



Indore Smart City Development Limited

**REQUEST FOR PROPOSAL SELECTION OF
TECHNICAL CONSULTANT**

FOR

**POWER DISTRIBUTION WITHIN ABD AREA
OF SMART CITY PROJECT.**

NIT No: 57 /ISCDL/ 17-18 Dated 03.11.2017

Indore Smart City Development Limited, Indore

NEHRUPARK CAMPUS, INDORE, Madhya Pradesh, 452003

Ph. No.: 0731-2535572; E-mail: smartcityindore16@gmail.com

CIN: U75100MP2016SGC035528; Website: www.smartcityindore.org

Section-1

INDORE SMART CITY DEVELOPMENT LIMITED

Smart City Office, Nehru Park Campus, Indore

NIT No. 57 /ISCDL/17-18

Date: 03.11.2017

NOTICE INVITING TENDER

Indore Smart City Development Limited, invites **tenders** for following works under Smart City Mission.

No.	Name of Work:	Cost of Tender Form	Earnest Money Deposit	Completion Period
1	Selection of Consultant for preparation of project report and availing Power Distribution licence in ABD Area Of Smart City Project including allied activities.	Rs. 15,000/-	Rs.3 Lakh	60 Months

Key Dates: -

1. Pre-Bid Meeting	15 11 2017 at 1500 Hrs.
2. Last date for Purchase of Tender	20 11 2017 till 1730 Hrs.
3. Last date for Submission of Tender (Online)	22 11 2017 till 1730 Hrs.
4. Last date for Submission of Hard Copy of Technical Bid and EMD	23 Nov. 2017 till 1500 Hrs.
5. Technical Bid Opening (Online)	23 Nov. 2017 at 1600 Hrs.
6. Tender Document and other details shall be available on: -Website- www.mpeproc.gov.in	
7. Amendment to NIT, if any would be published on website only.	
8. Earnest money to be deposited in the form of DD/FDR in favor of Executive Director, ISCDL, Indore.	

Chief Executive Officer
Indore Smart City Development Limited, Indore

2. Instructions to RFP participant

- a. The RFP participant expected to submit his offer Earnest money, Technical proposal and Financial bid online and also submit hardcopy in a sealed cover with Earnest money and Technical proposal in two separate sealed covers, clearly marked "Earnest money" and "Technical proposal, in respect of the works notified. The financial bid shall be in the form of man-month basis.
- b. The technical proposal should demonstrate the applicant's knowledge of the project requirements, understanding of the requisite, tests set forth in the scope of work, terms and references and capability to carry them out. Provision of the requested information in full must be set forth in the following sequence:-
- c. Background organization and experience of the firm for the purpose of providing the services for this project–Annexure –1.
- d. A list of works of similar nature carried out in the past is to be submitted in Annexures-2.
- e. A list of works in hand in Annexures-3.
- f. General approach of methodology that the applicant proposes for carrying out the services is to be given in formats as per Annexures-4.
- g. Financial Capacity in Annexures-5.
- h. List of relations in the ISCDL in Annexures-6. By the term near relative is meant wife, husband, parents and son, grandson, brothers, sisters, brothers-in-law, father-in-law and mother-in-law.
- i. List of litigation in Annexures-7.
- j. In order to obtain firsthand information about the assignment the local conditions / constraints and concept of the entire project, it is advisable that the applicant visits the site to acquaint with the site conditions etc.
- k. Selection of the consultant will be made on the basis of evaluation of the technical proposal and financial bids separately. The applicant should fulfil the following eligibility criteria to be technically qualified. Financial bids of only technical qualified bidders will be opened. The applicant who does not meet the eligibility criteria would not be considered and their financial bids will be returned unopened. The eligible consultant who quotes the lowest financial bid shall be declared as the successful consultant.

Eligibility Criteria:

1. **Financial:** The consultant should be in the field of electrical consultancy for a minimum of 10 years and should have an average annual turnover of rupees 1.0 Crore in last three financial years.
2. **Technical:**
 - 2.1 Consultant should have experience of preparation of DPR for value not less than Rs 400 Crores for one power distribution and transmission system of 50 MW and above for any city in India or abroad.
 - 2.2 The consultant should have experience of preparation of tender document for transmission and distribution works till the award of contract for a minimum value of Rs. 100 Crs.
 - 2.3 The consultant should have an experience of obtaining distribution license/ exemptions for the past 10 years.

- I. The bidder shall submit detailed technical personnel to be engaged inclusive of overhead expenses. The required staff for the work shall be as under: -

Particulars of Key Personnel

During Licensing Phase:

S. No.	Designation of Key Personnel	Required Nos	Educational Qualification	Length of Professional Experience
(1)	(2)	(3)	(4)	(5)
1	Project Leader	1 No	Graduate in Electrical Engineering	25 years having expertise in designing of distribution and transmission including underground LT line, 11KV/ 33KV, 132/ 33KV substation, Street lights etc. successfully. He should have specific experience in preparing conditions of License for a distributions licensee.
2.	Senior Electrical Engineer	2 Nos.	Graduate in Electrical Engineering	degree in Electrical Engineering minimum experience of 10 years in electrical matters (HT & LT power line, transformer, substation, street lights in industrial area/ township).

During Execution and O&M Phase:

S. No.	Designation of Key Personnel	Required Nos	Educational Qualification	Length of Professional Experience
(1)	(2)	(3)	(4)	(5)
1	Project Leader	1 No	Graduate in Electrical Engineering	25 years having expertise in designing of distribution and transmission including underground LT line, 11KV/ 33KV, 132/ 33KV substation, Street lights etc. successfully. He should have specific experience in preparing conditions of License for a distributions licensee.

2.	Senior Electrical Engineer	2 Nos.	Graduate in Electrical Engineering	degree in Electrical Engineering minimum experience of 10 years in electrical matters (HT & LT power line, transformer, substation, street lights in industrial area/ township).
3	Junior Electrical Engineer	3 Nos	Graduate in Electrical Engineering	Degree or Diploma with minimum experience of 3 years in electrical matters

- m. The Bidder will have to keep its bid open for 120 days of the opening of the technical proposals and in the case of withdrawal before that date the earnest money amount will be forfeited by the ISCDL.
- n. The expenses on preparing the proposals, visiting the site, attending the pre-bid meeting and negotiating the contract etc. will not be reimbursed.

3. METHOD OF APPLYING

- a. If the application is made by the individual it shall be signed above his full typewritten name and current address.
- b. If a proprietary firm makes the application, it shall be signed by the proprietor above his full typewritten name and the full name of his firm with its current address.
- c. If the application is made by a firm in partnership, it shall be signed by all the partners of the firm with their full name and current addresses or alternatively by a partner holding power of attorney for signing the documents, in which case, a certified copy of power of attorney shall be enclosed with the prequalification document. A certified copy of partnership deed and current address of all the partners of the firms shall also be enclosed with the prequalification document.
- d. If a limited Corporation or a corporation makes the application, a duly authorized person shall sign it.

4. SUBMISSION AND OPENING OF RFP DOCUMENT

- 1. No RFP document will be opened unless accompanied by the stipulated amount of earnest money in a separate sealed cover duly super-scribed. RFP documents not accompanied by earnest money will be returned to the RFP participants unopened.
- 2. At the advertised time and place all RFP participants received for the contract shall be opened by the officer inviting the RFP document (or any other officer authorized by him) in person, in the presence of such of the intending Consultants or their representatives as may choose to attend. No over writings shall be done but corrections where necessary shall be neatly scored out and rewritten and corrections shall be duly attested prior to the submission of the RFP document.
- 3. At the time of opening of RFP participants, one additional officer/senior clerk shall also be present invariably and sign each of the RFP document as witness.
- 4. Attendance of the RFP participants or their authorized representatives shall be noted down in the register to be maintained for this purpose. Rates and or conditions of each

of the RFP document shall be read out before the persons present and their Signatures obtained on each of the RFP document. Signatures on the comparative statement shall also be obtained.

