

SELECTION OF CONSULTANT FOR  
PREPARATION OF DETAILED STUDY ON  
“IDENTIFICATION OF SUITABLE INDUSTRIAL  
PROJECT ON MMTC LAND, ABHRAKNAGAR,  
KODERMA, JHARKHAND”

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REQUEST FOR PROPOSAL  
(RFP) DOCUMENT

18<sup>th</sup> December, 2014

**MMTC LIMITED**

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## SECTION-1: INFORMATION

### 1. INTRODUCTION

MMTC Limited is a Government of India Enterprise functioning under the aegis of the Ministry of Commerce and Industry. MMTC is in possession of land measuring approx. 52 acres, in the vicinity of Jhumri Tilaya town, approx. 5 kms from Koderma Railway Station, on the Koderma –Hazaribagh road. The land is partly used (approx. 25 acres) for setting up a Mica Processing plant in the 70's. However, due to change in Technology and Market scenario, the plant could not be run economically and plant operations were ceased in totality in 2004. The facilities have not been abandoned and the covered sheds, factory premises (including plant and machinery), water works, an electrical substation, administrative buildings and other utilities are maintained with skeletal staff. The remaining plot is largely barren land. The proposal is to utilize this land for industrial activity that could include warehousing activity either by way of direct investment or as a JV / Subsidiary, etc.

The objective is to consider various options and on identifiable parameters to select the suitable industrial activity, industrial park, etc., in this land. Such activity should be preferably in line with the existing business verticals of MMTC.

#### PURPOSE: -

MMTC invites offer in two bids systems from “Consultants” i.e the term “Consultants” could include but is not limited to reputed Consultancy firms, a consortium of consultants.

The consultants are invited to submit Technical & Financial Proposal, (the Proposal) for consulting services in two envelope process (Bidding Process) for the Assignment named in the Data Sheet. The Successful Bidder will be selected through a Quality and Cost Based Selection (QCBS) method. MMTC Limited reserves the right to accept or reject any or all proposals which are found to be not meeting the stated and implied requirements, as per the terms of this tender document.

It is MMTC's policy to require that the consultants observe the highest standard of ethics during the selection and execution of such contracts. In pursuance of this policy, MMTC:

(A) Defines, for the purposes of this provision, the terms set forth below as follows:

(I)“Corrupt practice” means the offering, giving, receiving, or soliciting of anything of value to influence the action of an official in this selection process or in contract execution; and

(II)“fraudulent practice” means a misrepresentation of facts in order to influence a selection process or the execution of a contract to the detriment of the Owner, and includes collusive practices among consultants (prior to or after submission of proposals) designed to establish prices at artificial, non-competitive levels and to deprive the Owner of the benefits of free and open competition;.

(B) will declare a firm/consultant(s) ineligible, either indefinitely or for a stated period of time, to be awarded a contract if it at any time determines that the firm/consultant(s) has engaged in corrupt or fraudulent practices in competing for, in executing, a contract.

## **2. DOCUMENTS COMPRISING THE RFP**

The RFP includes the following documents:

|            |   |                            |
|------------|---|----------------------------|
| Section -1 | : | Information to Consultants |
| Section-2  | : | Standard Forms             |
| Section-3  | : | Terms of Reference         |
| Section-4  | : | Standard Form of Contract  |

At any time before the submission of Proposals, MMTC may, for any reason, whether at its own initiative or in response to a clarification requested by any prospective bidder, modify the RFP documents by amendment. Any amendment shall be issued in writing through corrigendum which shall be posted on the websites of MMTC Limited. MMTC may at its discretion extend the deadline for submission of Proposal.

## **3 PREPARATION OF PROPOSAL**

Consultants are requested to submit the Proposal written in the Language(s) specified in the Data Sheet.

## **4. TECHNICAL PROPOSAL**

4.1 The Technical Proposal by the Bidders will be evaluated based on the following criteria. The bidders meeting the Minimum Technical Score prescribed herein shall alone be eligible for Financial Evaluation.

| Sl | Criteria           | Scoring Pattern   | Max Score | Proof to be submitted                                    |
|----|--------------------|---|-----------|--|
| 1  | Project Experience | Completed Industrial Land Development Consultancy Project carried out for State Government/PSU/Commercial undertaking in the last 10 years from proposal due date with project size exceeding Rs 25 cr / Rs 100 Cr will get 3 / 5 marks respectively for each project.<br><br>The scope of work in such Projects shall include Techno-Commercial Feasibility Studies. The Client for such project shall be a Company registered under Companies | 30        | Completion certificate from Client with the project cost |

|   |                                 |   |     |   |
|---|---------------------------------|---|-----|---|
|   |                                 | Act OR a Central/State Government Agency.   |     |   |
| 2 | Team Leader (Key Personnel)     | B.E. with 10 years experience (8 marks). MBA will be given 2 additional marks. To have served as Team Leader for at least one of the Projects claimed for experience in Sl No. 1 (CV should indicate Client, Project Name, Position held, Duration of the assignment)   | 8+2 | Certificate from Head of Organization of the Bidder OR Authorized Signatory |
| 3 | Industry Expert (Key Personnel) | B.E. with 10 years experience (8 marks). MBA will be given 2 additional marks. 10 yrs experience in Industry / Operations / Plant or Consultancy experience in above. (CV should indicate the organizations& designations held during the said period).   | 8+2 | -DO-  |
| 4 | Engineering/ Planning Expert    | B.E. (Civil Engineering / Architecture / Planning) with min 7 years Experience in Infrastructure, Project Design, Planning and Construction. Should have handled/served as team member in project design/planning for at least one Industrial Infrastructure Projects in West Bengal/Bihar/Jharkhand/Orissa during the last 10 yrs. (CV shall indicate Project Name, Client, Project Area, Position held) | 10  | -DO-  |
| 5 | CA/ICWA MBA(Fin)                | Min 5 years experience in Financial Modeling, Project Evaluation.   | 10  | -Do-  |

- 4.2 The Project Experience shall be given in Form 2A
- 4.3 The CV of the professional staff shall be given in Form 2B
- 4.4 TOTAL MAXIMUM TECHNICAL SCORE : 70
- 4.5 MINIMUM ELIGIBILITY TECHNICAL SCORE: 50
- 4.6 Technical Evaluation shall be completed approximately within 30 days of opening of Bids.

