

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

**(CIN-U74140DL2012PLC246662)**

*Corporate Office: 2<sup>nd</sup> Floor, MTNL Building, Sector 19, Dwarka,  
New Delhi-110075*

*Regd Office: Room NO.402, NHAI HQ, G 5 & 6, Sector-10, Dwarka, New  
Delhi-110075*

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

**Ref: No. IHMCL/TRAFFIC SURVEY/CC/2017**

**REQUEST FOR PROPOSAL (RFP)**

**June, 2017**

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## 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)	02 Years 06 months	Up to <06.00 pm > Hrs. (IST) on <14.07.2017 >

The RFP document to be downloaded from the IHMCL/NHAI 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.

IHMCL 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:

**Manager (Projects)**  
**Indian Highways Management Co. Ltd. (IHMCL)**  
**2<sup>nd</sup> Floor, MTNL Building,**  
**Sector 19, Dwarka**  
**New Delhi 110 075**

**Phone:** +91-11-25074100 Ext.             
**Email:** aksrivastavarajesh.tripathi@ihmcl.com  
**www.nhai.org, www.ihmcl.com**

**Website:**

## 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 Company which participates in the tender and submits its bid in pursuance of this Bid Document.
- c. **“Commencement date”** means the date upon which the Contractor receives the notice to commence the work issued by the Employer.
- d. **“Contract”** means the agreement entered into between the Employer and the, Successful Bidder as recorded in the Contract documents signed by the parties, including all attachments and appendices thereto and all documents incorporated by references therein
- e. **“IHMCL”** means Indian Highways Management Co. Ltd.
- f. **“Law” or “Legislation”** –
- g. 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 to successful Bidder by the Employer conveying its intention to accept the offer of Successful Bidder and awarding the work and also 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 Service Provider as employees and assigned to the performance of the Services or any part thereof.
- n. **“Bid Document”** 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 to be performed by the Service Provider as detailed in Clause ...of Bid Document

- p. **“Successful Bidder”** means the Bidder, who, after the complete evaluation process, has been issued the Letter of Award by IHMCL. **“Service Provider”** means the Successful Bidder who has executed the contract with IHMCL and has complied with other requirements as specified in this RFP to the satisfaction of IHMCL

### **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 A Company “Indian Highways Management Company Ltd. (IHMCL)” incorporated with equity participation of NHAI (41.38%), Concessionaires (33.81%) and Financial Institutions (24.81%) for implementation of Electronic Toll Collection (ETC) and other Intelligent Transportation System (ITS) / transportation related activities on highways in India.

MORT&H has assigned IHMCL for conducting traffic survey at around ~2300 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.

Through this Bid Document, IHMCL invites bids for set-up & provision of Control Centre (CC) services. The agency is expected to collect and store traffic data from the traffic survey agencies. The agency is expected to process and analyze this data to drive key analysis and insights while generating various reports. The agency is expected to host the data along with various reports on a webserver.

##### **3.2 ELIGIBILITY CRITERIA**

- 3.2.1 The Bidder shall be a Company incorporated and registered in India under the Companies Act, 2013 or any other previous company law .

*(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. **5** 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 for infra development sector projects for a period of atleast 5 years. The control centre should have involved a large scale IT system involving aggregation of data from multiple agencies. The scope of the control should include processing, analyzing and validating the data uploaded.

*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.*

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

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

the experience and the details of the Foreign Holding Company will be considered subject to above mentioned conditions , **otherwise** the experience of Indian Subsidiary Company only will be considered.

**3.2.5** Companies , Firms ,or any entities (Ineligible entities) who have been awarded the contract for carrying out traffic survey by IHMCL are not eligible to bid in pursuance to this Bid Document. Any company in which such Ineligible Entities or any Director or Promoter of such Ineligible entities whether directly or indirectly hold more than 02% (Two percent) equity share capital of the Company, shall also be not eligible to bid in pursuance of this Bid Document.

### 3.4 Power of Attorney

The Bidder should submit a notarised Power of Attorney as per proforma in Annexure-7.4 of this Bid Document.

### 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 Bid Document or submission of a bid not substantially responsive to the Bid 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 BID DOCUMENT

3.7.1 All Bidders are required to go through the Bid 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 <28.06.2017> at <11.00am>

3.7.3 IHMCL will publish the clarifications to the bidders' queries on IHMCL web site [www.ihmcl.com](http://www.ihmcl.com) and NHAI's website [www.nhai.org](http://www.nhai.org) only. No separate information will be sent to any individual Bidder in this regard.

