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**AGREEMENT**

**BETWEEN**

**INDIAN HIGHWAYS MANAGEMENT COMPANY  
LIMITED**

**AND**

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**FOR**

**Consultancy Services for Unique Helpline For  
Road Users On National Highways**

**May, 2015**

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## **AGREEMENT**

**No.** xxxxxxxxxxxxxx

This Consultancy Services Agreement (hereinafter called the "**Agreement**") is made on this \_\_ day of the month of April, 2015.

### **BETWEEN**

Indian Highways Management Company Limited (IHMCL), constituted under Companies Act, 1956 and having its Registered Office at NHAI, G 5 & 6, Sector 10, Dwarka, New Delhi-110075 and Corporate Office at 2<sup>nd</sup> Floor, MTNL Building, Sector 19, Dwarka, New Delhi-110075 (hereinafter referred to as the "**IHMCL**", which expression shall, unless repugnant to or inconsistent with the context, mean and include its successors and assigns) of the FIRST PART.

### **AND**

-----a \_\_\_\_\_ incorporated/registered under the provisions of the \_\_\_\_\_ and having its Registered Office at-----;

### **IN CONSORTIUM WITH (if any)**

a \_\_\_\_\_ incorporated/registered under the provisions of the \_\_\_\_\_ and having its Registered Office at

(hereinafter collectively referred to as the "**Consultant**", which expression shall unless repugnant to or inconsistent with the context, mean and include its successors and assigns) of the OTHER PART.

(As the context may require, IHMCL and Consultant are individually referred to as a "Party" and collectively as "Parties").

### **WHEREAS**

(A) IHMCL is a company incorporated under the Companies Act, 1956 with equity participation from NHAI, concessionaires and financial institutions for implementation of Electronic Toll Collection and other Intelligent Transportation System and allied works in road transport sector in India.

(B) Ministry of Road Transport and Highways (hereinafter referred to as "**MoRTH**") and NHAI has assigned IHMCL for setting up of Call Centre services for receiving calls from the public relating to

emergencies on, and complaints relating to, National Highways through toll free helpline No. "1033".

- (C) In this regard, IHMCL had invited bids vide Request for Proposal dated (hereinafter referred to as "**RFP**") from the entities shortlisted by IHMCL on the basis of their bid submitted on \_\_\_\_\_, for engagement as Consultant for "Setting Up and Operationalising 24x7 Helpline for road users on National Highways. (hereinafter referred to as the "**Project**").
- (D) The Consultant, in the ordinary course of its business, is engaged in providing similar services to their clients, and had represented to IHMCL through their bid against the RFP (hereinafter called the "**Bid**") that they have the required professional skills, personnel and technical resources to undertake the Project.
- (E) After evaluation of the bids received, IHMCL accepted the Bid of the Consultant and issued the Letter of Award vide letter no. IHMCL/----- dated -----(hereinafter referred to as "**LOA**") for the quoted price of Rs. /- -----(hereinafter referred to as the "**Agreement Price**"). Further, the Consultant was required, *inter alia*, to convey its acceptance to LOA within 10 days of the date of issue thereof.
- (F) By letter \_\_\_\_\_ dated \_\_\_\_\_ the Consultant has conveyed its acceptance of the LOA to IHMCL including the obligation to enter into this Agreement pursuant to the LOA (if any).
- (G) The Consultant, in accordance with the terms of the LOA and Clause 3.29.1 of the RFP, has submitted the Performance Security in the form of Bank Guarantee, within 15 days of the receipt of the Letter of Award, issued by -----Bank, equivalent to 10% of the Agreement Price, i.e., Rs. -----valid for a period of 180 days beyond the expiry of this Agreement as per the format provided by IHMCL for due performance of the obligations of the Consultant under this Agreement.

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

**ARTICLE 1**  
**DEFINITIONS AND INTERPRETATION**

**1.1. Definitions**

1.1.1 The words and expressions beginning with capital letters and defined in this Agreement shall, unless the context otherwise requires, have the meaning ascribed thereto herein. Words used in capitals and not defined herein but defined in the RFP shall have the meaning as ascribed thereto in the RFP.

**1.2. Interpretation**

1.2.1 In this Agreement, unless the context otherwise requires,

- a) references to any legislation or any provision thereof shall include amendment or re-enactment or consolidation of such legislation or any provision thereof so far as such amendment or re-enactment or consolidation applies or is capable of applying to any transaction entered into hereunder;
- b) references to laws of India or Indian law or regulation having the force of law shall include the laws, acts, ordinances, rules, regulations, bye laws or notifications which have the force of law in the territory of India and as from time to time may be amended, modified, supplemented, extended or re-enacted;
- c) references to a “**person**” and words denoting a natural person shall be construed as a reference to any individual, firm, company, corporation, society, trust, government, state or agency of a state or any association or partnership (whether or not having separate legal personality) of two or more of the above and shall include successors and assigns;
- d) the table of contents, headings or sub-headings in this Agreement are for convenience of reference only and shall not be used in, and shall not affect, the construction or interpretation of this Agreement;
- e) the words “**include**” and “**including**” are to be construed, without limitation and shall be deemed to be followed by “**without limitation**” or “**but not limited to**” whether or not they are followed by such phrases;
- f) any reference to a day shall mean a reference to a calendar day;
- g) references to a “**business day**” shall be construed as a reference to a day (other than a Sunday and holidays) on

which banks in their respective States are generally open for business;