## 5. FINANCIAL PROPOSAL

Financial Bids of only those bidders whose Technical Score is more than or equal to 50 shall be opened. Financial Bids of other bidders will be returned unopened.

In preparing the Financial Proposal, consultants are expected to take into account the requirements and conditions of the RFP document. The Financial Proposal should follow Standard Forms (Section-2, Form-2D).

The Financial Proposal should be in Indian Rupees, inclusive of all applicable taxes, duties, fees, levies; for the entire scope of the assignment under this RFP.

## **6. BID SECURITY**

The Bidder shall furnish as part of its technical proposal, a bid security of Rs.1.00 Lakh (Rupees One Lakh only) in the form of a Demand Draft / Pay Order, issued by one of the Nationalized/ Scheduled Banks (except Co-operative Bank, Gramin Bank, Dhan Laxmi Bank, Nainital Bank) in India in favour of “MMTC Limited” payable at Kolkata (the “Bid Security”). The Bid Security of unsuccessful Bidders shall be returned on selection of the successful Bidder or on MMTC annulling the bidding process except in case of the highest ranked (in terms hereof). The Selected Bidder’s Bid Security shall be retained as Performance Security/ Guarantee, upon the Bidder signing the work order. No interest will be payable on Bid Security/ Performance Security/ Guarantee.

Any Bid not accompanied by the Bid Security shall be rejected by MMTC as non-responsive.

The Bidder, by submitting its Application pursuant to this RFP, shall be deemed to have acknowledged that without prejudice to MMTC’s any other right or remedy hereunder or in law or otherwise, the Bid Security shall be forfeited and appropriated by MMTC as the mutually agreed pre-estimated compensation and damage payable to MMTC for, inter alia, the time, cost and effort of MMTC in regard to the RFP including the consideration and evaluation of the Proposal under the following conditions:

- (A) If a Bidder engages in any of the Prohibited Practices specified in this RFP;
- (B) If a Bidder withdraws its Proposal during the period of its validity as specified in this RFP and as extended by the Bidder from time to time;
- (C) In the case of a Selected Bidder, if the Bidder fails to sign the work order or commence the Contract as specified herein respectively; or
- (D) If the Bidder is found to have a Conflict of Interest as specified in this RFP;
- (E) If the Bidder misrepresents any information/qualification criteria or otherwise as required to be submitted/fulfilled in terms hereof.

## **7. FINANCIAL RANKING OF BIDS**

The Ranking of Financial Bids shall be done as follows:

The Lowest Financial Proposal (L1) received shall be assigned 100 Marks. Other Bidders will be ranked inversely proportional to their quotes in relation to the L1 quote. Eg if the L1 quote is Rs

1000/-. The Financial Score of a bidder who has quoted as 1200 shall be 83 ( $1000/1200 \times 100$ ) (rounded off to the nearest whole number)

## **8. SELECTION OF SUCCESSFUL BIDDER**

The Technical Score shall be given weightage of 60% and Financial Score shall be given a weightage of 40%..

Total Bid Score (TBS)= Technical Score\*0.60+Financial Score\*0.40

Eg If a bidder has a Technical Score of 60 and a Financial Score of 83 the Total Bid Score shall be  $TBS = 60 \times 0.60 + 83 \times 0.40 = 69.2$

## **9. SUBMISSION, RECEIPT AND OPENING OF PROPOSALS**

The proposal shall be submitted in the formats given in Section 2. Any inter-lineation or overwriting, or corrections must be authorized by the Authorized Signatory to the RFP.

An authorized representative of the firm shall initial all pages of the Proposal. The representative's authorization shall be confirmed by the written Power of Attorney (POA).

The completed Proposal must be delivered at the submission address on or before the time and date stated in the Data Sheet. Any Proposal received after the closing time for submission of proposal shall be returned unopened.

Technical Proposal & Financial proposal shall be kept in separate sealed envelopes with clear identification as "TECHNICAL PROPOSAL" and "FINANCIAL PROPOSAL" superscribed on respective Envelopes. Any envelope found not sealed shall not be considered for evaluation. Both Technical and Financial Proposals shall then be kept in a Single Envelope (Outer Envelope). The bidders shall superscribe the Outer Envelope "BIDS FOR SELECTION OF CONSULTANT FOR ABHARAKNAGAR PROJECT" and also write the Full Address of the Bidder. If the bids are received without the said marking and the same results in wrong handling at MMTC's office prior to opening of the Bid, MMTC shall not be responsible for the same.

After the deadline for submission of proposal the Technical Proposal shall be opened immediately by the evaluation committee. Bidders may at their own discretion choose to be present through their authorized representatives at the time of the proposal opening.

The proposals submitted by the consultants shall be valid for a period specified in the data sheet.

## **10. Opening and Evaluation of Financial Proposals**

After the Technical Evaluation, Bidders whose technical score are more than or equal to the Minimum Eligibility Technical Score (Technically Qualified Bidders-TQB) shall be intimated appropriately by MMTC. Financial Bids of other bidders shall be returned unopened.



The Financial Proposals shall be opened in the presence of TQB representatives who choose to attend.

The evaluation committee will carry out ranking of the bids subsequently as per the methodology specified in this RFP. The Successful Bidder will be intimated in approximately 30 days of opening the Financial Proposals.

Bid Security of unsuccessful bidders shall be returned within 30 days of opening of Financial Proposal.

## **11. AWARD OF CONTRACT**

MMTC and the Successful Bidder (Consultant) shall enter into an agreement provided in Section-4 of this RFP within 7 days of the Issuance of Letter of Award (LoA).

The Consultant shall commence the Assignment from the Effective date.

MMTC reserves the right to accept or reject any or all the proposals at any stage without assigning any reason whatsoever and without any liability, explicit or implied, as a consequence of the same.

## **12. CONFIDENTIALITY**

Information relating to evaluation of proposals and recommendations concerning awards shall not be disclosed to the consultants who submitted the proposals or to other persons not officially concerned with the process, until the winning firm/consultant has been notified that it has been awarded the contract.

