



**SELECTION OF TRANSACTION ADVISOR**

**FOR 'METRO CITY'**

**PROJECT**

Request for Proposal (RFP)

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Park Avenue, Kochi - 682 011  
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## Disclaimer

The information contained in this Request for Proposal document ("**RFP**") or subsequently provided to Applicants, whether verbally or in documentary or any other form by or on behalf of the Kochi Metro Rail Ltd., or any of its employees or advisers, is provided to Applicants on the terms and conditions set out in this RFP and such other terms and conditions subject to which such information is provided.

This RFP is not an agreement and is neither an offer nor invitation by the Kochi Metro Rail Ltd. to the prospective Applicants or any other person. The purpose of this RFP is to provide interested parties with information that may be useful to them in the formulation of their Proposals pursuant to this RFP. This RFP includes statements, which reflect various assumptions and assessments arrived at by the Authority in relation to the Consultancy. Such assumptions, assessments and statements do not purport to contain all the information that each Applicant may require. This RFP may not be appropriate for all persons, and it is not possible for the Kochi Metro Rail Ltd., its employees or advisers to consider the objectives, technical expertise and particular needs of each party who reads or uses this RFP. The assumptions, assessments, statements and information contained in this RFP, may not be complete, accurate, adequate or correct. Each Applicant should, therefore, conduct its own investigations and analysis and should check the accuracy, adequacy, correctness, reliability and completeness of the assumptions, assessments and information contained in this RFP and obtain independent advice from appropriate sources.

Information provided in this RFP to the Applicants is on a wide range of matters, some of which depends upon interpretation of law. The information given is not an exhaustive account of statutory requirements and should not be regarded as a complete or authoritative statement of law. The Kochi Metro Rail Ltd., accepts no responsibility for the accuracy or otherwise for any interpretation or opinion on the law expressed herein.

The Kochi Metro Rail Ltd., its employees and advisers make no representation or warranty and shall have no liability to any person including any Applicant under any law, statute, rules or regulations or tort, principles of restitution or unjust enrichment or otherwise for any loss, damages, cost or expense which may arise from or be incurred or suffered on account of anything contained in this RFP or otherwise, including the accuracy, adequacy, correctness, reliability or completeness of the RFP and any assessment, assumption, statement or information contained therein or deemed to form part of this RFP or arising in any way in this Selection Process.

The Kochi Metro Rail Ltd., also accepts no liability of any nature whether resulting from negligence or otherwise however caused arising from reliance of any Applicant upon the statements contained in this RFP.

The Kochi Metro Rail Ltd., may in its absolute discretion, but without being under any obligation to do so, update, amend or supplement the information, assessment or assumption contained in this RFP.

The issue of this RFP does not imply that the Kochi Metro Rail Ltd., is bound to select an Applicant or to appoint the Selected Applicant, as the case may be, for the Consultancy and the Kochi Metro Rail Ltd., reserves the right to reject all or any of the Proposals without assigning any reasons whatsoever.

The Applicant shall bear all its costs associated with or relating to the preparation and submission of its Proposal including but not limited to preparation, copying, postage, delivery fees, expenses associated with any demonstrations or presentations which may be required by the Kochi Metro Rail Ltd., or any other costs incurred in connection with or relating to its Proposal. All such costs and expenses will remain with the Applicant and the Kochi Metro Rail Ltd., shall not be liable in any manner whatsoever for the same or for any other costs or other expenses incurred by an Applicant in preparation or submission of the Proposal, regardless of the conduct or outcome of the Selection Process

## Glossary

Additional Costs	As in Item H of Form-2 of Appendix-II
Agreement	As defined in Schedule-2
Agreement Value	As defined in Clause 6.1.2 of Schedule-2
Applicable	Laws As defined in Schedule-2
Applicant	As defined in Clause 2.1.1
Associate	As defined in Clause 2.3.3
Authorised Representative	As defined in Clause 2.13.3
Award	As defined in Clause 9.4.3 of schedule 2
Bid Security	As defined in Clause 2.20.1
KMRL	As defined in Clause 1.1.1
Concession Agreement	As defined in Clause 1.1.2
Concessionaire	As defined in Clause 1.1.2
Conditions of Eligibility	As defined in Clause 2.2.1
Confidential Information	As defined in Clause 3.3 of Schedule 2
Conflict of Interest	As defined in Clause 2.3.1
Consultancy	As defined in Clause 1.2
Consultancy Team	As defined in [Clause 8] of Schedule-1
Consultant	As defined in Clause 1.2
CV	Curriculum Vitae
Deliverables	As defined in Para 5 of Schedule-1
Documents	As defined in Clause 2.12
Effective Date	As defined in Clause 2.1 of Schedule-2
Eligible Assignments	As defined in Clause 3.1.4
Expatriate Personnel	As defined in Clause 1.1.1(i) of Schedule-2
Feasibility Report or FR	As specified in Para 4.5 of Schedule-1
Financial Expert	As defined in Clause 2.1.4
Financial Proposal	As defined in Clause 2.15.1
Form of Agreement	Form of Agreement as in Schedule-2
INR, Re. Rs.	Indian Rupee(s)
Inception Report	As specified in Para 5 (A) of Schedule-1
Key Date or KD	As defined in Clause 6.2 of Schedule-1
Key Personnel	As defined in Clause 2.1.4
Lead Member	As defined in Clause 2.1.1
LOA	Letter of Award
MCA	As defined in Clause 1.1.3
Member	As defined in Clause 2.3.3(a)
Official Website	As defined in Clause 1.11.2
Personnel	As defined in Clause 1.1.1(l) of Schedule-2
PPP/BOT/JV	Public Private Partnership
Preliminary Report	As defined in Clause 4.1 of Schedule 1
Professional Personnel	As defined in Clause 2.14.6
Prohibited Practices	As defined in Clause 4.1
Project	As defined in Clause 1.1.1
Project Manager	As defined in Clause 4.6 of Schedule-2
Project Team	As defined in Para 7.1 of Schedule 1
Proposal	As defined in Clause 1.2
Proposal Due Date or PDD	As defined in Clauses 1.5 and 1.8
Resident Personnel	As defined in Clause 1.1.1(o) of Schedule-2
Revenue Model	As defined in Clause 1.2
Rules	As defined in Clause 9.4.1 of Schedule 2
RFP	As defined in Disclaimer
Selected Applicant	As defined in Clause 1.6
Selection Process	As defined in Clause 1.6
Services	As defined in Clause 1.1.1(q) of Schedule-2
Sole Firm	As defined in Clause 2.1.1
Statement of Expenses	As defined in Note 13, Form-2 of Appendix-II
Statutory Auditor	An Auditor appointed under Applicable Laws
Subject Person	As defined in 2.3.3 (a)
Sub-Consultant	As defined in Clause 1.1.1(r) of Schedule-2
Support Personnel	As defined in Clause 2.14.6
Team Leader	As defined in Clause 2.1.4
Technical Proposal	As defined in Clause 2.14.1
TOR	As defined in Clause 1.1.3
US\$	United States Dollar

The words and expressions beginning with capital letters and defined in this document shall, unless repugnant to the context, have the meaning ascribed thereto herein.

# Invitation for Proposal

## 1. INTRODUCTION

### 1.1 Background

- 1.1.1 Kochi Metro Rail Ltd., represented by its Director Projects (the KMRL) intends to implement "**METRO CITY**" (the Project) in 17.315 acres of land in Kakkanad, Kochi under a suitable mechanism as found feasible by the consultant appointed for the purpose. The implementation mechanism and the product mix of residential, recreational, commercial etc is to be recommended by the consultant based on their study.

The indicative cost of the project is Rs.1900 Crores (including land value)

- 1.1.2 With a view to inviting bids for the Project, the KMRL has decided to conduct a Techno-Commercial feasibility study for determining the technical feasibility and financial viability of the Project proposal. If found technically feasible and financially viable, the Project may be awarded on PPP/BOT/JV/JV basis to a private entity (the "Concessionaire") who will be selected through a competitive bidding process. The Project would be implemented in accordance with the terms and conditions stated in the concession agreement to be entered into between the KMRL and the Concessionaire (the "Concession Agreement"). The project is to be planned for maximum commercial exploitation of the land owned by the KMRL and for bringing up an upfront fee of not less than Rs.750/- crores along with a percentage of the annual revenue share.
- 1.1.3 In pursuance of the above, the KMRL has decided to carry out the process for selection of a Transaction Advisor (the consultant) for preparing the feasibility report and bid documents and assist the KMRL for selection of concessionaires and preparation of concession agreement. The consultant will render all technical services to design and develop an appropriate project structure including a profitable revenue model and based on different models, prepare project cost, financial analysis, prepare feasibility report (including commercial and legal services) prepare master plans and assist bidding process to find out a suitable '**design and build**' concessionaire and provide services to prepare the draft concession agreement for implementing the "**METRO CITY**" project based on Model Concession agreements for PPP/BOT/JV (the MCA) of Planning Commission, Government of India. The consultant shall appraise the project, develop a revenue model, project structure and prepare the feasibility report in accordance with Terms of Reference specified at schedule - 1 (the "TOR") and assist the KMRL in bidding process for selection of suitable concessionaire.
- 1.1.4 From within the revenue accruals of the "**METRO CITY**" project, provision is to be made for the construction of 150 quarters in lieu of the demolished quarters for the state PWD in the alternate land earmarked for the purpose.
- 1.1.5 The consultant has to also develop profitable revenue models including project mix in the land earmarked for property development including multi-level parking at Metro Stations of Aluva, Kalamassery, Edapally, JLN Stadium, Kaloor, and Petta.
- 1.1.6 The consultant will carry out TOD study of the Tripunithura- Kakkanad stretch and Kakkanad-Kalamassery stretch as per the scope of work given in Schedule 1. The proposed development as per the TOD study of this stretch will be factored in while developing the Project Proposal and the Revenue Model of the "**Metro City**".

### 1.2 Request for Proposal

The KMRL invites Proposals (the "Proposals") for selection of a Transaction Advisor (the "Consultant") who shall design and develop the appropriate project structure as also a profitable revenue model for the land including provision of 150 quarters in lieu of the demolished quarters to the state PWD in the alternate land earmarked for the purpose as also design and develop appropriate project structure and profitable revenue models in the land earmarked for property development including multi-level parking at Metro Stations of Aluva, Kalamassery, Edapally, JLN Stadium, Kaloor, and Petta (The Revenue Model), prepare a Feasibility Report for development of the Project, prepare the bid documents for selection of concessionaire and assist the KMRL in the process.

The Feasibility Report shall include all requisite studies, including market study, demand assessment, conceptual design conforming to rules and regulations and recommendations for the development mechanism to be followed. The project development proposed shall be with utmost consideration for the ecology of the existing surroundings. The KMRL intends to select the Consultant through an open competitive bidding in accordance with the procedure set out herein.

Carry out TOD study of the Tripunithura- Kakkanad stretch and Kakkanad-Kalamassery stretch of Kochi Metro Phase Two.

### **1.3 Due diligence by Applicants**

Applicants are encouraged to inform themselves fully about the assignment and the local conditions before submitting the Proposal by paying a visit to the KMRL and the Project site, sending written queries to the KMRL, and attending a Pre-Proposal Conference on the date and time specified in Clause 1.10.

### **1.4 Sale of RFP Document**

RFP document can be obtained between 1000 hrs and 1700 hrs on all working days from 11<sup>th</sup> October 2013 to 31<sup>st</sup> October 2013 on payment of a non-refundable fee of Rs 25,000.00 (Rupees twenty five thousand only) + VAT (5%) in the form of a demand draft or banker's cheque drawn on any Scheduled Bank in India in favour of the KMRL and payable at Kochi. The document can also be downloaded from the Official Website of the KMRL. In case of a downloaded form, the Applicant shall submit the cost of RFP document as D/D drawn in favour of the KMRL payable at Kochi along with the technical bid document. In case the applicant with downloaded form, wishes to attend the Pre-Proposal conference, DD should be submitted before attending the same.

### **1.5 Validity of the Proposal**

The Proposal shall be valid for a period of not less than 180 days from the Proposal Due Date (the "PDD").

### **1.6 Brief description of the Selection Process**

The KMRL has adopted a two stage selection process (collectively the "Selection Process") in evaluating the Proposals comprising technical and financial bids to be submitted in sealed envelopes separately on Proposal Due Date. In the first stage, a technical evaluation will be carried out as specified in Clause 3.1. In order to establish the project parameter familiarity, a competitive dialogue for development of a base financial and project model will be held and will be involved to submit outline solutions for the project and Phase I shortlisted applicants shall give a presentation of the same before the evaluation committee. Based on the technical evaluation, a list of short-listed applicants shall be prepared as specified in Clause 3.2. In the second stage, a financial evaluation will be carried out as specified in Clause 3.3. Proposals will finally be ranked according to their combined technical and financial scores as specified in Clause 3.4. The first ranked Applicant shall be selected for negotiation (the "Selected Applicant") while the second ranked Applicant will be kept in reserve.

**1.7 Payment to consultant**

- 1.7.1 For the purposes of technical evaluation of Applicants, only INR will be considered as the applicable currency.
- 1.7.2 All payments to the Consultant shall be made in INR in accordance with the provisions of this RFP. The Consultant may convert INR into any foreign currency as per Applicable Laws and the exchange risk, if any, shall be borne by the Consultant.

**1.8 Schedule of Selection Process**

The following schedule shall be adhered for the selection process of the consultant.