- h) reference to a month shall mean a reference to a calendar month as per the Gregorian calendar;
- i) references to any date, period or time shall mean and include such date, period or time as may be extended pursuant to this Agreement;
- j) reference to any period commencing “**from**” a specified day or date and “**till**” or “**until**” a specified day or date shall include both such days or dates; provided that if the last day of any period computed under this Agreement is not a business day, then the period shall run until the end of the next business day;
- k) the words importing singular shall include plural and vice versa;
- l) references to the “**winding-up**”, “**dissolution**”, “**insolvency**”, or “**reorganization**” of a company or corporation shall be construed so as to include any equivalent or analogous proceedings under the law of the jurisdiction in which such company or corporation is incorporated or any jurisdiction in which such company or corporation carries on business including the seeking of liquidation, winding-up, reorganization, dissolution, arrangement, protection or relief of debtors;
- m) save and except as otherwise provided in this Agreement, any reference at any time to any agreement, deed, instrument, license or document of any description shall be construed as reference to that agreement, deed, instrument, license or other document as amended, varied, supplemented, modified or suspended at the time of such reference; provided that this Sub-clause shall not operate so as to increase liabilities or obligations of the IHMCL hereunder or pursuant hereto in any manner whatsoever;
- n) any agreement, consent, approval, authorization, notice, communication, information or report required under or pursuant to this Agreement from or by any Party shall be valid and effective only if it is in writing under the hand of a duly authorized representative of such Party, as the case may be, in this behalf and not otherwise;

- o) the Appendices to this Agreement form an integral part of this Agreement and will be in full force and effect as though they were expressly set out in the body of this Agreement;
- p) references to Recitals, Articles, Clauses, Sub-clauses in this Agreement shall, except where the context otherwise requires, mean references to Recitals, Articles, Clauses, Sub-clauses of or to this Agreement and references to a Paragraph shall, subject to any contrary indication, be construed as a reference to a Paragraph of this Agreement in which such reference appears;
- q) the damages payable as set forth in this Agreement, whether on per diem basis or otherwise, are mutually agreed genuine pre-estimated loss and damage likely to be suffered and incurred by the Party entitled to receive the same and are not by way of penalty (the “**Damages**”); and
- r) time shall be of the essence in the performance of the Parties’ respective obligations. If any time period specified herein is extended, such extended time shall also be of the essence.

1.2.2 Any word or expression used in this Agreement shall, unless otherwise defined or construed in this Agreement, bear its ordinary English meaning and, for these purposes, the General Clauses Act 1897 shall not apply.

### 1.3 **Arithmetic conventions**

All calculations shall be done to 2 (two) decimal places, with the third digit of 5 (five) or above being rounded up and below 5 (five) being rounded down.

### 1.4. **Priority of Agreements, Clauses and Schedules**

1.4.1 In case of inconsistency between the provisions of this Agreement and the RFP, the terms of this Agreement shall prevail to the extent of such inconsistency.

1.4.2 In case of ambiguities or discrepancies within this Agreement, the following shall apply:

- (a) between two or more Clauses of this Agreement, the provisions of a specific Clause relevant to the issue under consideration shall prevail over those in other Clauses;
- (b) between the Clauses of this Agreement and the Appendices, the Clauses shall prevail;

- (c) between any two Appendices, the Appendix relevant to the issue shall prevail;
- (d) between the written description on the drawings/design documents, if any and the Specifications and Standards, the latter shall prevail; and
- (e) between any value written in numerals and that in words, the latter shall prevail.

**1.5.** The following appendices shall be deemed to form and be read and construed as part of this Agreement.

Appendices:

Appendix A	Copy of RFP Document.
Appendix B	Copies of Clarifications to bidders' queries.
Appendix C	Copies of Corrigendum to RFP.
Appendix D	Copy of Financial Bid of the Consultant.
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**ARTICLE 2**  
**TERM OF THE AGREEMENT**

- 2.1.** The term of this Agreement shall be for a period of 2 (two) years from the date of signing of this Agreement (hereinafter referred to as the “**Agreement Period**”).

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**ARTICLE 3**  
**TIME SCHEDULE**

- 3.1.** The Consultant shall commence the Services within Thirty (30) days of signing of this Agreement. If the Consultant fails to commence the Services as specified herein, IHMCL shall, without prejudice to its other rights and remedies hereunder or in law, shall be entitled to terminate this Agreement.
- 3.2.** The Consultant shall ensure that the Services are undertaken and completed in accordance with the time schedules specified in Clause 4.9 of RFP hereto. In case of any deviation from the said schedule, IHMCL reserves the right to terminate this Agreement and/or recover Damages there from.
- 3.3.** The Consultant, if faced with problems in timely delivery of Services under this Agreement, which have dependencies on the Call Center Owners , which are beyond the control of the Consultant, it shall immediately inform IHMCL in writing, about the causes of the delay and tentative duration of such delay. IHMCL, on receipt of such communication, shall analyze the facts at the earliest and at its sole discretion, may provide additional time, as deemed reasonable.
- 3.4.** The Consultant, if faced with problems in timely commencement of the Services, shall immediately inform IHMCL in writing, about the causes of the problem /delay and tentative duration of such delay etc. IHMCL, on receipt of such communication, shall analyze the facts at the earliest and at its sole discretion, may provide additional time and/or recover damages there from, as deemed reasonable.

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## **ARTICLE 4 SCOPE OF SERVICES**

### **4.1. Scope of Services**

4.1.1 The scope of Services of the Consultant shall include, without limitation, assisting IHMCL in organising, monitoring and setting up and smooth operationalisation of the call centres by the service provider selected/ to be selected by IHMCL.

The scope of Services shall include, without limitation, the following:

- a) Supervision/ monitoring during implementation of work.
- b) Providing necessary inputs to the Service Provider on customisation, finalisation of Reports, Training of Agents / Supervisors etc.
- c) Conducting Site Acceptance, Final Acceptance Testing & Commissioning.
- d) Assist service provider in Collection, compilation of data pertaining to local Control Centre, Hospitals / Trauma Centres, Ambulance Services etc.
- e) Analyze call volumes, hourly call patterns in different states and suggest changes in seat distribution in the Call Centre shifts
- f) Monitoring of the Call Centre Recording(CCR ) data
- g) Monitoring Agents performance
- h) Hold regular discussions with the Service Provider for process improvement.
- i) Make periodic as well as surprise checks in the Call Centres Verify compliance by the Service Provider to the Service Level Agreement (SLA) and submit periodic reports to IHMCL.
- j) Scrutiny of reports / bills / invoices received from Service Provider.
- k) Assist IHMCL in furnishing information for replying to RTI queries/ Parliament questions and litigation relating to the Call Centre Services whenever required.
- l) To advise/ suggest improving quality of service.
- m) Identification of shortcomings in day-to-day operation of call centres and ensures rectification by the Service Provider.
- n) Ensure strict compliance of the Contract Agreement signed between IHMCL & Service Provider.
- o) Submission of monthly & Quarterly progress reports to IHMCL.
- p) Updation of data pertaining to local Control Centre, Hospitals / Trauma Centres, Ambulance Services etc.