## **13. DATA SHEET**

### **Information to Consultants**

| Clause Reference | Details   | Information  |
|------------------|---|--|
| 1.1              | The Name of the Assignment  | “ IDENTIFICATION OF SUITABLE INDUSTRIAL ACTIVITY ON MMTC LAND, ABHRAKNAGAR, KODERMA, JHARKHAND “   |
| 2.1              | Clarifications may be requested on or before 2 <sup>nd</sup> January, 2015 by 1100 Hrs. | <b>General Manager</b><br>NIC Building (4 <sup>th</sup> Floor)<br>8 India Exchange Place, Kolkata – 700 001<br>Email: <a href="mailto:kkpaul@mmtclimited.com">kkpaul@mmtclimited.com</a> ;<br><a href="mailto:ahembram@mmtclimited.com">ahembram@mmtclimited.com</a> |
| 3.1              | Proposals should be submitted in the following language(s)                              | English.   |

|     |   |  |
|-----|---|--|
| 5.3 | The proposal submission Address is                                    | <b>General Manager</b><br>MMTC Limited,<br>NIC Building (4 <sup>th</sup> Floor)<br>8 India Exchange Place, Kolkata – 700 001<br>Email: <a href="mailto:kkpaul@mmtclimited.com">kkpaul@mmtclimited.com</a> ;<br><a href="mailto:ahembram@mmtclimited.com">ahembram@mmtclimited.com</a>                  |
| 5.4 | Pre-Bid Meeting date/Time/venue                                       | 2 <sup>nd</sup> January 2015 at 1100 AM at<br>MMTC Limited, NIC Building (4 <sup>th</sup> Floor)<br>8 India Exchange Place, Kolkata – 700 001<br>Email: <a href="mailto:kkpaul@mmtclimited.com">kkpaul@mmtclimited.com</a> ;<br><a href="mailto:ahembram@mmtclimited.com">ahembram@mmtclimited.com</a> |
| 5.5 | Proposals must be submitted no later than the following date and time | Date: 15 <sup>th</sup> January, 2015<br>Time: 15:00 PM<br>Venue : MMTC Ltd., Kolkata   |
| 5.6 | Validity of the Proposal  | Proposals must remain valid for 90 days from the bid submission date   |
| 5.7 | Opening of Technical bids   | Date :16 <sup>th</sup> January, 2015<br>Time : 1100 AM<br>Venue: MMTC Ltd., Kolkata  |

## **SECTION-2: PROPOSAL – STANDARD FORMS**

Form 2A: Proposal Covering Letter (In the letter head of the bidder)

To  
General Manager,  
MMTC Limited  
Kolkata.

Sub: OPTIONS AND SELECTIONS OF THE BEST INDUSTRIAL  
ACTIVITY ON MMTC LAND, ABHRAKNAGAR, KODERMA,  
JHARKHAND

Dear Sir,

With reference to your RFP document dated\*\*\*\*\*, I/We having examined the Bidding Documents and understood their contents, hereby submit my/our Bid for the aforesaid Project. The Bid is unconditional and unqualified.

1. I/We acknowledge that MMTC will be relying on the information provided in the Bid and the documents accompanying the Bid for selection of the Consultant for the aforesaid Project, and we certify that all information provided therein is true and correct; nothing has been omitted which renders such information misleading; and all documents accompanying the Bid are true copies of their respective originals.
2. This statement is made for the express purpose of our selection as Consultant for the aforesaid Project.
3. I/We shall make available to MMTC any additional information it may find necessary or require to supplement or authenticate the Bid.
4. I/We acknowledge the right of MMTC to reject our Bid without assigning any reason or otherwise and hereby waive, to the fullest extent permitted by applicable law, our right to challenge the same on any account whatsoever.
5. I/We certify that in the last three years, we/any of the Consortium Members or our/their Associates have not been expelled from any project or contract nor have had any contract terminated for breach on our part.
6. I/We declare that:

- (A) I/We have examined and have no reservations to the RFP Documents, including any Corrigendum issued by MMTC; and
  - (B) I/We do not have any conflict of interest in accordance with provision of the RFP document; and
  - (C) I/We have not directly or indirectly or through an agent engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice, as defined in the RFP document
  - (D) The undertakings given by us along with the Proposal in response to the RFP for the Project were true and correct as on the date of making the Proposal and are also true and correct as on the Proposal Due Date and I/We shall continue to abide by them.
7. I/We understand that you may cancel the Bidding Process at any time and that you are neither bound to accept any Proposal that you may receive nor to invite the Firms/Consultant(s) to submit proposal for the Project, without incurring any liability to the Bidders, in accordance with the RFP document.
8. I/We have studied all the RFP Documents carefully.
9. I/We agree and undertake to abide by all the terms and conditions of the RFP document.
10. I/We shall keep this offer valid for 90 (ninety) days from the Bid Due Date specified in the RFP.

11. We shall be having the following partners in our project

|  | Name | Address | Brief description |
|--|------|---------|-------------------|
|  |      |         |                   |

We, the undersigned, offer to provide the consulting services for the Project in accordance with your Request for Proposal dated [Date], and our Financial Proposal.

Yours faithfully,

Authorised Signature  
Name and Titlen of Authorised Signatory  
Name of the Firm/Consultant

Complete Address (with e-mail  
ID, Telephone, Mobile No. &

**Form 2B: Project Experience Format**

- PROVIDE PROJECT DETAILS WITH A COPY OF PROOF OF EXPERIENCE (COMPLETION CERTIFICATE/MANDATE LETTER/ ANY OTHER SUPPORTING DOCUMENT)
- COMPLETED PROJECTS DURING LAST FIVE YEARS WILL ONLY BE CONSIDERED

|   |   |
|---|---|
| Assignment Name:  | Approx. value of the contract (in INR):   |
| Country:<br>Location within country:  | Duration of assignment (months):  |
| Name of Client:   | Total No. of staff-months of the assignment   |
| Address:  | Approx. value of the services provided by your firm under the contract (in INR):  |
| Start date (month/year):<br>Completion date (month/year):                   | No. of professional staff-months provided by associated Consultants:  |
| Name of lead partner:   | Name of senior professional staff of your Firm involved and functions performed (indicate most significant profiles such as Project Director/Coordinator, Team Leader): |
| Name of associated Consultants, if any:                                     |   |
| Narrative Description of the project with Project Cost                      |   |
| Description of actual services provided by your staff within the assignment |   |

Firm's Name:

Signature of Authorised Representative:

Name of Authorised Representative:

Complete Address:

E-mail id:

Phone No. &amp; Mobile No:

Fax No.:



## Form 2C: Curriculum Vitae (CV) of Professional Staff

1. Position [only one candidate shall be nominated for each position]:
2. Name of Firm [Insert name of firm proposing the Staff]:
3. Name of Staff [Insert full name]
4. Date of Birth:\_\_\_\_\_Nationality\_\_\_\_\_
5. Education [Indicate college/University and other specialized education of staff members, giving names of Institutions, qualifications obtained, and date:
6. Membership of Professional Organisations:
- 7 Training & Publications [Indicate significant training since degrees under 5- Education were obtained]:
8. Countries of Work Experience: [List countries where staff has worked in the last ten years] :
9. Languages [For each language indicate proficiency: good, fair, or poor in speaking, reading and writing ]:
10. Employment Record [Starting with present position, list in reverse order every employment held by staff member since graduation, giving for each employment (see format here below); dates of employment, name of employing organization, positions held]:

| Employer | From (Year) | To (Year) | Position held |
|----------|-------------|-----------|---------------|
|          |             |           |               |
|          |             |           |               |

|                             |   |
|-----------------------------|---|
| 11. Detailed Tasks Assigned | <p><b>Work Undertaken that Best Illustrates Capability to Handle the Tasks Assigned</b></p> <p>[Among the assignments in which the staff has been involved, indicate the following information for those assignments that best illustrate staff capability to handle the tasks listed under point 11]</p> <p>Name of assignment or project: _____</p> <p>Year _____</p> <p>Location : _____</p> <p>Client: _____</p> <p>Main project features: _____</p> <p>Positions held: _____</p> <p>Activities performed _____</p> |
|-----------------------------|---|

**12. Certification:**

I, the undersigned, certify that to the best of my knowledge and belief, this CV correctly describes me, my qualifications, and my experience. I understand that any willful misstatement described herein may lead to my disqualification or dismissal, if engaged.

\_\_\_\_\_  
 (Signature of staff member) Date: \_\_\_\_\_  
Day/Month/Year

Full name of the Staff

Signature of Authorized representative of the staff

Date (DDMMYYYY)

Full name of authorized representative



**Form 2D: PRICE BID**

| Sl No    | Name of Activity                                      | Fee Amount<br>(in Indian Rupees) |
|----------|---|----------------------------------|
|          |   | In Figures & In Words            |
|          |   |                                  |
| <b>1</b> | <b>Consultancy Fee for DPR Preparation</b>            |                                  |
| <b>2</b> | <b>Local Taxes &amp; Duties @-----payable on fees</b> |                                  |
| <b>3</b> | <b>Total</b>  |                                  |

## **SECTION-3: TERMS OF REFERENCE**

### **1. BACK GROUND**

MMTC Limited is A Government of India Enterprise functioning under the aegis of the Ministry of Commerce and Industry. MMTC is in possession of land measuring approx. 52 acres, in the vicinity of Jhumri Tilaya town, approx. 5 kms from Koderma Railway Station, on the Koderma –Hazaribagh road. The land is partly used (approx. 25 acres) for setting up a Mica Processing plant in the 70's. However, due to change in Technology and Market scenario, the plant could not be run economically and plant operations were ceased in totality in 2004. The facilities have not been abandoned and the covered sheds, factory premises (including plant and machinery), water works, an electrical substation, administrative buildings and other utilities are maintained with skeletal staff. The remaining plot is largely barren land. The proposal is to utilize this land for industrial activity that could include warehousing activity either by way of direct investment or as a JV / Subsidiary, etc.

The objective is to consider various options and on identifiable parameters to select suitable the industrial activity, industrial park, etc. , in this land. Such activity should be preferably in line with the existing business verticals of MMTC.

### **2. OBJECTIVE**

The principal objective of the study is to prepare a Detailed Project Report (DPR) for identification of an appropriate usage of 50 acres of land for an industrial project.. The broad scope includes listing of various options and selecting the best project with existing and potential growth of the various production and consumption centres. The Scope of work has been divided into two parts. The detailed scope of work for both the parts is provided in Sl. No 3.

### **3. SCOPE OF WORK**

#### **3.1 Part A – Study of Best Use**

The following study shall be conducted to examine the best use of the proposed land parcel.

1. Initially a “Preliminary Feasibility Study” shall be conducted under which the following activities shall be performed:
  - a. Identification of various alternate uses
  - b. Preliminary evaluation of all the options
  - c. Selection of the best alternate use based on economic viability of the project
2. A detailed feasibility study of the best alternate use will be conducted. The scope of the work for the detailed feasibility study of the best alternate use shall be as suggested below.

### **3.2 Part B: Project Screening Report (PSR)**

#### **1. Demand Assessment Study**

- (i) Identification of major existing and upcoming clusters
- (ii) Identification of consumer base / target market.
- (iii) Assessment of value added services that have a potential to house in the proposed project based on the demand assessment of the region.
- (iv) Comprehensive study on the existing and proposed logistical network from Abharaknagar to Various procurement centres / Markets.
- (v) List of top prospective clients for the said project

#### **2. Demand projection:**

- (i) The consultant is expected to use suitable primary/secondary data of demand, identify appropriate correlation factors influencing such demand, make projections for demand based on such correlation factors. The consultant shall record rationale for assumptions made by them and the percentage error expected while making demand projections.
- (ii) Secondary data shall be taken from authorized sources and the source of such data needs to be specified in the DPR.

#### **3. Identifying suitable project infrastructure**

- (i) Identify most suitable business plan for the project with an objective to maximize the return on investment to the project.
- (ii) Identify the various Infrastructure components for the Project
- (iii) Proposed development time schedules (Project phasing) for the Infrastructure components based on the demand projections
- (iv) Block cost estimates for infrastructure development
- (v) Indicative layout drawings for the proposed project
- (vi) List of statutory/regulatory approvals required for the Project, Details of Authorities issuing such approvals and Summary of key requirements for each of the identified statutory/regulatory approvals.

#### **4. Project Risk Assessment**

- (i) Identify key external and internal risks for the project
- (ii) Identify the risk variables and the range of variability for each of the key external and internal risks

- (iii) Assess the impact of risk on the project arising from variability of the key risk variables.