	Event Description	Date
1	Last date for receiving queries/clarifications	05th November 2013
2	Pre-Proposal Conference	28th October 2013
3	KMRL response to queries	13 <sup>th</sup> November 2013
4	Proposal Due Date (PDD)	1400h On 25 <sup>th</sup> November 2013
5	Opening of Technical Proposals	1500h On 25 <sup>th</sup> November 2013
6	Presentation on understanding the scope of work along with suggestion on methodology of implementation giving a base line and project model for the project implementation by the Phase I shortlisted applicants.	Will be intimated
7	Announcement of short list	Will be intimated
8	Opening of financial proposal (FPD)	Will be intimated
9	Letter of Award (LOA)	Within 15 days of FPD
10	Signing of Agreement	Within 15 days of LOA
11	Validity of Applications (180 days from Proposal Due Date (PDD)	20 <sup>th</sup> April 2014

**1.9 Pre-Proposal visit to the Site and inspection of data**

Prospective applicants may visit the Site and review the available data at any time prior to PDD. For this purpose, they will provide at least two days notice to the nodal officer specified below:

General Manager,  
 Kochi Metro Rail Limited,  
 Regd Office: 8<sup>th</sup> Floor, Revenue Towers, Park Avenue,  
 Kochi - 682 011,  
 Phone: 0484-2380980  
 Fax-0484-2380686

However, for the convenience of the Applicants, a pre-Proposal visit to the Site has been arranged on **28<sup>th</sup> October 2013 at 1000 hrs**. The Applicants who desire to avail this facility may visit Kochi on the date and time mentioned above.

**1.10 Pre-Proposal Conference**

The date, time and venue of Pre-Proposal Conference shall be:

Date: **28<sup>th</sup> October 2013**, Time: **1430 hrs**  
 Venue: Project Director's Office, Kochi Metro Rail Ltd., Kochi: 682 011.



**1.11 Communications**

1.11.1 All communications including the submission of Proposal should be addressed to:

Director Projects  
Kochi Metro Rail Ltd.,  
8<sup>th</sup> Floor, Revenue Tower,  
Park Avenue,  
Kochi ó 682 011  
KERALA  
Phone:0484-2380980  
Fax: 0484-2380686

1.11.2 The Official Website of the **KMRL** is: <http://www.kochimetro.org>

1.11.3 All communications, including the envelopes, should contain the following information, to be marked

**RFP Notice. No.1/KMRL/2013-14**

**FOR SELECTION OF TRANSACTION ADVISOR**

**FOR 'METRO CITY' PROJECT**

## 2. INSTRUCTIONS TO APPLICANTS

### A. GENERAL

#### 2.1 Scope of Proposal

2.1.1 Detailed description of the objectives, scope of services, deliverables and other requirements relating to this Consultancy are specified in this RFP. In case an applicant firm possesses the requisite experience and capabilities required for undertaking the Consultancy, it may participate in the Selection Process either individually (the “**Sole Firm**”) or as lead member of a consortium of firms (the “**Lead Member**”) in response to this invitation. The term applicant (the “**Applicant**”) means the Sole Firm or the Lead Member, as the case may be. The manner in which the Proposal is required to be submitted, evaluated and accepted is explained in this RFP.

2.1.2 Applicants are advised that the selection of Consultant shall be on the basis of an evaluation by the **KMRL** through the Selection Process specified in this RFP. Applicants shall be deemed to have understood and agreed that no explanation or justification for any aspect of the Selection Process will be given and that the **KMRL**'s decisions are without any right of appeal whatsoever.

2.1.3 The Applicant shall submit its Proposal in the form and manner specified in this Part-2 of the RFP. The Technical proposal shall be submitted in the form at Appendix-I and the Financial Proposal shall be submitted in the form at Appendix-II. Upon selection, the Applicant shall be required to enter into an agreement with the **KMRL** in the form specified at Schedule-2.

#### 2.1.4 Key Personnel

The Consultancy Team shall consist of the following key personnel (the “**Key Personnel**”) who shall discharge their respective responsibilities as specified below:

Key Personnel	Responsibilities
a <b>PPP Expert cum Project Manager (Team Leader)</b>	He/She will lead, co-ordinate and supervise the consultancy team for delivering the consultancy in a timely manner as envisaged in this RFP. He shall not delegate responsibilities except with the prior written approval of the <b>KMRL</b> .
b <b>Financial Expert (the Financial Expert)</b>	He/She will co-ordinate and ensure development of a suitable revenue model in a timely manner as envisaged in this RFP. He will be responsible for establishing financial feasibility of the project.
c <b>Real Estate Expert</b>	He/She will be responsible for establishing the technical feasibility of the project and its structural elements. He will suggest the product mix and review cost estimates.

- d **Legal Expert** He/She shall be responsible for providing the legal assistance and advisory services in the bidding process, drafting concession agreement and bid documents.

**2.2 Conditions of Eligibility of Applicants**

2.2.1 Applicants must read carefully the minimum conditions of eligibility (the “**Conditions of Eligibility**”) provided herein. Proposals of only those Applicants who satisfy the Conditions of Eligibility will be considered for evaluation.

2.2.2 To be eligible for evaluation of its Proposal, the Applicant shall fulfil the following:

- (A) **Technical Capacity:** The Applicant shall have been actively involved in providing consultancy services of similar nature for at least five consultancy assignments in the last three years. Eligible Assignments as specified in Clause 3.1.4. Preference will be given to those who have provided consultancy services for developing techno-commercial/financial hubs.
- (B) **Financial Capacity:** The Applicant Firm should demonstrate a minimum Annual Turnover of Rs.100 crore (Rupees One Hundred Crore) per annum during each of the 3 (three) financial years preceding the current year. For explicit purposes the Financial Years under consideration are 2011-12, 2010-11 and 2009-10. For the purpose of evaluation, Applicants having comparatively larger revenues from professional fees shall be given added weightage. The Financial Capacity should be demonstrated through a Certificate from a Chartered Accountant and supported by Audited Financial Statements.
- (C) **Availability of Key Personnel:** The Applicant shall offer and make available all Key Personnel meeting the requirements specified in sub-clause (D) below.
- (D) **Conditions of Eligibility for Key Personnel:** Each of the Key Personnel must fulfil the Conditions of Eligibility specified below:

	<b>Key Personnel</b>	<b>Educational Qualification</b>	<b>Length of Professional Service</b>	<b>Experience on Eligible Assignments</b>
a	PPP Expert cum Project Manager	Civil Engineering & MBA (Finance)	15 years	15 years in Infrastructure Development field. He/She should have led the consultancy team in development of project models and / or bid documents for at least 5 completed PPP/BOT/JV /BOT/JV Projects
b	Financial Expert	CA/MBA (Finance)/CFA	15 years	He should have been the financial lead in the consultancy team for financial analysis preparation of revenue model and bid documents for at least 3

eligible assignments of which at least 2 should be PPP/BOT/JV Projects.

c	Real Estate Expert	Graduate Engineer/ Masters in Planning/ MBA	10 years	He will be responsible for establishing the technical feasibility of the project and its structural elements. He should have led the team in successful execution of at least 5 Real Estate/ Township Development Projects.
d	Legal Expert	Bachelor in Law or equivalent	10 years	He should have 10 years experience in commercial contracts. He should have led the legal team for not less than one PPP engagement.

- 2.2.3 The Applicant Firm shall enclose with its Proposal, certificate(s) from its Statutory Auditors/Chartered Accountant stating its Annual Turnover during each of the past three financial years preceding the current financial year and the fee received in respect of each of the Eligible Assignments specified in the Proposal. For more explicit purposes the Financial Years under consideration are 2011-12, 2010-11 and 2009-10. In the event that the Applicant does not have a statutory auditor, it shall provide the requisite certificate(s) from the firm of Chartered Accountants that ordinarily audits the annual accounts of the Applicant and supported by Audited Financial Statements.
- 2.2.4 The Applicant should submit a Power of Attorney as per the format at Form-4 of Appendix-I; provided, however, that such Power of Attorney would not be required if the Application is signed as a partner of the Applicant, in case the Applicant is a partnership firm or limited liability partnership.
- 2.2.5 Any entity which has been barred by the Government of India, any State Government, a statutory authority or a public sector undertaking, as the case may be, from participating in any project, and the bar subsists as on the date of Proposal, would not be eligible to submit a Proposal either by itself or through its Associate.
- 2.2.6 An Applicant or its Associate should have, during the last three years, neither failed to perform on any agreement, as evidenced by imposition of a penalty by an arbitral or judicial authority or a judicial pronouncement or arbitration award against the Applicant or its Associate, nor been expelled from any project or agreement nor have had any agreement terminated for breach by such Applicant or its Associate.
- 2.2.7 While submitting a Proposal, the Applicant should attach clearly marked and referenced continuation sheets in the event that the space provided in the specified forms in the Appendices is insufficient. Alternatively, Applicants may format the specified forms making due provision for incorporation of the requested information.

### 2.3 Conflict of Interest

- 2.3.1 An Applicant shall not have a conflict of interest that may affect the Selection Process or the Consultancy (the "**Conflict of Interest**"). Any Applicant found to have a Conflict of Interest shall be disqualified. In the event of disqualification, the **KMRL** shall forfeit and appropriate the Bid Security as mutually agreed genuine pre-estimated compensation and damages payable to the **KMRL** for, *inter alia*, the time, cost and effort of the **KMRL** including consideration of such Applicant's

Proposal, without prejudice to any other right or remedy that may be available to the **KMRL** hereunder or otherwise.

- 2.3.2 The **KMRL** requires that the Consultant provides professional, objective, and impartial advice and at all times hold the **KMRL's** interests paramount, avoid conflicts with other assignments or its own interests, and act without any consideration for future work. The Consultant shall not accept or engage in any assignment that would be in conflict with its prior or current obligations to other clients, or that may place it in a position of not being able to carry out the assignment in the best interests of the **KMRL**.
- 2.3.3 Some guiding principles for identifying and addressing Conflicts of Interest have been illustrated in the Guidance Note at Schedule-3. Without limiting the generality of the above, an Applicant shall be deemed to have a Conflict of Interest affecting the Selection Process, if:
- a) the Applicant, its consortium member (the "**Member**") or Associate (or any constituent thereof) and any other Applicant, its consortium member or Associate (or any constituent thereof) have common controlling shareholders or other ownership interest; provided that this disqualification shall not apply in cases where the direct or indirect shareholding or ownership interest of an Applicant, its Member or Associate (or any shareholder thereof having a shareholding of more than 5 per cent of the paid up and subscribed share capital of such Applicant, Member or Associate, as the case may be) in the other Applicant, its consortium member or Associate is less than 5% (five per cent) of the subscribed and paid up equity share capital thereof; provided further that this disqualification shall not apply to any ownership by a bank, insurance company, pension fund or a public financial institution referred to in section 4A of the Companies Act, 1956. For the purposes of this Clause 2.3.3(a), indirect shareholding held through one or more intermediate persons shall be computed as follows: (aa) where any intermediary is controlled by a person through management control or otherwise, the entire shareholding held by such controlled intermediary in any other person (the "**Subject Person**") shall be taken into account for computing the shareholding of such controlling person in the Subject Person; and (bb) subject always to sub-clause (aa) above, where a person does not exercise control over an intermediary, which has shareholding in the Subject Person, the computation of indirect shareholding of such person in the Subject Person shall be undertaken on a proportionate basis; provided, however, that no such shareholding shall be reckoned under this sub-clause (bb) if the shareholding of such person in the intermediary is less than 26% (twenty six per cent) of the subscribed and paid up equity shareholding of such intermediary; or
  - b) a constituent of such Applicant is also a constituent of another Applicant; or
  - c) such Applicant or its Associate receives or has received any direct or indirect subsidy or grant from any other Applicant or its Associate; or
  - d) such Applicant has the same legal representative for purposes of this Application as any other Applicant; or
  - e) such Applicant has a relationship with another Applicant, directly or through common third parties, that puts them in a position to have access to each other's information about, or to influence the Application of either or each of the other Applicant; or
  - f) there is a conflict among this and other consulting assignments of the Applicant (including its personnel and Sub-consultant) and any subsidiaries or entities controlled by such Applicant or having common controlling shareholders. The duties of the Consultant will depend on the circumstances of each case. While providing consultancy services to the **KMRL** for this particular assignment, the Consultant shall not take up any assignment that by its nature will result in conflict with the present assignment; or
  - g) a firm which has been engaged by the **KMRL** to provide goods or works or services for a project, and its Associates, will be disqualified from providing consulting services for the same project save and except as provided in Clause 2.3.4; conversely, a firm hired to provide consulting services for the preparation or implementation of a project, and its Members or Associates, will be disqualified from subsequently providing goods or works or services related to the same project; or

- h) the Applicant, its Member or Associate (or any constituent thereof), and the bidder or Concessionaire, if any, for the Project, its Consultant(s) or sub-Consultant(s) (or any constituent thereof) have common controlling shareholders or other ownership interest; provided that this disqualification shall not apply in cases where the direct or indirect shareholding or ownership interest of an Applicant, its Member or Associate (or any shareholder thereof having a shareholding of more than 5% (five per cent) of the paid up and subscribed share capital of such Applicant, Member or Associate, as the case may be,) in the bidder or Concessionaire, if any, or its Consultant(s) or sub-Consultant(s) is less than 5% (five per cent) of the paid up and subscribed share capital of such Concessionaire or its Consultant(s) or sub-Consultant(s); provided further that this disqualification shall not apply to ownership by a bank, insurance company, pension fund or a Public Financial Institution referred to in section 4A of the Companies Act, 1956. For the purposes of this sub-clause (h), indirect shareholding shall be computed in accordance with the provisions of sub-clause (a) above.

For purposes of this RFP, Associate means, in relation to the Applicant, a person who controls, is controlled by, or is under the common control with such Applicant (the “Associate”). As used in this definition, the expression “control” means, with respect to a person which is a company or corporation, the ownership, directly or indirectly, of more than 50% (fifty per cent) of the voting shares of such person, and with respect to a person which is not a company or corporation, the power to direct the management and policies of such person by operation of law or by contract.

