
- 3.28.3 At all times during the performance of the Services, the Bidder shall abide by all applicable IHMCL / MoRTH’s security rules, policies, standards, guidelines and procedures. The Bidder should note that before any of its employees or assignees is given access to the Confidential Information, each such employee and assignees shall agree to be bound by the term of this tender and such rules, policies, standards, guidelines and procedures by its employees or agents.
- 3.28.4 The Bidder should not disclose to any other party and keep confidential the terms and conditions of this Contract agreement, any amendment hereof, and any Attachment or Annexure hereof.
A copy of **Non Disclosure Agreement** as per the enclosed format at section -7 has to be signed by the successful bidder during signing of the contract agreement.
The obligations of confidentiality under this section shall survive rejection of the contract.

3.28.5 Bidders shall not be under a declaration of ineligibility for corrupt and fraudulent practices by the Central Government, the State Government or any public undertaking, autonomous body, authority by whatever name called under the Central or the State Government.

3.29 SIGNING OF AGREEMENT

At the same time that the Employer notifies the successful bidder that his bid has been accepted, the Employer will direct him to submit the Performance Security and inform the bidder for signing of the Contract Agreement.

3.30 PERFORMANCE SECURITY

3.30.1 Within 15 (Fifteen) days of the receipt of the Letter of Award, the successful Bidder shall submit performance security in the form of Bank Guarantee for Rs. 25,00,000/- (Rupees Twenty Five Lakhs only).

3.30.2 Deleted

3.30.3 The Performance Security shall be submitted in the form of Bank Guarantee issued in the name of Employer by a bank mentioned under [clause no: 3.31](#) as per the format given in [Section -7](#) and will be valid for **a period of 180 days after the expiry of contract period.**

3.30.4 The Performance Guarantee shall be payable to the Employer as a compensation for any loss resulting from the Contractor's failure to complete its obligations under the contract.

3.31 BANK GUARANTEE (BG)

3.31.1 The Bank Guarantee in the name of the Employer issued by the following banks would only be accepted:-

- (i) State Bank of India or its subsidiaries,
- (ii) Any Indian Nationalised Bank
- (iii) IDBI or ICICI Bank
- (iv) A Foreign Bank (issued by a branch outside India) with a counter guarantee from SBI or its subsidiaries or any Indian Nationalised Bank.
- (v) Any Scheduled Commercial Bank approved by RBI having a net worth of not less than Rs. 500 crore as per the latest Annual Report of the Bank. In the case of a Foreign Bank (issued by a branch in India), the net worth in respect of the Indian operations shall only be taken into account.
- (vi) Export Import Bank of India

3.31.2 The acceptance of the guarantees shall also be subject to the following conditions:-

- (i) The capital adequacy of the Bank shall not be less than the norms prescribed by RBI (presently 9, with effect from 31st March, 2003, 10).
- (ii) The bank guarantee issued by a Cooperative Bank shall not be accepted.

3.32 CORRUPT OR FRAUDULENT PRACTICES

The Employer will reject a proposal for award if it determines that the Bidder recommended for award has engaged in corrupt or fraudulent practices in competing for the contract in question.

The Employer will declare the firm ineligible, either indefinitely or for a stated period of time, to be awarded a contract by National Highways Authority if it at any time determines that the firm has engaged in corrupt or fraudulent practices in competing for the contractor, or during execution.

“Corrupt practice” means the offering, giving, receiving, or soliciting of any thing of value to influence the action of a public official in the procurement process or in Contract execution.

“Fraudulent Practice” means a misrepresentation of facts in order to influence a procurement process or the execution of a contract to the detriment of the Employer and includes collusive practice among Bidders (prior to or after bid submission) designed to establish bid process at artificial non-competitive levels and to deprive the Employer of the benefits of free and open competition.

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SECTION IV- CONDITIONS OF CONTRACT

4.1 CONDITIONS OF CONTRACT

These Conditions shall supplement or amend the other parts of the Bidding Documents and whenever there is a conflict; provision herein shall prevail over those in the other parts of the Bidding Documents.

4.2 GOVERNING LANGUAGE

All correspondence and other documents to be exchanged by the parties shall be written in the English language. The version written in English language shall govern its interpretation.

4.3 APPLICABLE LAW

Appropriate laws of Government of India shall apply.

4.4 INTERPRETATION

In interpreting these Conditions of Contract, singular also means plural, male also means female or neuter, and the other way around. Headings have no significance. Words have their normal meaning under the language of the Contract unless specifically defined.