## 5. **Business Planning**

Based on the market potential analysis and risk assessment, the Consultant shall suggest preferably Light Asset Business Model for MMTC broadly containing the followings:

- (i) Asset business Model for the Project
- Potential Client Sets and their stated & implied requirement
  - Potential Competitors to the Project and their business model, strengths and weaknesses
  - Infrastructure to be developed by MMTC , if any
  - Services to be offered by MMTC
  - Revenue Streams to MMTC
  - Cost Streams to MMTC
- (ii) Strategy for project development and marketing: Indicate suitable strategies for the client acquisition, Fund mobilization and Project Phasing
- (iii) Capital structuring of the project: Indicate appropriate debt: equity structure and potential financing strategy
- (iv) Sources(s) of Debt: Identify potential sources of Debt suitable for the project, details the salient terms of such debt and suggest strategies to meet the prescribed standards.
- (v) Financial projections (balance sheets, cash flows, P&L statements, Project IRR, capex statements) for 15 years post Commissioning of Phase 1 (If project is suggested to be developed in multiple phases)
- (vi) Sensitivity analysis of the project on key parameters (risk variables identified in Risk Analysis based on the relevant range of variability)
- (vii) Identification of potential Risk Mitigation Strategies.

### 3.3 **Part III: Project Master Plan & Detailed Project Report (DPR)**

The detailed project report shall incorporate the details of the draft report including suggestions and modifications in the same and the following. The DPR will be used for the purpose of debt financing from Banks/FIs and therefore the consultant's responsibility shall include making the DPR comply with requirements of the lenders.

1. A comprehensive Master Plan for the Project based on the optimum value to the identified demand
  - i. Land Use Plan
  - ii. Positioning of Infrastructure
  - iii. Sizing & Technical Specs for Infrastructure to be developed by MMTC
  - iv. Positioning of land/built up area to be offered to clients on assignment
2. Detailed engineering designs and drawing of all the components to be developed/ constructed by MMTC.
3. Detailed Bill of Quantities and schedule of cost based on the engineering details for the components to be constructed/ developed by MMTC.
4. Assessment of statutory project approvals required for the implementation of the project and collection of all relevant data for each statutory approval.
5. Final capital structuring and detailed financial analysis (if total cost in DPR varies with the estimate made in PSR).

#### **4. SCHEDULE FOR COMPLETION**

1. Part I: Project Screening Report
  - (i) Concept Report (CR): 2 weeks from the effective date
  - (ii) Draft Screening Report (DSR): 8 weeks after the submission of concept report
  - (iii) Final Screening Report (FSR): 2 weeks after the comments on the draft screening report
2. Part II: Detailed Project Report (After FSR approved by MMTC)
  - (i) Engineering detailing and drawing: 4 weeks
  - (ii) BoQ and cost estimates: 2 weeks after drawings
  - (iii) DPR: 2 weeks after approval of BoQ and Estimates

#### **5. PAYMENT TERMS / SCHEDULE**

The following is the terms of payment for this assignment. All the payments shall be made within 30 days of receipt of invoices/achieving the project milestones whichever is later. The Consultant shall be paid for its services as per the Payment Terms/Schedule as per the following payment terms

- i. 10% of the contract value against submission of Concept Report
- ii. 15% of the contract value against submission of Draft Project Report
- iii. 30% of the contract value against submission of Final Project Report
- iv. 20% of the contract value against submission of Engineering Detailing and Drawings
- v. 20% of the contract value against approval of Final Project Report by MMTC
- vi. 5% on Financial Closure of the Project.

## SECTION-4: AGREEMENT FOR PREPARATION OF DETAILED PROJECT REPORT

AGREEMENT NO \_\_\_\_\_

This AGREEMENT (hereinafter called the “Agreement”) is made on the \_\_\_\_ day of the month of \_\_\_\_\_2015, between, on the one hand, MMTC Limited (hereinafter called the “MMTC” 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. MMTC vide its Request for Proposal for Preparation of Detailed Project Report (hereinafter called the “Consultancy”) for International Cargo Hub at Haldia, West Bengal
- B. The Consultant submitted its proposals for the aforesaid work, whereby the Consultant represented to MMTC that it had the required professional skills, and in the said proposals the Consultant also agreed to provide the Services to MMTC on the terms and conditions as set forth in the RFP and this Agreement; and
- C. MMTC, on acceptance of the aforesaid proposals of the Consultant, awarded the Consultancy to the Consultant vide its Letter of Award 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

#### Definitions and Interpretation

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:

“Third Party” means any person or entity other than the Government, MMTC, the Consultant or a Sub-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 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) RFP; and
- (C) Letter of Award.

## **1.2 Relation between the Parties**

- 1.2.1** Nothing contained herein shall be construed as establishing a relation of master and servant of or of agent and principal as between MMTC 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**

- 1.3.1** The mutual rights and obligations of MMTC and the Consultant shall be as set forth in Agreement, in particular:

- (A) The Consultant shall carry out the Services in accordance with the provision of the Agreement; and
- (B) MMTC shall make payments to the Consultant in accordance with the provisions of the Agreement.

## **1.4 Governing law and jurisdiction**

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

## **1.5 Language**

- 1.5.1** 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**

- 1.6.1** 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**

- 1.7.1** 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 fax 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 MMTC; provided that notices or other communications to be given to an address outside Kolkata may, if they are subsequently confirmed by sending a copy thereof by registered acknowledgement due, air mail or by courier, be sent by fax or e-mail to the number as the Consultant may from time to time specify by notice to MMTC;



- (B) In the case of MMTC, be given by fax or e-mail and by letter delivered by hand and be addressed to MMTC with a copy delivered to MMTC Representative set out below in Clause 1.8 or to such other person as MMTC may from time to time designate by notice to the Consultant; provided that if the Consultant does not have an office in Kolkata it may send such notice by fax 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 fax or e-mail, it shall be deemed to have been delivered on the working days following the date of its delivery.

## **1.8 Authorised Representatives**

1.8.1 Any action required or permitted to be taken, and any document required or permitted to be executed, under this Agreement by MMTC or the Consultant, as the case may be, may be taken or executed by the officials specified in this Clause 1.8.

