

**MINISTRY OF TRANSPORT AND HIGHWAYS
ROAD DEVELOPMENT AUTHORITY**

**CENTRAL EXPRESSWAY PROJECT SECTION 3
(FROM POTHUHERA TO GALAGEDARA)**

REQUEST FOR PROPOSALS

**SELECTION OF AN INDIVIDUAL CONSULTANT
TO
SERVE AS THE CONTRACT MANAGEMENT AND CLAIMS SPECIALIST
FOR
CONSTRUCTION SUPERVISION OF
CENTRAL EXPRESSWAY PROJECT SECTION 3
FROM POTHUHERA (CH. 0+100 KM) TO RAMBUKKANA (CH.13+800KM)**

SEPTEMBER 2023

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**MINISTRY OF TRANSPORT & HIGHWAYS
ROAD DEVELOPMENT AUTHORITY
CENTRAL EXPRESSWAY PROJECT SECTION 3
(FROM POTHUHERA TO GALAGEDARA)**

**INVITATION TO SERVE AS THE CONTRACT MANAGEMENT AND CLAIMS SPECIALIST
FOR
CONSTRUCTION SUPERVISION OF
CENTRAL EXPRESSWAY PROJECT SECTION 3
FROM POTHUHERA (CH. 0+100 KM) TO RAMBUKKANA (CH.13+800KM)**

Road Development Authority (RDA) under the Ministry of Transport and Highways intends to recruit experienced and qualified individual for the post of **Contract Management and Claims Specialist** to enhance its team engaged for Construction Supervision/Contract Administration of Central Expressway Project Section 3 from Pothuhera (Chainage 0+100km) to Rambukkana(Chainage 13+800km).

Applications are invited from experienced and qualified individuals. The maximum age limit is 65 years. The application submission forms, the Terms of Reference (TOR) including the qualifications/experience requirements and Conditions of Contract are attached herewith.

The consultants are selected on the basis of their qualifications, experience and performance. The remuneration is negotiable and the appointments will be on an assignment basis initially for a period of 540 days starting within the 4th quarter of 2023 and extendable on requirement, subject to performance of the Consultant.

Dully completed application/s together with complete Bio-Data and copies of relevant documentary proof of experience and qualifications should be handed over or sent under registered cover to reach the Procurement Specialist, Ministry of Transport and Highways, 7th Floor, “Maganeguma Mahamedura”, Denzil Kobbekaduwa Mawatha, Battaramulla on or before **2.00pm on 19.09.2023**.

The Post applied shall be written on the top left-hand corner of the envelope.

Further information can be obtained from the office of the Project Director, Central Expressway Project Section 3 on 011 2877708 and 011 2862801.

Chairman
Ministry Consultant Procurement Committee
Ministry of Transport and Highways
“Maganeguma Mahamedura”
Denzil Kobbekaduwa Road
Battaramulla

**APPLICATION SUBMISSION FORM
FOR
THE POST OF THE CONTRACT MANAGEMENT AND CLAIMS SPECIALIST**

SECTION A:-TECHNICAL PROPOSAL SUBMISSION FORM

1. Proposed Position :.....
2. Name of Consultant :..... {Insert full name}.....
3. Date of Birth :..... {dd/mm/yy}.....
4. Citizenship :.....
5. NIC No :.....
6. Current Resident Address and Contact details
 - Address :.....
 -
 - Land phone :.....
 - Mobile phone :.....
 - Fax No. :.....
 - Email :.....

7. Educational Qualification [*Indicate college/ university and other specialized education of expert, giving names of institutions, degrees obtained and dates of obtainment starting from NVQ Level 4(GCE A/L)*]:

Name of Institution	Qualification obtained	Date of Obtainment

8. Other Trainings[*indicate significant training undergone after Educational Qualification*]:

Name of Institution	Qualification obtained	Date of Obtainment

9. Membership of Professional Association:

Name of Institution	Qualification obtained	Date of Obtainment

10. Indicate Languages [For each language indicate proficiency:(good, fair, or poor) in speaking, reading, and writing]

	English	Sinhala	Tamil
Spoken			
Reading			
Writing			

11. Employment records relevant to this assignment: **Maximum 5 pages** [Please attach total employment records (after graduation) separately].

[Starting with present position, list in reverse order. Please provide dates, name of employer, titles of positions held, type of employment (full time, part time, contractual), types of activities performed and location of the assignment, and clients/employer reference and their contact details.]

a. Outside Sri Lanka

Period	Title (post) & Type of Employment	Employer & Contact Details	Type of activity performed & location
[e.g., May 2020-present]		M/S ABC & Pvt Ltd For references: Tel...../e-mail.....; Mr.	

b. Within Sri Lanka

Period	Title (post) Type of Employment	Employer & Contact Details	Type of activity performed & location
[e.g., May 2020-present]		M/S ABC & Pvt Ltd For references: Tel...../e-mail.....; Mr.	