4.2 The consultant shall continuously revise and evolve the above mentioned services throughout the Agreement Period on the basis of experience gained, knowledge and changing environment.

4.3 The Consultant shall review regulatory framework for the successful implementation of the Project.

#### **4.4.**

4.4.1.1 The consultant shall play lead role and assist the IHMCL at every stage of transaction. Further, the Consultant shall work to the satisfaction of the IHMCL

4.4.1.2 The Consultant shall prepare and submit periodic status reports to the IHMCL.

4.4.1.3 The Consultant shall determine if any delay has occurred in completion works in accordance with this Agreement, and shall also determine the damages, if any, payable by the operating agency to the IHMCL for such delay.

4.4.1.4 The Consultant shall assist in dispute resolution with the operating agencies.

4.4.2 Overall Project Co-ordination and General Administration Support

4.4.2.1 The Consultant shall provide day to day support to the IHMCL in the overall Project including administrative and procurement functions for the Project.

4.4.2.2 All the backend support work in relation to documentation/memos etc for establishing decision support systems & tools to execute the Project.

4.4.2.3 Coordinate meetings, prepare agendas and record and distribute minutes of meetings, regular Project monitoring & status reports and monitor contract compliance.

#### **4.5. Key Personnel**

4.5.1 The Consultant shall deploy one Team Leader and one support staff, who should be employed with the Consultant. The Team Leader shall be responsible for overall management and monitoring of the Project and shall interact with the IHMCL

.4.5.2 The Consultant shall also deploy Key Personnel as specified in clause 5.2.1 in RFP along with other personnel and support staff as required for successful completion of the Project.

4.5.2 Team Leader and Key Personnel deployed by the Consultant shall qualify necessary eligibility conditions as provided in RFP.

4.5.3 The Contractor shall be fully responsible to provide security to its personnel deputed on the Project including their insurance, wherever required under the law or as considered prudent

#### **4.6. Deliverables**

4.6.1 The report formats shall be finalized after discussions with all the agencies and service provider and shall be standardized by the IHMCL, which may be modified from time to time based on the requirement.

4.6.2 The Contractor shall deliver the following deliverables during the course of this Consultancy.

- i. Customisation /Training Reports/ MIS / Executive Reports in consultation with IHMCL
- ii. Report on final System Acceptance
- iii. Monthly Progress Reports on Call Centre performance
- iv. Quarterly Reports on Call Centre performance
- v. Report on surprise checks in the Call Centre/s
- vi. Scrutiny reports / bills / invoices of Service Provider

4.6.3 All the reports mentioned herein above shall meet the objectives set-out in Article 4 hereof. The reports should be comprehensive enough, duly indexed and in hard bound cover with all pages signed. The reports shall be issued under the signature of authorized signatory of the Consultant and should be submitted in 4 (Four) copies.

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## **ARTICLE 5 OBLIGATIONS OF THE CONSULTANT**

### **5.1. Obligations of the Consultant**

The Consultant agrees and undertakes to fulfill the following obligations towards IHMCL, at its own cost and expense:

- 5.1.1 The Consultant shall undertake the scope of Services and strictly comply with the service level requirements as mentioned in Article 4 hereof.
- 5.1.2 The Consultant shall assume full responsibility for the successful conceptualization, development, management and operations of the Project and shall take all the necessary actions to that effect.
- 5.1.3 The Consultant shall coordinate the services of all the agencies involved in the Project.
- 5.1.4 The Consultant shall obtain the necessary approvals from the concerned agencies/ authorities/ IHMCL before commencing the Services.
- 5.1.5 The Consultant shall not substitute a Key Personnel unless due to reasons attributable to incapacity or due to health. Such substitution shall only be considered by IHMCL in case the substituted Key Personnel is of an equal or better qualification and experience, further subject to the satisfaction of IHMCL.
- 5.1.6 The Consultant shall provide necessary support staff for successful execution of the Project.
- 5.1.7 The Consultant shall strictly adhere to the timelines provided under this Agreement, the RFP and the Corrigendum/clarifications hereto.

### **5.2. Penalty for delay**

- 5.2.1 Damages shall be imposed on the Consultant for delay in performance of the Services under the scope of the Consultant beyond the Agreement Period or such other extended time period as may be granted by IHMCL. However in case of delay due to reasons beyond the control of the contractor, suitable extension of time will be granted without imposing any penalty.
- 5.2.2 IHMCL shall impose on the Consultant for the above stated delay 0.05% of the Contract value per week of the delay subject to a

maximum of 5% (Five per cent) of the Contract value as Penalty, without prejudice to any of its other rights and remedies under this Agreement and shall be recovered from payments due/performance security.

- 5.2.3 In case IHMCL is of the view that the delay is due to reasons beyond the control of the Consultant, IHMCL may, in its sole discretion, consider suitable extension of time without imposing any Damages upon the Consultant.

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**ARTICLE 6**  
**OBLIGATIONS OF IHMCL**

**6.1. Obligations of IHMCL**

The IHMCL undertakes to fulfill the following obligations at its own cost and expense:

- 6.1.1 Supervise the overall management and implementation of this Agreement;
- 6.1.2 Provide requisite specifications as considered necessary, from time to time to the Consultant for carrying out its obligations under this Agreement;
- 6.1.3 Extend cooperation for facilitating the Consultant in the implementation of the Services in accordance with the provisions of this Agreement.