1.8.2 MMTC may, from time to time, designate one of its officials as MMTC Representative unless otherwise notified, MMTC Representative shall be:

**General Manager**

NIC Building (4<sup>th</sup> Floor)

8 India Exchange Place, Kolkata – 700 001

Email: [kkpaul@mmtclimited.com](mailto:kkpaul@mmtclimited.com); [ahembram@mmtclimited.com](mailto:ahembram@mmtclimited.com)

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

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Tel:

Mobile:

Fax:

E-mail:

## **1.9 Taxes and duties**

1.9.1 Unless otherwise specified in the Agreement, the Consultant shall pay all such taxes, duties, fees and other impositions as may be levied under the Applicable Laws and MMTC 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

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

## **2.2 Commencement of Services**

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

## **2.3 Termination of Agreement for failure to commence Services**

2.3.1 If the Consultant does not commence the Services within the period specified in Clause 2.2 above and/or does not achieve the stipulated first milestone as specified under Clause 7.2.2 of this Agreement within the stipulated time period of two weeks from the issue of LoA, MMTC may, by not less than 2 (two) weeks’ notice to the Consultant, declare this Agreement to be null and void at its sole discretion.

## **2.4 Expiration of Agreement**

2.4.1 Unless terminated earlier pursuant to Clauses 2.3 or 2.8 hereof, this Agreement shall, unless extended by the Parties by mutual consent, expire upon the earlier of (A) expiry of a period of 90 (ninety) days after the delivery of the final deliverable to MMTC; and (B) the expiry of [1 (one) year] from the Effective date.

## **2.5 Entire Agreement**

2.5.1 This Agreement and the Sections 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**

2.6.1 Modification of the terms and conditions of this Agreement, including any modification of the scope of this Services, may only be made by written agreement between the Parties. However, each Party shall give due consideration to any proposals for modification made by the other Party

## **2.7 Suspension of Agreement**

2.7.1 MMTC may, by written notice of suspension to the Consultant, suspend all payments to the Consultant hereunder if the Consultant is in breach of this Agreement or fails to perform any of its obligations under this Agreement, including the carrying out of the Services; provided that such notice of suspension (A) shall specify the nature of the breach or failure, and (B) shall provide an opportunity to the Consultant to remedy such breach or failure within a period not exceeding 30 (thirty) days after receipt by the Consultant of such notice of suspension.

## **2.8 Termination of Agreement**

### **2.8.1 By MMTC**

**2.8.1.1** MMTC may, by not less than 30 (thirty) 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 2.8.1, 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 2.7 hereinabove, within 30 days of receipt of such notice of suspension or within such further period as MMTC 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 11.3 hereof;
- (D) The Consultant submits to MMTC a statement which has a material effect on the rights, obligations or interests of MMTC 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) MMTC, in its sole discretion and for any reason whatsoever, decides to terminate this Agreement.

### **2.8.2 By the Consultant**

**2.8.2.1** The Consultant may, by not less than 30 (thirty) days' written notice to MMTC, such notice to be given after the occurrence of any of the events specified in this Clause 2.8.2, terminate this Agreement if:

- (A) MMTC fails to pay any money due to the Consultant pursuant to this Agreement and not subject to dispute within 45 (forty five) days after receiving written notice from the Consultant that such payment is overdue;
- (B) MMTC is in material breach of its obligations pursuant to this Agreement and has not remedied the same within 45 (forty five) days after receiving written notice from the Consultant that such payment is overdue;

## **2.9 Cessation of rights and obligations**

**2.9.1** Upon termination of this Agreement pursuant to Clause 2.3 or 2.8 hereof, or upon expiration of this Agreement pursuant to Clause 2.4 hereof, all rights and obligations of the Parties hereunder shall cease, except (A) such rights and obligations as may have accrued on the date of termination or expiration, or which expressly survive such Termination; (B) the obligation of confidentiality

set forth in Clause 4 hereof; (C) the Consultant's obligation to permit inspection, copying and auditing of such of its accounts and records, as relate to the Consultant's Services provided under this Agreement; and (D) any right or remedy which a Party may have under this Agreement or the Applicable Law.

## **2.10 Cessation of Services**

**2.10.1** Upon termination of this Agreement by notice of either Party to the other pursuant to Clause 2.8 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.

## **2.11 Payment upon Termination**

**2.11.1** Upon termination of this Agreement pursuant, MMTC shall make the following payments to the Consultant (after offsetting against these payments any amount that may be due from the Consultant to MMTC):

- (A) No remuneration shall be paid if the agreement is terminated before achievement of first payment milestone mentioned under this agreement.
- (B) Remuneration for Services satisfactorily performed prior to the date of termination;
- (C) Reimbursable expenditure for expenditures actually incurred prior to the date of termination; and
- (D) except in the case of termination, reimbursement of any reasonable cost incidental to the prompt and orderly termination of the Agreement including the cost of the return travel of the Consultant's personnel.

## **2.12 Disputes about Events of Termination**

**2.12.1** If either Party disputes whether an event specified in Clause 7.2.2 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 11 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**

**3.1.1.1** 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 methods. The Consultant shall always act, in respect of any matter relating to this Agreement or to the Services, as a faithful adviser to MMTC, and shall at all times support and safeguard MMTC's legitimate interests in any dealings with Sub-Consultants or Third Parties.

### **3.1.2 Terms of Reference**

- 3.1.2.1 The scope of services to be performed by the Consultant is specified in the Terms of Reference (the “TOR”) at Section-3 of this RFP. The Consultant shall provide the Deliverables specified therein in conformity with the time schedule stated therein.

### **3.1.3 Applicable Laws**

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

### **3.1.4 Prohibition of conflicting activities**

- 3.1.4.1 Neither the Consultant nor its Sub-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 specifically which can have a potential or perceived adverse impact on the business prospects of the Project or business activities of MMTC.

### **3.1.5 Consultant not to benefit from commissions discounts, etc.**

- 3.1.5.1 The remuneration of the Consultant shall constitute the Consultant’s sole remuneration 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 Sub-Consultant, as well as the Personnel and agents of either of them, similarly shall not receive any such additional remuneration.

- 3.1.5.2 The Consultant and its Personnel shall observe the highest standards of ethics and shall 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, MMTC 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, MMTC shall forfeit and appropriate the Performance security, if any, as mutually agreed genuine pre-estimated compensation and damages payable to MMTC towards, inter alia, the time, cost and effort of MMTC, without prejudice to MMTC’s any other rights or remedy hereunder or in law.

- 3.1.5.3 Without prejudice to the rights of MMTC and the other rights and remedies which MMTC may have under this Agreement, if the Consultant is found by MMTC 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 2 (two) years from the date the Consultant is found by MMTC to have directly or indirectly or through an agent, engaged or indulged in any Prohibited Practices.