12. Detailed task Assigned

(List all tasks to be performed under the assignment based on expert's own assessment)

- a...
- b.
- c.
- etc

13. Describe past experience (out of 11 above) that best illustrates capabilities to handle this tasks assigned.

- a. Name of Assignment or Project
- b. Year
- c. Location
- d. Client
- e. Main Project features
- f. Position held
- g. Activities Performed

14. Certification

I, the undersigned, certify to the best of my knowledge and belief that;

- a. This CV correctly describes my qualifications and experience
- b. I have not been debarred by any Client in the History.
- c. I certify and confirm that I will be available to carry out the assignment for which my CV has been submitted in accordance with the Terms of Reference.
- d. I do not have any conflict of interest related to this procurement.
- e. I certify that I am presently in good physical and mental health condition, that I am physically fit to undertake the assignment required by my contract with the Client and I do not have any physical and/or mental disability that could impair my ability to satisfactorily complete this assignment.
- f. I also agree to submit a medical certificate and/or other evidence if and when required by Client to prove above statement.
- g. I understand that any willful misstatement described herein may lead to my disqualification or dismissal, if engaged.

.....
[Signature of Consultant]

Name:-

Date:- (Day/Month/Year)

**APPLICATION SUBMISSION FORM
FOR
THE POST OF CONTRACT MANAGEMENT AND CLAIMS SPECIALIST**

SECTION B:- FINANCIAL PROPOSAL SUBMISSION FORM

1. I the undersigned offer to provide consultancy service in the capacity of **Contract Management and Claims Specialist** in accordance with Request for Proposal and Conditions of Contract dated at the rates/prices stated in the following financial proposal.

Description	Unit	Qty.	Rate(LKR)	Amount(LKR)
Basic remuneration-A	Months	18		
Other expected Payments-B (if applicable, please submit break-downs separately)				
Total Amount(without VAT)- Sub Total C=A+B	~	~	~	
Total Amount (without VAT) in words.....				

2. My Bank Account details.

Name of the Bank :-.....
 Branch :-.....
 Account Name :-.....
 Account No :-.....

3. The above proposals shall be valid for a period of 120 Calendar Days from the date of submission and be binding up on me subject to modification resulting from arithmetical correction and negotiation.

4. I understand that you are not bound to accept any proposal you receive.

.....
[Signature of Consultant]

Name:-.....

Date:-.....(Day/Month/Year)

**MINISTRY OF TRANSPORT & HIGHWAYS
ROAD DEVELOPMENT AUTHORITY
CENTRAL EXPRESSWAY PROJECT SECTION3
ENGAGEMENT OF CONTRACT MANAGEMENT AND CLAIMS SPECIALIST
FOR
CONSTRUCTION SUPERVISION OF
CENTRAL EXPRESSWAY PROJECT SECTION 3
FROM POTHUHERA (CH. 0+100 KM) TO RAMBUKKANA (CH.13+800KM)**

TERMS OF REFERENCE (TOR)

A. Background

1. Out of 4 sections of entire Central Expressway Project (CEP), Central Expressway Section 3(CEP3) traverses through Pothuhera (Ch. 0+000km) to Galagedara (Ch. 32+450km) via Rambukkana.
2. The construction works on CEP3 within the stretch from Ch.0+840 km (Pothuhera) to Ch.12+890 km (Rambukkana), was commenced in 2021/2022 by the Employer- Road Development Authority (RDA) established under the Ministry of Transport & Highways by awarding 17 separate Contract (Contract No. 1A to Contract No. 1Q) to local Contractors on competitive bidding procedure to complete the expressway sections up to sub base top level including the completion of structures with local funds. (*the details of these Contracts are given in Annexure 1*)
3. The RDA having its staff released to Project Management Unit of CEP3 (PMU-CEP) and with few outside staff (who are not available within the cadre of RDA) recruited through Project Management Unit (PMU) provisions, has been carrying out Construction Supervision/Contract Administration under International Federation of Consulting Engineers (FIDIC) Conditions of Contract for 'Construction for Building and Engineering Works Designed by the Employer-First Edition 1999.
4. Further, the Employer has entered into a Contract with the National Building Research Organization (NBRO) to review or submission of geotechnical designs depending on the requirement of each construction contract.
5. Although the Works on all 17 Contract Packages progressed initially to a satisfactory level, the economic crisis emanated subsequently in the Country stalled the Contract performance due to scarcity of materials (locally produced and imported) and delays in payments to the Contractors. Eventually, the Works on 17 Contract packages virtually ceased to perform and the schedule dates of competition have also been expired as at end of August 2023.
6. However, in July 2023, the Government of Sri Lanka decided to construct the CEP 3 Section from Pothuhera (Ch.0+100km) to Rambukkana (Ch. 13.800km) to an operational level.
7. With affirmation of the Government, the RDA with the consent of the Ministry of Transport & Highways decided to revive 17 stalling Contracts and the balance works within the stretch from Pothuhera (Ch.0+100km) to Rambukkana (Ch. 13.800km)to complete the expressway Section to an operational level with Government financing.
8. Further, approval has been obtained to grant maximum of 18months from July 2023 to complete the present 17 Contracts. Accordingly, the 17 Contractors were instructed to submit the programme and cost proposal for the completion of balance Works within a maximum period of 18 months. Further, the RDA expect to award contracts to complete remaining