**ARTICLE 7**  
**REPRESENTATION AND WARRANTIES**

**7.1. Representation and Warranties of the Consultant**

The Consultant declares, represents and warrants as follows:

- 7.1.1 It is a duly organized and validly existing under the laws of India, and has full power and authority to execute and perform its obligations under this Agreement and to carry out the transactions contemplated hereby;
- 7.1.2 It has taken all necessary corporate actions under Applicable Laws to authorize the execution and delivery of this Agreement and to validly exercise its rights and perform its obligations under this Agreement;
- 7.1.3 It has obtained all necessary internal/external approvals, registrations and certifications required from relevant authorities and other entities for fulfilling its obligations as set out in this Agreement;
- 7.1.4 It has not violated any of the conditions subject to which such approvals, registrations and certifications have been granted or any other applicable regulations and/or guidelines or directives or statutes;
- 7.1.5 It shall ensure that such approvals, registrations and certifications will remain in force, including, by taking prompt steps for timely renewal of the same;
- 7.1.6 It undertakes to continue to comply with all Applicable Laws with respect to its roles/obligations under this Agreement;
- 7.1.7 There are no actions, suits, proceedings, or investigations pending or, to the Consultant's knowledge, at law or in equity before any court or before any other judicial, quasi-judicial or other authority, the outcome of which may result in the breach of this Agreement or which individually or in the aggregate may result in any material impairment of its ability to perform any of its obligations under this Agreement;
- 7.1.8 It shall at no time sub-contract any of its obligations under this Agreement to any third party without prior written approval from IHMCL;

- 7.1.9 No representation or warranty by the Consultant contained herein or in any other document furnished by it to the IHMCL in relation to Applicable Laws contains or will contain any untrue or misleading statement of material fact or omits or will omit to state a material fact necessary to make such representation or warranty not misleading;
- 7.1.10 No sums, in cash or kind, have been paid or will be paid, by or on behalf of the Contractor, to any person by way of fees, commission or otherwise for securing the award of this Agreement or entering into this Agreement or for influencing or attempting to influence any officer or employee of the IHMCL in connection therewith;
- 7.1.11 All Key Personnel made available by it meets the requisite conditions of eligibility as specified in RFP;
- 7.1.12 All Key Personnel shall be available for the entire term of this Agreement and no Key Personnel shall be substituted except for reasons of any incapacity or due to health. Further, any such substitution shall ordinarily be limited to one Key Personnel only.
- 7.1.13 It has never been barred by the Central Government, any State Government, a statutory authority or a public sector undertaking, as the case may be, from participating in any project;
- 7.1.14 It has neither failed to perform any agreement, as evidenced by imposition of a penalty by an arbitral or judicial authority or a judicial pronouncement or arbitration award nor been expelled from any project or agreement nor have had any agreement terminated for breach, during the last 3 (three) years;
- 7.1.15 It has no conflict of interest that may affect the carrying out of Services or due execution of this Agreement;
- 7.1.16 It shall replace, to the satisfaction of the IHMCL, all the Professional Personnel and Sub-Consultants that are not found suitable by the IHMCL;
- 7.1.17 No individual Key Personnel has made any false averment regarding his qualification, experience or other particulars and in case of any default herein, shall be liable to be debarred for any future assignment of IHMCL for a period of 5 (five) years.

## **7.2. Representation and Warranties of IHMCL**

The IHMCL represents and warrants to the Consultant that:

- 7.2.1. It has full power and authority to execute, deliver and perform its obligations under this Agreement and to carry out the transactions contemplated herein and that it has taken all actions necessary to execute this Agreement, exercise its rights and perform its obligations, under this Agreement;
- 7.2.2. It has taken all necessary actions under the Applicable Laws to authorise the execution, delivery and performance of this Agreement;
- 7.2.3. This Agreement constitutes a legal, valid and binding obligation enforceable against it in accordance with the terms hereof;
- 7.2.4. It has no knowledge of any violation or default with respect to any order, writ, injunction or any decree of any court or any legally binding order of any Government Instrumentality which may result in any material adverse effect of any act or event on the ability of IHMCL to perform any of its obligations under and in accordance with the provisions of this Agreement and which act or event causes a material financial burden or loss to the IHMCL's ability to perform its obligations hereunder.

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**ARTICLE 8**  
**STANDARD OF PERFORMANCE**

- 8.1.** The Consultant shall provide professional, objective and impartial advice and at all times hold the IHMCL's interest paramount. Consultant shall further avoid conflicts with other assignments or its own interests and act without any consideration, over and above the Agreement Price, for future work.
- 8.2.** The Consultant shall not accept or engage in any assignment that may place it in a position of not being able to successfully execute this Agreement in the best interests of IHMCL.
- 8.3.** The Consultant shall perform the Services and carry out obligations hereunder with all due diligence, efficiency and economy, in accordance with the highest professional standards and practices, and shall observe sound management practices, and employ appropriate technology and safe and effective equipment, machinery, materials and methods.
- 8.4.** The Consultant shall always act, in respect of any matter relating to this Agreement or to the Services to be provided, as faithful adviser to IHMCL, and shall at all times support and safeguard the IHMCL's legitimate interests in any dealings with sub-consultants or third parties.

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## **ARTICLE 9 PAYMENT TERMS**

### **9.1. Payment Terms**

- 9.1.1 The Consultant shall be paid a sum of -----as the Agreement Price for the Project in accordance with the completion of activity as specified in RFP.
- 9.1.2 The quoted prices are inclusive of all Taxes & duties, except Service Tax, which shall be paid separately, as actual.
- 9.1.3 In case any clarifications/checks etc. is required for calculating deduction which is likely to take some time, IHMCL shall release 70% of the invoice amount within 30 days of receipt of the same and the balance 30% shall be settled after completion of clarifications/checks etc., however, in not more than additional 30 days thereof.
- 9.1.4 All payments shall be made subject to adjustment of applicable damages, if any.
- 9.1.5 All payments shall be made only for the actual Services rendered to the satisfaction of IHMCL.
- 9.1.6 All payment shall be made in Indian Rupees only.
- 9.1.7 Payments will be made after successful completion of Quarterly services.