5. The officer opening the RFP documents would initial on each and every RFP document and the serial numbers of such RFP documents with reference to total RFP documents noted on each RFP document as denominator / nominator. The initials shall be recorded on the page containing the financial bid.
6. Each and every correction or overwriting shall be initialed and the number of such corrections noted on the respective pages. A Consultant shall witness the RFP document for the works. The Consultants are advised to properly seal the RFP document papers in their own interest.
7. The earnest money of all the RFP participants shall be refunded if it is decided to reject all the RFP documents on the same day. Otherwise the earnest money of the three lowest RFP participants shall be retained till the RFP document is accepted and agreement executed. The earnest money of the remaining RFP participants whose RFP document is not accepted shall be refunded after the agreement is executed. However, irrespective of the decision on the RFP documents the earnest money of all the RFP participants shall be refundable on expiry of the validity period specified in the NIT.
8. Each RFP participant shall supply the name, residence and place of business of the person or persons giving the RFP document and shall be signed by the RFP participant with his usual signature. When a partnership firm gives RFP document then the full names of all partners shall be furnished. An attested copy of the constitution of the firm and the registered number of the firm shall be furnished. In such a case the RFP document must be signed separately by each partner thereof or in the event of the absence of any partner must be signed on his behalf by a person holding a power of attorney authorizing him to be so. RFP documents by corporation shall be signed with the legal name of corporation followed by the name of the state of in-corporation and by signature and by designation of the resident, secretary or other person authorized to bind it in the matter.
9. The RFP participant shall also give the following information invariably on cover containing the RFP document: -
 - A. Name and address of the Consultant.
 - B. Amount of earnest money deposited and No. and date of the D.D./ F.D.R. etc.
10. Earnest money which has been deposited for a particular work will not ordinarily be adjusted towards the earnest money for another work but if the RFP document of Consultant for another work has been rejected and the earnest money has not been refunded to him due to any reason it may be so adjusted.
11. The RFP documents shall be opened at the time and place stated in para-1 by the officer issuing this NIT in the presence of the RFP participant or their duly authorized representatives who may choose to attend. The officer under unavoidable circumstances may depute another officer in his absence to receive and open RFP documents on his behalf.
12. The Executive Engineer, in the presence of the applicants or their authorized

representatives, who choose to be present, will open the technical proposal. The financial bids will be opened after evaluation of the technical proposals and on a date and time to be notified to such of the bidders who secure the prescribed minimum score in such evaluation.

13. The particulars of the proposed work given are provisional and must be considered only as advance information to assist the applicant.
14. Enhancement or Curtailment in the quantum of the work will not vitiate the contract.
15. The officer opening the RFP documents does not bind himself to accept or recommend for the acceptance of the lowest or any RFP document or to give any reasons for his decision. In deciding the RFP documents the manifest capability / competence of the RFP participant his experience in this line will be the main consideration.
16. Conditional RFP documents are liable to be rejected.
17. Canvassing for support in any form for the acceptance of any RFP document is strictly prohibited.
18. If the RFP participant whose RFP document is accepted fails to deposit the performance security amount and execute the agreement documents within the notified period for any reason whatsoever, earnest money deposited with the RFP document shall be forfeited and acceptance of the RFP document cancelled.
19. The payment will be made by cheque of the Bank only. No bank commission charges on realizing such payments will be borne by the Corporation.
20. Deductions of Income Tax at source shall be done as per the law. It is open to the Consultant or the Sub-Consultant as the case may be to make an application to the Officer concerned and obtain from him a certificate authorizing the payer to deduct tax at such lower rate or deduct no tax as may be appropriate to his case. Such certificate will be valid for the period specified therein unless the officer concerned cancels it. The RFP participant whose RFP document has been accepted also referred to as the Consultant, will have to execute the agreement in the prescribed form within 15 days of the receipt of the communication of the acceptance of his RFP document. He will also have to furnish the performance security amount simultaneously. Failure to do so will result in the earnest money being forfeited to Corporation and RFP document being cancelled.
21. In case of delay or extension of the construction work beyond stipulated time period of the construction work, the quoted man/month rate shall be applicable for the extended period with the increase of the man month amount as per Note 2 of RFP document.
22. Removal of undesirable persons: - The consultant shall on receipt of the requisition from the Executive Engineer at once remove any person employed/ engaged directly or indirectly by him on the work who, if in the opinion of the Executive Engineer is unsuitable or undesirable.
23. All the terms and conditions of the Notice inviting RFP documents (NIT) and the Annexure referred to herein before will be binding on the Consultants in addition to the conditions of the contract in the prescribed form.

Attachments: Annexures – 1 to 7

Signature of the Applicant

Annexure – 1

STRUCTURE AND ORGANISATION

1. Name of the applicant:
2. Office Address:
3. Telegraphic Address:
4. Telephone Numbers:
5. Fax Number:
6. Date and location of establishment:
7. The applicant is
 - a. An individual
 - b. A proprietary firm
 - c. A partnership firm (if yes, give name and address of each of the partners)
8. A limited Corporation (Attach the organizational chart showing the structure of the organization including the names of the Directors and position of the Officers.)
9. Number of years of experience.
10. How many years have your organization been in this business of supervision Consultancy under the present name? What were the fields when your organization was established? Whether any new fields were added in your organization? And if so, when?
11. Were you ever required to suspend the Consultancy of a work for a period of more than six months continuously after you started? If so give the names of projects and reasons.
12. Have you ever not completed any assignment given to you? (If so, give name of project and reasons for not completing the work)
13. In how many of your project were penalties imposed for delays? Please give details.
14. In which field of Civil Engineering construction do you claim specialization and interest?
15. Give details of your experience in supervising the works with modern concrete technology for manufacture and quality control.

Signature of the Applicant

Annexure – 2

Details of works completed and applicant performance record.

1. Name of work
2. Place
3. Total cost of work
4. Brief description of works including principal features and quantities of main items.
5. Annual turnover
6. Period of competition
7. Originally stipulated time limit b) Extended time limit c) Actual time taken to complete the work d) Reasons for non-completion of work in stipulated time limit / extended time limit.
8. 7. Name of applicant's Engineer In charge of the work and Educational Qualification.
9. Were there any penalties / fines / stop notices / compensations / liquidated damages imposed ? (Yes / No) (If yes, give amount and explanation)

Signature of the Applicant

Annexure – 3

Details of works in hand

1. Name of work
2. Place
3. Total cost of work
4. Name of bidder's Engineer In charge with educational qualifications.
5. Brief description of works including principal features and quantum of work.
6. Details of works in hand.
 - a. Percentage of physical completion and amount billed for the work completed.
 - b. Cost of work remaining to be executed.
 - c. Stipulated dated of completion
 - d. Anticipated date of completion
7. Explain for non-completion of work within the stipulated time limit, if so.
8. Were there any penalties / fines / stop notices / compensations / liquidated damages imposed? (Yes / No) (If yes, give amount and explanation)
9. Were there any fines, claims or stop notices filled by the Employer? (Yes / No) If yes, give amount and explanation.

Signature of Applicant

Annexure - 4

General approach of methodology that the applicant proposes for providing the Consultancy services.

Signature of the Applicant

Annexure – 5

S. No.	Financial Year	Annual Professional Fee from Consultancy Services (Rs)
1.	2014-15	
2.	2015-16	
3.	2016-17	
Average		

(Signature, name and designation of the authorised signatory)

Date:

Name and seal of the audit firm:

Annexure – 6

List showing near relative of the applicant working in Indore Municipal Corporation, Indore or Indore Smart City Development Limited.

S.No.	Name of Officer	Relationship with applicant	Name of the Relation with the applicant who are near relatives to Officers mentioned In Col.2
(1)	(2)	(3)	(4)
1			
2			
3			
4			
5			

Annexure – 7

Information regarding current litigation:

S.No.	Name of the Contract	Year of Contract	Organisation	Details of Litigation
(1)	(2)	(3)	(4)	(5)
1				
2				
3				
4				
5				

Signature of the applicant

Annexure-8

(In lieu of Performance Security Deposit) (GUARANTEE BOND) (To be used by Scheduled Bank)

I. In consideration of the Executive Director Indore Smart City Development Limited (herein after called the Authority) having agreed to exempt ----- hereinafter called the said consultant(s) from the demand under the terms and conditions of an agreement no.-----, made between the ISCDL and the Consultant(s) and for the work (Name of work) ---- (hereinafter called the said Agreement) of Performance security deposit for the due fulfillment by the said consultant(s) of the terms and conditions contained in the said agreement, on production of a Bank Guarantee for Rs------(Rupees-----only)we, (*) - -- (hereinafter referred to as "the Bank", at the request of the said consultant(s) does hereby undertake to pay to the ISCDL an amount not exceeding Rs. ----- against any loss or damage caused to or suffered or would be caused to or suffered by the ISCDL, by reasons of any breach by the said consultant(s) of the terms and conditions contained in the said agreement.