sections within the stretch from Pothuhera (Ch.0+100km) to Rambukkana (Ch. 13.800km) within the said period of 18 months up to top of sub base level.

9. Therefore, the RDA has decided to recruit few **domestic** individual consultants to enhance its Construction Supervision/Contract Administration team for successful completion of the above 17 Contracts and remaining contracts to be awarded to complete the stretch from Pothuhera (Ch.0+100km) to Rambukkana (Ch. 13.800km) up to top of sub base level.
10. Accordingly, the RDA requires the service of a qualified and experienced expert for the post of **Contract Management and Claims Specialist** as per this TOR.

B. Objectives

The objectives of the engagement of the Contract Management and Claims Specialist is to advise the Engineer and Team Leader on all matters concerning implementation of the Contracts including the claims for extension of time for completion, additional costs, variations, dispute resolution, adjudication or litigation, amendments to the contracts, and contract termination.in order to produce outcome expected through the Construction Contracts.

C. Scope of Service

The Contract Management and Claims Specialist shall report to the Team Leader on matters concerning contractual issues. The Contract Management and Claims Specialist will have all functions and responsibilities delegated by the Engineer or by the Team Leader as the case may be.

The Scope of Service shall include, but not limited to, the following;

- a. Respond to contractual correspondences;
- b. . Evaluate the Contractor's claims and notices, prepare the Employer's claims and notices if required and provide expert opinion on the Contractor's entitlement of Claims;
- c. Substantiation of claims and prepare the Engineer's Determination;
- d. Assist negotiations with the contractor to reach an amicable settlement/agreement;
- e. Attend the meetings with the supervision staff. Prepare contractual letters related to claims as necessary;
- f. Participate in meetings related to claims, negotiations for amicable settlement and DAB referrals etc.;
- g. Support RDA to identify all potential problems and risks during claim procedures and assist in selecting options for resolving them;
- h. The Contract Management and Claims Specialist shall ensure that the Contractors have submitted all the required bank guarantees (performance securities, advance payment guarantees and guarantees for release of retention money, if any) and insurance policies required in accordance with the Contracts;
- i. Examine the Contractors' work programs (or the revised work programs);
- j. Assess and make necessary recommendations to the Team Leader on the Contractors' applications for extension of time for completion, claims for additional payment, contract variations, change to scope of work, disputes, etc.;

- k. Review all claims submitted by the Contractors and provide advice to the Team Leader of the validity of the claims, the effect of such claims on the construction schedules and the cost of the project;
- l. Preparation of responses/submissions to DAB on behalf of the Employer;
- m. Throughout the contract implementation, the Contract Management and Contract Specialist will (i) evaluate variations and be responsible for their proper format (ii) assist in assessing the contractor and employer's claims in accordance with the Contract; (iii) assess contract amendments and updated particular conditions of contract of civil work contracts (if any is needed); (iv) monitor fulfillment of contractual obligations by the Contractor and recommend proper and timely notices to be issued or other actions in accordance with the Contract; and (v) Assist Team Leader in making determinations from contractual point of view (vi) maintain claim registers;
- n. Advice Team Leader on claims, disputes and contract interpretations;
- o. Conduct site claims meetings;
- p. Any other task as reasonably requested by the Team Leader/the Engineer.

D. Deliverables

- a. The Contract Management and Claims Specialist shall submit an initial assessment report of the claims, issues and related contract conditions;
- b. Submit monthly and a final report summarizing the issues dealt with, results achieved, situation report and conclusions/recommendations for any outstanding items;
- c. Prepare responses/submissions to DAB on behalf of the Employer;
- d. Any other deliverable related to the Assignment required by the Client/Team Leader/the Engineer;
- e. The monthly report on Service performed to the Client (Project Director-CEP3) with a copy to the Team Leader within 7 days after end of each month on the format approved by the Client.