3.7.4 All Bidders are required to suvery and study the existing Traffic Survey Data base , technology to migrate into new system on as is where is basis.

### 3.8 AMENDMENT OF BID 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 Bid documents by issuing amendment(s).

3.8.2 Any Corrigendum /Addendum thus issued shall be part of the Bid Document and shall be communicated on website [www.nhai.org](http://www.nhai.org) /www.ihmcl.com . 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 Set up and Provision of Control Center Services For Traffic Survey”, which should contain following sealed envelopes:

- (i) Document 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 as per Annexure 7.1 of Bid Document
- c. Power of Attorney (in original) in favour of the authorized signatory of the bidder in the prescribed format as per Annexure **7.4 of Bid Document**; 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) in the form of Demand draft/Pay Order 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 **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.

3.13.3

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

3.13.4 Any bid not accompanied by an acceptable Earnest Money Deposit shall be rejected by IHMCL as non-responsive.

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

3.13.6 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 -Contract; 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 Bid 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 IHMCL at the address specified in the Bid Document on or before <14.07.2017> **up to <06.00pm> Hrs(IST)**. In the event of the specified date for the submission of bids being declared a holiday for IHMCL, the Bids will be received up to the specified time on the next working day.
- 3.17.2 IHMCL may, at his discretion, extend the deadline for submission of bids by issuing an amendment in which case all rights and obligations of IHMCL 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 <11.00am > (IST) on <21.07.2017> at the address mentioned in **Bid Document**.
- 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 IHMCL 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, IHMCL 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, but will exclude the applicable taxes such as Value Added Tax, Service Tax, Sales Tax GST 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 **IHMCL’s estimate** of the cost of work to be performed under the contract, IHMCL 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, IHMCL 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 IHMCL 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 has quoted the lowest.

3.25

### **3.25 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.

### **3.26 NOTIFICATION OF AWARD OF CONTRACT**

3.26.1 Prior to the expiration of the Bid validity, the IHMCL will notify the successful bidder that his Bid has been accepted. IHMCL will mention the contract value in the Letter of Award (LOA).

3.27.2 The Contract Agreement will incorporate all agreements between the IHMCL and the successful Bidder. It will be signed by the IHMCL and the successful Bidder after the performance security is furnished. IHMCL will issue notice to commence the work after signing of contract.

3.27.3 Upon furnishing of the Performance Security by the successful Bidder, IHMCL 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 limitation, 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 /NHAI/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**

IHMCL shall ask the Successful Bidder to furnish the Performance Guarantee and also to execute 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 **3.30.2** The Performance Security shall be submitted in the form of Bank Guarantee issued in the name of IHMCL by a bank mentioned under [clause no: 3.31](#) as per the format given in [Annexure -7.5](#) of Bid Document and will be valid for **a period of 180 days after the expiry of contract period.**

- 3.30.3 The Performance Guarantee shall be payable to the IHMCL as a compensation for any loss resulting from the Service Provider'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 IHMCL 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.

- 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 31<sup>st</sup> March, 2003, 10).
- (ii) The bank guarantee issued by a Cooperative Bank shall not be accepted.

### 3.32 CORRUPT OR FRAUDULENT PRACTICES

IHMCL 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.

IHMCL will declare the Bidder ineligible, either indefinitely or for a stated period of time, for award of a contract by IHMC/NAHI if it at any time it is found that the Bidder has engaged in corrupt or fraudulent practices in competing for the Bid , or during execution.

“Corrupt practice” means the offering, giving, receiving, or soliciting of any thing of value to influence the action of a **public/IHMCL 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 Bid Documents and whenever there is a conflict; provision herein shall prevail over those in the other parts of the Bid 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, reference to male gender includes female gender 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 Service Provider 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 Bid 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) Value Added Tax and other applicable taxes both existing & future, such as Service Tax, Sales Tax, GST etc., which will be levied on the goods and services invoiced by the Service Provider to the IHMCL, will be reimbursed on actual basis.
- b) IHMCL reserves the right to ask the Bidder to submit proof of payment against any of the taxes, duties, levies indicated.



- c) All payments shall be made subject to adjustment of applicable penalties.
- d) No amount or cost shall be payable for holding discussion, as considered necessary by the IHMCL, for any purpose with IHMCL's Officials at IHMCL Head Office or elsewhere, prior, during or after the conduct of an assignment.
- e) 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 Service Provider shall commence Control Centre (CC) operation.
- 4.9.2 The Service Provider, 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. 10000/- per day upto to a maximum of Rs.3,00,000/- will be imposed. However in case of delay due to reasons beyond the control of the Service Provider , 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 Two Years Six months renewable on yearly basis at the option of IHMCL.