4.5 The Contractor shall indemnify the IHMCL against all third party claims of infringement of patent, trademark or industrial design rights arising from use of the goods or any part thereof in IHMCL.

4.6 The Bidders are expected to examine all terms and instructions included in the RFP Document. During preparation of the technical proposal, the bidders shall make their own assessment of staff to undertake the assignment.

4.7 PAYMENT TERMS

4.7.1 Payments will be made in Indian Rupees only

4.7.2 Payment will be made on quarterly basis after successful completion of quarterly services. Payment will be made normally within 60 days of submission of invoice subject to adjustment of applicable penalties, if any.

4.8 PRICES

- a) All taxes and duties as applicable shall be payable by the Contractor.
- b) Service Tax shall be released separately only after submission of proof of payment of the service tax duly certified by a Chartered Accountant.
- c) Mandatory taxes/ duties etc. as applicable will be deducted by IHMCL.

- d) The effects of any increase / decrease of any type of taxes levied by the Government shall be borne by the Contractor
- e) All payments shall be made subject to adjustment of applicable penalties.
- f) No amount or cost shall be payable for holding discussion, as considered necessary by the Client, for any purpose with Client's Officials at Client's Head Office or elsewhere, prior, during or after the conduct of an assignment.
- g) Prices quoted by the bidder shall be fixed for the entire **Contract period**.

4.9 START OF ASSIGNMENT

- 4.9.1 Within thirty (30) days of receipt of formal instruction from IHMCL, the contractor shall commence Control Centre (CC) operation.
- 4.9.2 The Contractor, if faced with problems in timely commencement of operation, shall immediately inform IHMCL in writing/Email, about the causes of the problem /delay and tentative duration of such delay etc.

4.10 PENALTY

- 4.10.1 In case of delay in setting up / commencement of CC operation, penalty of Rs. 5000/- per day upto to a maximum of Rs. 5,00,000/- will be imposed. However in case of delay due to reasons beyond the control of the agency, suitable extension of time will be granted without imposing any penalty.
- 4.10.2 For deficiency in services, penalties will be application as per clause 5.10

4.11 CONTRACT PERIOD

The total contract period will be for **Five Years** renewable on yearly basis at the option of IHMCL.

4.12 INSURANCE

The Contractor shall have necessary insurances, as appropriate.

4.13 FORCE MAJEURE

- (i) Neither party shall be responsible to the other for any delay or failure in performance of its obligations due to any occurrence commonly known as Force Majeure which is beyond the control of any of the parties, including, but without limited to, fire, flood, explosion, acts of God or any governmental body, public disorder, riots, embargoes, or strikes, acts of military authority, epidemics, strikes, lockouts or other labour disputes, insurrections, civil commotion, war, enemy actions.

- (ii) If a Force Majeure arises, the Contractor shall promptly notify IHMCL in writing of such condition and the cause thereof. Unless otherwise directed by IHMCL, the Contractor shall continue to perform his obligations under the contract as far as is reasonably practical, and shall seek all reasonable alternative means for performance not prevented by the Force Majeure event. The Bidder shall be excused from performance of his obligations in whole or part as long as such causes, circumstances or events shall continue to prevent or delay such performance.

4.14 INDEMNIFICATION

The successful bidder shall at all time indemnify IHMCL and MoRTH against all claims of losses and damages etc. of any kind which may be made by third party in respect of infringement of any protected right. Provided always that in the event of any claim in respect of alleged breach being made against IHMCL and MoRTH, the IHMCL shall notify the successful bidder of the same and the successful bidder shall at its own expense either settles any such dispute or conduct and litigation that may arise there from.

The successful bidder will indemnify IHMCL and MoRTH of all legal obligations of its professionals deployed. IHMCL and MoRTH also stand absolved of any liability on account of death or injury sustained by the Contractor's staff during the performance of their work and also for any damages or compensation due to any dispute between the agency and its staff.

4.15 TERMINATION

- 4.15.1 **ON EXPIRY OF THE CONTRACT:** The Agreement shall be deemed to have been automatically terminated on the expiry of the Contract period unless the IHMCL has exercised its option to extend the Contract in accordance with the provisions, if any, of the Contract.
- 4.15.2 **ON ACCOUNT OF FORCE MAJEURE:** Either party shall have the right to terminate the Contract on account of Force Majeure, as set forth in [clause 4.13](#).
- 4.15.3 **ON BREACH OF CONTRACT:** The Employer may terminate the Contract if the Contractor causes a fundamental breach of the Contract.