E. Required Qualifications, Experience and Competencies

Qualifications & Experience

The Contract Management and Claims Specialist shall possess BSc in civil Engineering/ Quantity Surveying and preferably with a Master's Degree in in relevant field. He shall possess Chartered membership in acceptable professional body & Diploma or above from an acceptable institution in commercial arbitration. Total experience 25 years out of which 12 years in roads/highways/expressways and 10 years in similar capacity. His qualifications shall be acceptable to practice in Sri Lanka.

Competencies

- a. Overall professionalism, integrity and commitment
- b. Good problem solving skills and ability to apply good judgement
- c. Ability to work efficiently with minimal direction
- d. Analytical skills and document drafting skills
- e. Good interpersonal skills and ability to establish and maintain effective working relations
- f. Experience in claims and contract disputes and resolution procedures.

- g. Experience with FIDIC Conditions of contract
- h. Excellent knowledge of the English language with written and oral.

F. Facilities provided by Client-RDA

The RDA will provide;

- a. Suitably equipped & air conditioned Site Office complete with utilities & internet connection and online conferencing facilities. The present Site Office is located at Wadakada, Pothuhera,
- b. Office consumables and stationery,
- c. Adequate Technical and Non- Technical Supporting Staff,
- d. Transport for official traveling,
- e. Required assistance in liaising with other stakeholders as necessary and in furnishing key reports and other necessary documents that the Contract Management and Claims Specialist needs to discharge his functions.
- f. Equipped material laboratory with Staff.
- g. House accommodation on sharing basis if required.

G. Normal Working Hours and Duration of the Assignment

- a. The Normal Working Hours are from Monday to Friday from 8.00 AM to 5.00pm PM and on Saturday: from 8, 00 AM to 1.00PM excluding mercantile holidays. However, if need arises as per respective contract, the Contract Management and Claims Specialist is expected to work beyond above limits.
- b. Duration of the Assignment is **540** Calendar Days calendar subject to extensions approved by the Client. The Contract Management and Claims Specialist is expected to start in 4th quarter of 2023.

**CENTRAL EXPRESSWAY PROJECT SECTION 3
FROM POTHUHERA (CH. 0+840 KM) TO RAMBUKKANA (CH.12+890KM)**

No	Contract No	Commencement Date	Original Completion Date	Original Contract Price Rs. Mn	Physical Progress % as at 31.08.2023		Financial Progress % as at 31.08.2023	
					Target	Actual	Target	Actual
1	RDA/CEP3/PACK1A	20.08.2021	19.08.2022	859.30	100.00	48.90	100.00	41.20
2	RDA/CEP3/PACK1B	20.08.2021	19.08.2022	743.62	100.00	31.72	100.00	41.90
3	RDA/CEP3/PACK1C	20.08.2021	19.08.2022	912.00	100.00	16.50	100.00	27.81
4	RDA/CEP3/PACK1D	24.12.2021	23.06.2023	3,587.39	100.00	4.31	100.00	19.64
5	RDA/CEP3/PACK1E	06.12.2021	05.12.2022	997.59	100.00	15.80	100.00	27.02
6	RDA/CEP3/PACK1F	06.12.2021	05.12.2022	992.83	100.00	10.49	100.00	22.14
7	RDA/CEP3/PACK1G	06.12.2021	05.12.2022	944.77	100.00	75.65	100.00	40.87
8	RDA/CEP3/PACK1H	03.12.2021	02.12.2022	872.57	100.00	6.80	100.00	24.49
9	RDA/CEP3/PACK1I	06.12.2021	05.12.2022	938.49	100.00	17.80	100.00	23.41
10	RDA/CEP3/PACK1J	24.12.2021	23.06.2023	3,963.43	100.00	8.10	100.00	20.86
11	RDA/CEP3/PACK1K	23.11.2021	22.11.2022	961.48	100.00	18.52	100.00	33.99
12	RDA/CEP3/PACK1L	30.11.2021	29.11.2022	621.55	100.00	14.88	100.00	20.84
13	RDA/CEP3/PACK1M	03.01.2022	02.07.2023	3,884.10	100.00	5.21	100.00	18.16
14	RDA/CEP3/PACK1N	23.12.2021	22.06.2023	4,497.80	100.00	7.56	100.00	19.28
15	RDA/CEP3/PACK1O	03.01.2022	02.01.2023	851.90	100.00	1.72	100.00	15.67
16	RDA/CEP3/PACK1P	23.11.2021	22.11.2022	508.83	100.00	43.62	100.00	42.82
17	RDA/CEP3/PACK1Q	27.12.2021	26.06.2023	2757.99	100.00	6.24	100.00	18.18