### **9.2. PRICES**

- 9.2.1 The Consultant shall be liable for payment of all taxes and levies prevalent and/or imposed or increased, during the Agreement Period and indemnify IHMCL against any such claims.
- 9.2.2 Service Tax over and above the Agreement Price shall be released separately, as actuals, only after submission of proof of payment of the Service Tax by the Consultant.
- 9.2.3 Applicable statutory deductions such as TDS, Cess etc shall be deducted by IHMCL from all the Payments of the Consultant.
- 9.2.4 No amount or cost shall be payable for holding discussion, as considered necessary by IHMCL, for any purpose with the Consultant at IHMCL Office or elsewhere, prior, during or after the conduct of

the Project.

9.2.5 No escalation shall be payable to the Consultant on the Agreement Price quoted by the Consultant and the same shall remain fixed for the entire Agreement Period.

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**ARTICLE 10**  
**COMPENSATION FOR BREACH**

**10.1 Compensation for default by the Consultant**

10.1.1 In the event of the Consultant being in breach of this Agreement, unless such default or delay is on account of Force Majeure, the Consultant shall pay to IHMCL, by way of compensation, all direct costs suffered or incurred by IHMCL as a consequence of such breach, within 30 days of receipt of the demand supported by necessary particulars thereof.

10.1.2 Without limiting the generality of Sub-Clause 10.1.1, the Consultant shall pay to IHMCL by way of compensation, all direct costs suffered or incurred by IHMCL as a result of any and all losses, claims, damages and liabilities including, without limitation, legal fees and other expenses incurred in connection with any suit, action or proceeding or any claim asserted, as such fees and expenses are incurred, joint or several, that arise out of, or based upon:

- (i) Any untrue statement or misrepresentation of a material fact provided by the Consultant or an omission to state a material fact required to be communicated.
- (ii) Any non-performance or breach of the roles, responsibilities, representations, warranties, undertakings and declarations contained herein by the Consultant or its personnel or representatives, as the case may be.
- (iii) Negligence, fraud or misconduct of the Consultant or any of its personnel, representatives, employees, agents, affiliates or advisors.

**10.2 Survival**

10.2.1 The provisions of this Article 10 shall survive Termination or expiration of this Agreement.

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## **ARTICLE 11 INDEMNIFICATION**

- 11.1.** The Consultant shall indemnify, defend and hold harmless, IHMCL and its affiliates and their respective members, directors, officers, employees, agents, sureties, insurers and affiliated entities (hereinafter collectively referred to as **“IHMCL Indemnified Parties”**) against any direct loss, damage, claims, cost and liabilities of any and every kind, and all expenses (including without limitation, legal fees, claims and expenses incurred in connection with any suit, action or proceeding or any claim asserted, as such fees and expenses are incurred), joint or several, that arise out of or are based upon any order passed by any statutory authority including Courts, tribunals or other judicial/quasi judicial authorities, on account of breach of the Consultant’s obligations under this Agreement or any other related agreement or otherwise, any fraud or negligence attributable to the Consultant or its agents under contract or tort or on any other ground whatsoever, except to the extent that any such suits, proceedings, actions, demands and claims has arisen due to any breach or default of this Agreement on the part of the IHMCL Indemnified Parties.
- 11.2.** The Consultant shall indemnify the IHMCL, NHAH and MoRTH of all legal obligations of the personnel deployed by the Consultant. IHMCL also stand absolved of any liability on account of death or injury sustained by the Consultant’s staff during the performance of its obligations under this Agreement and also for any damages or compensation due to any dispute between the Consultant and its staff.
- 11.3.** The Consultant shall indemnify IHMCL, NHAH and MoRTH for an amount not exceeding 3 (three) times of the Agreement Price for any direct loss or damage accrued or likely to accrue due to any deficiency in Services rendered by the Consultant.
- 11.4.** In addition to the aforesaid, the Consultant shall fully indemnify, hold harmless and defend the IHMCL Indemnified Parties from and against any and all direct loss, damage, cost and expense of whatever kind and nature (including, without limitation, legal fees and other expenses incurred in connection with any suit, action or proceeding or any claim asserted, as such fees and expenses are incurred), joint or several, that arise out of, or are based upon any demands, claims, suits or proceedings arising out of third party claims with respect to infringement of any domestic or foreign patent, trademark or industrial design rights or other intellectual property, proprietary or confidentiality rights with respect to any materials, information, design or process used by the Consultant or



by its personnel in performing the Consultant's obligations under or in any way incorporated in or related to this Agreement. If in any such suit, action, claim or proceedings, a temporary restraint order or preliminary injunction is granted, the Consultant shall make every reasonable effort, by giving a bond (of the type and value as required) or otherwise, to secure the revocation or suspension of the injunction or restraint order and continue to perform its obligations hereunder. If the Consultant is unable to secure such revocation within a reasonable time, it shall, at its own expense, rectify such defaults and shall also be liable for damages to the IHMCL for the corresponding loss during the interim period on this account.

**11.5.** The remedies provided under this Article are not exclusive and shall not limit any rights or remedies that may otherwise be available to IHMCL Indemnified Parties at law or in equity.

**11.6.** The provisions of this Article 11 shall survive expiration or earlier Termination of this Agreement.

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## **ARTICLE 12**

### **PERFORMANCE SECURITY**

#### 12.1. Performance Guarantee

12.1.1 The Consultant has, for the due performance of its obligations hereunder, provided to the IHMCL prior to the date of this Agreement, an irrevocable and unconditional performance guarantee in the form of a Bank Guarantee from \_\_\_\_\_ Bank for a sum equivalent to 10% of the Agreement Price, i.e., Rs. -----(hereinafter referred to as the **“Performance Guarantee”**) within 15 days of the receipt of LOA.

12.1.2 The Performance Guarantee shall be kept valid by the Consultant for a period of 180 days beyond the expiry of this Agreement.