II. We (*) do hereby undertake to the amount due and payable under this guarantee without any demure merely on demand from the ISCDL stating the amount claimed is due by way of loss or damage caused to or would be caused to or suffered by the ISCDL by reason of breach by the said consultant(s) of any of the terms and conditions contained in the said agreement or by reasons of the consultant(s) failure to perform the said agreement. Any such demand made on the bank shall be conclusive as regards the amount due and payable by the Bank under this guarantee. However our liability under this guarantee shall be restricted to an amount not exceeding Rs.-----.

III. We (*) undertake to pay to the ISCDL any money so demanded notwithstanding any dispute or disputed raised by the consultant(s) in any suit or proceedings pending before any court or tribunal relating thereto, out liability under this present being absolute and unequivocal. The payment so made by us under this bond shall be a valid discharge of out liability for payment there under and the consultant(s) shall have no claim against us for making such payment.

IV. We (*) further agree that the guarantee herein contained shall remain in full force and effect during the period that would be taken for the performance of the said agreement and that it shall continue to be enforceable till all the dues of the ISCDL under or by virtue of the said agreement have been fully paid and its claims satisfied or discharged or till the Executive Engineer, of the ISCDL certifies that the terms and conditions of the said agreement have been fully and properly carried out by the said consultant(s) and accordingly discharges this guarantee.

V. We (*) further agree with the ISCDL that the ISCDL shall have the fullest liberty without our consent and without affecting in any manner our obligation hereunder to vary any of the terms and conditions of the said agreement for the time of performance by the said consultant(s) and to for bear or enforce any of the terms and conditions relating to the said agreement and we shall not be relieved from our liability by any reason of any such variation, or extension being granted to the said consultant(s) or forbearance, act, or commission on the part of the ISCDL or any indulgence by the ISCDL

to the said consultant(s) but for this provision have effect of so relieving us.

VI. This guarantee will not be discharged due to the change in the constitution of the Bank or the consultant(s).

VII. We (*) lastly undertake not to revoke this guarantee during its currency except with the previous consent of the ISCDL in writing.

Dated the -----day of -----

For (*) Indicate the name of the Bank

Annexure – 9

FINANCIAL PROPOSAL

(To Be Submitted Online Only)

Items	Total Price (INR)
Financial proposal	
Selection of Consultant for preparation of project report and availing Power Distribution licence in ABD Area of Smart City Project including allied activities.	Rs. ----- (Figures)
	Rs. ----- ----- (Words)

Note:

1. The commercial figure quoted will be an all-inclusive figure – inclusive of out of pocket expenses and all taxes except service tax, duties, etc payable. No out-of-pocket expenses will be reimbursed separately. Should the commercial quote include separate out of pocket expenses or any taxes except service tax, duties, etc., such a Financial proposal will be treated as an invalid proposal.
2. All taxes quoted will be assumed to be as on 10th day prior to the date of submission of bid. Any changes in the statutory taxes or levies affected by Central/State/Other Government bodies after this date will be considered and applied after due authorization.
3. No escalation on any account will be payable on the above amounts.
4. The aforesaid fees, payable to the Consultant in accordance with the Financial Proposal, shall cover the costs of reasonable amount of in-house photocopying and stationery and costs of support staff. No additional charges in respect thereof shall be due or payable. The said fees, however, will not include counsel fee, outstation travel, faxes, couriers and postage, collections and deliveries, subscriptions to special services and specifically required stationery and bulk photocopying (the “Disbursements”). The Disbursements will be paid at actuals and will be indicated separately in the invoices of the Consultant together with appropriate supporting documents. Outstation travel shall be undertaken as per request of the Authority. Bills for reimbursement hereunder may be submitted on a monthly basis along with a Statement of Expenses, duly certified by the Authorised Representative.
5. All payments shall be made in Indian Rupees. The Goods & Service Tax shall be paid additionally to the Consultant in accordance with applicable laws.

Dated this [day / month / year]

Authorized Signatory (in full and initials):

Name and title of signatory:

Duly authorized to sign this Proposal for and on behalf of [Name of Consultant]

Name of Firm:

Address:

**Annexure – 10
DETAILS OF MILESTONE**

SNO	Scope of work	DELIVERABLES	Duration Months
1	SEEKING DISTRIBUTION LICENSE AND PREPARATION FOR POWER DISTRIBUTION: - Preparation of Project Report for power distribution as licensee as per provisions of The Electricity Act 2003 in ABD area		
1.1	<p>Prepare project report for undertaking reliable and economical power within ABD area including survey of existing distribution & transmission system, interaction with GOI, GOMP, existing distribution licensee MPPKVCL, Indore Transmission licensee MPPTCL, Jabalpur etc.</p> <p>Prepare estimates for transmission connectivity, 33/11KV Indoor Substation existing /modified existing substation of MPPKVCL in ABD area, Integrate Planning with proposed underground electrification (already under progress), smart metering, O & M services.</p> <p>(Excluding 11KV, LT work for underground electrification work already under progress at ISCDL)</p>	<p>1.Inception Report</p> <p>2.Detailed Project Report</p>	<p>X + 1</p> <p>X + 2</p>
1.2	Obtain Power distribution license (second licensee first being MPPKVCL) for ABD area for ISCDL and filing of required Petition before MPERC for seeking license or exemption from requirement of license as per provisions of The Electricity Act 2003. The scope of work shall include assistance in seeking Govt. of Madhya Pradesh permissions, filing of Petitions for seeking license before Madhya Pradesh Electricity Regulatory Commission Bhopal, coordinate with existing distribution licensee (MPPKVCL), State transmission Company (MPPTCL), State Load Dispatch Centre (SLDC), Power producers and all related stake holders. Comply all requirements of MPERC	3.MPERC Petition for distribution license or exemption to be distribution licensee and all representations before MPERC, GOMP	X + 6
2	Technical services , appointment of O & M agency and 33/11KV Indoor SS with transmission connectivity for doing power distribution on behalf of ISCDL		
2.1	Preparation of tender documents for 33/11KV Indoor SS, O&M services as per project report on behalf of ISCDL, consumer services, new service connections, metering, billing, serving power connections to consumer (Through underground electrification already under progress by ISCDL)	4. Tender document and assistance in evaluation and appointment of suitable agency for Capex and O&M work	X + 7

3	Commercial and Regulatory services		X + 7 + 60
3.1	Power Procurement Planning, assistance in signing all agreements like Power Purchase (PPA), transmission, wheeling (BPTA/WPA), transfer agreements for transfer scheme for migrating existing consumers from MPPKVCL to ISCDL and signing of power sale agreements.	Signing of PPA, BPTA, WA, consumer LT/HT agreement	
3.2	Calculation and assessment of day ahead, fortnightly and monthly power requirement for ABD area, demand forecast. CONSULATNT will co-ordinate with MPPMCL/NTPC/PGCIL/WRLDC/MPPKVCL/MPPTCL for power procured including procurement of power from IEX etc. The power procurement bills will be payable by ISCDL to respective agencies as per their practice in vogue. Advising ISCDL on operational matters and other regulatory affairs	Daily load scheduling	
3.3	Filing of ARR and Tariff petitions on behalf of ISCDL before MPERC Bhopal. Responding to MPERC on operational matters and other regulatory affair. ISCDL shall ensure that all requisite information required for preparation of ARR/Tariff petitions is made available	ARR filing and fixing retail tariff order for power supply to consumers once every year.	
3.4	Filing of miscellaneous petitions and representation before MPERC on various regulatory matters related with power distribution business. Advising ISCDL on operational matters and other regulatory affairs and assistance in regulatory compliances. Consultant shall also be responsible for discharging its obligations in respect of above activities.	True up Petitions and All regulatory compliances like R15, MIS.	
3.5	Supervision and monitoring of O & M agency work, consumer services and reporting to ISCDL.	Verification of O & M agencies work of meter readings, bills and energy audit report, consumer complaints redressal	
4	Consultancy services for economizing retail power tariff for IMC utilities, evaluating alternate source of power , energy audit and facilitating reduced cost of line shifting in IMC area	Filing representation before MPERC for reduced electricity tariff for IMC utilities. Assistance in procurement economic power through energy exchange/ alternate sources/ solar. Coordination with	X +60

		MPPKVCL for reduction in cost of line shifting	
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Annexure - 11