**ROAD DEVELOPMENT AUTHORITY
CENTRAL EXPRESSWAY PROJECT SECTION 3
ENGAGEMENT OF CONTRACT MANAGEMENT AND CLAIMS SPECIALIST FOR
CONSTRUCTION SUPERVISION OF CENTRAL EXPRESSWAY PROJECT SECTION 3
FROM POTHUHERA (CH. 0+100 KM) TO RAMBUKKANA (CH.13+800KM)
FORM OF CONTRACT AGREEMENT NO RDA/CEP3/CON/IC-2**

This **CONTRACT** (hereinafter called the “Contract”) on theday of 2023, between, on the one hand, **ROAD DEVELOPMENT AUTHORITY** established under the Road Development Authority Act No. 73 of 1981 having its head office at No. 216, “Maganeguma Mahamedura”, Denzil Kobbekaduwa Mawatha, Battaramulla (hereinafter called the “Client”) and, on the other hand, Mr.....of.....(hereinafter called the “Consultant”).

WHEREAS

- (a) the Client has requested the Consultant to provide certain services as defined in this Agreement (hereinafter called the “Services”);
- (b) the Consultant, having represented to the Client that it has the required qualifications, experience, capacity and ability, has agreed to provide the Services on the terms and conditions set forth in this Agreement;

NOW THEREFORE the parties hereto hereby agree as follows:

1. The following documents (in the precedence order given below) attached hereto shall be deemed to form an integral part of this Agreement:
 - (a) Conditions of Contract
 - (b) The General Conditions of Contract;
 - (c) The following Appendices:
 - Appendix A: Terms of Reference (TOR)
 - Appendix B: Schedule of Payments
2. The mutual rights and obligations of the Client 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 Contract;
 - (b) the Client shall make payments to the Consultant in accordance with the provisions of the Contract;
 - (c) the Remuneration has been fixed on the understanding that the Client will make available, free of charge to the Consultant, the Services, Facilities and Equipment to be provided by the Client under Appendix A.

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

.....
Client
Road Development Authority

.....
Consultant
Name:-.....

Witness 1:- Signature:-.....
Name:-.....

Witness 2:- Signature:-.....
Name:-.....

**CONDITIONS OF CONTRACT
FOR
ENGAEMENT OF CONTRACT MANAGEMENT AND CLAIMS SPECIALIST FOR
CONSTRUCTION SUPERVISION OF
CENTRAL EXPRESSWAY PROJECT SECTION 3
FROM POTHUHERA (CH. 0+100 KM) TO RAMBUKKANA (CH.13+800KM)**

1) **Definitions**

Unless the context otherwise requires, the following terms whenever used in this Contract have the following meanings:

- a. **“Applicable Law”** means the laws and any other instruments having the force of law in the Government of Democratic Socialist Republic of Sri Lanka
- b. **“Client”** means the entity with which the selected Consultant signs the Contract for the Services.
- c. **“Contract”** means the Contract signed by the Parties and all the attached documents listed in the Agreement
- d. **“Day”** means Calendar Day.
- e. **“Effective Date”** means the date on which this Contract comes into force and effect pursuant to Clause 23.
- a. **“Consultant”** means the natural person with whom the Client signed the Contract for the Services.
- b. **“In writing”** means communicated in written form with proof of receipt.
- c. **“Party”** means the Client or the Consultant, as the case may be, and **“Parties”** means both of them.
- d. **“Reimbursable expenses”** means all assignment-related costs other than Consultant’s remuneration.
- e. **“Service”** means the work to be performed pursuant to this Contract, as described in **“Terms of Reference” (TOR)**
- f. **“Period of Engagement”** means the period during which the Contract is effective.
- g. **“Third Party”** means any person or entity other than the Client or the Consultant.
- h. **“Scheduled Monthly Working Days”** are the working days defined under Clause 5.

2) **Performance of the Consultant**

During the Period of Engagement, the Consultant shall work full time basis and shall diligently and effectively complete the services in accordance with generally accepted professional standards, management practices and methodologies. The Consultant shall cooperate with the Client who reserves its right to evaluate the Consultant’s performance and to maintain a record of the performance evaluation, if the Consultant is considered for continuation or re-engagement.

The Consultant shall always act, in respect of any matter relating to this Contract, as faithful adviser to the Client, and shall at all times support and safeguard the Client’s legitimate interests in any dealings with Third Parties.

3) **Contractual Ethics**

The Client requires Consultant to observe the laws of the Democratic Socialist Republic of Sri Lanka against fraud and corruption and the highest standard of ethics during in execution of this Contract. In pursuance of this Clause, in the context of the Agreement, the Client

(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, directly or indirectly, anything of value to influence improperly the actions of another party;
- ii. “fraudulent practice” means any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation;
- iii. “coercive practice” means impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party;
- iv. “collusive practice” means an arrangement between two or more parties designed to achieve an improper purpose, including influencing improperly the actions of another party.