#### **4.12 INSURANCE**

**The Service Provider 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 Service Provider shall promptly notify IHMCL in writing of such condition and the cause thereof. Unless

otherwise directed by IHMCL, the Service Provider 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/NHAI 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 ,NHAI and MoRTH, the IHMCL shall notify the Service Provider of the same and the 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,NHAI 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 Service Provider'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:** IHMCL may terminate the Contract if the Service Provider causes a fundamental breach of the Contract.

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

- a) The Service Provider fails to carryout any obligation under the contract.
- b) The Service Provider 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 Service Provider stops work and the stoppage has not been authorized byIHMCL;
- e) the Service Provider 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 Service Provider, in the judgement of theIHMCL, 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 IHMCLmay 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”.

#### **4.17 CHANGE OF SCOPE**

IHMCL, in consensus with the Service Provider, can change the scope of the work. The Service Provider would need to provide detailed assessment of the new scope and shall propose the fees and the payment structure for the new scope. IHMCLwill validate the detailed cost assessment and payment structure for the revised scope. Both the IHMCLand the Service Provider must agree on the revised scope, the final cost and the proposed payment structure for the revised scope.

----- **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 through NHAI assigned IHMCL for conducting traffic survey at around 2300 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 single/ intermediate/2/4/6/8 lane National Highways at identified locations on National Highways in India.

Through this RFP, IHMCL invite bids for set-up & provision of Control Centre (CC) services. The agency is expected to collect and store traffic data from the traffic survey agencies. The agency is expected to process, validate and analyze this data to drive key analysis and insights while generating various reports. The agency is expected to host the data along with various reports on a webserver.

#### **5.2 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) Processing of traffic survey data received from all locations/zones to represent it in a systematic manner
- (iv) Validation of traffic survey data received from all locations/zones using the uploaded video feeds
- (v) Driving new analysis and insights from the traffic survey data to propose new initiatives/interventions within and outside MoRTH/NHAI/IHMCL
- (vi) Design/ customise various types of reports and graphs as per the requirements of IHMCL NHAI/ MoRTH
- (vii) Setup, maintain and operate Database System for traffic survey data. Database system shall be structured for storing & allowing access to specific zones, states, locations and time periods. The traffic survey data needs to be uploaded in the database Server
- (viii) Setup, maintain and operate Web based system for remotely accessing the traffic survey reports as per the requirements of IHMCL
- (ix) The web based system shall support real time report generation with configurable parameters and / or filters for region, state, date and time. Also the system shall allow exporting of data / reports in MS-Excel formats and PDF formats.

- (x) Create and manage user accounts and provide privilege based access to specific Survey data to specific users.
- (xi) The User account creation & privileges shall be under control of IHMCL.
- (xii) The User account management and data access privileges shall be completely configurable via GUI.
- (xiii) Safe custody of traffic survey reports/ data received in the form of hard copies and electronic media
- (xiv) Traffic survey Data shall be stored & accessible for entire Contract Period.
- (xv) IHMCL shall have right to change or customize the type of reports and graphs as per the requirements at any time
- (xvi) The Service Provider shall migrate existing or old traffic survey data of IHMCL to current Server on as is where is basis.

5.3 Service Provider will be responsible for collection and compilation of traffic survey data received from all locations/zones. Service provider will be responsible for processing the traffic survey information and its representation in systematic manner.

5.4 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 server must be hosted on NIC data center or any other secured data center as supervised by IHMCL. The traffic survey data collected (both vehicle class and vehicle count) across zones/agencies shall be validated with the video of traffic survey received in electronic form (HDD media). The video need not have to be loaded in any Server.

5.5 The Service Provider shall process and analyze the collected traffic data as per the requirement of the IHMCL: 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.

5.6 The Service Provider shall analyze the final validated traffic data across the overall network to generate insights, possible implications and propose key initiatives/interventions specific to IHMCL/MoRTH or otherwise.

The Service provider will be required to submit detailed reports every half year detailing the key insights from the traffic survey data and their possible implications for IHMCL/MoRTH or otherwise. The Service Provider shall include the proposed interventions/ initiatives/ measures that are to be undertaken by MoRTH or otherwise to act on these possible implications.