- 2.3.4 An Applicant eventually appointed to provide Consultancy for this Project, and its Associates, shall be disqualified from subsequently providing goods or works or services related to the construction and operation of the same Project and any breach of this obligation shall be construed as Conflict of Interest; provided that the restriction herein shall not apply after a period of 5 (five) years from the completion of this assignment or to consulting assignments granted by banks/ lenders at any time; provided further that this restriction shall not apply to consultancy/ advisory services performed for the **KMRL** in continuation of this Consultancy or to any subsequent consultancy/ advisory services performed for the **KMRL** in accordance with the rules of the **KMRL**. For the avoidance of doubt, an entity affiliated with the Consultant shall include a partner in the Consultant’s firm or a person who holds more than 5% (five per cent) of the subscribed and paid up share capital of the Consultant, as the case may be, and any Associate thereof.

## 2.4 Number of Proposals

No Applicant or its Associate shall submit more than one Application for the Consultancy. An Applicant applying individually or as an Associate shall not be entitled to submit another application either individually or as a member of any consortium, as the case may be.

## 2.5 Cost of Proposal

The Applicants shall be responsible for all of the costs associated with the preparation of their Proposals and their participation in the Selection Process including subsequent negotiation, visits to the **KMRL**, Project site etc. The **KMRL** will not be responsible or in any way liable for such costs, regardless of the conduct or outcome of the Selection Process.

## 2.6 Site visit and verification of information

Ascertaining for themselves the site conditions, traffic, location, surroundings, climate, access to the site, availability of drawings and other data with the **KMRL**, and collection of preliminary data required, Applicable Laws and regulations or any other matter considered relevant by

them. Visits shall be organized for the benefit of prospective Applicants on dates, time and venue as specified in Clause 1.9.

**2.7 Acknowledgement by Applicant**

2.7.1 It shall be deemed that by submitting the Proposal, the Applicant has:

- (a) made a complete and careful examination of the RFP;
- (b) received all relevant information requested from the **KMRL**;
- (c) acknowledged and accepted the risk of inadequacy, error or mistake in the information provided in the RFP or furnished by or on behalf of the **KMRL** or relating to any of the matters referred to in Clause 2.6 above;
- (d) satisfied itself about all matters, things and information, including matters referred to in Clause 2.6 herein above, necessary and required for submitting an informed Application and performance of all of its obligations thereunder;
- (e) acknowledged that it does not have a Conflict of Interest; and
- (f) agreed to be bound by the undertaking provided by it under and in terms hereof.

2.7.2 The **KMRL** shall not be liable for any omission, mistake or error on the part of the Applicant in respect of any of the above or on account of any matter or thing arising out of or concerning or relating to RFP or the Selection Process, including any error or mistake therein or in any information or data given by the **KMRL**.

**2.8 Right to reject any or all Proposals**

2.8.1 Notwithstanding anything contained in this RFP, the **KMRL** reserves the right to accept or reject any Proposal and to annul the Selection Process and reject all Proposals, at any time without any liability or any obligation for such acceptance, rejection or annulment, and without assigning any reasons thereof.

2.8.2 Without prejudice to the generality of Clause 2.8.1, the **KMRL** reserves the right to reject any Proposal if:

- (a) at any time, a material misrepresentation is made or discovered, or
- (b) the Applicant does not provide, within the time specified by the **KMRL**, the supplemental information sought by the **KMRL** for evaluation of the Proposal. Misrepresentation/ improper response by the Applicant may lead to the disqualification of the Applicant. If the Applicant is the Lead Member of a consortium, then the entire consortium may be disqualified / rejected. If such disqualification / rejection occurs after the Proposals have been opened and the highest ranking Applicant gets disqualified / rejected, then the **KMRL** reserves the right to consider the next best Applicant, or take any other measure as may be deemed fit in the sole discretion of the **KMRL**, including annulment of the Selection Process.

**B. DOCUMENTS**

**2.9 Contents of the RFP**

2.9.1 This RFP comprises the Disclaimer set forth hereinabove, the contents as listed below and will additionally include any Addendum / Amendment issued in accordance with Clause 2.11:

**Request for Proposal**

- 1 Introduction

- 2 Instructions to Applicants
- 3 Criteria for Evaluation
- 4 Fraud and corrupt practices
- 5 Pre-Proposal Conference
- 6 Miscellaneous

## Schedules

### 1. Terms of Reference

### 2. Form of Agreement

- Annex-1 : Terms of Reference
- Annex-2 : Deployment of Personnel
- Annex-3 : Estimate of Personnel Costs
- Annex-4 : Approved Sub-Consultant(s)
- Annex-5 : Cost of Services
- Annex-6 : Payment Schedule
- Annex-7 : Bank Guarantee for Performance Security

### 3. Guidance Note on Conflict of Interest

## Appendices

### Appendix-I: Technical Proposal

- Form 1 : Letter of Proposal
- Form 2 : Particulars of the Applicant
- Form 3 : Statement of Legal Capacity
- Form 4 : Power of Attorney
- Form 5 : Financial Capacity of Applicant
- Form 6 : Particulars of Key Personnel
- Form 7 : Proposed Methodology and Work Plan
- Form 8 : Abstract of Eligible Assignments of Applicant
- Form 9 : Abstract of Eligible Assignments of Key Personnel
- Form 10 : Eligible Assignments of Applicant
- Form 11 : Eligible Assignments of Key Personnel
- Form 12 : CV of Key Personnel
- Form 13 : Deployment of Personnel
- Form 14 : Survey and Field Investigations
- Form 15 : Proposal for Sub-Consultant(s)
- Form 16 : Unconditional Bank Guarantee Lieu Of retention money

### Appendix-II: Financial Proposal

- Form 1 : Covering Letter
- Form 2 : Financial Proposal
- Form 3 : Estimate of Personal Cost



### Appendix-III: List of Bid-Specific Clauses

#### 2.10. Clarifications

2.10.1 Applicants requiring any clarification on the RFP may send their queries to the KMRL in writing before the date mentioned in the Schedule of Selection Process at Clause 1.8. The envelopes shall clearly bear the following identification:

"Queries/Request for Additional Information concerning RFP for implementing  
'METRO CITY' at Kakkanad, Kochi"

The KMRL shall endeavour to respond to the queries within the period specified therein but not later than 7 (seven) days prior to the Proposal Due Date. The responses will be sent by fax or e-mail. The KMRL will post the reply to all such queries on the Official Website and copies thereof will also be circulated to all Applicants who have purchased the RFP document without identifying the source of queries.

2.10.2 The KMRL reserves the right not to respond to any questions or provide any clarifications, in its sole discretion, and nothing in this Clause 2.10 shall be construed as obliging the KMRL to respond to any question or to provide any clarification.

#### 2.11 Amendment of RFP

2.11.1 At any time prior to the deadline for submission of Proposal, the KMRL may, for any reason, whether at its own initiative or in response to clarifications requested by an Applicant, modify the RFP document by the issuance of Addendum/ Amendment and posting it on the Official Website and by conveying the same to the prospective Applicants (who have purchased the RFP document) by fax or e-mail.

2.11.2 All such amendments will be notified in writing through fax or e-mail to all Applicants who have purchased the RFP document. The amendments will also be posted on the Official Website along with the revised RFP containing the amendments and will be binding on all Applicants.

2.11.3 In order to afford the Applicants a reasonable time for taking an amendment into account, or for any other reason, the KMRL may, in its sole discretion, extend the Proposal Due Dates.

### C. PREPARATION AND SUBMISSION OF PROPOSAL

#### 2.12 Language

The Proposal with all accompanying documents (the "Documents") and all communications in relation to or concerning the Selection Process shall be in English / Malayalam language and strictly on the forms provided in this RFP. No supporting document or printed literature shall be submitted with the Proposal unless specifically asked for and in case any of these Documents is in another language, it must be accompanied by an accurate translation of the relevant passages in English / Malayalam, in which case, for all purposes of interpretation of the Proposal, the translation in English / Malayalam shall prevail.

#### 2.13 Format and signing of Proposal

- 2.13.1 The Applicant shall provide all the information sought under this RFP. The **KMRL** would evaluate only those Proposals that are received in the specified forms and complete in all respects.
- 2.13.2 The Applicant shall prepare one original set of the Proposal (together with originals/ copies of Documents required to be submitted along therewith pursuant to this RFP and clearly marked "ORIGINAL". In addition, the Applicant shall submit 2 (two) copies of the Proposal, along with Documents, marked "COPY". In the event of any discrepancy between the original and its copies, the original shall prevail.
- 2.13.3 The Proposal and its copy shall be typed or written in indelible ink and signed by the authorised signatory of the Applicant who shall initial each page, in blue ink. In case of printed and published Documents, only the cover shall be initialed. All the alterations, omissions, additions, or any other the person(s) signing the Proposal. The Proposals must be properly signed by the authorised representative (the "**Authorised Representative**") as detailed below:
- (a) by the proprietor, in case of a proprietary firm; or
  - (b) by a partner, in case of a partnership firm and/or a limited liability partnership; or
  - (c) by a duly authorised person holding the Power of Attorney, in case of a Limited Company or a corporation; or
  - (d) by the authorised representative of the Lead Member, in case of consortium.

A copy of the Power of Attorney certified under the hands of a partner or director of the Applicant and notarised by a notary public in the form specified in Appendix-I (Form4) shall accompany the Proposal.

- 2.13.4 Applicants should note the Proposal Due Date, as specified in Clause 1.8, for submission of Proposals. Except as specifically provided in this RFP, no supplementary material will be entertained by the **KMRL**, and that evaluation will be carried out only on the basis of Documents received by the closing time of Proposal Due Date as specified in Clause 2.17.1. Applicants will ordinarily not be asked to provide additional material information or documents subsequent to the date of submission, and unsolicited material if submitted will be summarily rejected. For the avoidance of doubt, the **KMRL** reserves the right to seek clarifications under and in accordance with the provisions of Clause 2.23.

## **2.14 Technical Proposal**

- 2.14.1 Applicants shall submit the technical proposal in the formats at Appendix-I (the "**Technical Proposal**").
- 2.14.2 While submitting the Technical Proposal, the Applicant shall, in particular, ensure that:
- (a) The Bid Security is provided;
  - (b) All forms are submitted in the prescribed formats and signed by the prescribed signatories;
  - (c) Power of Attorney, if applicable, is executed as per Applicable Laws;
  - (d) CVs of all Professional Personnel have been included;
  - (e) Key Personnel have been proposed only if they meet the Conditions of Eligibility laid down at Clause 2.2.2 (D) of the RFP;
  - (f) No alternative proposal for any Key Personnel is being made and only one CV for each position has been furnished;

- (g) The CVs have been recently signed and dated in blue ink by the respective Personnel and countersigned by the Applicant. Photocopy or unsigned / countersigned CVs shall be rejected;
  - (h) The CVs shall contain an undertaking from the respective Key Personnel about his/her availability for the duration specified in the RFP;
  - (i) Professional Personnel proposed have good working knowledge of English / Malayalam language.
  - (j) Key Personnel would be available for the period indicated in the TOR;
  - (k) No Key Personnel should have attained the age of 75 (seventy five) years at the time of submitting the proposal; and
  - (l) The proposal is responsive in terms of Clause 2.21.3.
- 2.14.3 Failure to comply with the requirements spelt out in this Clause 2.14 shall make the Proposal liable to be rejected.
- 2.14.4 If an individual Key Personnel makes a false averment regarding his qualification, experience or other particulars, or his commitment regarding availability for the Project is not fulfilled at any stage after signing of the Agreement, he shall be liable to be debarred for any future assignment of the **KMRL** for a period of 5 (five) years. The award of this Consultancy to the Applicant may also be liable to cancellation in such an event.
- 2.14.5 The Technical Proposal shall not include any financial information relating to the Financial Proposal.
- 2.14.6 The proposed team shall be composed of experts and specialists (the "**Professional Personnel**") in their respective areas of expertise and managerial/support staff (the "**Support Personnel**") such that the Consultant should be able to complete the Consultancy within the specified time schedule. The Key Personnel specified in Clause 2.1.4 shall be included in the proposed team of Professional Personnel. Other competent and experienced Professional Personnel in the relevant areas of expertise must be added as required for successful completion of this Consultancy. The CV of each such Professional Personnel, if any, should also be submitted in the format at Form-12 of Appendix-I.
- 2.14.7 An Applicant may, if it considers necessary, propose suitable Sub-Consultants in specific areas of expertise. Credentials of such sub-consultants should be submitted in Form-15 of Appendix-I. A Sub-Consultant, however, shall not be a substitute for any Key Personnel.
- 2.14.8 The **KMRL** reserves the right to verify all statements, information and documents, submitted by the Applicant in response to the RFP. Any such verification or the lack of such verification by the **KMRL** to undertake such verification shall not relieve the Applicant of its obligations or liabilities hereunder nor will it affect any rights of the **KMRL** there under.
- 2.14.9 In case it is found during the evaluation or at any time before signing of the Agreement or after its execution and during the period of subsistence thereof, that one or more of the eligibility conditions have not been met by the Applicant or the Applicant has made material misrepresentation or has given any materially incorrect or false information, the Applicant shall be disqualified forthwith if not yet appointed as the Consultant either by issue of the LOA or entering into of the Agreement, and if the Selected Applicant has already been issued the LOA or has entered into the Agreement, as the case may be, the same shall, notwithstanding anything to the contrary contained therein or in this RFP, be liable to be terminated, by a communication in writing by the **KMRL** without the **KMRL** being liable in any manner whatsoever to the Applicant or Consultant, as the case may be.