(b) will terminate the Contract if it determines that the Consultant has directly, or through an agent, engaged in corrupt, fraudulent, collusive, or coercive practices in execution the contract.

4) **Commencement of Contract and Period of Engagement**

The Consultant shall commence the Services on the date of signing the Contract (the Commencement Date) on which date the Contract shall come into force and effective (the “Effective Date”). The Period of Engagement shall be **540** days starting on the Commencement Date.

5) **Place of operating, Working Hours, Overtime, Leave and maintenance of Registries**

The Consultant shall operate from the Client’s Sub Office at Wadakada, Pothuhera.

The **Scheduled Monthly Working Days** are the days counted from Monday to Friday excluding mercantile holidays for that month. The Normal Working Hours are from Monday to Friday: from 8.00 AM to 5.00pm PM and on Saturday: from 8, 00 AM to 1.00PM. In general, the Consultant shall not be entitled to be paid for overtime/holiday and the remuneration shall be deemed to cover these expenses. However, if need arises for supervision as per respective contract, the Consultant shall work beyond above limits. The payments for such overtime will be made in accordance with the respective civil work contract.

The Consultant shall not be entitled for paid leave or unless otherwise approved by the Client. The Consultants’ remuneration shall be deemed to cover such leave.

The Consultant shall maintain as directed by the Client, Attendance Registry and Movement Registry and these registries shall be kept under the custody of the Client.

6) **Remuneration, Out-of-Pocket Expenses (OPE), Per Diem Allowance & Subsistence**

1. **Remuneration**

- a) The Client pays remuneration subjected to the ceiling, terms and conditions specified under Clause 7 to the Consultant for the Period of Engagement during which the Client requires the Consultant’s exclusive commitment to provide the Service. Unless otherwise subject to any variation, said rates of remuneration shall be fixed for the Period of Engagement.

- b) The Consultant shall work (in the field or in the sub office on all Scheduled Monthly Working Days as per Clause 5 above to be eligible for the full amount of remuneration. If the actual days, the Consultant spends on the service is less than the Scheduled Monthly Working Days per each month, the remuneration will be paid as follows.

$$\left\{ \frac{\text{Monthly Remuneration}}{\text{Scheduled Monthly Working Days}} \right\} \times \text{Actual days the Consultant spends on the service}$$

2. Out-of-Pocket Expenses (OPE)

- a. The Out-of-Pocket Expense is the expenditure incurred for the purchase of items such as stationery required in case of urgency, to avoid losses to the Client. The Client will reimburse OPE to the Consultant for actual cost substantiated by receipts of supporting documents. The Consultant shall obtain prior approval for such expenses.

3. Per Diem Allowance

- a. The Per Diem Allowance is a daily allowance for accommodation and subsistence when the Consultant stays overnight at a place situated 75km outside the province/s in which the Civil Construction Site/s located. The Consultant shall obtain prior approval from the Client giving comprehensive details with respect to such stay. The Per Diem Allowance shall be made at the rate...../Day as quoted by the Consultant and accepted by the Client. If the Consultant has not quoted such rate in its Financial Proposal, this Clause shall not be applicable and such cost deemed to be included in other rates and prices quoted by the Consultant.

7) Payment

- a. No Advance Payment will be made. As soon as practicable and not later than fifteen (15) days after the end of each Calendar Month, the Consultant shall submit to the Client, in duplicate, itemized statements acceptable to the Client, accompanied by copies of certified attendance, movements, invoices, vouchers and other appropriate supporting materials, of the amounts payable pursuant to the Contract as per Clause 6 above. Such statement shall distinguish that portion of the total eligible costs which pertains to Remuneration from that portion which pertains to other expenses.
- b. The payment to the Consultant is directly based on the attendance as stated under Clause 6 and a report describing the work done during the particular Calendar Month shall be attached to the statement requesting the payment. However, the Client may deduct at its discretion for non-submission or failure to submit acceptable deliverables required during the period. The maximum amount so deducted will be 10% of the monthly Remuneration. The maximum amount will be deducted for non-submission of deliverable and a % age will be deducted for noncompliance deliverables for a particular month depending on the level of acceptance.
- c. The Client shall make the payment to the Consultant within Forty Five (45) days after the receipt by the Client of such statements with supporting documents. Any statement that is not satisfactorily supported may be withheld from payment. Should any discrepancy be found to exist between actual payment and costs authorized to be incurred by the Consultant, the Client may add or subtract the difference from any subsequent payments.
- d. All payments under this Contract shall be made to the following Account of the Consultant.
 Bank Name:-.....
 Branch:-.....
 Account Name:-.....
 Account No:-.....
- e. The Consultant shall submit the final invoice within 30 days after the completion of the Period of Engagement or termination of the Contract. If no such final invoice is received

by the Client, the final payment is made based on the assessment by the Client after the settlement of any pending matters, such as Contract variations or handover of equipment by the Consultant to the Client (if any). The Client will then close the Contract account after the final payment.