**3.1.5.4** For the purposes of Clauses 3.1.4 and 3.1.5 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 MMTC 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 one year from the date such official resigns or retires from or otherwise ceases to be in the service of MMTC, 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 MMTC 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 MMTC under this Agreement.
- (D) **“undesirable practice”** means (i) establishing contact with any person connected with or employed or engaged by MMTC 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 Bidders with the objective of restricting or manipulating a full and fair competition in the Selection Process.

#### **4. CONFIDENTIALITY**

- 4.1 The Consultant, its Sub-Consultants and the personnel of either of them shall not, either during the term or within 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 MMTC to the Consultant, its Sub-Consultants and the Personnel; any information provided by or relating to MMTC, its technology, technical processes, business affairs or finances or any information relating to MMTC’s employees, officers or other professionals or suppliers, customers, or contractors of MMTC; 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 MMTC. Notwithstanding the aforesaid, the Consultant, its Sub-Consultants and the Personnel of either of them may disclose Confidential Information to the extent that such Confidential Information:

- (A) was in the public domain prior to its delivery to the Consultant, its Sub-Consultants and the Personnel of either of them or becomes a part of the public knowledge from a source other than the Consultant, its sub-Consultants and the Personnel of either of them;
- (B) was obtained from a third party with no known duty to maintain its confidentiality;
- (C) 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, its Sub-Consultants and the Personnel of either of them shall give MMTC, prompt written notice, and use reasonable efforts to ensure that such disclosure is accorded confidential treatment; and
- (D) is provided to the professional advisers, agents, auditors or representatives of the Consultant or its Sub-Consultants or Personnel of either of them as is reasonable under the circumstances; provided, however, that the Consultant or its Sub-Consultants 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.

## **5. LIABILITY OF THE CONSULTANT**

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

- 5.1.1 The Consultant shall, subject to the limitation specified, be liable to MMTC for any direct or indirect loss or damage accrued or likely to accrue due to deficiency in Services rendered by it.
- 5.1.2 This limitation of liability 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 3 (three) times the Agreement Value.

### **5.2 Insurance to be taken out by the Consultant**

- 5.2.1 The Consultant shall, for the duration of this Agreement, take out and maintain, and shall cause any Sub-Consultant to take out and maintain, at its (or the Sub Consultant's, as the case may be) own cost, but on terms and conditions approved by MMTC, Insurance against the risks, and for the coverages, as specified in the Agreement and in accordance with good industry practice.
- 5.2.2 Within 15 (fifteen) days of receiving any insurance policy certificate in respect of insurances required to be obtained and maintained under this clause, the Consultant shall furnish if asked by MMTC, copies of such policy certificates, copies of the Insurance policies and evidence that the insurance premia have been paid in respect of such insurance. No insurance shall be cancelled, modified or allowed to expire or lapse during the term of this Agreement.

- 5.2.3 If the Consultant fails to effect and keep in force the aforesaid insurances for which it is responsible pursuant hereto, MMTC shall, apart from having other recourse available under this Agreement, have the option, without prejudice to the obligations of the Consultant, to take out the aforesaid insurance, to keep in force any such insurances, and pay such premia and recover the costs thereof from the Consultant, and the Consultant shall be liable to pay such amounts on demand by MMTC.
- 5.2.4 Except in case of Third Party liabilities, the insurance policies so procured shall mention MMTC as the beneficiary of the Consultant and the Consultant shall procure an undertaking from the insurance company to this effect provided that in the event the Consultant has a general insurance policy that covers the risks specified in this Agreement and the amount of insurance cover is equivalent to 3 (three) times the cover required hereunder, such insurance policy may not mention MMTC as the sole beneficiary of the Consultant or require an undertaking to that effect.
- (A) The Parties agree that the risks and coverages shall include but not be limited to the following:
- a. Third Party liability insurance as required under Applicable Laws,;
  - b. Employer's liability and workers' compensation insurance in respect of the Personnel of the Consultant and of any Sub- Consultant, in accordance with Applicable Laws; and
  - c. Professional liability insurance for an amount no less than the Agreement Value.

### **5.3 Consultant's actions requiring MMTC's prior approval**

- 5.3.1 The Consultant shall obtain MMTC's prior approval in writing before taking any of the following actions:
- (A) Entering into a sub contract 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 MMTC 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
- (B) Any other action that is specified in this Agreement.

### **5.4 Reporting obligations**

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

### **5.5 Documents prepared by the Consultant to be property of MMTC**



- 5.5.1 All plans, drawings, specifications, designs, reports and other documents (collectively referred to as “**Consultancy Documents**”) prepared by the Consultant (or by the Sub-Consultants or any Third Party) in performing the Services shall become and remain the property of MMTC, and all intellectual property rights in such Consultancy Documents shall vest with MMTC. Any Consultancy Document, of which MMTC’s ownership or the intellectual property rights do not vest with MMTC under law, shall automatically stand assigned to MMTC as and when such Consultancy Document is created and the Consultant agrees to execute all papers and to perform such other acts as MMTC may deem necessary to secure its rights herein assigned by the Consultant.
- 5.5.2 The Consultant shall, not later than termination or expiration of this Agreement, deliver all Consultancy Documents to MMTC, together with a detailed Inventory thereof. The Consultant may retain a copy of such Consultancy Documents. The Consultant, its Sub-Consultants or a Third Party shall not use these Consultancy Documents for purposes unrelated to this Agreement without the prior written approval of MMTC.
- 5.5.3 The Consultant shall hold MMTC 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 its Sub-Consultants or a Third Party to perform any of its duties or obligations in relation to securing the aforementioned rights of MMTC.
- 5.6 **Equipment and materials furnished by MMTC**
- 5.6.1 Equipment and materials made available to the Consultant by MMTC shall be the property of MMTC and shall be marked accordingly. Upon termination or expiration of this Agreement, the Consultant shall furnish forthwith to MMTC, an inventory of such equipment and materials and shall dispose of such equipment and materials in accordance with the instructions of MMTC. While in possession of such equipment and materials, the Consultant shall, unless otherwise instructed by MMTC in writing, insure them in an amount equal to their full replacement value.
- 5.7 **Accuracy of Documents**
- 5.7.1 The Consultant shall be responsible for accuracy of the data collected by it directly or procured from other agencies/authorities, the designs, drawings, estimates and all other details prepared by it as part of these services. It shall indemnify MMTC 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 drawings including any re-survey/investigations.
6. **CONSULTANT’S PERSONNEL AND SUB-CONSULTANTS**
- 6.1 **GENERAL**
- 6.1.1 The Consultant shall employ and provide such qualified and experienced Personnel as may be required to carry out the Services.