In such an event, the **KMRL** shall forfeit and appropriate the Bid Security as mutually agreed pre-estimated compensation and damages payable to the **KMRL** for, *inter alia*, time, cost and effort of the **KMRL**, without prejudice to any other right or remedy that may be available to the **KMRL**.

## 2.15 Financial Proposal

2.15.1 Applicants shall submit the financial proposal in the formats at Appendix-II (the "**Financial Proposal**") clearly indicating the total cost of the Consultancy (Item [G] of Form-2 of Appendix-II) in both figures and words, in Indian Rupees, and signed by the Applicant's Authorised Representative. In the event of any difference between figures and words, the amount indicated in words shall prevail. In the event of a difference between the arithmetic total and the total shown in the Financial Proposal, the lower of the two shall prevail.

2.15.2 While submitting the Financial Proposal, the Applicant shall ensure the following:

- (i) All the costs associated with the assignment shall be included in the Financial Proposal. These shall normally cover remuneration for all the Personnel (Expatriate and Resident, in the field, office etc), accommodation, air fare, equipment, printing of documents, surveys, geo-technical investigations etc. The total amount indicated in the Financial Proposal shall be without any condition attached or subject to any assumption, and shall be final and binding. In case any assumption or condition is indicated in the Financial Proposal, it shall be considered non-responsive and liable to be rejected.
- (ii) The Financial Proposal shall take into account all expenses and tax liabilities. For the avoidance of doubt, it is clarified that all taxes shall be deemed to be included in the costs shown under different items of the Financial Proposal. Further, all payments shall be subject to deduction of taxes at source as per Applicable Laws.
- (iii) Costs (including break down of costs) shall be expressed in INR.

## 2.16 Submission of Proposal

2.16.1 The Applicants shall submit the Proposal in bound form with all pages numbered serially and by giving an index of submissions. Each page of the submission shall be initialed by the Authorised Representative of the Applicant as per the terms of the RFP. In case the proposal is submitted on the document down loaded from Official Website, the Applicant shall be responsible for its accuracy and correctness as per the version uploaded by the **KMRL** and shall ensure that there are no changes caused in the content of the downloaded document. In case of any discrepancy between the downloaded or photocopied version of the RFP and the original RFP issued by the **KMRL**, the latter shall prevail.

2.16.2 The Proposal will be sealed in an outer envelope which will bear the address of the **KMRL**, RFP Notice number, Consultancy name as indicated at Clauses 1.11.1 and 1.11.3 and the name and address of the Applicant. It shall bear on top, the following:

"Do not open, except in presence of the Authorised Person of the **KMRL**"

If the envelope is not sealed and marked as instructed above, the **KMRL** assumes no responsibility for the misplacement or premature opening of the contents of the Proposal submitted and consequent losses, if any, suffered by the Applicant.

- 2.16.3 The aforesaid outer envelope will contain two separate sealed envelopes, one clearly marked '**Technical Proposal**' and the other clearly marked '**Financial Proposal**'. The envelope marked "**Technical Proposal**" shall contain:
- (i) Application in the prescribed format (Form-1 of Appendix-I) along with Forms 1 to 2 of Appendix-I and supporting documents; and
  - (ii) Bid security as specified in Clause 2.20.1
- The envelope marked "**Financial Proposal**" shall contain the financial proposal in the prescribed format (Forms 1, 2 & 3 of Appendix-II).
- 2.16.4 The Technical Proposal and Financial Proposal shall be typed or written in indelible ink and signed by the Authorised Representative of the Applicant. All pages of the original Technical Proposal and Financial Proposal must be numbered and initialed by the person or persons signing the Proposal.
- 2.16.5 The completed Proposal must be delivered on or before the specified time on Proposal Due Date. Proposals submitted by fax, telex, telegram or e-mail shall not be entertained.
- 2.16.6 The Proposal shall be made in the Forms specified in this RFP. Any attachment to such Forms must be provided on separate sheets of paper and only information that is directly relevant should be provided. This may include photocopies of the relevant pages of printed documents. No separate documents like printed annual statements, company brochures, copy of contracts etc. will be entertained.
- 2.16.7 The rates quoted shall be firm throughout the period of performance of the assignment upto and including acceptance of the Feasibility Report by the **KMRL** and discharge of all obligations of the Consultant under the Agreement.

## **2.17 Proposal Due Date**

- 2.17.1 Proposal should be submitted at or before 3.00 PM on the Proposal Due Date specified at Clause 1.8 at the address provided in Clause 1.11 in the manner and form as detailed in this RFP. A receipt thereof should be obtained from the person specified therein.
- 2.17.2 The **KMRL** may, in its sole discretion, extend the Proposal Due Date by issuing an Addendum in accordance with Clause 2.11 uniformly for all Applicants.

## **2.18 Late Proposals**

Proposals received by the **KMRL** after the specified time on Proposal Due Date shall not be eligible for consideration and shall be summarily rejected.

## **2.19 Modification/ substitution/ withdrawal of Proposals**

- 2.19.1 The Applicant may modify, substitute, or withdraw its Proposal after submission, provided that written notice of the modification, substitution, or withdrawal is received by the **KMRL** prior to Proposal Due Date. No Proposal shall be modified, substituted, or withdrawn by the Applicant on or after the Proposal Due Date.
- 2.19.2 The modification, substitution, or withdrawal notice shall be prepared, sealed, marked, and delivered in accordance with Clause 2.16, with the envelopes being additionally marked "MODIFICATION", "SUBSTITUTION" or "WITHDRAWAL", as appropriate.

2.19.3 Any alteration / modification in the Proposal or additional information or material supplied subsequent to the Proposal Due Date, unless the same has been expressly sought for by the **KMRL**, shall be disregarded.

## 2.20 Bid Security

2.20.1 The Applicant shall furnish as part of its Proposal, a bid security of Rs.2 (two) lakhs in the form of a Demand Draft issued by one of the Nationalised/ Scheduled Banks in India in favour of the **KMRL** payable at Kochi (the "**Bid Security**"), returnable not later than 30 (thirty) days from FPD except in case of the two highest ranked Applicants as required in Clause 2.24.1. In the event that the first ranked Applicant commences the assignment as required in Clause 2.29, the second ranked Applicant, who has been kept in reserve, shall be returned its Bid Security forthwith, but in no case not later than 120 (one hundred and twenty) days from FPD. The Selected Applicant's Bid Security shall be returned, upon the Applicant signing the Agreement and completing the Deliverables assigned to it for the first 2 (two) months of the Consultancy in accordance with the provisions thereof.

2.20.2 Any Bid not accompanied by the Bid Security shall be rejected by the **KMRL** as nonresponsive.

2.20.3 The **KMRL** shall not be liable to pay any interest on the Bid Security and the same shall be interest free.

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

- (a) If an Applicant submits a non-responsive Proposal;
- (b) If an Applicant engages in any of the Prohibited Practices specified in Section 4 of this RFP;
- (c) If an Applicant withdraws its Proposal during the period of its validity as specified in this RFP and as extended by the Applicant from time to time;
- (d) In the case of the Selected Applicant, if the Applicant fails to reconfirm its commitments during negotiations as required vide Clause 2.24.1;
- (e) In the case of a Selected Applicant, if the Applicant fails to sign the Agreement or commence the assignment as specified in Clauses 2.28 and 2.29 respectively; or
- (f) If the Applicant is found to have a Conflict of Interest as specified in Clause 2.3

## D. EVALUATION PROCESS

### 2.21 Evaluation of Proposals

2.21.1 The **KMRL** shall open the Technical / Financial Proposals at 1530 hrs on the Proposal Due Date (specified for each in Clause 1.8), at the place specified in Clause 1.11.1 and in the presence of the Applicants who choose to attend.

2.21.2 Proposals for which a notice of withdrawal has been submitted in accordance with Clause 2.19 shall not be opened.

- 2.21.3 Prior to evaluation of Proposals, the **KMRL** will determine whether each Proposal is responsive to the requirements of the RFP. The **KMRL** may, in its sole discretion, reject any Proposal that is not responsive hereunder. A Proposal shall be considered responsive only if:
- (a) the Technical Proposal is received in the form specified at Appendix-I;
  - (b) it is received by the Proposal Due Date including any extension thereof pursuant to Clause 2.17;
  - (c) it is accompanied by the Bid Security as specified in Clause 2.20.1. and cost of tender form in case of downloaded application forms.
  - (d) it is signed, sealed, bound together in cover and marked as stipulated in Clauses 2.13 and 2.16;
  - (e) it is accompanied by the Power of Attorney as specified in Clause 2.2.4;
  - (f) it contains all the information (complete in all respects) as requested in the RFP;
  - (g) it does not contain any condition or qualification; and
  - (h) it is not non-responsive in terms hereof.
- 2.21.4 The **KMRL** reserves the right to reject any Proposal which is non-responsive and no request for alteration, modification, substitution or withdrawal shall be entertained by the **KMRL** in respect of such Proposals.
- 2.21.5 The **KMRL** shall subsequently examine and evaluate Proposals in accordance with the Selection Process specified at Clause 1.6 and the criteria set out in Section 3 of this RFP.
- 2.21.6 After the technical evaluation, the **KMRL** shall prepare a list of pre-qualified and shortlisted Applicants in terms of Clause 3.2 for opening of their Financial Proposals. The date, time and venue will be notified to all selected Applicants for announcing the result of evaluation and opening of Financial Proposals. Before opening of the Financial Proposals, the list of pre-qualified and shortlisted Applicants along with their Technical Score will be read out. The opening of Financial Proposals shall be done in presence of respective representatives of Applicants who choose to be present. The **KMRL** will not entertain any query or clarification from Applicants who fail to qualify at any stage of the Selection Process. The financial evaluation and final ranking of the Proposals shall be carried out in terms of Clauses 3.3 and 3.4.
- 2.21.7 Applicants are advised that Selection will be entirely at the discretion of the **KMRL**. Applicants will be deemed to have understood and agreed that no explanation or justification on any aspect of the Selection Process or Selection will be given.
- 2.21.8 Any information contained in the Proposal shall not in any way be construed as binding on the **KMRL**, its agents, successors or assigns, but shall be binding against the Applicant if the Consultancy is subsequently awarded to it.

## 2.22 Confidentiality

Information relating to the examination, clarification, evaluation, and recommendation for the selection of Applicants shall not be disclosed to any person who is not officially concerned with the process or is not a retained professional adviser advising the **KMRL** in relation to matters arising out of, or concerning the Selection Process. The **KMRL** will treat all information, submitted as part of the Proposal, in confidence and will require all those who have access to such material to treat the same in confidence. The **KMRL** may not divulge any such information unless it is directed to do so by any statutory entity that has the power under law to require its disclosure or is to enforce or assert any right or privilege of the statutory entity and/or the **KMRL**.

## 2.23 Clarifications

- 2.23.1 To facilitate evaluation of Proposals, the **KMRL** may, at its sole discretion, seek clarifications from any Applicant regarding its Proposal. Such clarification(s) shall be provided within the time specified by the **KMRL** for this purpose. Any request for clarification(s) and all clarification(s) in response thereto shall be in writing.
- 2.23.2 If an Applicant does not provide clarifications sought under Clause 2.23.1 above within the specified time, its Proposal shall be liable to be rejected. In case the Proposal is not rejected, the **KMRL** may proceed to evaluate the Proposal by construing the particulars requiring clarification to the best of its understanding, and the Applicant shall be barred from subsequently questioning such interpretation of the **KMRL**.

## E. APPOINTMENT OF CONSULTANT

### 2.24 Negotiations

- 2.24.1 The Selected Applicant may, if necessary, be invited for negotiations. The negotiations shall generally not be for reducing the price of the Proposal, but will be for re-confirming the obligations of the Consultant under this RFP. Issues such as deployment of Key Personnel, understanding of the RFP, methodology and quality of the work plan and outline scheme model shall be discussed during negotiations. A Key Personnel who did not score 70% (seventy per cent) marks as required under Clause 3.1.2 shall be replaced by the Applicant with a better candidate to the satisfaction of the **KMRL**. In case the Selected Applicant fails to reconfirm its commitment, the **KMRL** reserves the right to designate the next ranked Applicant as the Selected Applicant and invite it for negotiations.
- 2.24.2 The **KMRL** will examine the CVs of all other Professional Personnel and those not found suitable shall be replaced by the Applicant to the satisfaction of the **KMRL**.
- 2.24.3 The **KMRL** will examine the credentials of all Sub-Consultants proposed for this Consultancy and those not found suitable shall be replaced by the Applicant to the satisfaction of the **KMRL**.

### 2.25 Substitution of Key Personnel

- 2.25.1 The **KMRL** will not normally consider any request of the Selected Applicant for substitution of Key Personnel as the ranking of the Applicant is based on the evaluation of Key Personnel and any change therein may upset the ranking. Substitution will, however, be permitted if the Key Personnel is not available for reasons of any incapacity or due to health, subject to equally or better qualified and experienced personnel being provided to the satisfaction of the **KMRL**.
- 2.25.2 The **KMRL** expects all the Key Personnel to be available during implementation of the Agreement. The **KMRL** will not consider substitution of Key Personnel except for reasons of any incapacity or due to health. Such substitution shall ordinarily be limited to one Key Personnel subject to equally or better qualified and experienced personnel being provided to the satisfaction of the **KMRL**. As a condition to such substitution, a sum equal to 20% (twenty per cent) of the remuneration specified for the original Key Personnel shall be deducted from the payments due to the Consultant. In the case of a second substitution hereunder, such deduction shall be 50% (fifty per cent) of the remuneration specified for the original Key Personnel. Any further substitution may lead to disqualification of the Applicant or termination of the Agreement.



2.25.3 Substitution of the Team Leader will not normally be considered and may lead to disqualification of the Applicant or termination of the Agreement.