Schedule of Applicable Fee

SNO	Scope of work	Qty	Fees	Payment
1	STEP1: PREPARATION OF PROJECT REPORT AND SEEKING DISTRIBUTION LICENSE AND PREPARATION OF PROJECT REPORT FOR POWER DISTRIBUTION: -			
1.1	Prepare project report for undertaking reliable and economical power within ABD area including survey of existing distribution & transmission system, interaction with GOI, GOMP, existing distribution licensee MPPKVCL, Indore Transmission licensee MPPTCL, Jabalpur etc. Prepare estimates for transmission connectivity, 33/11KV Indoor Substation existing /modified existing substation of MPPKVCL in ABD area, Integrate Planning with proposed underground electrification (already under progress), smart metering, O & M services. (Excluding 11KV, LT work for underground electrification work already under progress at ISCDL)	1 Job	10% of total fees	50% on draft report 40% on approval of project report. Balance 10% on submission of project report.
1.2	Obtain Power distribution license (second licensee first being MPPKVCL) for ABD area for ISCDL and filing of required Petition before MPERC for seeking license or exemption from requirement of license as per provisions of The Electricity Act 2003. The scope of work shall include assistance in seeking Govt of Madhya Pradesh permissions, filing of Petitions for seeking license before Madhya Pradesh Electricity Regulatory Commission Bhopal, coordinate with existing distribution licensee (MPPKVCL), State transmission Company (MPPTCL), State Load Dispatch Centre (SLDC), Power producers and all related stake holders. Comply all requirements of MPERC	1 Job	10% of the total fees	50% on submission of document for obtaining license 25% on filing petition Balance 25% on obtaining license.
2	<u>STEP: 2 Technical services, appointment of O & M agency for doing power distribution on behalf of ISCDL</u>			
2.1	Preparation of tender documents for appointment of suitable agency for O&M services as per project report on behalf of ISCDL, consumer services, new service connections, metering, billing, serving power connections to consumer. (Through underground electrification already under progress by ISCDL)	1 Job	5% of the total fees	50% on finalization of contract/ RFP Document 25% on evaluation of proposals by contractors Balance 25% on appointment

				of contractor.
3	Step 3: Commercial and Regulatory services	60	60% of the	Equal
3.1	Power Procurement Planning, assistance in signing all agreements like Power Purchase (PPA), transmission, wheeling(BPTA/WPA), transfer agreements for transfer scheme for migrating existing consumers from MPPKVCL to ISCDL	Months	total fees	monthly installments
3.2	Calculation and assessment of day ahead, fortnightly and monthly power requirement for ABD area, demand forecast. CONSULATNT will co-ordinate with MPPMCL/ NTPC/ PGCIL/ WRLDC/ MPPKVCL/ MPPTCL for power procured including procurement of power from IEX etc. The power procurement bills will be payable by ISCDL to respective agencies as per their practice in vogue. Advising ISCDL on operational matters and other regulatory affairs			
3.3	Filing of ARR and Tariff petitions on behalf of ISCDL before MPERC Bhopal. Responding to MPERC on operational matters and other regulatory affair. ISCDL shall ensure that all requisite information required for preparation of ARR/Tariff petitions is made available			
3.4	Filing of miscellaneous petitions and representation before MPERC on various regulatory matters related with power distribution business. Advising ISCDL on operational matters and other regulatory affairs and assistance in regulatory compliances. CONSULATNT shall also be responsible for discharging its obligations in respect of above activities for a period commencing from Effective Date only.			
3.5	Supervision and monitoring of O & M agency work and reporting to ISCDL.			
4.0	Services required for economizing retail power tariff for IMC utilities, evaluating alternate source of power, energy audit and facilitating reduced cost of line shifting in IMC area.	60 months	15% of the total Fee	Equal Monthly Installments

SCOPE OF WORK:

The detailed description of work, hereinafter 'work', is given below.

1. PREPARATION OF PROJECT REPORT AND SEEKING DISTRIBUTION LICENSE AND PREPARATION OF PROJECT REPORT FOR POWER DISTRIBUTION: -

Preparation of Project Report for power distribution as licensee as per provisions of The Electricity Act 2003 in ABD area

1.1 Prepare project report for undertaking reliable and economical power within ABD area including survey of existing distribution & transmission system, interaction with GOI, GOMP, existing distribution licensee MPPKVVCL, Indore Transmission licensee MPPTCL, Jabalpur etc.

Prepare estimates for transmission connectivity, 33/11KV Indoor Substation existing /modified existing substation of MPPKVVCL in ABD area, Integrate Planning with proposed underground electrification (already under progress), smart metering, O & M services.

(Excluding 11KV, LT work for underground electrification work already under progress at ISCDL)

1.2 Obtain Power distribution license (second licensee first being MPPKVVCL) for ABD area for ISCDL and filing of required Petition before MPERC for seeking license or exemption from requirement of license as per provisions of The Electricity Act 2003. The scope of work shall include assistance in seeking Govt of Madhya Pradesh permissions, filing of Petitions for seeking license before Madhya Pradesh Electricity Regulatory Commission Bhopal, coordinate with existing distribution licensee (MPPKVVCL), State transmission Company (MPPTCL), State Load Dispatch Centre (SLDC), Power producers and all related stake holders. Comply all requirements of MPERC.

2. Technical services, appointment of O & M agency for doing power distribution on behalf of ISCDL.

2.1 Preparation of tender documents for appointment of suitable agency for O&M services as per project report on behalf of ISCDL, consumer services, new service connections, metering, billing, serving power connections to consumer (Through underground electrification already under progress by ISCDL)

3. Commercial and Regulatory services

3.1 Power Procurement Planning, assistance in signing all agreements like Power Purchase (PPA), transmission, wheeling (BPTA/WPA), transfer agreements for transfer scheme for migrating existing consumers from MPPKVVCL to ISCDL

3.2 Calculation and assessment of day ahead, fortnightly and monthly power requirement for ABD area, demand forecast. CONSULATNT will co-ordinate with MPPMCL/NTPC/PGCIL/WRLDC/MPPKVVCL/MPPTCL for power procured including procurement of power from IEX etc. The power procurement bills will be payable by ISCDL to respective agencies as per their practice in vogue. Advising ISCDL on operational matters and other regulatory affairs

3.3 Filing of ARR and Tariff petitions on behalf of ISCDL before MPERC Bhopal. Responding to MPERC on operational matters and other regulatory affair. ISCDL shall ensure that all requisite information required for preparation of ARR/Tariff petitions is made available

3.4 Filing of miscellaneous petitions and representation before MPERC on various regulatory matters related with power distribution business. Advising ISCDL on operational matters and other regulatory affairs and assistance in regulatory compliances. CONSULATNT shall also be responsible for discharging its obligations in respect of above activities for a period commencing from Effective Date only.

3.5 Supervision and monitoring of O & M agency work and reporting to ISCDL all MIS.

4.0 Services required for economizing retail power tariff for IMC utilities, evaluating alternate source of power, energy audit and facilitating reduced cost of line shifting in IMC area.

Annexure 12
SECTION 3
DRAFT CONSULTANCY AGREEMENT

Provision of Consultancy Services for “ _____ ”

AGREEMENT No. _____

This AGREEMENT (hereinafter called the “Agreement”) is made on the _____ day of the month of _____ 2017, between, on the one hand, the **Indore Smart City Development Limited** (hereinafter called the “Authority” which expression shall include their respective successors and permitted assigns, unless the context otherwise requires) and, on the other hand, _____ (hereinafter called the “Consultant” which expression shall include their respective successors and permitted assigns).

WHEREAS

- A. The Authority vide its Request for Proposal for appointment of Consultant who will be responsible for providing the required consulting services (hereinafter called the “Consultancy”) which broadly include _____ for the proposed _____ at _____ (hereinafter called the “Project”); and
- B. the Consultant submitted its proposals for the aforesaid work, whereby the Consultant represented to the Authority that it had the required professional skills, and in the said proposals the Consultant also agreed to provide the Services to the Authority on the terms and conditions as set forth in the RFP and this Agreement; and
- C. the Authority, on acceptance of the aforesaid proposals of the Consultant, awarded the Consultancy to the Consultant vide its Letter of Acceptance dated _____ (the “LOA”); and
- D. in pursuance of the LOA, the parties have agreed to enter into this Agreement.