Fundamental breach of Contract include, but shall not be limited to, the following:

- a) The contractor fails to carryout any obligation under the contract.
- b) The contractor without reasonable excuse fails to commence the work in accordance with [clause 4.9](#).
- c) Has failed to furnish the required securities or extension thereof in terms of the contract.

- d) the Contractor stops work and the stoppage has not been authorized by the Employer;
- e) the Contractor at any time during the term of the Contract becomes **insolvent** or makes a voluntary assignment of its assets for the benefit of creditors or is adjudged bankrupt
- f) If the Contractor, in the judgement of the Employer, has engaged in the corrupt or fraudulent practice in competing for or in executing the Contract.
- g) Any other fundamental breaches as specified in the Tender.

4.15.4 Notwithstanding the above, the Employer may terminate the Contract for convenience by giving 30 days prior notice without assigning any reason.

4.16 ARBITRATION/ RESOLUTION OF DISPUTES

In the event of any dispute or difference arising out or touching upon any of the terms and conditions of this contract and / or in relation to the implementation or interpretation hereof, the same shall be resolved initially by mutual discussion and conciliation but in the event of failure thereof, the same shall be referred to a sole arbitration of the Chairman of the Indian Highways Management Co. Ltd. (IHMCL) or his nominee and the decision of the Arbitrator shall be final and binding upon the parties. The arbitration shall **be in Delhi** and the Arbitrator shall give his award in accordance with “The Arbitration and Conciliation Act, 1996”.

----- **XXXX** -----

SECTION -V

SCOPE OF WORK

5.1 Background

The Ministry of Road Transport & Highways (MORT&H) is responsible for the development, maintenance and management of National Highways and for matters connected or incidental thereto.

MORT&H officiates from Transport Bhawan located at 1, Parliament Street, New Delhi. MORT&H also has Regional offices in most of the State Capitals. Issues relating to Planning for National Highways are being done by MORT&H and the execution of work at site are being done through agencies namely, National Highways Authority of India (NHAI), National Highway (NH) wing of State Public Works Department (PWD), Border Roads Organisation (BRO) etc.

NHAI got a new Company “Indian Highways Management Company Ltd. (IHMCL)” incorporated with equity participation of NHAI (25%), Concessionaires (50%) and Financial Institutions (25%) for implementation of Electronic Toll Collection (ETC) and other Intelligent Transportation System (ITS) / transportation related activities on highways in India.

MORT&H assigned IHMCL for conducting traffic survey at around 1600 locations on national highways in India. In that direction, IHMCL invites bids from eligible agencies to conduct traffic survey using portable Automatic Traffic Counter-cum-Classifiers (ATCC) on sections of single/intermediate/2/4/6/8 lane National Highways at identified locations on National Highways in India as given in Annexure-3. and set-up & provision of Control Centre (CC) services in New Delhi.

Through this RFP, the agency is expected to collect traffic data from the traffic survey agencies, store, process/analyze data generate various reports, hosting on webserver etc.

5.2 Control Centre (CC) Services

5.2.1 Control Centre (CC) Services include but not limited to the following:

- (i) Collection of traffic survey data from all agencies
- (ii) Compilation of traffic survey data received from all locations /zones.
- (iii) Setup, maintain and operate Database System for traffic survey data.
- (iv) Upload traffic survey data in the database.
- (v) Setup, maintain and operate Web based system for remotely accessing the traffic survey reports.
- (vi) Design/ customise various types of reports and graphs as per the requirements of IHMCL / MoRTH

- (vii) Safe custody of traffic survey reports/ data received in the form of hard copies and electronic media

5.9.2 Control Centre (CC) will be in Delhi NCR. IHMCL will only provide the space for Control Centre for housing required Hardware and other equipment/furniture etc. Control Centre service provider shall make his own arrangements for power supply, telecom, internet bandwidth, air conditioning, furniture, storage racks, furnishing etc.

5.9.3 Service provider shall have minimum following systems in the Control Centre:

- (i) Server /database of adequate size and specifications for storing and accessing minimum 25,000 traffic survey reports of all locations/zones for the contract period of 5 years.

- (ii) 60+ inch LED TV/Monitor for viewing traffic survey reports and traffic video.