2.25.4. Those Key Personnel not found suitable during the course of the agreement shall be replaced by the Consultant immediately to the satisfaction of the **KMRL**.

## **2.26 Indemnity**

The Consultant shall, subject to the provisions of the Agreement, indemnify the **KMRL** for an amount not exceeding 3 (three) times the value of the Agreement for any direct loss or damage that is caused due to any deficiency in services provided as per TOR.

## **2.27 Award of Consultancy**

After selection, a Letter of Award (the "LOA") shall be issued, in duplicate, by the **KMRL** to the Selected Applicant and the Selected Applicant shall, within 7 (seven) days of the receipt of the LOA, sign and return the duplicate copy of the LOA in acknowledgement thereof. In the event the duplicate copy of the LOA duly signed by the Selected Applicant is not received by the stipulated date, the **KMRL** may, unless it consents to extension of time for submission thereof, appropriate the Bid Security of such Applicant as mutually agreed genuine pre-estimated loss and damage suffered by the **KMRL** on account of failure of the Selected Applicant to acknowledge the LOA, and the next highest ranking Applicant may be considered.

## **2.28 Execution of Agreement**

After acknowledgement of the LOA as aforesaid by the Selected Applicant, it shall execute the Agreement within the period prescribed in Clause 1.8. The Selected Applicant shall not be entitled to seek any deviation in the Agreement.

## **2.29 Commencement of assignment**

The Consultant shall commence the Services at the Project site within 7 (seven) days of the date of the Agreement or such other date as may be mutually agreed. If the Consultant fails to either sign the Agreement as specified in Clause 2.28 or commence the assignment as specified herein, the **KMRL** may invite the second ranked Applicant for negotiations. In such an event, the Bid Security of the first ranked Applicant shall be forfeited and appropriated in accordance with the provisions of Clause 2.20.4.

## **2.30 Proprietary data**

Subject to the provisions of Clause 2.22, all documents and other information provided by the **KMRL** or submitted by an Applicant to the **KMRL** shall remain or become the property of the **KMRL**. Applicants and the Consultant, as the case may be, are to treat all information as strictly confidential. The **KMRL** will not return any Proposal or any information related thereto. All information collected, analysed, processed or in whatever manner provided by the Consultant to the **KMRL** in relation to the Consultancy shall be the property of the **KMRL**.

### 3. CRITERIA FOR EVALUATION

#### 3.1 Evaluation of Technical Proposals

3.1.1 In the first stage, the Technical Proposal will be evaluated on the basis of Applicant's experience, its understanding of TOR, proposed methodology and Work Plan, the experience of Key Personnel and the base model presentation. Only those Applicants whose Technical Proposals get a score of 75 marks or more out of 100 shall qualify for further consideration, and shall be ranked from highest to the lowest on the basis of their technical score ( $S_T$ ).

3.1.2 Each Key Personnel must score a minimum of 70% marks except as provided herein. A Proposal shall be rejected if the Team Leader scores less than 70% marks or any two of the remaining Key Personnel score less than 70% marks. In case the Selected Applicant has one Key Personnel, other than the Team Leader, who scores less than 70% marks, he would have to be replaced during negotiations, with a better candidate who, in the opinion of the **KMRL**, would score 70% or above.

3.1.3 The scoring criteria to be used for evaluation shall be as follows:

Item No.	Parameter	Maximum Marks	Criteria (Weightage of points for sub parameter)
<b>Phase I</b>			
<b>1.</b>	<b>Relevant experience of the Applicant</b>	<b>20</b>	
1.1	Number of Eligible assignments undertaken by the Firm ó maximum Five assignments		20%
1.2	Comparative size and quality of eligible assignments		20%
1.3	Other similar works		10%
1.4	Turnover and Financial Capacity of Firm		50%
<b>2.</b>	<b>Adequacy of approach &amp; Methodology &amp; Work Plan</b>	<b>20</b>	
2.1	Adequacy of approach and methodology		40%
2.2	Availability of infrastructure facilities or taking up the work		30%
2.3	Completeness of the work plan scheduling and staffing		30%
<b>3.</b>	<b>Outline scheme model proposal based on minimum requirements of KMRL</b>	<b>10</b>	
3.1	Strength of proposed indicative product mix based on preliminary studies		40%
3.2	Strength of proposed base revenue model based on preliminary studies		30%
3.3	Completeness of the work plan scheduling and staffing		30%
<b>4.</b>	<b>Experience of Key Persons</b>		
(a)	<b>PPP Expert cum Project Manager (Team Leader)</b>	<b>10</b>	
(b)	<b>Financial Expert</b>	<b>7.5</b>	
(c)	<b>Real Estate Expert</b>	<b>7.5</b>	
(d)	<b>Legal Expert</b>	<b>5</b>	
	<b>Total</b>	<b>30</b>	
4.1	No. of eligible assignments		40%
4.2	Comparative size and quality		40%
4.3	Other similar works		20%

	Total - Phase I (1 - 4) *	<b>80</b>	
<b>5.</b>	<b>Phase II Visual Presentation and discussion by the shortlisted persons on the dates intimated to them.</b>	<b>20</b>	
	<b>Total Phase I &amp; II</b>	<b>100</b>	

Phase I Short listing will be for a minimum score of **75/100**

### 3.1.4 Eligible Assignments

For the purposes of determining Conditions of Eligibility and for evaluating the Proposals under this RFP, advisory/ consultancy assignments in respect of preparation of an appropriate revenue model feasibility report and/or detailed project report, preparation of bid documents including engineering surveys and social and environmental impact assessment, for the following projects shall be deemed as eligible assignments (the "Eligible Assignments"). The consultant should demonstrate at least five eligible assignments covering the following categories :

- (i) Completed project undertaken through PPP/BOT/JV having an estimated capital cost (excluding land) of at least 200 crore.
- (ii) Completed project involving construction and having an estimated capital cost (excluding land) of at least Rs. 500 (Five hundred) crore.

### 3.2 Short-listing of Applicants

Of the Applicants ranked as aforesaid, not more than five shall be pre-qualified and short-listed for financial evaluation in the second stage. However, if the number of such pre-qualified Applicants is less than two, the **KMRL** may, in its sole discretion, pre-qualify the Applicant(s) whose technical score is less than 70 points even if such Applicant(s) do(es) not qualify in terms of Clause 3.1.2; provided that in such an event, the total number of pre-qualified and short-listed Applicants shall not exceed two.

### 3.3 Evaluation of Financial Proposal

3.3.1 In the second stage, the financial evaluation will be carried out as per this Clause 3.3. Each Financial Proposal will be assigned a financial score ( $S_F$ ).

3.3.2 For financial evaluation, the total cost indicated in the Financial Proposal, excluding Additional Costs, will be considered. Additional Costs shall include items specified as such in Form-2 of Appendix-II.

3.3.3 The **KMRL** will determine whether the Financial Proposals are complete, unqualified and unconditional. The cost indicated in the Financial Proposal shall be deemed as final and reflecting the total cost of services. Omissions, if any, in costing any item shall not entitle the firm to be compensated and the liability to fulfill its obligations as per the TOR within the total quoted price shall be that of the Consultant. The lowest Financial Proposal ( $F_M$ ) will be given a financial score ( $S_F$ ) of 100 points. The financial scores of other proposals will be computed as follows:

$$S_F = 100 \times F_M / F$$

( $F$  = Amount of Financial Proposal)

### 3.4 Combined and final evaluation

3.4.1 Proposals will finally be ranked according to their combined technical ( $S_T$ ) and financial ( $S_F$ ) scores as follows:

$$S = S_T \times T_w + S_F \times F_w$$

Where  $S$  is the combined score, and  $T$  and  $F$  are weights assigned to Technical Proposal and Financial Proposal that shall be 0.75 and 0.25 respectively.

3.4.2 The Selected Applicant shall be the first ranked Applicant (having the highest combined score). The second ranked Applicant shall be kept in reserve and may be invited for negotiations in case the first ranked Applicant withdraws, or fails to comply with the requirements specified in Clauses 2.24, 2.28 and 2.29, as the case may be.

#### 4. FRAUD AND CORRUPT PRACTICES

- 4.1 The Applicants and their respective officers, employees, agents and advisers shall observe the highest standard of ethics during the Selection Process. Notwithstanding anything to the contrary contained in this RFP, the **KMRL** shall reject a Proposal without being liable in any manner whatsoever to the Applicant, if it determines that the Applicant has, directly or indirectly or through an agent, engaged in corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice (collectively the "**Prohibited Practices**") in the Selection Process. In such an event, the **KMRL** shall, without prejudice to its any other rights or remedies, forfeit and appropriate the Bid Security or Performance Security, as the case may be, as mutually agreed genuine pre-estimated compensation and damages payable to the **KMRL** for, *inter alia*, time, cost and effort of the **KMRL**, in regard to the RFP, including consideration and evaluation of such Applicant's Proposal.
- 4.2 Without prejudice to the rights of the **KMRL** under Clause 4.1 hereinabove and the rights and remedies which the **KMRL** may have under the LOA or the Agreement, if an Applicant or Consultant, as the case may be, is found by the **KMRL** to have directly or indirectly or through an agent, engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice during the Selection Process, or after the issue of the LOA or the execution of the Agreement, such Applicant or Consultant shall not be eligible to participate in any tender or RFP issued by the **KMRL** during a period of 2 (two) years from the date such Applicant or Consultant, as the case may be, is found by the **KMRL** to have directly or through an agent, engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice, as the case may be.
- 4.3 For the purposes of this Section, the following terms shall have the meaning hereinafter respectively assigned to them:
- (a) "**corrupt practice**" means (i) the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence the action of any person connected with the Selection Process (for avoidance of doubt, offering of employment to or employing or engaging in any manner whatsoever, directly or indirectly, any official of the **KMRL** who is or has been associated in any manner, directly or indirectly with the Selection Process or the LOA or has dealt with matters concerning the Agreement or arising there from, 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 the **KMRL**, shall be deemed to constitute influencing the actions of a person connected with the Selection Process); or (ii) save as provided herein, engaging in any manner whatsoever, whether during the Selection Process or after the issue of the 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 consultant/ adviser of the **KMRL** in relation to any matter concerning the Project;
  - (b) "**fraudulent practice**" means a misrepresentation or omission 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 persons or property to influence any person's participation or action in the Selection Process;

- (d) **"undesirable practice"** means (i) establishing contact with any person connected with or employed or engaged by the **KMRL** with the objective of canvassing, lobbying or in any manner influencing or attempting to influence the Selection Process; or (ii) having a Conflict of Interest; and
  
- (e) **"restrictive practice"** means forming a cartel or arriving at any understanding or arrangement among Applicants with the objective of restricting or manipulating a full and fair competition in the Selection Process.

## 5. PRE-PROPOSAL CONFERENCE

- 5.1 Pre-Proposal Conference of the Applicants shall be convened at the designated date, time and place. Only those Applicants, who have purchased the RFP document or downloaded the same from the Official Website for the **KMRL**, and after making payment of request for document, shall be allowed to participate in the Pre-Proposal Conference. A maximum of two representatives of each Applicant shall be allowed to participate on production of an authority letter from the Applicant.
- 5.2 During the course of Pre-Proposal Conference, the Applicants will be free to seek clarifications and make suggestions for consideration of the **KMRL**. The **KMRL** shall endeavor to provide clarifications and such further information as it may, in its sole discretion, consider appropriate for facilitating a fair, transparent and competitive Selection Process.

## 6. MISCELLANEOUS

- 6.1 The Selection Process shall be governed by, and construed in accordance with, the laws of India and the Courts at Kerala shall have exclusive jurisdiction over all disputes arising under, pursuant to and/or in connection with the Selection Process.
- 6.2 The **KMRL**, in its sole discretion and without incurring any obligation or liability, reserves the right, at any time, to:
- (a) suspend and/or cancel the Selection Process and/or amend and/or supplement the Selection Process or modify the dates or other terms and conditions relating thereto;
  - (b) consult with any Applicant in order to receive clarification or further information;
  - (c) retain any information and/or evidence submitted to the **KMRL** by, on behalf of and/or in relation to any Applicant; and/or
  - (d) independently verify, disqualify, reject and/or accept any and all submissions or other information and/or evidence submitted by or on behalf of any Applicant.
- 6.3 It shall be deemed that by submitting the Proposal, the Applicant agrees and releases the **KMRL**, its employees, agents and advisers, irrevocably, unconditionally, fully and finally from any and all liability for claims, losses, damages, costs, expenses or liabilities in any way related to or arising from the exercise of any rights and/or performance of any obligations hereunder, pursuant hereto and/or in connection herewith and waives any and all rights and/or claims it may have in this respect, whether actual or contingent, whether present or future.
- 6.4 All documents and other information supplied by the **KMRL** or submitted by an Applicant shall remain or become, as the case may be, the property of the **KMRL**. The **KMRL** will not return any submissions made hereunder. Applicants are required to treat all such documents and information as strictly confidential.

The **KMRL** reserves the right to make inquiries with any of the clients listed by the Applicants in their previous experience record.