NOW, THEREFORE, the parties hereto hereby agree as follows:

1 GENERAL

1.1 Definitions and Interpretation

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

- a. “**Agreement**” means this Agreement, together with all the Annexes;
- b. “**Agreement Value**” shall have the meaning set forth in Clause 6.1;
- c. “**Applicable Laws**” means the laws and any other instruments having the force of law in India as they may be issued and in force from time to time;

- d. **“Confidential Information”** shall have the meaning set forth in Clause 3.3;
- e. **“Conflict of Interest”** shall have the meaning set forth in Clause 3.2 read with the provisions of RFP;
- f. **“Dispute”** shall have the meaning set forth in Clause 9.2.1;
- g. **“Effective Date”** means the date on which this Agreement comes into force and effect pursuant to Clause 2.1;
- h. **“Expatriate Personnel”** means such persons who at the time of being so hired had their domicile outside India;
- i. **“Government”** means the Government of India;
- j. **“INR, Re. or Rs.”** means Indian Rupees;
- k. **“Member”**, in case the Consultant consists of a consortium of more than one entity, means any of these entities, and **“Members”** means all of these entities;
- l. **“Party”** means the Authority or the Consultant, as the case may be, and **“Parties”** means both of them;
- m. **“Personnel”** means persons hired by the Consultant as employees or retainers and assigned to the performance of the Services or any part thereof;
- n. **“Resident Personnel”** means such persons who at the time of being so hired had their domicile inside India;
- o. **“RFP”** means the Request for Proposal document in response to which the Consultant’s proposal for providing Services was accepted;
- p. **“Services”** means the work to be performed by the Consultant pursuant to this Agreement, as described in the Terms of Reference hereto;
- q. **“Third Party”** means any person or entity other than the Government, the Authority, the Consultant.

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

1.1.2 The following documents along with all addenda issued thereto shall be deemed to form and be read and construed as integral part of this Agreement and in case of any contradiction between or among them the priority in which a document would prevail over another would be as laid down below beginning from the highest priority to the lowest priority:

- (a) Agreement;
- (b) Annexes, Schedules;
- (c) RFP; and
- (d) Letter of Acceptance

1.2 Relation between the Parties

Nothing contained herein shall be construed as establishing a relation of master and servant or of agent and principal as between the Authority and the Consultant. The Consultant shall, subject to this Agreement, have complete charge of Personnel performing the Services and shall be fully responsible for the Services performed by them or on their behalf hereunder.

1.3 Rights and obligations

The mutual rights and obligations of the Authority and the Consultant shall be as set forth in the Agreement, in particular:

- a. the Consultant shall carry out the Services in accordance with the provisions of the Agreement; and
- b. the Authority shall make payments to the Consultant in accordance with the provisions of the Agreement.

1.4 Governing law and jurisdiction

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

1.5 Language

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

1.6 Table of contents and headings

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

1.7 Notices

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

- a. in the case of the Consultant, be given by facsimile or e-mail and by letter delivered by hand to the address given and marked for attention of the Consultant's Representative set out below in Clause 1.10 or to such other person as the Consultant may from time to time designate by notice to the Authority; provided that notices or other communications to be given to an address outside Indore may, if they are subsequently confirmed by sending a copy thereof by registered acknowledgement due, air mail or by courier, be sent by facsimile or e-mail to the number/ address as the Consultant may from time to time specify by notice to the Authority;
- b. in the case of the Authority, be given by facsimile or e-mail and by letter delivered by hand and be addressed to the Authority with a copy delivered to the Authority Representative set out below in Clause 1.10 or to such other person as the Authority may from time to time designate by notice to the Consultant; provided that if the Consultant does not have an office in Indore it may send such notice by facsimile or e-mail and by registered acknowledgement due, air mail or by courier; and
- c. any notice or communication by a Party to the other Party, given in accordance herewith, shall be deemed to have been delivered when in the normal course of post it

ought to have been delivered and in all other cases, it shall be deemed to have been delivered on the actual date and time of delivery; provided that in the case of facsimile or email, it shall be deemed to have been delivered on the working days following the date of its delivery.

1.8 Location

The Services shall be performed at the offices of the Authority in accordance with the provisions of RFP and at such locations as are incidental thereto, including the offices of the Consultant.

1.9 Authority of Member-in-Charge

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

1.10 Authorised Representatives

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

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

DESIGNATION OF OFFICER IN CHARGE

Tel : _____

Mobile : _____

Fax No. : _____

Email : _____

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

Name : -----

Designation : -----

Address : -----

Tel : -----

Mobile : -----

Fax : -----

E-mail : -----

1.11 Taxes and duties

Unless otherwise specified in the Agreement, the Consultant shall pay all such goods and services tax, duties, fees and other impositions as may be levied under the Applicable Laws and the Authority shall perform such duties in regard to the deduction of such taxes as may be lawfully imposed on it.

2. COMMENCEMENT, COMPLETION AND TERMINATION OF AGREEMENT

2.1 Effectiveness of Agreement

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

2.2 Commencement of Services

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

2.3 Termination of Agreement for failure to commence Services

If the Consultant does not commence the Services within the period specified in Clause 2.2 above, the Authority may, by not less than 1 (one) weeks’ notice to the Consultant, declare this Agreement to be null and void, and in the event of such a declaration, this Agreement shall stand terminated and the Consultant shall be deemed to have accepted such termination.

2.4 Expiration of Agreement

Unless terminated earlier pursuant to Clauses 2.3 or 2.9 hereof, this Agreement shall, unless extended by the Parties by mutual consent, expire upon the expiry of a period of 60 (sixty) days after the delivery of the final Deliverable to the Authority. Upon Termination, the Authority shall make payments of all amounts due to the Consultant hereunder.

2.5 Entire Agreement

2.5.1 This Agreement and the Annexes together constitute a complete and exclusive statement of the terms of the agreement between the Parties on the subject hereof, and no amendment or modification hereto shall be valid and effective unless such modification or amendment is agreed to in writing by the Parties and duly executed by persons especially empowered in this behalf by the respective Parties. All prior written or oral understandings, offers or other communications of every kind pertaining to this Agreement are abrogated and withdrawn; provided, however, that the obligations of the Consultant arising out of the provisions of the RFP shall continue to subsist and shall be deemed to form part of this Agreement.

2.5.2 Without prejudice to the generality of the provisions of Clause 2.5.1, on matters not covered by this Agreement, the provisions of RFP shall apply.

2.6 Modification of Agreement

Modification of the terms and conditions of this Agreement, including any modification of the scope of the Services, may only be made by written agreement between the Parties.

2.7 Force Majeure

2.7.1 Definition

- a. For the purposes of this Agreement, “**Force Majeure**” means an event which is beyond the reasonable control of a Party, and which makes a Party’s performance of its obligations hereunder impossible or so impractical as reasonably to be considered impossible in the circumstances, and includes, but is not limited to, war, riots, civil disorder, earthquake, fire, explosion, storm, flood or other adverse weather conditions, strikes, lockouts or other industrial action (except where such strikes, lockouts or other industrial action are within the power of the Party invoking Force Majeure to prevent), confiscation or any other action by government agencies.
- b. Force Majeure shall not include (i) any event which is caused by the negligence or intentional action of a Party or such Party’s agents or employees, nor (ii) any event which a diligent Party could reasonably have been expected to both (A) take into account at the time of the conclusion of this Agreement, and (B) avoid or overcome in the carrying out of its obligations hereunder.
- c. Force Majeure shall not include insufficiency of funds or failure to make any payment required hereunder.

2.7.2 No breach of Agreement

The failure of a Party to fulfil any of its obligations hereunder shall not be considered to be a breach of, or default under, this Agreement insofar as such inability arises from an event of Force Majeure, provided that the Party affected by such an event has taken all reasonable precautions, due care and reasonable alternative measures, all with the objective of carrying out the terms and conditions of this Agreement.

2.7.3 Measures to be taken

- a. A Party affected by an event of Force Majeure shall take all reasonable measures to remove such Party’s inability to fulfil its obligations hereunder with a minimum of delay.
- b. A Party affected by an event of Force Majeure shall notify the other Party of such event as soon as possible, and in any event not later than 14 (fourteen) days following the occurrence of such event, providing evidence of the nature and cause of such event, and shall similarly give notice of the restoration of normal conditions as soon as possible.
- c. The Parties shall take all reasonable measures to minimize the consequences of any event of Force Majeure.

2.7.4 Extension of time

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

2.7.5 Consultation

Not later than 30 (thirty) days after the Consultant has, as the result of an event of Force Majeure, become unable to perform a material portion of the Services, the Parties shall consult with each other with a view to agreeing on appropriate measures to be taken in the circumstances.

2.8 Suspension of Agreement

The Authority may, by written notice of suspension to the Consultant, suspend all payments to the Consultant hereunder if the Consultant shall be in breach of this Agreement or shall fail to perform any of its obligations under this Agreement, including the carrying out of the Services; provided that such notice of suspension (i) shall specify the nature of the breach or failure, and (ii) shall provide an opportunity to the Consultant to remedy such breach or failure within a period not exceeding 15(fifteen) days after receipt by the Consultant of such notice of suspension.