- (i) Desktop Computer

- (a) 27-inch (diagonal) LED-backlit display with IPS technology; 2560x1440 resolution
- (b) 3.4GHz quad-core Intel Core i5 processor (Turbo Boost up to 3.8GHz) with 6MB L3 cache
- (c) 8 GB RAM and 1TB (7200-rpm) hard drive
- (d) NVIDIA GeForce GTX 775M graphics processor with 2GB of GDDR5 memory
- (e) Operating System : OS X Mavericks

- (ii) Laptop Computer with broadband data card

- (a) 13.3-inch (diagonal) LED-backlit glossy widescreen display, 1440x900 (native) resolution
- (b) 4GB of 1600MHz LPDDR3 onboard memory and 256GB flash storage
- (c) 1.3GHz dual-core Intel Core i5 (Turbo Boost up to 2.6GHz) with 3MB shared L3 cache
- (d) Intel HD Graphics 5000
- (e) Battery - Up to 12 hours wireless web and 30 days standby time
- (f) Operating System : OS X Mavericks

- (iii) Network Colour Printer

- (iv) Broadband internet connection

5.9.4 Immediately after receipt of traffic data (in electronic form) from survey agencies, the service provider shall upload the traffic data on their Web Server to enable the authorised users of employer accessing reports remotely. The service provider may setup his own Web Server at the Control Centre or take services from external source.

The video of traffic survey received in electronic form (HDD media) will be generally used for verification of class/count of ATCC traffic data and monitoring of traffic. The video need not have to be loaded in any Server.

5.9.5 The Service Provider shall analyze the collected traffic data as per the requirement of the Employer for Hourly, daily, weekly, monthly and yearly traffic variation with pictorial diagrams/graphs for all types of vehicles to determine, but not be limited to, the following:

- (i) Monthly traffic composition
- (ii) Traffic pattern in urban / rural locations
- (iii) Seasonal traffic variation factors
- (iv) Growth factors
- (v) Trend analysis
- (vi) Forecasting
- (vii) Peak hour and lean hour analysis and factors
- (viii) Modal shift

The Service Provider shall perform any other analysis of collected traffic data as per the requirement of Employer for which no additional cost shall be payable.

5.9.6 Service Provider shall ensure security of traffic survey data during the contract period. Also, shall have data backup and disaster recovery mechanism as per best industry practices.

5.9.7 The Employer will not own any equipment/systems of Control Centre indicated above. The Service Provider shall take back all their equipment/systems and other items except traffic survey data after the contract period.

5.9.8 On termination /expiry of contract, the Service Provider shall handover all data related to traffic survey including Reports (Hard copies & Electronic form) to the Employer.

5.9.9 The Service Provider shall deploy one Traffic Expert / Team Leader, who should be employed with the firm whose CV shall be approved by IHMCL. The Traffic Expert / Team Leader shall be overall in-charge of Control Centre and shall interact with IHMCL with reference to traffic survey reports and analysis. He should be Graduate in relevant field of Engineering with minimum 5 years of experience out of which minimum 3 years in traffic survey/analysis.

In addition, the Service Provider shall also deploy two System Engineers in Control Centre meeting the qualification and experience given below:

System Engineer: Graduate in Engineering (Electronics/ Computer Science) /MCA with minimum 3 years experience in managing database/web server / Report design/ highway toll & traffic related activities.

5.9.10 The Service Provider shall form a multi-disciplinary team consisting of above personnel as well as other required manpower for managing the Control Centre. The agency shall be fully responsible to deploy its personnel whose qualifications and experience fully commensurate with the tasks / responsibilities assigned and to achieve the objectives. The personnel deployed should be experienced enough and should have proficiency in the requisite techniques / skills for preparing various types of reports/graphs and data analysis.

5.10 SERVICE LEVEL REQUIREMENTS AND PENALTIES:

5.10.1 The contractor shall ensure system uptime of 95%. All computations will be on quarterly basis. The downtime will be calculated as below

$$\text{Permissible downtime in a quarter} = 24 \times 30 \times 3 \times 5/100 = 108 \text{ Hrs}$$

5.10.2 Scheduled Downtime

(a) Scheduled downtime is defined as the period of time when system will remain unavailable for conducting necessary preventive maintenance, urgent repairs etc. This is the Maximum duration, which the contractor can take with the prior written permission of IHMCL for Scheduled downtime purposes.

(b) The maximum scheduled downtime would be 24 hrs in every calendar month

5.10.3 The penalty for deficiency of services beyond the permissible limits indicated at clause 5.15.1 is :

(a) 1 – 24 hrs - 1 % of the quarterly service charges

(b) 25 – 72 hrs - 2 % of the quarterly service charges

(c) 73 – 96 hrs - 3 % of the quarterly service charges

(e) Above 97 hrs - 5 % of the quarterly service charges

Once the maximum is reached, IHMCL may consider termination of the contract.