## Schedules

**SCHEDULE-1**

*(See Clause 1.1.3)*

**CONSULTANCY FOR TRANSACTION ADVISORY  
SERVICES FOR IMPLEMENTING  
'METRO CITY' PROJECT  
AT  
KAKKANAD, KOCHI**

**TERMS OF REFERENCE**

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## Terms of Reference (TOR)

### 1 GENERAL

- 1.1 Government of Kerala vide GO (MS) No. **91/13/RD dated 12/03/2013** allowed the **KMRL** to commercially exploit allotted prime properties. Accordingly, the **KMRL** has proposed to develop an extent of 17.315 acres of land available at Kakkanad Kochi with an anticipated investment of not less than Rs. **1500 crores**. This investment shall help to generate economic activities in the State and create valuable property for **KMRL** which will provide financial buoyancy by subsidizing Kochi Metro operations from the ensuing financial accruals. Therefore, a project proposal for developing a ultra-modern techno-commercial hub for the State of Kerala along with a residential district including all associated physical infrastructure facility / services (including provision of fast access to site), Building Management Systems and Social facilities like Convention Centre, Shopping mall, Sports facilities, Medical facilities, Restaurants etc. is envisaged in the above said land. The above project will be named '**METRO CITY**'. The scope will also include TOD study of Tripunithura-Kakkanad Stretch and Kakkanad-Kalamassery Stretch and factoring in the effect of this TOD development into the project proposal of 'Metro City'.
- 1.2 From within the revenue accruals provision is to be made for the construction of 150 quarters in lieu of the demolished quarters for the state PWD in the alternate land earmarked for the purpose.
- 1.3 Also design and develop appropriate project structure and profitable revenue models in the tracts of land earmarked for property development including multi-level parking at Metro Stations of Aluva, Edapally, JLN Stadium, Kaloor, Ernakulam South and Petta.

Accordingly, the **KMRL** seeks the services of a qualified Transaction Advisor for appraising the project and developing an appropriate project and revenue model with the following minimum requirements. The **Terms Of References (TOR)** for this assignment are specified below:

- (a) The project should contain financial, software cum commercial hub, a residential district and other social facilities like Convention Centre, shopping mall, sports facilities, medical facilities, restaurants, hotel etc. with all associated physical infrastructure / services and Building Management Systems.
- (b) The project should also provide from within the internal accruals the finance for construction of 150 quarters for State PWD in lieu of the quarters demolished in the allotted 17.315 acres of land. The said quarters are to be constructed in the 15.685 acres earmarked for the purpose.
- (c) The project should include property development with multi-level parking at Metro Stations of Aluva, Edapally, JLN Stadium, Kaloor, Ernakulam South and Petta.
- (d) The hub should have provisions for integration with the proposed Phase 2 of Kochi Metro as well as other modes of transport planned under the aegis of Unified Metropolitan Transport Authority- Kochi.

- (e) The scope will also include TOD study of Tripunithura-Kakkanad Stretch and Kakkanad-Kalamassery Stretch and factoring in the effect of this into the project proposal of 'Metro City'
- 1.4 The Consultant shall be guided in its assignment by latest land value assessment done by **KMRL** through an approved valuer, based on directions, the guidelines / rules for PPP/BOT/JV projects issued by the Ministry of Finance from time to time and should make themselves aware of the statutory and regulatory rules and data related to the land & the project issued by State Government / Government of India.
- 1.5 The Consultant shall act in the combined role of Transaction Advisor and shall be responsible for the preparation of bid documents and giving all assistance to the **KMRL** for selection of a suitable PPP/BOT/JV partner for the project as given in para 1.1., including preparation of the concession agreement, legal scrutiny of the bid documents and concession agreement.
- 1.6 The Consultant shall assist **KMRL** by furnishing clarifications as required for structuring, documentation and award of the project.
- 1.7 The Consultant shall also participate in the pre bid conference with the bidders of the project and assist the **KMRL** in the clarifying the technical, financial and legal aspects arising from the bid.
- 1.8 The Consultant shall make available the team leader and other key personnel to attend and participate in meetings, conferences and discussion with the **KMRL** and shall otherwise advise on and assist the **KMRL** in the diverse commercial issues, legal issues or such others that may arise from time to time.

## 2. OBJECTIVE

The objective of this Consultancy (the "objective") is to develop a profitable revenue model, undertake financial appraisal and structure the product mix for the purpose of firming up the **KMRL's** requirements in respect of development and construction of the Project and Project Facilities and enabling the prospective bidders to assess the **KMRL's** requirements in a clear and predictable manner with a view to ensuring:

- (i) The project shall help to generate economic activities in the State, create valuable infrastructure and which is integrated with the surrounding areas and creation of an iconic urban infrastructure with architecturally distinctive buildings.
- (ii) To site and plan economically in the 15.685 Acres provided for the purpose construction of alternate 150 quarters for state PWD in place of demolished quarters from within the financial accruals of the project.
- (iii) Design and develop appropriate project structure and profitable revenue models for the tracts of land earmarked for property development including multi-level parking at Metro Stations of Aluva, Kalamassery, Edapally, JLN Stadium, Kaloor, and Petta.
- (iv) Conduct the TOD study of Tripunithura-Kakkanad Stretch and Kakkanad-Kalamassery Stretch and factoring in the effect of this into the project proposal of 'Metro City'
- (v) To suggest a most feasible development plan with minimum requirements as given in Para 1.1 to Para 1.3.
- (vi) The development of an eco-friendly project with due consideration for the ecology of the surroundings which meets the green criteria such as LEED/GRIHA rating.

- (vii) Provide for integration with Kochi Metro Phase 2 as well as other forms of transport as envisaged by UMTA Kochi.

### 3. SCOPE OF SERVICES

3.1.1 The scope of services to be performed by the Consultant for the development of Metro City shall include but not be limited to the following:

- (i) Study of the site location with regularity norms.
- (ii) The consultant shall study the site layout and the demographic cum literacy profile of the state for developing a conceptual plan of commercial, entertainment, institutional and residential areas which will be commercially viable and enable Metro maximize its revenue.
- (iii) Infrastructure Assessment and connectivity.
- (iv) Ascertain and study development plans of surrounding areas which could have a bearing on the project.
- (v) Development control applicable to the subject site and designated use of land parcel if any.
- (vi) Deriving market value of land through registered valuers practicing in Kerala and also guided by the land value assessment done by **KMRL**.
- (vii) To study real estate trends and assessment of demand - supply parameters.
- (viii) Collection, compilation and analysis of relevant financial data relating to all costs and revenues.
- (ix) Assisting the **KMRL** in identification of project risks and in allocation of the same in an efficient and economic manner.
- (x) Development of various possible alternatives for project structuring including revenue maximization and suggest an optimal product mix which give maximum returns based on all requisite studies and analysis of the same. This shall be done referring to the indicative product mix proposed by **KMRL** and the minimum requirement as per 1.1.
- (xi) Advising on tax-related issues arising out of the project structuring, preparation of a consolidated list for approvals / consents / clearances required from Government Instrumentation.
- (xii) Submit project structuring options and suggestion including the nature of arrangement to be made with the selected partner.
- (xiii) Suggesting the implementation strategy with reference to PPP/BOT/JV by forming SPV / Development agreement for maximizing the benefits / returns to the **KMRL** and other stake holders as well as appropriate allocation of risks.
- (xiv) Preparing techno commercial and financial feasibility of selected option and submission of draft report.
- (xv) Submission of final report including detailed project report after due consultation with the **KMRL** officials and management. Consultant shall make modifications as desired by **KMRL** on the salient features of the report, finding conclusion and final presentation / recommendations.
- (xvi) Based on the selected model of the project, prepare a master plan, development plan, preparation of preliminary cost estimate with breakup cost for each component and phasing plan.
- (xvii) Prepare preliminary technical standards and specification for construction and maintenance of the project.

- (xviii) During the preparation of the above mentioned design criteria it should be ensured that the project meets the GRIHA (Green Rating for Integrated Habitat Assessment) green building design evaluation system, and/or LEED (Leadership in Energy & Environmental Design) rating system for the design, construction and operation of high performance green buildings.
- (xix) Formulating the technical and financial criteria for the selection of Joint Venture partners / developer based on the feasibility report.
- (xx) Preparation of expression of interest document for inviting Global competitive bids to select Joint Venture partner / developer.
- (xxi) Organizing the pre-bid conference providing clarifications to the bidders as mutually decided by the consultant and the **KMRL**.
- (xxii) Technical, Financial and Legal evaluation of the bid responses and advising **KMRL** to select the successful partner / bidder from the responses received through global competitive bidding.
- (xxiii) Preparation of documents and assisting **KMRL** in forming the SPV / Development Agreement and related matters with the successful bidder and the **KMRL**.
- (xxiv) Prepare Concession Agreement to be executed with the selected partner / bidder.
- (xxv) Prepare documents for the physical commencement of the work by the partner / bidder including but not limited to obtaining approvals from Local bodies.
- (xxvi) The consultant should suggest marketing strategy to attract Anchor Investor / Developer.

3.1.2 The scope of services to be performed by the Consultant for the TOD study of Tripunithura-Kakkanad Stretch and Kakkanad-Kalamassery Stretch shall include but not be limited to the following:

**3.1.2.1 Stage I: Review of Documents, Delineation of Study Area and Assessment of Existing Situation**

- (a) Review of Perspective Plan of Greater Cochin Development Authority Area 2021, Kerala Sustainable Urban Development Project, Integrated Development Plan of Kochi and adjoining Islands, Comprehensive Study for Transport System for Greater Cochin Area, Detailed Project Report for Kochi Metro, and other relevant studies carried out for the identified corridor, as available.
- (b) Delineation of the influence areas of metro corridor/stations on both sides based on the present modes of transport including walking / cycling distances from residences to stations and from work places to stations. The boundaries of the influence areas will follow the existing road network.
- (c) Review and assess the existing land use of the identified metro corridors and influence area in terms of density, economic base, utilities and amenities.
- (d) Review the urban form of the identified corridors - details of existing developments such as built-up area, vacant land and take stock of the existing infrastructure facilities.
- (e) Review of the Development Control Regulations (DCR) along the proposed metro corridor.
- (f) Review of existing real estate trends in the area of influence of the transit corridor in terms of existing market supply and demand across categories of property.

**3.1.2.2 Stage II: Preparation of Strategic Transit Oriented Development Plan**

- (a) Assessment of carrying capacity of the transit corridor and identified influence area to judge the impact of densification on availability of other infrastructure e.g. water supply, sewerage, etc.

- (b) Identification of mechanisms of development, infill, re-development, and re-densification applicable to Kochi city and TOD area incorporating inputs from the best practices of enhancing transit ridership including higher FSI /TODs, etc.
- (c) Development of strategies for Transit Oriented Development such as development of mixed land uses, higher densities and FSI, walk-able trip distances etc. for Kochi
- (d) Develop Transit Oriented Development Action Plan for Kochi including a conceptual level Station Area Plan
- (e) Work out broad infrastructure needs and extent to which densification can be achieved as transport is one of the infrastructure being made available, while formulating densification strategy.
- (f) Support the TOD Action Plan with necessary revised Development Control Regulations- FSI, Ground Coverage, Setbacks, and Parking etc, as applicable.

**3.1.2.3 Stage III: Estimation of Revenue Generation from TOD initiatives and Preparation of Strategic Implementation Plan**

- (a) Identification and review of alternative finance mechanisms and sources for non-fare box revenue generation.
- (b) Estimate Built-up Area based on proposed land use mix and development control regulations
- (c) Market Analysis of proposed built-up area with reference to prevailing and forecasted rates, demand and supply.
- (d) Estimation of revenue potential from TOD based planning initiatives.
- (e) Preparation of Implementation Strategy to maximize revenue returns from TOD. Stakeholder consultations shall be conducted at various stages to receive the opinion on development initiatives.

The above are tentative and indicative and to be finalized during the signing of agreement. In making its projections, recommendation and reports the consultant shall identify the underlying assumptions and reach an agreement with the **KMRL** in relation thereto. The services to be rendered by the consultants are briefly explained hereunder:

**3.1.3. Advisory Services**

The Consultant shall provide advisory services for conducting the bidding process and will assist in the preparation of bidding documents and in conducting the bidding process for selection of the concessionaire for the project (technical, financial and legal) The Consultant shall provide such other advice and assistance as may be necessary and incidental to the services and as may be requested by **KMRL** in respect of the project, including but not limited to attending meetings, conferences and discussion with the **KMRL** and shall otherwise advice on and assist **KMRL** in the diverse legal and commercial issues that may arise from time to time. The Consultant shall be responsible primarily for providing advice relating to financial, technical and legal issues arising from or during the course of bidding process.

**3.2 Studies, Surveys and Investigations**

3.2.1 Following services and studies shall be conducted as part of this Consultancy

- (i) About 17.315 acres of land is available for development of the Project. The Consultant shall prepare a Master Plan for development of the entire Project site. The Consultant shall carry out a topographic survey of the available land and the surrounding areas to prepare accurate site plans. The development proposals should be primarily confined



to the site. However, to achieve the objective of harmonious development with the surrounding city and adequately meet the need for transport linkages, the Consultant shall plan works on surrounding roads and the land adjoining the land boundary of the site. Feasibility of such construction shall be carefully examined. The plan should provide for integrating the proposed development with Kochi Metro Phase 2 and the other available modes of transport.

(ii) From within the revenue accruals provision is to be made for the construction of 150 quarters in lieu of the demolished quarters to the state PWD in the alternate land earmarked for the purpose.

(iii) Also develop profitable revenue models in the tracts of land earmarked for property development including multi-level parking at Metro Stations of Aluva, Edapally, JLN Stadium, Kaloor, Ernakulam South and Petta.

(iv) TOD study of the Phase II Metro Corridor stretch from Tripunithura-Kakkanad stretch and Kakkanad-Kalamassery stretch to be carried out and this proposed development should be integrated with the project proposal for 'Metro City'.

(v) Survey of services and utilities;

(vi) Study of infrastructure assessment and connectivity;

(vii) Study of micro market Real Estate trends and assessment of demand-supply parameters.

(viii) Any other study or survey which the Consultant considers necessary or which the **KMRL** may stipulate for successful completion of the Services under the Consultancy shall also be carried out.