2.9 Termination of Agreement

2.9.1 By the Authority

The Authority may, by not less than 15 (fifteen) days' written notice of termination to the Consultant, such notice to be given after the occurrence of any of the events specified in this Clause 2.9.1, terminate this Agreement if:

- a. the Consultant fails to remedy any breach hereof or any failure in the performance of its obligations hereunder, as specified in a notice of suspension pursuant to Clause 2.8 hereinabove, within 15 (fifteen) days of receipt of such notice of suspension or within such further period as the Authority may have subsequently granted in writing;
- b. the Consultant becomes insolvent or bankrupt or enters into any agreement with its creditors for relief of debt or take advantage of any law for the benefit of debtors or goes into liquidation or receivership whether compulsory or voluntary;
- c. the Consultant fails to comply with any final decision reached as a result of arbitration proceedings pursuant to Clause 9 hereof;
- d. the Consultant submits to the Authority a statement which has a material effect on the rights, obligations or interests of the Authority and which the Consultant knows to be false;

- e. any document, information, data or statement submitted by the Consultant in its Proposals, based on which the Consultant was considered eligible or successful, is found to be false, incorrect or misleading;
- f. as the result of Force Majeure, the Consultant is unable to perform a material portion of the Services for a period of not less than 60 (sixty) days; or
- g. the Authority, in its sole discretion and for any reason whatsoever, decides to terminate this Agreement.

2.9.2 By the Consultant

The Consultant may, by not less than 30 (thirty) days' written notice to the Authority, such notice to be given after the occurrence of any of the events specified in this Clause 2.9.2, terminate this Agreement if:

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

2.9.3 Cessation of rights and obligations

Upon termination of this Agreement pursuant to Clauses 2.3 or 2.9 hereof, or upon expiration of this Agreement pursuant to Clause 2.4 hereof, all rights and obligations of the Parties hereunder shall cease, except (i) such rights and obligations as may have accrued on the date of termination or expiration, or which expressly survives such Termination; (ii) the obligation of confidentiality set forth in Clause 3.3 hereof; and (iii) any right or remedy which a Party may have under this Agreement or the Applicable Laws.

2.9.4 Cessation of Services

Upon termination of this Agreement by notice of either Party to the other pursuant to Clauses 2.9.1 or 2.9.2 hereof, the 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. With respect to documents prepared by the Consultant and materials furnished by the Authority, the Consultant shall proceed as provided respectively by Clauses 3.8 or 3.9 hereof.

2.9.5 Payment upon Termination

Upon termination of this Agreement pursuant to Clauses 2.9.1 or 2.9.2 hereof, except in the case of termination pursuant to Sub-clauses (a) through (e) of Clause 2.9.1 hereof, the Authority shall make the payments to the Consultant pursuant to Clause 6 hereof for Services satisfactorily performed prior to the date of termination (after offsetting against these payments any amount that may be due from the Consultant to the Authority).

2.9.6 Disputes about Events of Termination

If either Party disputes whether an event specified in Clause 2.9.1 or in Clause 2.9.2 hereof has occurred, such Party may, within 30 (thirty) days after receipt of notice of termination from the other Party, refer the matter to arbitration pursuant to Clause 9 hereof, and this Agreement shall not be terminated on account of such event except in accordance with the terms of any resulting arbitral award.

3. OBLIGATIONS OF THE CONSULTANT

3.1 General

3.1.1 Standards of Performance

The Consultant shall perform the Services and carry out its obligations hereunder with all due diligence, efficiency and economy, in accordance with generally accepted professional techniques and practices, and shall observe sound management practices, and employ appropriate advanced technology and safe and effective equipment, machinery, materials and methods. The Consultant shall always act, in respect of any matter relating to this Agreement or to the Services, as a faithful adviser to the Authority, and shall at all times support and safeguard the Authority's legitimate interests in any dealings with Third Parties.

3.1.2 Scope of Work

The scope of Services to be performed by the Consultant is specified in the Scope of Bid of the RFP Document. The Consultant shall provide the Deliverables specified therein in conformity with the time schedule stated therein.

3.1.3 Applicable Laws

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

3.2 Conflict of Interest

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

3.2.2 Consultant and Affiliates not to be otherwise interested in the Project

The Consultant agrees that, during the term of this Agreement and after its termination, the Consultant or any Associate thereof, shall be disqualified from providing goods, works, services, loans or equity for any project resulting from or closely related to the Services and any breach of this obligation shall amount to a Conflict of Interest; provided that the restriction herein shall not apply after a period of 3 (three) years from the completion of this assignment or to consulting assignments granted by banks/ lenders at any time; provided further that this restriction shall not apply to consultancy/ advisory services provided to the Authority in continuation of this Consultancy or to any subsequent consultancy/ advisory services provided to the Authority in accordance with the rules of the Authority. For the avoidance of doubt, an entity affiliated with the Consultant shall include a partner in the firm of the Consultant or a person who holds more than 5% (five per cent) of the subscribed and paid up share capital of the Consultant, as the case may be, and any Associate thereof.

3.2.3 Prohibition of conflicting activities

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

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

3.2.4 Consultant not to benefit from commissions, discounts, etc.

The payments to the Consultant pursuant to Clause 6 hereof shall constitute the Consultant's sole payment in connection with this Agreement or the Services and the Consultant shall not accept for its own benefit any trade commission, discount or similar payment in connection with activities pursuant to this Agreement or to the Services or in the discharge of its obligations hereunder, and the Consultant shall use its best efforts to ensure that any Personnel and agents of either of them, similarly shall not receive any such additional payment.

3.2.5 The Consultant and its Personnel shall observe the highest standards of ethics and not have engaged in and shall not hereafter engage in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice (collectively the "Prohibited Practices"). Notwithstanding anything to the contrary contained in this Agreement, the Authority shall be entitled to terminate this Agreement forthwith by a communication in writing to the Consultant, without being liable in any manner whatsoever to the Consultant, if it

determines that the Consultant has, directly or indirectly or through an agent, engaged in any Prohibited Practices in the Selection Process or before or after entering into of this Agreement. In such an event, the Authority shall forfeit and appropriate the Performance Security, if any, as mutually agreed genuine pre-estimated compensation and damages payable to the Authority towards, inter alia, time, cost and effort of the Authority, without prejudice to the Authority's any other rights or remedy hereunder or in law.

3.2.6 Without prejudice to the rights of the Authority under Clause 3.2.5 above and the other rights and remedies which the Authority may have under this Agreement, if the Consultant is found by the Authority to have directly or indirectly or through an agent, engaged or indulged in any Prohibited Practices, during the Selection Process or before or after the execution of this Agreement, the Consultant shall not be eligible to participate in any tender or RFP issued during a period of 3 (three) years from the date the Consultant is found by the Authority to have directly or indirectly or through an agent, engaged or indulged in any Prohibited Practices.

3.2.7 For the purposes of Clauses 3.2.5 and 3.2.6, the following terms shall have the meaning hereinafter respectively assigned to them:

- a. "corrupt practice" means the offering, giving, receiving or soliciting, directly or indirectly, of anything of value to influence the actions of any person connected with the Selection Process (for removal of doubt, offering of employment or employing or engaging in any manner whatsoever, directly or indirectly, any official of the Authority who is or has been associated in any manner, directly or indirectly with Selection Process or LOA or dealing with matters concerning the Agreement before or after the execution thereof, at any time prior to the expiry of 1 (one) year from the date such official resigns or retires from or otherwise ceases to be in the service of the Authority, shall be deemed to constitute influencing the actions of a person connected with the Selection Process); or (ii) engaging in any manner whatsoever, whether during the Selection Process or after the issue of LOA or after the execution of the Agreement, as the case may be, any person in respect of any matter relating to the Project or the LOA or the Agreement, who at any time has been or is a legal, financial or technical adviser the Authority in relation to any matter concerning the Project;
- b. "fraudulent practice" means a misrepresentation or omission of facts or suppression of facts or disclosure of incomplete facts, in order to influence the Selection Process;
- c. "coercive practice" means impairing or harming, or threatening to impair or harm, directly or indirectly, any person or property to influence any person's participation or action in the Selection Process or the exercise of its rights or performance of its obligations by the Authority under this Agreement;
- d. "undesirable practice" means (i) establishing contact with any person connected with or employed or engaged by the Authority with the objective of canvassing, lobbying or in any manner influencing or attempting to influence the Selection Process; or (ii) having a Conflict of Interest; and

- e. “restrictive practice” means forming a cartel or arriving at any understanding or arrangement among Applicants with the objective of restricting or manipulating a full and fair competition in the Selection Process.