#### 12.2. Appropriation of Performance Guarantee

12.2.1 Upon failure of the Consultant to commence the Services, for any reason whatsoever, within the period set forth in Clause 3.1 of Article-3, IHMCL shall, without prejudice to its other rights and remedies hereunder or in law, be entitled to levy damages or encash and appropriate the entire Performance Guarantee.

12.2.2 The IHMCL shall, without prejudice to its other rights and remedies hereunder or in law, is entitled to encash and appropriate the relevant amounts from the Performance Guarantee as damages for any loss resulting from the Consultant's failure to complete its obligations under this Agreement. Upon such encashment and appropriation from the Performance Guarantee, the Consultant shall, within 10 days thereof, replenish, in case of partial appropriation, to the original level of the amount guaranteed under the Performance Guarantee, and in case of appropriation of the entire Performance Guarantee, provide a fresh Performance Guarantee, as the case may be, failing which IHMCL shall be entitled to terminate this Agreement in accordance with Article 13 hereof.

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## **ARTICLE 13**

### **SUSPENSION AND TERMINATION**

#### 13.1. Suspension

13.1.1 IHMCL may by a written notice of suspension to the Consultant suspend all payments to the Consultant hereunder, in the event of failure to perform by the Consultant of any of its obligations under this Agreement, including the carrying out of Services, provided that such notice of suspension (i) shall specify the nature of the failure; and (ii) shall request the Consultant to remedy/cure such failure within a period not exceeding 30 (thirty) days (hereinafter referred to as **"Cure Period"**) after receipt of such notice of suspension (hereinafter referred to as **"Cure Period Notice"**).

13.1.2 In the event the Consultant fails to remedy/cure such failure to perform, IHMCL may, without prejudice to any other rights and remedies available under this Agreement and/or law, terminate this Agreement in accordance with Clause 13.2 hereunder.

#### 13.2. Termination

##### **13.2.1 Termination by IHMCL**

Notwithstanding anything stated in this Agreement, in case of the occurrence of any of the events specified hereunder, IHMCL may terminate this Agreement by giving a written notice of termination to the Consultant (**"Termination"**) of not less than 30 (Thirty) days and 60 (Sixty) days in case of the event specified in Sub-Clause (n) hereunder (the **"Termination Notice"**).

- a) If the Consultant fails to remedy a failure in the performance of its obligations hereunder as specified in a Cure Period Notice pursuant to Clause 13.1 hereinabove, within the Cure Period or within such further period as IHMCL may subsequently approve in writing.
- b) If any of the members of the Consultant becomes insolvent or bankrupt or enter into any agreements with their creditors for relief of debt or take any advantage of any law for the benefit of debtors or go into liquidation or receivership whether compulsorily or voluntarily.

- c) If the Consultant fails to comply with any final decision reached as a result of dispute resolution proceedings in pursuance to Clause 15 hereof.
- d) If the Consultant, in judgment of IHMCL, has engaged in corrupt or fraudulent practices in competing for or in executing this Agreement.
- e) If the Consultant has made to the IHMCL a material misrepresentation or has given any materially incorrect or false statement herein, resulting in any material effects on the rights, obligations or interests of the IHMCL under this Agreement.
- f) If the Consultant makes more than 2 (Two) substitutions for the same Key Personnel or substitutes the Team Leader.
- g) If the Consultant fails to maintain and/or replenish the requisite Performance Guarantee as per the terms of this Agreement.
- h) If the Consultant without reasonable excuse fails to commence the Services in accordance with the terms of this Agreement.
- i) If the Consultant without reasonable excuse ceases to perform any assignment without the prior written approval of the IHMCL.
- j) If the Consultant sub-contracts any assignment and/or Services under this Agreement without prior written approval of the IHMCL.
- k) Breach or non performance by the Consultant of any of its representations and/or obligations stipulated in this Agreement.
- l) Any other fundamental breaches as specified in the RFP or this Agreement.
- m) If IHMCL, in its sole discretion and for any reason whatsoever, wants to terminate this Agreement.

### **13.2.2 Termination by the Consultant**

Notwithstanding anything stated in this Agreement, in case of the occurrence of any of the events specified hereunder, the Consultant may terminate this Agreement, by giving a written Termination Notice to the IHMCL of not less than 60 (Sixty) days.

- a) If IHMCL fails to pay any money due to the Consultant pursuant to this Agreement and not subject to any dispute within 45 (Forty five) days after receiving a written notice from the Consultant that such payment is overdue.
- b) If the IHMCL fails to comply with any final decision reached as a result of dispute resolution proceedings in pursuance to Clause 15 hereof.

### **13.3. Consequences of Termination**

- 13.3.1 Upon Termination, the Consultant shall comply with and conform to the following requirements:

- (a) Transfer all data related to Services provided by the Consultant under this Agreement, to IHMCL or any other entity as directed by IHMCL.
- (b) Transfer relevant documents/permissions/approvals/licenses to IHMCL or any other entity as directed by IHMCL.
- (c) Transfer and/or surrender all permits obtained under the Applicable Law pertaining to the Project to IHMCL or any other entity as directed by IHMCL.

13.3.2 Upon Termination in pursuance of Sub-Clause 13.2.1 hereof, save paragraph (m) of Sub-Clause 13.2.1, the IHMCL shall be entitled to appropriate the entire Performance Guarantee.

#### **13.4. Cessation of Rights and Obligations upon Termination**

13.4.1 Upon Termination of this Agreement in pursuance of Clause 13.2 hereof, or upon expiration of this Agreement in pursuance of Clause 2.1 hereof, all the rights and obligations of the Parties hereunder shall cease, except (i) such rights and obligations as may have accrued on the date of Termination or expiration, including without limitation, right to claim and recover money damages and performance guarantee; (ii) the obligation of confidentially set forth in Clause 16.1 hereof; and (iii) any other rights and remedies which either Party may have under the Applicable Law.

#### **13.5. Cessation of Services upon Termination**

13.5.1 Upon Termination of this Agreement by notice of either Party to the other in pursuance of Sub-Clauses 13.2.1 or 13.2.2 hereof, the Consultant shall, immediately upon dispatch or receipt of such notice, take all necessary steps to bring the Services to a close in a prompt and orderly manner and shall make every reasonable effort to keep expenditures for this purpose to a minimum.