- f. Total payment under this Contract shall not exceed the ceiling specified in the **Schedule of Payments** unless otherwise a Modifications and/or Variation is/are affected pursuant to Clause 24.

8) **Language**

All reports, unless otherwise specified in the TOR, and all communication related to the execution of this Contract shall be in English. However, when dealing with Public, appropriate language shall be used.

9) **Reports**

The Consultant shall submit to the Client the reports and/or other written and electronic documents as required in the TOR. The documents and data compiled or made by the Consultant or the Consultant while performing the Services shall be the sole and exclusive property of the Client. The Consultant may retain copies of such documents and data but shall not use the same for purposes unrelated to the Services without the prior approval of the Client. After concluding the Period of Engagement, the Consultant shall continue to cooperate with the Client to clarify or explain any contents in the reports the Consultant submits.

10) **Intellectual Property**

The Consultant, shall ensure that all its Services and all goods and services (including without limitation all computer hardware, software, and systems) procured by the Consultant from the Client's funds or used by the Consultant in the carrying out of the Services do not violate or infringe on any industrial property or intellectual property right or any third party claim. The Consultant shall indemnify the Client from and against any and all claims, liabilities, obligations, losses, damages, penalties, actions, suits, proceedings, demands, costs, expenses, and disbursements that may be imposed on, incurred by, or asserted against the Client for actions related to performing the Services. These include the Consultant's infringing or allegedly infringing copyright, trademark, patent, or other protected right.

11) **Public Statement and Commitment**

The Consultant shall act discretely and refrain from making public statements about the Services or any Client's projects without Client's prior written approval.

12) **Equipment**

It is agreed that the Consultant, unless otherwise approved by the Client, shall use, when necessary, his/her own equipment other than those stated under the Facilities to be provided by the Client in the TOR for the purpose of completing the assignment.

13) **Subcontracting**

The Consultant shall not assign or sub-let the Contract or any part of it without Client's prior written consent for an approved sub-contract.

14) **Disability or Incompetence of the Consultant**

The Client's engagement of the Consultant is conditional upon the Consultant's confirmation that the Consultant is healthy and without physical or mental disability that may interfere with performing the Services. The Consultant shall, if called upon to do so, give the Client any medical or other evidence as Client may reasonably require.

15) **Reporting Unusual Incidence**

The Consultant shall report immediately to the Client any accident involving his personal injury or 3rd party damage during the Period of Engagement. The Consultant shall also report

to the Client immediately any circumstances which might hinder or prejudice performance of the Services.

16) **Suspension & Termination of Contract**

- a. The Client may suspend performance of the whole or part of the Contract, or the payment of Consultant's fees hereunder, for a period as the Client deems necessary if the Client determines that a condition has arisen which, in the reasonable opinion of the Client, interferes, or threatens to interfere, with the effective carrying out of the assignment or accomplishing the Services for a specified period of time not to exceed thirty (60) working days;
- b. Notwithstanding the above, this Contract may be terminated by the Client;
 - i. upon giving 28 days notice to the Consultant of intention to terminate for Client's convenience or;
 - ii. upon giving 14 days notice to the Consultant, if the Client determines that the Consultant has engaged in unethical behavior, or corrupt, fraudulent, collusive, or coercive practices as defined under Clause 3 in executing this Contract or
 - iii. upon giving 14 days notice to the Consultant, if the Client determines that the Consultant fails to perform any of its obligations under this Contract or the Services to date are so deficient as to demonstrate that the Services cannot be satisfactorily performed. or
 - iv. upon giving 14 days notice to the Consultant, if the Client determines to terminate the project wholly or partly or
 - v. upon giving 14 days notice to the Consultant, if the Client finds reasonable evidence that the Consultant is unable to perform or to complete the Services due to ill health of the Consultant.
 - vi. upon giving 7 days notice to the Consultant, if the Consultant has failed to commence the Service on the Effective Date.
 - vii. upon giving 28 days notice to the Consultant, if, 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 sixty (60) calendar days;
 - viii. upon giving 28 days notice, if the Consultant fails to comply with any final decision reached as a result of arbitration pursuant to Clause 20 hereof.
- c. The Consultant may terminate the Contract by not less than thirty (28) days' written notice to the Client, in case of the occurrence of any of the following events;
 - i. if there are circumstances beyond the Consultant's reasonable control which make it impossible to carry out the Services. Consultant must substantiate such reasons in writing and the Client must accept the justification in order that such a termination can occur. Upon the Client's confirmation in writing, or the failure of the Client to respond to such submission of justification within fifteen (14) days from receipt, the Consultant shall be relieved from performing the Services and this Contract shall be terminated.
 - ii. If the Client fails to pay any money due to the Consultant pursuant to this Contract and not subject to dispute pursuant to Clause 20 hereof within forty-five (42) days after receiving written notice from the Consultant that such payment is overdue.