3.3 Confidentiality

The Consultant and the Personnel shall not, either during the term or within 2 (two) years after the expiration or termination of this Agreement disclose any proprietary information, including information relating to reports, data, drawings, design software or other material, whether written or oral, in electronic or magnetic format, and the contents thereof; and any reports, digests or summaries created or derived from any of the foregoing that is provided by the Authority to the Consultant and the Personnel; any information provided by or relating to the Authority, its technology, technical processes, business affairs or finances or any information relating to the Authority’s employees, officers or other professionals or suppliers, customers, or contractors of the Authority; and any other information which the Consultant is under an obligation to keep confidential in relation to the Project, the Services or this Agreement ("Confidential Information"), without the prior written consent of the Authority.

Notwithstanding the aforesaid, the Consultant and the Personnel of either of them may disclose Confidential Information to the extent that such Confidential Information:

- i. was in the public domain prior to its delivery to the Consultant and the Personnel of either of them or becomes a part of the public knowledge from a source other than the Consultant and the Personnel of either of them;
- ii. was obtained from a third party with no known duty to maintain its confidentiality;
- iii. is required to be disclosed by Applicable Laws or judicial or administrative or arbitral process or by any governmental instrumentalities, provided that for any such disclosure, the Consultant and the Personnel of either of them shall give the Authority, prompt written notice, and use reasonable efforts to ensure that such disclosure is accorded confidential treatment; and
- iv. is provided to the professional advisers, agents, auditors or representatives of the Consultant or Personnel of either of them, as is reasonable under the circumstances; provided, however, that the Consultant or Personnel of either of them, as the case may be, shall require their professional advisers, agents, auditors or its representatives, to undertake in writing to keep such Confidential Information, confidential and shall use its best efforts to ensure compliance with such undertaking.

3.4 Liability of the Consultant

3.4.1 The Consultant’s liability under this Agreement shall be determined by the Applicable Laws and the provisions hereof.

3.4.2 The Consultant shall, subject to the limitation specified in Clause 3.4.3, be liable to the Authority for any direct loss or damage accrued or likely to accrue due to deficiency in Services rendered by it.

3.4.3 The Parties hereto agree that in case of negligence or willful misconduct on the part of the Consultant or on the part of any person or firm acting on behalf of the Consultant in carrying out the Services, the Consultant, with respect to damage caused to the Authority's property, shall not be liable to the Authority:

- i. for any indirect or consequential loss or damage; and
- ii. for any direct loss or damage that exceeds (a) the Agreement Value set forth in Clause 6.1 of this Agreement, or (b) the proceeds the Consultant may be entitled to receive from any insurance maintained by the Consultant to cover such a liability, whichever of (a) or (b) is higher.

3.4.4 This limitation of liability specified in Clause 3.4.3 shall not affect the Consultant's liability, if any, for damage to Third Parties caused by the Consultant or any person or firm acting on behalf of the Consultant in carrying out the Services subject, however, to a limit equal to the Agreement Value.

3.5 Accounting and auditing

The Consultant shall keep accurate and systematic accounts and records in respect of the Services provided under this Agreement, in accordance with internationally accepted accounting principles and standards such as Indian Accounting Standards, GAAP, etc.

3.6 Consultant's actions requiring the Authority's prior approval

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

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

3.7 Reporting obligations

The Consultant shall submit to the Authority the reports and documents specified in the Agreement, in the form, in the numbers and within the time periods set forth therein.

3.8 Documents prepared by the Consultant to be property of the Authority

3.8.1 All reports and other documents (collectively referred to as “Consultancy Documents”) prepared by the Consultant (or any Third Party) in performing the Services shall become and remain the property of the Authority, and all intellectual property rights in such Consultancy Documents shall vest with the Authority. Any Consultancy Document, of which the ownership or the intellectual property rights do not vest with the Authority under law, shall automatically stand assigned to the Authority as and when such Consultancy Document is created and the Consultant agrees to execute all papers and to perform such other acts as the Authority may deem necessary to secure its rights herein assigned by the Consultant.

3.8.2 The Consultant shall, not later than termination or expiration of this Agreement, deliver all Consultancy Documents to the Authority, together with a detailed inventory thereof. The Consultant may retain a copy of such Consultancy Documents. The Consultant or a Third Party shall not use these Consultancy Documents for purposes unrelated to this Agreement without the prior written approval of the Authority.

3.8.3 The Consultant shall hold the Authority harmless and indemnified for any losses, claims, damages, expenses (including all legal expenses), awards, penalties or injuries (collectively referred to as “Claims”) which may arise from or due to any unauthorized use of such Consultancy Documents, or due to any breach or failure on part of the Consultant or a Third Party to perform any of its duties or obligations in relation to securing the aforementioned rights of the Authority.

3.9 Materials furnished by the Authority

Materials made available to the Consultant by the Authority shall be the property of the Authority and shall be marked accordingly. Upon termination or expiration of this Agreement, the Consultant shall furnish forthwith to the Authority, an inventory of such materials and shall dispose of such materials in accordance with the instructions of the Authority.

3.10 Providing access to Project Office and Personnel

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

3.11 Accuracy of Documents

The Consultant shall be responsible for accuracy of the documents drafted and/ or vetted and data collected by it directly or procured from other agencies/authorities, estimates and all other details prepared by it as part of these services. Subject to the provisions of Clause 3.4, it shall indemnify the Authority against any inaccuracy in its work which might surface during implementation of the Project, if such inaccuracy is the result of any negligence or inadequate

due diligence on part of the Consultant or arises out of its failure to conform to good industry practice. The Consultant shall also be responsible for promptly correcting, at its own cost and risk, the documents including any re-survey / investigations.

4. CONSULTANT'S PERSONNEL AND SUB-CONSULTANTS

4.1 General

The Consultant shall employ and provide such qualified and experienced Personnel as may be required to carry out the Services.

4.2 Deployment of Personnel

The designations, names and other particulars of each of the Consultant's Key Personnel required in carrying out the Services are described in Annex-2 of this Agreement.

4.3 Approval of Personnel

4.3.1 The Key Personnel of the Agreement are hereby approved by the Authority. No other Key Personnel shall be engaged without prior approval of the Authority.

4.3.2 If the Consultant hereafter proposes to engage any person as Professional Personnel, it shall submit to the Authority its proposal along with a CV of such person in the form provided in the RFP. The Authority may approve or reject such proposal within 14 (fourteen) days of receipt thereof. In case the proposal is rejected, the Consultant may propose an alternative person for the Authority's consideration. In the event the Authority does not reject a proposal within 14 (fourteen) days of the date of receipt thereof under this Clause 4.3, it shall be deemed to have been approved by the Authority.

4.4 Substitution of Key Personnel

The Authority expects all the Key Personnel specified in the Proposal to be available during implementation of the Agreement. The Authority will not consider any substitution of Key Personnel except under compelling circumstances beyond the control of the Consultant and the concerned Key Personnel. Such substitution shall be limited to 1 (one) Key Personnel subject to equally or better qualified and experienced personnel being provided to the satisfaction of the Authority. Without prejudice to the foregoing, substitution of the Key Personnel shall be permitted only upon reduction of payment equal to 10% (ten per cent) of the total Agreement Value.

The Consultant should specifically note that substitution of the Team Leader will not normally be considered during the implementation of the Agreement and may lead to disqualification of the Applicant or termination of the Agreement.

4.5 Team Leader

The person designated as the Team Leader of the Consultant's Personnel shall be responsible for the coordinated, timely and efficient functioning of the Personnel.

4.6 Sub-Consultants

(Deleted)

5. OBLIGATIONS OF THE AUTHORITY

5.1 Assistance in clearances etc.

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

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

5.2 Access to land and property

The Authority warrants that the Consultant shall have, free of charge, unimpeded access to the site of the project in respect of which access is required for the performance of Services; provided that if such access shall not be made available to the Consultant as and when so required, the Parties shall agree on the time extension, as may be appropriate, for the performance of Services.

5.3 Change in Applicable Law

If, after the date of this Agreement, there is any change in the Applicable Laws with respect to taxes and duties which increases or decreases the cost or expenses incurred by the Consultant in performing the Services, by an amount exceeding 10% (ten per cent) of the Agreement Value specified in Clause 6.1, then the payments otherwise payable to the Consultant under this Agreement shall be increased or decreased accordingly by agreement between the Parties hereto, and corresponding adjustments shall be made to the aforesaid Agreement Value. All service tax and other taxes other than income tax, as may be applicable from time to time, on the payment of the professional fees to the Consultant, shall be borne by the Authority.