#### **13.6. Payment upon Termination**

13.6.1 Upon Termination of this Agreement in pursuance of Sub-Clauses 13.2.1 or 13.2.2 hereof, IHMCL shall make the following payments to the Consultant:

- a) Remuneration and reimbursable expenditures in pursuance of Article 9 hereof for Services satisfactorily performed prior to the

effective date of Termination and/or for reimbursable expenditures actually incurred prior to the effective date of Termination respectively;

- b) Except in the case of Termination in pursuance to paragraphs (a) through (m) of Sub-Clause 13.2.1 hereof, reimbursement of any reasonable cost incidental to the prompt and orderly Termination of this Agreement.

### **13.7. Disputes about events of Termination**

13.7.1 If either Party disputes whether an event specified in Sub-Clauses 13.2.1 or 13.2.2 hereof has occurred, save paragraph (m) of Sub-Clause 13.2.1, such Party may, within 45 (Forty five) days after receipt of notice of Termination, from the other Party, refer the dispute resolution as per Article 15 hereof, and this Agreement shall not be terminated on account of such event .

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## **ARTICLE 14 FORCE MAJEURE**

### **14.1. Force Majeure Event**

No Party shall be considered in default of performance of its obligations under the terms of this Agreement, if such performance is prevented or delayed for any causes beyond the reasonable control of the Party affected by such event (hereinafter referred to as **"Affected Party"**), including, but not 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 which substantially bars the performance of obligations of the Affected Party (hereinafter referred to as **"Force Majeure Event"**)

### **14.2. Reporting of Force Majeure**

If a Force Majeure Event arises in the aforesaid manner, the Affected Party shall within 48(Forty Eight) hours notify the other Party in writing of such condition and the cause thereof. However, in case the Consultant claims to have suffered a Force Majeure Event, the Consultant shall continue to perform its obligations under this Agreement as far as is reasonably practical, and shall seek all reasonable alternative means for performance not prevented by Force Majeure Event, unless otherwise directed by the IHMCL. Further, the Affected Party shall be excused from performance of its obligations in whole or part hereof, as long as such Force Majeure Event shall continue to prevent or delay such performance thereof.

### **14.3. Mitigation of Force Majeure Event**

Upon occurrence of Force Majeure Event, the Affected Party shall immediately take steps as are reasonably necessary to remove the causes resulting in Force Majeure if within its control and to mitigate the effect thereof. Any costs incurred and attributable to such event or curing of the Force Majeure Event shall be solely borne by the Affected Party.

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**ARTICLE 15**  
**DISPUTE RESOLUTION**

15.1. Dispute resolution

15.1.1 Any dispute, difference or controversy including objections by either Party to any action or inaction of the other Party of whatever nature howsoever arising under or out of or in relation to this Agreement (hereinafter referred to as “**Dispute**”) between the Parties shall be notified by a written Notice of Dispute by either Party to the other Party. Such Dispute shall, in the first instance, be attempted to be resolved amicably by mutual discussion and conciliation. The Party receiving such Notice of Dispute shall consider and respond to it within 14 (Fourteen) days after the receipt thereof.

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## **ARTICLE 16 MISCELLANEOUS**

### **16.1. Confidentiality**

16.1.1 The Parties hereby unconditionally agree and undertake that they shall not disclose the terms and conditions of this Agreement or disclose the information submitted under this Agreement to any third party unless such disclosure is required by law or regulation, to internal/external auditors or advisers in respect of performing functions under this Agreement or for the purpose of performing their obligations under this Agreement.

16.1.2 The Consultant hereby unconditionally agrees and undertakes that all documents and other information provided by the IHMCL or submitted by the Consultant to the IHMCL shall remain or become the property of the IHMCL and Consultant shall treat all such information as strictly confidential. Further, all information collected, analyzed, processed or in whatever manner provided by the Consultant to the IHMCL in relation to this Agreement shall be the property of the IHMCL.

16.1.3 The Consultant and its personnel shall not at any time communicate to any person or any entity any confidential information acquired in the course of performing its obligations under this Agreement, nor shall the Consultant and its personnel make public the recommendations formulated in the course of, or as a result of performing its obligations under this Agreement, except with the prior written approval of the IHMCL.

16.1.4 All details, documents, data, applications, software, systems, papers, statements and business/customer information pertaining to this Agreement communicated in writing shall be treated as absolutely confidential and the Parties irrevocably agree and undertake to ensure that they shall keep the same as confidential and that they shall not disclose the same, in whole or in part to any person without the prior written approval of the other Party nor shall use or allow to be used any information, other than as may be necessary for the due performance of their obligations hereunder. The confidentiality obligations shall not apply to (i) information in the public domain; or (ii) information that is received by a Party from a third person without breach of a confidentiality obligation by such third person; or (iii) information disclosed by a Party under any applicable law, rule, regulation or to a judicial, regulatory, quasi judicial, administrative or governmental body or authority; or (iv) information not in writing.

16.1.5 The Parties agree to:

- (a) Take all necessary action to protect the confidential information against misuse, loss, destruction, deletion and/or alteration;
- (b) Not to misuse or permit misuse directly or indirectly and/or commercially exploit the confidential information for economic or other benefit;
- (c) Notify the other Party promptly of any unauthorized or improper use or disclosure of the confidential information; and
- (d) Subject to Clause 16.1.2, promptly return all the confidential documents/material that is in the custody of the other Party upon Termination of this Agreement.

16.1.6 The provisions of this Clause shall survive the expiration or earlier Termination of this Agreement for a period of one year.

## **16.2. Intellectual Property Rights**

16.2.1 All Intellectual Property of the respective Parties shall continue to vest with the respective Party and one Party may make use of the Intellectual Property only with the prior written approval of the other Party.