5.11 IHMCL reserves the right to modify this TOR in public interest, of the Nation and proper conduct of services.

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SECTION-VI

**BOQ & FORMAT FOR
SUBMISSION OF FINANCIAL BID**

6.1 FINANCIAL PROPOSAL SUBMISSION FORM

From, _____ (Date)
(Name & Address of the Bidder)

To,
CEO
Indian Highways Management Co. Ltd.
2nd Floor, MTNL Building, Sector –19,
Dwarka
New Delhi 110 075

Dear Sir,

Subject:
Tender Ref No: _____

We, the undersigned, offer to provide the services as required in accordance with your tender document Ref no. _____ and our Proposal (Technical and Financial). Our attached financial proposal is for the sum of Rs. _____ (*Amount in words*). This amount is inclusive of the all taxes, duties etc.

Our Proposal is binding upon us upto expiration of the validity period of the Proposal.

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

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

Yours sincerely,

Authorised signatory:
Name and title of Signatory:
Name of Bidder:
Address:

Encl. Bill of Quantities.

6.2 BILL OF QUANTITIES
(to be quoted in Indian Rupees only)

Description	Quarterly charges	Total charges for 5 years (Quarterly charges *20)
Provision of Control Centre Services for Traffic Survey on Highways		

(Authorized Signatory)

SECTION-VII

FORMATS FOR SUBMISSION OF BIDS

7.1 BID FORM

(Date)

From,
(Name & Address of the Bidder)

To,
CEO
Indian Highways Management Co. Ltd.
2nd Floor, MTNL Building, Sector –19,
Dwarka
New Delhi 110 075

Subject: _____

Ref.: Tender No _____

Dear Sir/Madam,

After examining/reviewing the Bidding Documents for _____ etc. the receipt of which is hereby duly acknowledged, we, the undersigned, are pleased to bid to execute the whole of the Job for the item in conformity with, the said RFP Documents, including Corrigendum / Addenda Nos. _____.

We confirm that this bid is valid for a period of **180 days** from the date of opening of Bid, and it shall remain binding upon us and may be accepted by any time before the expiration of that period.

If our bid is accepted, we will provide the required performance guarantee as per the tender document.

Until a final Contract is prepared and executed, the bid together with your written acceptance thereof in your notification of award shall constitute a binding Contract between us.

We undertake that, in competing for (and, if the award is made to us, in executing) the above contract, we will strictly observe the laws against fraud and corruption in force in India namely "Prevention of Corruption Act 1988". We understand you are not bound to accept any Proposal you receive.

Yours sincerely,

(Signature of the Authorized signatory):

Name and Designation of the Authorized signatory:

Name and Address of Bidder:

Phone, Fax & E-Mail

7.2 UNDERTAKING
(should be on Bidder's Letterhead)

1. I, the undersigned, do hereby certify that all the statements made in the required attachments are true and correct.
2. The undersigned also hereby certifies that neither our firm M/s _____ have abandoned any work of National Highways Authority of India nor any contract awarded to us for such works have been rescinded, during last five years prior to the date of this bid.
3. The undersigned hereby authorize(s) and request(s) any bank, person, firm or corporation to furnish pertinent information deemed necessary and requested by the Employer to verify this statement or regarding my (our) competence and general reputation.
4. The undersigned understands and agrees that further qualifying information may be requested, and agrees to furnish any such information at the request of the Employer.
4. We confirm that we have not been blacklisted /debarred by any central/state Government department/organization or Quasi Government agencies of PSU.
5. We confirm that no criminal proceeding is pending any court of law.
6. We also confirm that we have not been convicted by any court of law for any of the _____ offenses under any Indian laws

(Signed by an Authorized Officer of the bidder)

Title of Officer

Name of bidder

DATE

7.3 BIDDER'S ANNUAL TURNOVER

(Date)

From,
(Name & Address of the Bidder)

To,
CEO
Indian Highways Management Co. Ltd.
2nd Floor, MTNL Building, Sector –19,
Dwarka
New Delhi 110 075

Subject: -----

Tender Ref. No.:-----

Dear Sir/Madam,

We hereby certify that the average annual turnover of M/s. _____
(name of the bidder) for the last consecutive three financial years (ending 31st March
of the previous financial year) is as given below:

Annual Turnover for the last 3 financial years in Indian Rupees (INR)			
Year (2010-2011)	Year (2011-2012)	Year (2012-2013)	Average