## **6.2 Sub-Consultants**

6.2.1 The Consultant may, with prior written approval of MMTC, engage Sub-Consultants.

## **7. OBLIGATIONS OF MMTC**

### **7.1 Access to land and property**

**7.1.1** MMTC 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  
**SCHEDULE FOR COMPLETION**

shall agree on (A) the time extension, as may be appropriate, for the performance of Services, and (B) the additional payments, if any, to be made to the Consultant as a result thereof.

### **7.2 Change in Applicable Law**

**7.2.1** **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 of reimbursable expenses incurred by the Consultant in performing the Services, by an amount exceeding 2% (two per cent) of the Agreement Value, then the remuneration and reimbursable expenses 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.

### **7.2.2 SCHEDULE FOR COMPLETION**

#### **7.2.3** Part I: Project Screening Report

- i. Concept Report (CR): 2 weeks from the effective date
- ii. Draft Screening Report (DSR): 8 weeks after the submission of concept report
- iii. Final Screening Report (FSR): 2 weeks after the comments on the draft screening report

#### **7.2.4** Part II: Detailed Project Report (After FSR approved by MMTC)

- i. Engineering detailing and drawing: 4 weeks
- ii. BoQ and cost estimates: 2 weeks after drawings
- iii. DPR: 2 weeks after approval of BoQ and Estimates

### **7.2.5 SCHEDULE FOR COMPLETION**

#### **1. Part I: Project Screening Report**

- (i) Concept Report (CR): 2 weeks from the effective date
- (ii) Draft Screening Report (DSR): 8 weeks after the submission of concept report

- (iii) Final Screening Report (FSR): 2 weeks after the comments on the draft screening report

2. Part II: Detailed Project Report (After FSR approved by MMTC)

- (i) Engineering detailing and drawing: 4 weeks
- (ii) BoQ and cost estimates: 2 weeks after drawings
- (iii) DPR: 2 weeks after approval of BoQ and Estimates

### 7.3 Payment

**7.3.1** In consideration of the Services performed by the Consultant under this Agreement, MMTC shall make to the Consultant such payments and in such manner as is provided in Clause 8 of this Agreement.

## 8. PAYMENT TO THE CONSULTANT

### 8.1 Cost estimates and Agreement value

**8.1.1** 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..... (Rupees.....)

The following is the terms of payment for this assignment. All the payments shall be made within 30 days of receipt of invoices/achieving the project milestones whichever is later.

- a. 10% of the contract value against submission of Concept Report
  - b. 15% of the contract value against submission of Draft Project Report
  - c. 30% of the contract value against submission of Final Project Report
  - d. 20% of the contract value against submission of Engineering Detailing and Drawings
  - e. 20% of the contract value against approval of Final Project Report by MMTC
  - f. 5% on Financial Closure of the Project.
- 8.1.2** The Consultant shall be paid for its services as per the Payment Terms/Schedule as per the following payment terms.
- i. No payment shall be due for the next stage till the Consultant completes, to the satisfaction of MMTC, the work pertaining to the preceding stage.
  - ii. MMTC shall pay to the Consultant, only the undisputed amount.
- 8.1.3** MMTC shall cause the payment due to the Consultant to be made within 30 (thirty) days after the receipt by MMTC of duly completed bills with necessary particulars (**the “Due Date”**)

**8.1.4** Any amount which MMTC 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 MMTC within 30 (thirty) days after receipt by the Consultant of notice thereof. Any such claim by MMTC for reimbursement must be made within 1 (one) year after receipt by MMTC of a final report. Any delay by the Consultant in reimbursement by the due date shall attract simple interest @10% (Ten per cent) per annum.

**8.1.5** All payments under this Agreement shall be made to the account of the Consultant as may be notified to MMTC by the Consultant.

## **8.2 Currency of payment**

**8.2.1** All payments shall be made in Indian Rupees.

## **9 LIQUIDATED DAMAGES AND PENALTIES**

### **9.1 Liquidated Damages**

#### **9.1.1 Liquidated Damages for error/variation**

**9.1.1.1** 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 MMTC in a reasonable manner and recovered from the Consultant by way of deemed liquidated damages, subject to a maximum of 50% (fifty per cent) of the Agreement Value.

#### **9.1.2 Liquidated Damages for delay**

**9.1.2.1** In case of delay in completion of Services, liquidated damages not exceeding an amount equal to 0.2% (zero point two per cent) of the Agreement Value per day, subject to a maximum of Rs.1.00 lakh (Rupees One lakh only) of the Agreement Value will be imposed and shall be recovered by appropriation from the Performance Guarantee or otherwise. However, in case of delay due to reasons beyond the control of the Consultant, suitable extension of time shall be granted.

## **10 FAIRNESS AND GOOD FAITH**

### **10.1 Good Faith**

**10.1.1** 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.

### **10.2 Operation of the Agreement**

**10.2.1** 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 shall not give rise to a dispute subject to arbitration.

## **11. SETTLEMENT OF DISPUTES**

### **11.1 Amicable settlement**

**11.1.1** 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.

### **11.2 Dispute resolution**

**11.2.1 A.** 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.

**11.2.2 B.** 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 if thirty (30) days have expired since the receipt of such a notice of ‘dispute’ without any written amicable settlement, it shall be deemed that such a dispute is not resolvable by amicable settlement. However, at any time, both the parties can extend the said period of 30 days by mutual agreement in writing.

### **11.3 Arbitration**

**11.3.1 A.** Any dispute or difference whatsoever arising between the parties out of or relating to the construction, meaning, scope, operation or effect of this contract or the validity or the breach thereof shall be settled by arbitration in accordance with the Rules of Arbitration of the Indian Council of Arbitration and the award made in pursuance thereof shall be binding on the parties. The venue of such arbitration shall be Kolkata and the language of arbitration proceedings shall be English. The decision/Award of the Arbitrator shall be binding on both Parties.

**11.3.2 B.** The cost of arbitration shall be borne equally by both the parties.

**11.3.3 C.** This Agreement and the rights and obligations of the Parties shall remain in full force and effect, pending the Award in any arbitration proceedings hereunder.

**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.**

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**For MMTC Limited**

**Authorized Signatory**

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**For Consultant**

**(Authorized Signatory)**

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