(vi) The Consultant shall study the development bye laws and Master Plan of the city and other requirements laid down by local authorities and shall advise the **KMRL** regarding the nature and extent of construction permitted. The Consultant shall prepare necessary documents to establish the minimum construction requirement over the entire site to meet the scale of facilities expected of a Commercial City cum Residential District. Corporation or other local bodies shall be clearly brought out and shall prepare plans conforming to the exact urban by laws with a view to enabling an 'in principle' approval of local authorities. The Consultant is responsible for obtaining in-principle approval from relevant local authorities.

(vii) **Energy Efficient Green Building Guidelines.** The project should be conceived and designed such that it meets the GRIHA (Green Rating for Integrated Habitat Assessment) green building design evaluation system, and LEED (Leadership in Energy & Environmental Design) rating system for the design, construction and operation of high performance green buildings. A presentation elaborating the features being incorporated should be included along with deliverables as per KD1, KD2, KD3, KD4, KD5, KD6 & KD7 as given clause 6.0.

### 3.3.1. Compilation and analysis of data

The Consultant shall; based on available information, compile and analyse the financial and commercial data relating to project and prepare a revenue and expenditure statement on commercial accounting principles for three financial years. The expenditure shall include expenses on staff, material, contractual payments etc.

### 3.4. Development of Revenue model

The Consultant shall identify and quantify all costs, expenses and revenues of the project and prepare cash -flow statements for the concession period. Based on the above, the Consultant shall prepare the Revenue model which will indicate the possible capital structure, likely sources of financing, the costs of financing, the cash flow, debt service, return on investment etc. (the Revenue Model) This would also include sensitivity analysis in relation to the critical parameters of the Revenue Model.

### 3.5. Project Appraisal

3.5.1. Based on the parameters specified in this document as well as the Revenue Model, the Consultant shall prepare an Appraisal Report for the Project outlining the salient features of the project, its financial viability and its social and economic benefits. The Consultant shall work out the financial viability of the project with a view to estimating the likely IRR over a concession period of 10 (ten) years, 25 (twenty five) years, 35 (thirty five) years, 50 (fifty) years, 90 (ninety) years respectively. Suitable concession period may be suggested by the Consultant.

3.5.2. While undertaking the financial analysis and projecting the IRR, the following assumptions shall be adopted:

- (a) Capital cost shall be adopted as per estimates of construction cost to which not less than 25% (twenty five percent) shall be added for physical and price contingencies, interest during construction, other financing costs etc.
- (b) Debt equity ratio may be assumed as 70:30.
- (c) O&M costs may be assumed in consultation with the **KMRL**.

3.5.3. The Consultant shall

- (a) Calculate the NPV and EIRR for the project. It will undertake sensitivity analysis by identifying the most critical factors and determine their impact on the EIRR, including varying project costs and benefits, implementation period, and combination of these factors, and
- (b) Conduct a risk analysis (using the Monte Carlo method) by considering the possible values for key variables based on records, and their occurrence probability.

3.5.4. If the IRR of the Project, based on the afore said calculation is less than 12% (twelve percent) an effort should be made to reduce the capital costs in consultation with the **KMRL**. This may be done either by omitting / modifying some of the proposed structure or by phasing them after a period of seven years or more, such that the IRR reaches a minimum of 12% (twelve percent).

### 3.6. Master Plan.

3.6.1 The Project would be built on PPP/BOT/JV mode by forming SPV/development agreement that requires the concessionaire to bear the responsibility for detailed design.

3.6.2 The Technical / Feasibility Report to be prepared by the Consultant will contain the lay out plan and sufficient details to judge the feasibility and constructability of various project components. Preliminary design shall be adequately detailed so that interest of the **KMRL**

is fully safeguarded by clear planning and design parameters, Preliminary Design shall be submitted at the time of submission of the final Technical / Feasibility Report.

### **3.7. Impact on traffic and structures.**

- 3.7.1. The Consultant shall study the impact of the proposed development on traffic and congestion on surrounding roads and area and make an assessment of the impact on infrastructure demand in terms of water, sewerage, power, communications, road network and parking. Mitigation plans for increase in infrastructure demand shall also be prepared.
- 3.7.2. Consultant shall assess the requirements of relocation of structure and their users / occupants, removal of encroachments, land acquisition, diversion of services / utilities and trees to be felled. Cost estimates for all these requirements shall also be included. Though only preliminary plans are to be made for the property development, the lighting, circulation, traffic integration, access, and services required for property development are to be planned for an integrated with overall planning.

### **3.8 Assistance in RFQ process**

The bidding process is specified in the Model Request for Qualification (RFQ) document published by the Planning Commission. The Consultant shall assist in adapting the Model RFQ document for project specific purposes. The Consultant shall also assist the **KMRL** in the prequalification process. The **KMRL** intends to pre-qualify and short list bidders on the basis of the response to the RFQ document

### **3.9. Assistance in preparation of Bid documents.**

- 3.9.1. The Consultant shall assist in preparing the Request for Proposal (RFP) and draft Concession Agreement based on the Model RFP. The model RFP has been published by the Planning commission.
- 3.9.2. The Consultant shall prepare, revise and update all schedules of Concession Agreement. These will define the **KMRL's** architectural parameters and controls as well as the minimum technical requirements, which shall be mandatory for the Concessionaire. These schedules shall consist of drawings and design, construction and functional outline criteria and will generally define the site of the project including the existing assets and facilities, scope of relocation and development, floor plans showing uses of space, development control norms for the proposed development, scope of other civic infrastructure such as roads, parks, landscaping etc. Generally the content of these schedules shall be derived from the approved Master Plan and draft Feasibility Report and shall be submitted as part of the final Feasibility Report.
- 3.9.3. Once the bid documents are released, it shall prepare replies to the written queries made by the bidders on the technical financial and legal aspects of the bid documents. It shall take part in the pre-bid conference for award of concession and furnish such technical clarifications as may be called for. The Consultant shall assist **KMRL** in the bid process for the selection of concessionaire from among the bidders and till signing of the Concession Agreement This will primarily relate to participation in pre bid meetings and answering questions or issuing clarifications with the approval of **KMRL**. The Consultant shall also assist the **KMRL** in engaging with the bidders on different aspects of the project such as its assets, the process of the transaction, the revenue model and the structure of the project and for providing clarifications on legal issues that are raised during the process. Such services shall continue till the execution of the concession Agreement with the selected bidder. It will

also assist the **KMRL** in preparing internal notes and projects for securing governmental approvals if any. Beyond the 34<sup>th</sup> week from the effective Date, these services may be in the nature of intermittent services required till the completion of services. Costs of services till the 34<sup>th</sup> week from effective date have to be included in the financial proposals. Applicable statutory regulations shall form part of the Concession Agreement by reference and the consultant shall generally conform to the provisions thereof in the preparation of Master Plan and Feasibility Report. However the Consultant may, if necessary recommend deviations from the above with justifications.

### **3.10. Scope not exhaustive**

The scope of services specified in this Clause 3 are not exhaustive and the Consultant shall undertake such other tasks as may be necessary to design and develop the project structure, appraise the project financially, prepare the Revenue Model and successfully complete the bid process of the Project.

## **4. PREPARATION OF REPORTS**

In pursuance of this TOR the Consultant shall prepare the Reports as a part of this Consultancy. These reports, except the Feasibility Report, are not intended to be used as final products but as intermediate inputs for obtaining the **KMRL's** feedback to aid preparation of the Feasibility Report. The Consultant shall submit the draft of each report to the **KMRL's** at least three weeks before its final submission. Upon submission of draft reports, the **KMRL** will scrutinize the draft reports and convey its observations to the Consultant through the Project Team. The Consultant shall make necessary presentations, attend meetings and provide clarifications during the **KMRL's** scrutiny. The Consultant shall address the Project Team's observations and carry out necessary additional work, rectification, modification, clarification etc. and submit the final report thereafter.

### **4.1 Preliminary Report**

The Consultant shall prepare the preliminary plans of the proposed Project and based on the **KMRL's** feedback on its recommendations of the viable project (ref 3.4 & 3.5), the Consultant shall prepare the proposed plan containing all necessary details generally shown on such plans. The Consultant shall prepare quick estimates of floor area requirements for meeting the objective of the Project and prepare a concept paper for FAR requirements and other Development Control Norms and for obtaining approval from relevant local authorities. The concept paper on FAR/Development Control Norms shall be delivered as the Preliminary Report (the "Preliminary Report"). Should any revision of these plans and paper become necessary during subsequent reviews, the Consultant shall revise the same to the satisfaction of the **KMRL**.

### **4.2 Master Plan**

4.2.1 The Consultant shall prepare a master plan (the "Master Plan") comprising the land use, architecture, urban design and associated parameters for the proposed development of a world class Project in a manner which would utilize the existing land and infrastructure to the best advantage without being constricted in creativity and imagination for designing a truly urban icon.

4.2.2 This project proposal should be integrated with the TOD study of the Phase II Metro Corridor stretch from Tripunithura-Kakkanad stretch and Kakkanad-Kalamassery stretch,

- 4.2.3 The Consultant shall study the traffic pattern of the area taking into account the future planned developments. Based on such study, the Consultant shall prepare the plan for (re)development of road network, pedestrian walkways, subways, traffic integration, parking etc. Analysis of traffic flow and quality of service with the existing approach roads and with the improvements in approach roads shall be worked out.
- 4.2.4 The Consultant shall provide for adequate open space such as parks, fountains, and green landscaping in the plan so that the Project adds value to the quality of the environment. The drawings for property development should adequately address the requirements of public amenities such as parking, circulating areas, toilets, drinking water etc. The infrastructure required for these amenities shall form the mandatory part of the project facilities under the Concession Agreement.
- 4.2.5 While preparing the Master Plan, the Consultant shall integrate the recommendations contained in the Preliminary Report.

### **4.3 Feasibility Report**

- 4.3.1 The feasibility report (the "Feasibility Report") shall include the revised and updated Master Plan after incorporating observations of the **KMRL**, an executive summary of relevant survey/study reports, site plans, drawings of traffic integration, plans at each floor level, sections and elevations, perspective plans, landscape design, costing, 3D Modelling, plans for property development, broad financial analysis, preliminary risk analysis, scenario analysis, phasing and construction planning and shall, at a minimum, consist of but not be limited to the following:

#### *Cost Estimates*

- 4.3.2 The Consultant shall prepare a preliminary cost estimate for the Project including but not limited to the mandatory capital expenditure, commercial development, additional infrastructure facilities for coping with the commercial developments, etc. Cost estimates during concept proposal stage may be approximate based on typical relationship of quantities such as floor area/ volume etc. At Feasibility Report stage, preliminary cost estimates for mandatory capital expenditure shall be based on preliminary BOQ or typical relationship of quantities or a combination thereof, as appropriate, so as to give a reasonable assessment of cost for taking administrative and financial decisions. Cost estimates shall include all the costs including cost of construction, land development, cost of augmenting infrastructure, etc.

#### *Specification and Standards*

- 4.3.3 The Consultant shall prepare the technical specifications and standards that would govern the construction of the Project and the maintenance thereof. While the existing codal provisions may be adopted to the extent possible, project-specific variations, especially in respect of finishes and exteriors would have to be specified.
- 4.3.4 The project should be conceived and designed such that it meets the GRIHA (Green Rating for Integrated Habitat Assessment) and/or LEED (Leadership in Energy & Environmental Design) evaluation/rating system.
- 4.3.5 Detailed financial analysis is to be prepared by the Consultant which shall include the estimated construction costs, operation and maintenance costs, revenue streams nature of arrangements that can be made with by which **KMRL** can yield maximum returns, as part of its financial analysis and appraisal of the Project.

**4.4 Assistance in preparation of bid documents.**

The Consultant shall prepare bid documents.

**4.5 Assistance in pre-bid meetings**

The Consultant shall assist the **KMRL** in pre-bid meetings for selection of the Concessionaire and preparation of concession agreement. The Consultant shall be paid as per the man days actually provided for this work. These may be in the nature of intermittent services required from the 20<sup>th</sup> week and up to the end of the period of Agreement. Irrespective of the availability or otherwise of the Personnel beyond the period of first 20 weeks, it shall be the responsibility of the Consultant to provide these intermittent services as per the Terms of Reference.

**5. DELIVERABLES**

5.1.Deliverables for Property Development is as under:

The Consultant shall deliver the following during the course of this Consultancy. Each deliverable shall include drawings, plans, reports, photographs and such other documents that generally comprise deliverables for similar consultancy work internationally by way of best practices. The deliverables shall be so drafted that they could be given to the Bidders for guidance in preparation of their bids. 30 (thirty) hard copies and 3 (three) soft copies in CDs of all the Reports mentioned herein below shall be submitted to the KMRL. The deliverables shall include:

- (A) **Preliminary Report (Refer Para 4.1)**
- (B) **Revenue Model (Refer Para 3.4)**
- (C) **Master Plan (Refer Para 4.2)**
- (D) **Feasibility Report (Refer Para 4.3)**
- (E) **Assistance in preparation of Bid documents and bidding process (Refer Para 4.4)**
- (F) **Assistance in pre-Bid meetings (Refer Para 4.5)**
- (G) **Preparation of concession agreement.**

5.2.Deliverables for TOD Study is as under:

(a) The deliverables for providing the Services in respect of the Project shall be as follows:

S. No.	Components	Timelines (Weeks)
1	Inception Report	4
2	Existing Situation Analysis Report	16
3	Strategic Transit Oriented Development Plan	24
4	Revenue Estimation Report and Strategic Implementation Plan as part of the Final Report	32

- (b) Above timelines are indicative and exclusive of receipt of necessary approvals and information from the relevant Competent Authorities. The timeline for the subsequent deliverable(s) shall commence after all approvals and information, as may be necessary, has been provided by the Client.
- (c) The timelines for the assignment shall be extended mutually between Client and Consultant at no extra cost to the Client provided there is no change in the scope of Services being provided by the Consultant under the terms of this Agreement

The above though exhaustive are tentative/ indicative and will be finalized during the signing of agreement. **KMRL** reserves the right to modify the deliverables according to the requirement of the project.