Yours Sincerely,

(Signature of Statutory Auditor)

Name of the Statutory Auditor:

Name of the Statutory Auditor Firm:

Seal:

7.4 Power of Attorney

Know all men by these presents, we, M/s (name of Firm/ Company and address of the registered office) do hereby constitute, nominate, appoint and authorise Mr/ Ms..... son/daughter/wife of..... and presently residing at, who is presently employed with us and holding the position of as our true and lawful attorney (hereinafter referred to as the "Authorised Signatory or Attorney") to do in our name and on our behalf, all such acts, deeds and things as are necessary or required in connection with or incidental to submission of our quotation for empanelment as the agency for -----, proposed by Indian Highways Management Co. Ltd., including but not limited to signing and submission of all applications, proposals and other documents and writings, and providing information/ responses to IHMCL, representing us in all matters before IHMCL, signing and execution of all contracts and undertakings consequent to acceptance of our proposal and generally dealing with IHMCL in all matters in connection with or relating to or arising out of our proposal for the said assignment and/or upon award thereof to us.

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

IN WITNESS WHEREOF WE,THE ABOVE NAMED PRINCIPAL HAVE EXECUTED THIS

POWER OF ATTORNEY ON THIS DAY OF, 2014

For
(Signature, name, designation and address)

Witnesses:

- 1.
- 2.

Notarised

Accepted

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

Notes:

*The mode of execution of the Power of Attorney should be in accordance with the procedure, if any, laid down by the applicable law and the charter documents of the executants(s) and when it is so required the same should be under common seal affixed in accordance with the required procedure. **The Power of Attorney should be executed on a non-judicial stamp paper of appropriate denomination and should be registered or duly notarised by a notary public.***

Wherever required, the Applicant should submit for verification the extract of the charter documents and other documents such as a resolution/power of attorney in favour of the person executing this Power of Attorney for the delegation of power hereunder on behalf of the Applicant.

For a Power of Attorney executed and issued overseas, the document will also have to be legalised by the Indian Embassy and notarised in the jurisdiction where the Power of Attorney is being issued. However, Applicants from countries that have signed the Hague Legislation Convention 1961 need not get their Power of Attorney legalised by the Indian Embassy if it carries a conforming Apostiles certificate.

7.5 FORM OF PERFORMANCE SECURITY (BANK GUARANTEE)

To
The Chairman,
Indian Highways Management Co. Ltd.
2nd Floor, MTNL Building, Sector- 19,
Dwarka, New Delhi- 110 075

WHEREAS _____ (Name and address of Contractor) (hereinafter called "the contractor")* has undertaken, in pursuance of Contract No. _____ dated _____ to execute _____ (Name of contract and brief description of works) (hereinafter called the "the Contract").

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

AND WHEREAS we have agreed to give the Contractor such a Bank Guarantee;

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

We hereby waive the necessity of your demanding the said debt from the Contractor before presenting us with the demand.

We further agree that no change or addition to or other modification of the terms of the Contract or of the Works to be performed there under or of any of the Contract documents which may be made between you and the Contractor shall in any way release us from any liability under this guarantee, and we hereby waive notice of any such change, addition or modification.

The liability of the Bank under this Guarantee shall not be affected by any change in the constitution of the contractor or of the Bank.

Notwithstanding anything contained herein before, our liability under this guarantee is restricted to Rs. _____ (Rs. _____) and the guarantee shall remain valid till _____. Unless a claim or a demand in writing is served on us on or before _____ all our liability under this guarantee shall cease.

Signature and seal of the Guarantor _____

In presence of

Name and Designation _____

1. _____

(Name, signature & Occupation)

Code no. of the officer(s) signing the guarantee(s)

Name of the Bank _____

Address _____

2. _____

(Name, signature & Occupation)

Date _____

Controlling Office of the Bank:

Contact Person: _____

Address : _____

Tel. No : _____

Note:

- * Give names of ***all partners*** if the Contractor is a Joint Venture/consortium.
- ** An amount is to be inserted by the Guarantor, representing the percentage of the contract price specified in the Contract and denominated in Indian Rupees.