5.4 Payment

In consideration of the Services performed by the Consultant under this Agreement, the Authority shall make to the Consultant such payments and in such manner as is provided in Clause 6 of this Agreement.

6. PAYMENT TO THE CONSULTANT

6.1 Agreement Value

The payments under this Agreement shall not exceed the agreement value specified herein (the "Agreement Value"). The Parties agree that the Agreement Value is Rs. (Rs.).

6.2 Currency of payment

All payments shall be made in Indian Rupees.

6.3 Mode of billing and payment

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

- (a) A Mobilization Advance for an amount up to 10% (ten per cent) of the Agreement Value shall be paid to the Consultant on request and against a Bank Guarantee from a Scheduled Bank in India in an amount equal to such advance, such Bank Guarantee to remain effective until the advance payment has been fully set off as provided herein. The advance outstanding shall attract simple interest @ 10% (ten per cent) per annum and shall be adjusted in four equal instalments from the first four stage payments due and payable to the Consultant, and the accrued interest shall be recovered from the fifth instalment due and payable thereafter.
- (b) The Consultant shall be paid for its services as per the Payment Schedule at Annex-6 of this Agreement, subject to the Consultant fulfilling the following conditions:
 - (i) No payment shall be due for the next stage till the Consultant completes, to the satisfaction of the Authority, the work pertaining to the preceding stage.
 - (ii) The Authority shall pay to the Consultant, only the undisputed amount.
- (c) The Authority shall cause the payment due to the Consultant to be made within 30 (thirty) days after the receipt by the Authority of duly completed bills with necessary particulars (the "Due Date"). Interest at the rate of 10% (ten per cent) per annum shall become payable as from the Due Date on any amount due by, but not paid on or before, such Due Date.
- (d) The final payment under this Clause shall be made only after the final report and a final statement, identified as such, shall have been submitted by the Consultant and approved as satisfactory by the Authority. The Services shall be deemed completed and finally accepted by the Authority and the final deliverable shall be deemed approved by the Authority as satisfactory upon expiry of 90 (ninety) days after receipt of the final deliverable by the Authority unless the Authority, within such 90 (ninety) day period, gives written notice to the Consultant specifying in detail, the deficiencies in the Services. The Consultant shall thereupon promptly make any necessary corrections and/or additions, and upon completion of such corrections or additions, the foregoing process shall be repeated. The Authority shall make the final payment upon acceptance or deemed acceptance of the final deliverable by the Authority.

- (e) Any amount which the Authority has paid or caused to be paid in excess of the amounts actually payable in accordance with the provisions of this Agreement shall be reimbursed by the Consultant to the Authority within 30 (thirty) days after receipt by the Consultant of notice thereof. Any such claim by the Authority for reimbursement must be made within 1 (one) year after receipt by the Authority of a final report in accordance with Clause 6.3 (d). Any delay by the Consultant in reimbursement by the due date shall attract simple interest @ 10% (ten per cent) per annum.
- (f) 10% (ten per cent) of the Agreement Value has been earmarked as Final Payment to be made to the Consultant upon execution of the Concession Agreement. In the event the Concession Agreement does not get executed within 1 (one) year of the Effective Date the Final Payment shall not become due to the Consultant, save and except the costs incurred for meeting its reimbursable expenses during the period after expiry of 18 (eighteen) weeks from the Effective Date, including travel costs and personnel costs, at the agreed rates.
- (g) All payments under this Agreement shall be made to the account of the Consultant as may be notified to the Authority by the Consultant.

7. LIQUIDATED DAMAGES AND PENALTIES

7.1 Performance Security

7.1.1 For the purposes of this Agreement, performance security shall be deemed to be an amount equal to 5% (Five Per Cent) of the Agreement Value (the "Performance Security"); provided that the Consultant shall not be required to provide Performance Security in the form of a bank guarantee or cash deposit.

7.1.2 Notwithstanding anything to the contrary contained in Clause 7.1.1, as and when payments become due to the Consultant for its Services, the Authority shall retain by way of Performance Security, 5% (five percent) of all the amounts due and payable to the Consultant, to be appropriated against breach of this Agreement or for recovery of liquidated damages as specified in Clause 7.2. The balance remaining out of the Performance Security shall be returned to the Consultant at the end of 3 (three) months after the expiry of this Agreement pursuant to Clause 2.4 hereof. For the avoidance of doubt, the parties hereto expressly agree that in addition to appropriation of the amounts withheld hereunder, in the event of any default requiring the appropriation of further amounts comprising the Performance Security, the Authority may make deductions from any subsequent payments due and payable to the Consultant hereunder, as if it is appropriating the Performance Security in accordance with the provisions of this Agreement.

7.1.3 The Consultant may, in lieu of retention of the amounts as referred to in Clause 7.1.1 above, furnish a Bank Guarantee substantially in the form specified at Annex-5 of this Agreement.

7.2 Liquidated Damages

7.2.1 Liquidated Damages for error/variation

In case any error or variation is detected in the reports submitted by the Consultant and such error or variation is the result of negligence or lack of due diligence on the part of the Consultant, the consequential damages thereof shall be quantified by the Authority in a reasonable manner and recovered from the Consultant by way of deemed liquidated damages, subject to a maximum of the Agreement Value.

7.2.2 Liquidated Damages for delay

In case of delay in completion of Services for each Stage as specified in the Proposed Deliverables, Timeframe and Terms of Payment, Clause 6.3 of the conditions of contract and as per Annexure 11 , liquidated damages not exceeding an amount equal to 0.1% (zero-point one percent) of the Agreement Value per day, subject to a maximum of 10% (Ten Percent) of the Agreement Value shall be imposed and shall be recovered by appropriation from the Performance Security or otherwise. However, in case of delay due to reasons beyond the control of the Consultant, suitable extension of time shall be granted.

7.2.3 Encashment and appropriation of Performance Security

The Authority shall have the right to invoke and appropriate the proceeds of the Performance Security, in whole or in part, without notice to the Consultant in the event of breach of this Agreement or for recovery of liquidated damages specified in this Clause 7.2.

7.3 Penalty for deficiency in Services

In addition to the liquidated damages not amounting to penalty, as specified in Clause 7.2, warning may be issued to the Consultant for minor deficiencies on its part. In the case of significant deficiencies in Services causing adverse effect on the Project or on the reputation of the Authority, other penal action including debarring for a specified period may also be initiated as per policy of the Authority.

8. FAIRNESS AND GOOD FAITH

8.1 Good Faith

The Parties undertake to act in good faith with respect to each other's rights under this Agreement and to adopt all reasonable measures to ensure the realization of the objectives of this Agreement.

8.2 Operation of the Agreement

The Parties recognize that it is impractical in this Agreement to provide for every contingency which may arise during the life of the Agreement, and the Parties hereby agree that it is their intention that this Agreement shall operate fairly as between them, and without detriment to the interest of either of them, and that, if during the term of this Agreement either Party believes that this Agreement is operating unfairly, the Parties will use their best efforts to agree

on such action as may be necessary to remove the cause or causes of such unfairness, but failure to agree on any action pursuant to this Clause 8.2 shall not give rise to a dispute subject to arbitration in accordance with Clause 9 hereof.

9. SETTLEMENT OF DISPUTES

9.1 Amicable settlement

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

9.2 Dispute resolution

9.2.1 Any dispute, difference or controversy of whatever nature howsoever arising under or out of or in relation to this Agreement (including its interpretation) between the Parties, and so notified in writing by either Party to the other Party (the "Dispute") shall, in the first instance, be attempted to be resolved amicably in accordance with the conciliation procedure set forth in Clause 9.3.

9.2.2 The Parties agree to use their best efforts for resolving all Disputes arising under or in respect of this Agreement promptly, equitably and in good faith, and further agree to provide each other with reasonable access during normal business hours to all non-privileged records, information and data pertaining to any Dispute.

9.3 Conciliation

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

9.4 Arbitration

The arbitration clause shall not apply to this agreement. The civil courts of **Indore** only shall have jurisdiction to entertain the disputes arising out of this contract by way of civil suits.

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

SIGNED, SEALED AND DELIVERED

For and on behalf of

SIGNED, SEALED AND DELIVERED

For and on behalf of

Consultant:

Authority

(Signature)
(Name)
(Designation)
(Address)

(Signature)
(Name)
(Designation)
(Address)

In the presence of:

1.

2.