- iii. If, 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 sixty (60) days.
- iv. If the Client fails to comply with any final decision reached as a result of arbitration pursuant to Clause 20 hereof.

17) **Termination Procedure**

Upon termination of the Contract or the Client giving such notice, the Consultant, shall immediately bring the Services to an orderly closure and reduce expenditures to a minimum.

Unless the Consultant's default causes termination, the Consultant, is entitled to full reimbursement for costs duly and reasonably incurred prior to the termination date. Reasonable costs incurred for the orderly closure of Services are reimbursable.

If termination is occasioned by the Consultant's default, the Client shall recover from the Consultant for any losses and damages incurred by the Client and any extra costs which may incur in completing the balance Service. After recovering such losses, damages and extra costs, the Client shall pay any balance to the Consultant.

18) **Notices and Requests**

Any notice or request required or permitted under this Contract shall be in writing. Such notice or request shall be deemed to be fully given or made when it is delivered by hand, mail, or fax to the intended party.

19) **Inspection and Audit**

The Consultant agrees to allow the Client or a representative authorized by the Client to inspect and audit any accounts, documents, and records relating to this Contract.

20) **Settlement of Disputes**

- a. The Parties shall attempt to settle all disputes arising out of or connected with this Contract or its interpretation amicably examining the matter(s) in dispute and considering the availability of options to resolve such dispute. The Parties shall come to an agreement upon the resolution of dispute amicably and shall act appropriately to reach a settlement.
- b. Any dispute or difference arising out of this Contract or in connection with it which cannot be resolved amicably between the Parties shall be settled by arbitration under the rules of the Institute for the Development of Commercial Law and Practice, ICLP, No 61, Carmel Road, Colombo 03 to be settled as per Arbitration Act No 11 of 1995. The arbitration shall take place Colombo. The Arbitration award shall be final and binding up on the Parties and shall replace other remedies. The language of arbitration shall be English and each Party shall share the cost arbitration process.

21) **Law Governing Contract**

This Contract, its meaning and interpretation, and the relation between the Parties shall be governed by the Applicable Law.

22) **Taxes and Duties**

Unless otherwise specified in the Contract, the Consultant, shall pay such taxes, duties, levies, fees and other impositions as may be levied under the Applicable Law except Value Added Tax.

23) **Modifications or Variations**

- a. Any modification or variation of the terms and conditions of this Contract, including any modification or variation of the Scope of Services, may only be made by written agreement between the Parties. However, each Party shall give due consideration to any proposals for modification or variation made by the other Party.

- b. In cases of substantial modifications or variations, the prior written consent of the Client is required.

24) **Force Majeure**
Definition

- a. For the purposes of this Contract, “Force Majeure” means an event which is beyond the reasonable control of a Party, is not foreseeable, is unavoidable, 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 nor
 - (ii) Any event which a diligent Party could reasonably have been expected both to take into account at the time of the conclusion of this Contract, and avoid or overcome in the carrying out of its obligations hereunder nor
 - (iii) Insufficiency of funds or failure to make any payment required hereunder.

25) **No Breach of Contract**

The failure of a Party to fulfill any of its obligations hereunder shall not be considered to be a breach of this Contract 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 Contract

26) **Measures to be Taken**

- (a) A Party affected by an event of Force Majeure shall continue to perform its obligations under the Contract as far as is reasonably practical, and shall take all reasonable measures to minimize the consequences of any event of Force Majeure.
- (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 case not later than fourteen (14) days following the occurrence of such event, providing evidence of the nature and cause of such event, and shall similarly give written notice of the restoration of normal conditions as soon as possible.
- (c) Any period within which a Party shall, pursuant to this Contract, 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.
- (d) During the period of their inability to perform the Services as a result of an event of Force Majeure, the Consultant, upon instructions by the Client, shall either:
 - (i) demobilize, in which case the Consultant shall be reimbursed for costs he/she reasonably and necessarily incurred, and, if required by the Client, in reactivating the Services; or
 - (ii) continue with the Services to the extent possible, in which case the Consultant shall continue to be paid under the terms of this Contract and be reimbursed for additional costs reasonably and necessarily incurred.
- (e) In the case of disagreement between the Parties as to the existence or extent of Force Majeure, the matter shall be settled according to Clause 20.