7.6 Format for Non Disclosure Agreement

This Non Disclosure Agreement dated the day of _____, 2014

BETWEEN

Indian Highways Management Co. Ltd., 2nd Floor, MTNL Building, Sector-19, Dwarka, New Delhi-75
(hereinafter referred to as the “**Disclosing Party**”)

AND

_____, a company incorporated under the laws of India
and having its registered office at _____
(hereinafter referred to as “**Receiving Party**”) (collectively referred to as “**the parties**”)

WHEREAS

In connection with “_____”, the Receiving Party as **Contractor** by the Disclosing Party, the Parties have agreed to execute this Non Disclosure Agreement to ensure that all information provided by the Disclosing Party to the Receiving Party in the course of engagement of the Receiving Party as **Contractor** is kept confidential

NOW IT IS HEREBY AGREED AS FOLLOWS:

1. Definitions

- a) “**Purpose**” shall mean “_____”, by the Receiving Party to the Disclosing Party.
- b) “**Confidential Information**” shall mean all discussions, documents, paper, discs, technology, procedure and other information of a confidential nature pertaining to, generated or disclosed by either party in any form including in writing, electronically, computerized orally or otherwise marked as “Confidential” or informed to be ‘Confidential’ or relating to the Purpose, including, without limitation:
- (i) All financial details investment plans, price specifications, schemes, technology know-how, techniques and information relating to business, investments, transactions or affairs, services being rendered, plans for business investments or for improving services and discussions on future services; and all other information, material or data relating to the current and /or future business and operations of the Disclosing Party and analysis, compilations, studies, summaries, extracts or other documentation prepared by the Receiving Party arising out of the Confidential Information.
 - (ii) the terms of this or any other agreement or document signed or to be signed by or between the Parties and the provisions thereof.

However, “Confidential Information” shall exclude any part of such disclosed information or data which: -

- i. is in or comes into the public domain in any way without breach of this Agreement by the Receiving Party; or
- ii. the Receiving Party can show (a) was in its possession or known to it by being in its use or being recorded in its files or computers or other recording media prior to receipt from the Disclosing Party and was not previously acquired by the Receiving Party from the Disclosing Party under an obligation of confidence, or (b) to have been developed by or for the Receiving Party at any time independently of any information disclosed to it by the Disclosing Party; or
- iii. the Receiving Party obtains from a source other than the Disclosing Party without breach by the Receiving Party or such source or any obligation of confidentiality or non-use towards the Disclosing Party; or

- iv. is hereafter furnished by the Disclosing Party to a third party without restriction on disclosure or use; or
- v. is disclosed by the Receiving Party (a) with the prior written approval of the Disclosing Party, or (b) without such approval, after a period of one (1) year from the date of receipt thereof.

2. Handling of Confidential Information

The Receiving Party shall maintain the Disclosing Party's Confidential Information in confidence and shall exercise in relation thereto no lesser security measures and degree of care than those which the Receiving Party applies to its own Confidential Information which the Receiving Party warrants as providing adequate protection against unauthorized disclosure, copying or use. The Receiving Party shall ensure that disclosure of such Confidential Information is restricted to those employees, directors, officers, representatives, advisors, consultants or agents (collectively referred to as "**Representatives**") of the Receiving Party having the need to know the same for the Purpose. Copies or reproductions shall not be made except to the extent reasonably necessary for the Purpose and all copies made shall be the property of the Disclosing Party. All Confidential Information and copies thereof shall be returned to the Disclosing Party within seven (7) days of receipt of a written request from the Disclosing Party

The Receiving Party shall not attempt to reverse engineer, decompile, disassemble or reverse translate any Confidential Information provided by the Disclosing Party or discover the source code or trade secrets in any such Confidential Information.

Nothing in this Agreement shall limit the ability of a party to disclose such Confidential Information of the other party if such disclosure is (a) required to be made pursuant to any law or regulation, government authority, duly authorized subpoena or court order, whereupon that party shall provide prompt notice to the Disclosing Party of the Confidential Information in question, who will thereof have the opportunity to respond prior to such disclosure; (b) required to be made by a court or other tribunal in connection with the enforcement of such Disclosing Party's rights under this Agreement, or (c) is approved by the prior written consent of the Disclosing Party of the Confidential Information.

3. Limitations and Warranty

- a) The Receiving Party shall (i) not divulge the Disclosing Party's Confidential Information, in whole or in part, to any third party without the prior written consent of the Disclosing Party, (ii) use the same only for the Purpose, and (iii) make no commercial use of the same or any part thereof without the prior written consent of the Disclosing Party. Notwithstanding the foregoing, the Receiving Party shall be entitled to make any disclosure required by law of the Disclosing Party's Confidential Information.
- b) The Disclosing Party warrants its right to disclose its Confidential Information to the Receiving Party and to authorize the Receiving Party to use the same for the Purpose.