## **16.3. Notice**

16.3.1 All communication, notices, demands, requests, consents, approvals or intimation required to be given to either Party shall be marked to under or in connection with this Agreement shall be written in English and shall:

- (a) In case of the Contractor, be given by facsimile or registered acknowledgment due or courier or e-mail and by letter delivered by hand to the below mentioned address and marked for attention of the person set out below:

Sh. \_\_\_\_\_,  
Authorized Signatory,

.  
E-mail:

- (b) In the case of the IHMCL, be given by facsimile or registered acknowledgment due or courier or e-mail and by letter

delivered by hand and be addressed to the Chairman of the IHMCL with a copy delivered to the IHMCL Representative or such other person as the IHMCL may from time to time designate by notice to the Consultant.

16.3.2 Any notice or communication by a Party to the other Party given in accordance herewith shall be deemed to have been delivered when in the normal course of post it ought to have been delivered and in all other cases, it shall be deemed to have been delivered on the actual date and time of delivery; provided that in the case of facsimile or e-mail, it shall be deemed to have been delivered on the working day following the date of its delivery.

#### **16.4. Governing Law and Jurisdiction**

16.4.1 This Agreement shall be construed and interpreted in accordance with and governed by the laws of India, and the Courts at New Delhi shall have exclusive jurisdiction over matters arising out of or relating to this Agreement.

#### **16.5. Insurance**

16.5.1 The Consultant shall for the duration of this Agreement, take out and maintain at its own cost, such insurance cover, adequate for covering its equipments, employees, road user and any other road assets, in accordance with Good Industry Practice.

16.5.2 The Consultant shall be solely responsible for making good any damages to road assets and road users, caused by the Consultant and/or its representatives.

#### **16.6. Expenses in relation to this Agreement**

16.6.1 The Consultant shall bear all costs, charges, penalties and expenses in connection with the execution of this Agreement including stamp duty, registration charges, etc., which may be payable as on the date of this Agreement or at any time hereinafter.

#### **16.7. No Assignment without consent**

16.7.1 Neither Party shall assign this Agreement, in whole or in part, nor any of its rights or obligations hereunder, without the express and prior written consent of the other Party, which consent in case of Consultant may be provided or denied by IHMCL in its sole and absolute discretion.

16.7.2 Except as otherwise provided, any assignment of this Agreement or any of the rights hereunder, without a Party's express and prior

written consent shall be absolutely void and, at the option of the non-assigning Party, shall result in Termination of this Agreement.

#### **16.8. Waiver**

16.8.1 No forbearance or delay on the part of either Party in enforcing its rights, power or privilege under this Agreement will constitute or operate as a waiver of any terms of this Agreement, or a forfeiture of any such rights or a consent thereto; nor shall any single or partial exercise of any such right, power or privilege preclude any further exercise thereof or the exercise of any other right, power or privilege. The remedies herein provided are cumulative and not exclusive of any remedies provided by law.

#### **16.9. Legal Status/No Partnership**

16.9.1 Both Parties are acting solely as independent entities hereunder and this Agreement shall not be interpreted or construed to create an association, joint venture or partnership between the Parties, or to impose any partnership obligation or liability upon either Party and neither Party shall have any right, power or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as or be an agent or representative of, or to otherwise bind, the other Party.

#### **16.10. Entire Agreement**

16.10.1 This Agreement sets forth the entire agreement between the Parties. All prior conversations, negotiations or writings between the Parties or their respective agents are merged into and superseded by this Agreement.

#### **16.11. Amendment**

16.11.1 No amendment, modification or waiver of any provision of this Agreement shall be binding or effective unless the same has been made in writing and signed by a duly authorized representative of the Parties hereto.

#### **16.12. Third Party Benefit**

16.12.1 Nothing herein expressed or implied is intended, nor shall it be construed, to confer upon or give to any third party any right, remedy or claim under or by reason of this Agreement or any part thereof.

#### **16.13. Dates**

16.13.1 If the date or last date to perform any act or give notice or approval shall fall on a day on which banking institutions in India, are authorized or required by law to be closed, then such act, notice or approval will be timely if performed or given on the next succeeding business day.

**16.14. Attorney's Fees**

16.14.1 In any action to enforce this Agreement or any provision or term hereof, the prevailing Party shall be entitled to recover its reasonable costs and expenses, including its attorney's fees and disbursements.

**16.15. Severability**

16.15.1 If for any reason whatsoever any provision of this Agreement is or becomes invalid, illegal or unenforceable or is declared by any court of competent jurisdiction or any other Government Instrumentality to be invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions shall not be affected in any manner, and the Parties will negotiate in good faith with a view to agreeing to one or more provisions which may be substituted for such invalid, unenforceable or illegal provisions, as nearly as is practicable to such invalid, illegal or unenforceable provision. Failure to agree upon any such provisions shall not be subject to the Dispute Resolution procedure set forth under Article 15 of this Agreement.

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**IN WITNESS WHEREOF THE PARTIES HAVE EXECUTED AND DELIVERED THIS AGREEMENT AS OF THE DAY, MONTH AND YEAR FIRST ABOVE WRITTEN.**

SIGNED, SEALED AND DELIVERED

For and on behalf of

**INDIAN HIGHWAYS  
MANAGEMENT COMPANY  
LIMITED** by:

(Signature)  
(Name)  
(Designation)

THE COMMON SEAL OF **Indian Highways Management Company Limited** has been affixed pursuant to the resolution passed by the Board of Directors of the **Indian Highways Management Company Limited** at its meeting held on the ..... day of ....., 20... hereunto affixed in the presence of ..... , Director, who has signed these presents in token thereof and ....., company Secretary / Authorised Officer who has countersigned the same in token thereof

SIGNED, SEALED AND DELIVERED

For and on behalf of by:

(Signature)  
(Name)  
(Designation)

THE COMMON SEAL OF has been affixed pursuant to the resolution

passed by the Board of Directors of the ..... at its meeting held on the ..... day of ....., 20.... hereunto affixed in the presence of ....., Director, who has signed these presents in token thereof and ....., Company Secretary/Authorised Officer who has countersigned the same in token thereof

In the presence of:

1.

2.