Some of the key analysis using the traffic survey data to drive insights for MoRTH or otherwise are as follows -

- (i) Network Planning – Identification of stretches with need for bypasses, augmentation etc. basis traffic intensity
- (ii) Need for access controlled highways – Identification of stretches with significant traffic variation of traffic across stretch and numerous leakage points – need for access controlled highways
- (iii) Commercial Usage of stretch – Proportion of commercial vehicles vs other vehicles – Need for better facilities (access controlled highways etc.) to ensure logistics efficiency
- (iv) Public Transport Penetration – Proportion of public transport (buses) vs private transport – Low penetration of public transport, need to increase public buses on identified routes
- (v) Average speed variation over the stretch – Bypasses, augmentation, maintenance required to increase average speed across stretch

## **5.7 SYSTEM REQUIREMENTS**

5.7.1 Service Provider shall have minimum following systems in the Control Centre:

- (i) Server / database of adequate size and specifications for storing and accessing minimum 100000 traffic survey reports of all locations/zones for the contract period. The database must be hosted on the NIC data center or any other secured data center as supervised by IHMCL.

5.7.2 IHMCL 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.

5.7.3 IHMCL will only provide the space for Control Centre. Control Centre service provider shall make his own arrangements for hardware, power supply, telecom, internet bandwidth, air conditioning, furniture, storage racks, furnishing etc.

5.7.4 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.

## **5.8 STAFFING REQUIREMENTS**

5.8.1 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 four 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.

- 5.8.2 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.

## **5.9 SERVICE LEVEL REQUIREMENTS AND PENALTIES:**

- 5.9.1 The Service Provider shall ensure an overall system uptime of 95%. All computations will be on quarterly basis. The downtime will be calculated as below:

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

### **5.9.2 Scheduled Downtime**

- i. 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 Service Provider can take with the prior written permission of IHMCL for Scheduled downtime purposes.
- ii. The maximum scheduled downtime would be 24 hrs in every calendar month

- 5.9.3 The penalty for deficiency of services beyond the permissible limits are indicated as below:

- i. 1 – 24 hrs - 1 % of the quarterly service charges
- ii. 25 – 72 hrs - 2 % of the quarterly service charges
- iii. 73 – 96 hrs - 3 % of the quarterly service charges
- iv. Above 97 hrs - 5 % of the quarterly service charges

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

5.9.4 The Service Provider shall adhere to following time lines for activities / services specified herein:

- i. Commencement of the Control center after formal “Instruction for Commencement of Services.” - 30 Calendar Days
- ii. Uploading of received Traffic Survey data – within 1 Business Day of receipt of data
- iii. Generation / development of any customized report format – within 4 Business days of intimation
- iv. Any specific analysis of historical data as requested by IHMCL – within 7 Business days of intimation
- v. Repairing / restoring working condition, of the Control center equipments & systems – within 2 Business Days.

5.9.5 The penalty for deficiency of each of the services, beyond the permissible limits, indicated at clause 5.9.4 is:

(a) INR 5000/- per day of delay, for every instance, of each sub clause.

5.10 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.

5.11 Access to Traffic survey data, to any employee of Service Provider shall be strictly governed by approval of IHMCL. Service provider employees shall be able to upload & process the data in desired format, but downloading of data and reports shall be restricted to users identified by IHMCL.

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

-----XXXXX-----



**SECTION-VI**

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

## 6.1 FINANCIAL PROPOSAL SUBMISSION FORM

From, \_\_\_\_\_ (Date)  
(Name & Address of the Bidder)  
\_\_\_\_\_  
\_\_\_\_\_

To,  
Managing Director  
Indian Highways Management Co. Ltd.  
2<sup>nd</sup> 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)*

<b>Description</b>	<b>Quarterly charges</b>	<b>Total charges for 2 years 06 months (Quarterly charges *20)</b>
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,  
Managing Director  
Indian Highways Management Co. Ltd.  
2<sup>nd</sup> 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/India Highways Management Company Limited 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,  
Managing Director  
Indian Highways Management Co. Ltd.  
2<sup>nd</sup> 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 31<sup>st</sup> March  
of the previous financial year) is as given below:

Annual Turnover for the last 3 financial years in Indian Rupees (INR)			
Year (2014-2015)	Year (2015-2016)	Year (2016-2017)	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  
Managing Director  
Indian Highways Management Co. Ltd.  
2<sup>nd</sup> 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.

This Non Disclosure Agreement dated the ..... day of \_\_\_\_\_, 2014

BETWEEN

Indian Highways Management Co. Ltd., 2<sup>nd</sup> 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 \_\_\_\_\_