4. Disclaimer

All rights in Confidential Information are reserved by the Disclosing Party and no rights or obligations other than those expressly recited herein are granted or to be implied from this Agreement. In particular, no licence is hereby granted directly or indirectly under any invention, discovery, patent, copyright or other intellectual property right now or in the future held, made, obtained or licensable by either party. Nothing in this Agreement or its operation shall constitute an obligation on either party to enter into the aforesaid business relationship or shall preclude, impair or restrict either party from continuing to engage in its business otherwise than in breach of the terms of this Agreement

5. Notices

All notices under this Agreement shall be in writing, sent by facsimile or first-class registered or recorded delivery post to the party being served at its address specified above or at such other address of which such party shall have given notice as aforesaid, and marked for the

attention of that party's signatory of this Agreement. The date of service shall be deemed to be the day following the day on which the notice was transmitted or posted as the case may be.

6. No Bar on Participation in Projects initiated by the Disclosing Party

The Disclosing Party acknowledges that the advisory mandate awarded to the Receiving Party will not bar the Receiving Party or any of its group companies from bidding or participating in any projects initiated by the Disclosing Party on the ground that the Receiving Party was privy to information which was not within the public domain.

On its part the Receiving Party shall ensure, confirm and warrant that neither the Receiving Party nor any of its group companies will mis- use the information available to it in the course of the advisory mandate to derive an unfavorable advantage in bidding /participation in any projects initiated by the Disclosing Party .The Disclosing Party on its part shall not summarily debar or reject the bid/participation of the Receiving Party on the ground that the Receiving Party was privy to confidential information and its has derived undue advantage , unless reasonable opportunity its given to the Receiving Party to put forth its say.

7. Non-Assignment

This Agreement is personal to the parties and shall not be assigned or otherwise transferred in whole or in part by either party without the prior written consent of the other party.

9. Forbearance

No relaxation, forbearance or delay by a party in enforcing any of the terms of this Agreement shall prejudice, affect or restrict its rights, nor shall waiver by a party of any breach hereof operate as a waiver of any subsequent or continuing breach.

10. Indemnity

The Receiving Party agrees to indemnify the Disclosing Party for any loss or damage suffered due to any breach by it of its obligations under this Agreement. Damages shall include all costs, expenses and attorney's fees incurred by the Disclosing Party in the enforcement of this Agreement. PROVIDED ALWAYS THAT IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, INCIDENTAL AND/OR CONSEQUENTIAL DAMAGES, LOST BUSINESS, LOST SAVINGS OR LOST PROFITS OR REVENUES RESULTING FROM A BREACH OF THIS AGREEMENT EVEN IF THE BREACHING PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF THE OCURRENCE OF SUCH DAMAGES.

11. Non-Publicity

The parties shall not make any announcement or disclosure of any kind whatsoever concerning this Agreement, including without limitation the existence of this Agreement, without the other Party's prior written consent unless such announcement and/or disclosure is required by law.

12. Notwithstanding anything contained herein to the contrary, the obligations of the Parties herein shall continue for a period of one (1) year from the date of this Agreement or if a further agreement is entered into, the termination of such further agreement, whichever is the later.

13. The Receiving Party agrees that the obligations contained in this Agreement shall extend to the affiliated companies of the Receiving Party and to all its advisors and consultants. In this respect the Receiving Party represents that an agreement to keep such information confidential, on terms similar to this Agreement, is in place before disclosing any Confidential Information to such affiliate, advisor or consultant.

14. Entire Agreement

This Agreement constitutes the entire agreement and understanding between the parties in respect of Confidential Information and supersedes all previous agreements, understandings and undertakings in such respect. This Agreement cannot be amended except by written agreement signed on behalf of each party by their authorized signatories.

15. Dispute Resolution

The parties shall attempt to resolve any dispute arising out of or in connection with this Agreement by mutual consultation, failing which such dispute shall be referred to and finally

resolved by arbitration in India under the auspices and governed by the provisions of the Arbitration and Conciliation Act, 1996. The arbitration shall be at **Delhi** and only the courts at **Delhi** shall have the jurisdiction to try any matters arising from the arbitration. The language of the arbitration shall be in English.

16. Governing Law and Jurisdiction

This Agreement shall be governed by and construed in all respects in accordance with the laws of India

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives on the day and year first above written

On behalf of **Disclosing Party**

On behalf of Receiving Party

Signature _____

Signature _____

Name _____

Name _____

Title _____

Title _____