**6. TIME AND PAYMENT SCHEDULE**

6.1 The total duration for preparation of Master Plan and Feasibility Report shall be 20 weeks, excluding any delay in granting approvals by the **KMRL** to the draft reports. Consultant shall deploy all his Key Personnel at the Project office in Kochi (the "Project Office") as per Deployment Schedule proposed. At least 50% of total man days each of Expatriate as well as Resident Professional Personnel should be deployed at Project Office and only those Expatriate Personnel and Key Personnel whose full time availability is not required may work from offices away from Kerala as per the Deployment Schedule. Concession agreement to be got executed by the developers with the **KMRL** within 34 weeks. However, intermittent services will be required beyond 34<sup>th</sup> week till the physical commencement of the project by the PPP/BOT/JV partner. Irrespective of the availability or otherwise of the Personnel beyond the period of 20 weeks, it shall be the responsibility of the Consultant to provide the Services as per the Agreement.

6.2 **Retention** **KMRL** shall retain 5% from each payment due to the Consultant till the completion of the Works. Upon the issue of a Certificate of Completion of the Works by the Director (Projects), the total amount retained shall be repaid to the Consultant. The Consultant may also exercise the option of substituting the retention money with an *õn demandõ* Bank Guarantee as given in Annex 1 ó Form 16.

6.2 Time Schedule for important Deliverables (the "**key Date**") of the Consultancy and the payment schedule linked to the specified Deliverables is given below:

6.2.1 The Key Dates alongwith payment schedule for Property Development is as given underneath. Eighty percent of the quoted consultation fee will be paid for deliverables under property development.

Key Date No.	Prescription of Deliverables	*Week No.	Payment
KD1	Preliminary Report	2	10%
KD2	Revenue Model	12	10%
KD3	Master Plan	12	10%
KD4	Feasibility Report	20	20%
KD5	Technical Bid Evaluation Report	30	10%
KD6	Execution of Agreement with the selected PPP/BOT/JV Partner	34	30%
KD7	Completion of Services with the physical commencement of the project by the selected partner	52	10%

<b>Total</b>	<b>100</b>
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\* Excludes time taken by the **KMRL** in providing its comments on the Reports.

6.2.2 The Key Dates alongwith payment schedule for TOD of Tripunithura-Kakkanad and Kakkanad-Kalamassery stretch is as given underneath. Twenty percent of the quoted consultation fee will be paid for deliverables under property development.

Key Date No.	Prescription of Deliverables	*Week No.	Payment
KD1	Inception Report	4	10%
KD2	Existing Situation Analysis	16	30%
KD3	Strategic Transit Oriented Development	24	40%
KD5	Revenue Estimation and Strategic Implementation Plan as part of Final Report	32	20%
<b>Total</b>			<b>100</b>

6.4 Final Feasibility Report shall be the final product of the first part of the Consultancy to be completed in 20 weeks

6.5 In the event, physical commencement of the project does happen within one year of the effective date, the final payment shall not become due to the Consultant, save and except the costs incurred for meeting its reimbursable expenses during the period after expiry of 20 week from the Effective Date, including travel costs and personal costs, at the agreed rates limited to 90% of financial proposal. In the event that the Consultancy is terminated at the instance **KMRL** prior to its completion, the Consultant shall be entitled to full payment for the Deliverables completed by it.

## 7. MEETINGS WITH THE **KMRL**

7.1 The Consultancy requires close interaction with the project team (the "**Project Team**") that will be nominated by the **KMRL** at Kochi for timely inputs, feedbacks on proposals, confirmation of operational requirements and approval of intermediate stages. The Consultant shall interact with the Project Team at least twice a week, with each meeting attended by at least one Key Personnel, for presenting the work completed and obtaining Project team's feedback. Each meeting shall be minuted by the Consultant and submitted to the **KMRL** fortnightly for record. Team leader must participate in these meetings at least twice a month on dates to be mutually agreed between the **KMRL** and the Consultant having regard to avoiding his unnecessary travel. In addition, the Team leader or respective Key Personnel shall make formal presentations to the **KMRL**, Kochi as part of the interactive process as and when mutually agreed upon. Inputs and response provided by the **KMRL** in these presentations shall be minuted by the Consultant and be considered as the **KMRL**'s tentative response. Consultant shall actively associate in the **KMRL**'s reviews of various submissions and provide necessary clarifications, documents and backup information for conducting the reviews. Further, the **KMRL** will send brief formal responses to the Consultant in response to the Consultant's request for certain decisions and in response to draft reports. These should be considered and reflected in the final report of the respective deliverables including subsequent revisions of final reports by the Consultant.

7.2 The **KMRL** will review the progress of the Consultancy in monthly meetings to be held in Kochi at **KMRL**'s office. The Team Leader and such other Key Personnel as deemed necessary by the Consultant shall participate in these meetings. Personnel costs of such meetings would be deemed as included in the Financial Proposal.



**8. CONSULTANCY TEAM AND PROJECT OFFICE**

8.1 The Consultant shall form a multi-disciplinary team (the "Consultancy Team") for undertaking this assignment. The Consultancy Team shall consist of experts who have the requisite experience. However, for day to day coordination and management of the Consultancy Team's work, the Consultant shall appoint a Project manager (the "Project Manager") who will be a senior Professional Personnel from the Lead Member with a minimum of 15 years of professional experience.

8.2 The Consultant shall establish a Project Office at a suitable location in Kochi for efficient and coordinated performance of its Services

8.3 The following Key Personnel whose experience and responsibilities are briefly described herein would be considered for evaluation of the Technical Proposal. Other expertise that required for financial analysis, social impact assessment etc. for the Project shall be included in the Team.

**a. PPP Expert cum Project Manager (Team Leader)**

Educational Qualifications	Graduate Civil Engineer & MBA
Essential Experience	15 years in construction field. He/She should have led the consultancy team in development of project models and/or bid documents for at least five completed PPP Projects.
Job responsibilities	He/She will lead, co-ordinate and supervise the consultancy team for delivering the consultancy in a timely manner as envisaged in this RFP. He shall not delegate responsibilities except with the prior written approval of the <b>KMRL</b> .

**b. Financial Expert (the Financial Expert)**

Educational Qualifications	CA / MBA Finance / CFA
Essential Experience	He/She should have led the consultancy team in financial analysis preparation of revenue model and / or bid documents for at least three PPP Projects.
Job responsibilities	He will co-ordinate and ensure development of a suitable revenue model in a timely manner as envisaged in this RFP and establishing financial feasibility of the project.

**c. Real Estate Expert**

Educational Qualifications	Graduate Engineer/Master in Planning of equivalent
Essential Experience	He/She will be responsible for establishing the technical feasibility of the project and its structural elements. He should have led the team in successful execution of at least five real estate township development projects.
Job responsibilities	He will be carry out the demand assessment cum feasibility study and also develop the appropriate product mix

**a. Legal Expert**

Educational Qualifications	Bachelor in Law or equivalent
Essential Experience	He/She should have 10 years of experience in commercial contracts. He/She should have led the legal team for not less than 1 eligible assignment.
Job responsibilities	He shall responsible for providing the legal assistance and advisory services in the bidding process, drafting concession agreement and bid documents.

**9. COMPLETION OF SERVICES**

- 9.1 All the study outputs including primary data shall be compiled, classified and submitted by the Consultant to the **KMRL** in soft copy, apart from the reports indicated in the Deliverables in para 5. The study outputs shall remain the property of the **KMRL** and shall not be used for any purpose other than that intended under these Terms of Reference without the permission of the **KMRL**. The Consultancy shall stand completed on acceptance by the **KMRL** of all the Deliverables of the Consultant, execution of the Concession Agreement by the PPP/BOT/JV Partner. The Director (Projects), **KMRL** shall issue a certificate to that effect. However the consultant is honor bound to clarify queries of the concessionaire till the completion of execution of the project..

**SCHEDULE-2**

(See Clause 2.1.3)

**CONSULTANCY FOR IMPLEMENTING**

**'METRO CITY' PROJECT**

**AT**

**KAKKANAD, KOCHI**

**AGREEMENT**

**AGREEMENT No.**

This AGREEMENT (hereinafter called the "**Agreement**") is made on the day of the month of 2013, between, on the one hand, the KMRL through its Director (Projects) (hereinafter called the "**KMRL**" which expression shall include their respective successors and permitted assigns, unless the context otherwise requires) and, on the other hand, (hereinafter called the "**Consultant**" which expression shall include their respective successors and permitted assigns).

WHEREAS

(A) The **KMRL** vide its Request for Proposal for selection of Transaction Advisor for developing a project in 17.315 acres of land at Kakkanad, Kochi under Public Private Partnership (hereinafter called the "**Project**") by forming Special Purpose vehicle (hereinafter called the **Consultancy**);

(B) the Consultant submitted its proposals for the aforesaid work, whereby the Consultant represented to the **KMRL** that it had the required professional skills, and in the said proposals the Consultant also agreed to provide the Services to the **KMRL** on the terms and conditions as set forth in the RFP and this Agreement; and

(C) The **KMRL**, 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**

**1.1 Definitions and Interpretation**

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

- (a) "**Additional Costs**" means any expenses the consultancy will have to meet after the acceptance of the proposal, at the instance of the **KMRL**;
- (b) "**Agreement**" means this Agreement, together with all the Annexes;
- (c) "**Agreement Value**" is the value set forth as agreement value in Clause 6.1.2;
- (d) "**Applicable Laws**" means the laws and any other instruments having the force of law in India as they may be issued and in force from time to time;
- (e) "**Confidential Information**" shall have the meaning set forth in Clause 3.3;
- (f) "**Conflict of Interest**" shall have the meaning set forth in Clause 3.2 read with the provisions of RFP.
- (g) "**Dispute**" shall have the meaning set forth in Clause 9.2.1;
- (h) "**Effective Date**" means the date on which this Agreement comes into force and effect pursuant to Clause 2.1;
- (i) "**Expatriate Personnel**" means such persons who at the time of being so hired had their domicile outside India;
- (j) "**Government**" means the Government of Kerala;
- (k) "**INR, Re. or Rs.**" means Indian Rupees;
- (l) "**Member**", in case the Consultant consists of a joint venture or consortium of more than one entity, means any of these entities, and "**Members**" means all of these entities;

- (m) **"Party"** means the **KMRL** or the Consultant, as the case may be, and Parties means both of them;
- (n) **"Personnel"** means persons hired by the Consultant or by any Sub-Consultant as employees and assigned to the performance of the Services or any part thereof;
- (o) **"Resident Personnel"** means such persons who at the time of being so hired had their domicile inside India;
- (p) **"RFP"** means the Request for Proposal document in response to which the Consultant's proposal for providing Services was accepted;
- (q) **"Services"** means the work to be performed by the Consultant pursuant to this Agreement, as described in the Terms of Reference hereto;
- (r) **"Sub-Consultant"** means any entity to which the Consultant subcontracts any part of the Services in accordance with the provisions of Clause 4.7; and
- (s) **"Third Party"** means any person or entity other than the Government, the **KMRL**, 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.

1.1.2 The following documents along with all addenda issued thereto shall be deemed to form and be read and construed as integral parts 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) Annexures of Agreement;
- (c) RFP; and
- (d) 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 or of principal and agent as between the **KMRL** and the Consultant. The Consultant shall, subject to this Agreement, have complete charge of Personnel performing the Services and shall be fully responsible for the Services performed by them or on their behalf hereunder.

## 1.3 Rights and obligations

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

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

#### **1.4 Governing law and jurisdiction**

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

#### **1.5 Language**

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

#### **1.6 Table of contents and headings**

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

#### **1.7 Notices**

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

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

#### **1.8 Location**

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

#### **1.9 Authority of Member-in-charge**

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

### 1.10 Authorised Representatives

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

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

Director (Projects)  
 Kochi Metro Rail Ltd.,  
 8th Floor, Revenue Tower,  
 Park Avenue,  
 Kochi 682 011  
 KERALA  
 Phone: 0484-2380980  
 Fax: 0484-2380686  
 E-mail: maheshkumar@kochimetromail.com

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

Tel:  
 Mobile:  
 Fax:  
 Email:

### 1.11 Taxes and duties

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 the **KMRL** shall perform such duties in regard to the deduction of such taxes as may be lawfully imposed on it.

## 2. COMMENCEMENT, COMPLETION AND TERMINATION OF AGREEMENT

### 2.1 Effectiveness of Agreement

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

### 2.2 Commencement of Services

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

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

If the Consultant does not commence the Services within the period specified in Clause 2.2 above, the **KMRL** may, by not less than 2 (two) weeks' notice to the Consultant, declare this Agreement

to be null and void, and in the event of such a declaration, the Bid Security of the Consultant shall stand forfeited.

## 2.4 Expiration of Agreement

Unless terminated earlier pursuant to Clauses 2.3 or 2.9 hereof, this Agreement shall, unless extended by the Parties by mutual consent, expire upon the expiry of 1 1/2(one and a half) years from the Effective Date. Upon Termination, the **KMRL** shall make payments of all amounts due to the Consultant hereunder.

## 2.5 Entire Agreement

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

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

## 2.6 Modification of Agreement

Modification of the terms and conditions of this Agreement, including any modification of the scope of the Services, may only be made by written agreement between the Parties. Pursuant to Clauses 4.2.3 and 6.1.3 hereof, however, each Party shall give due consideration to any proposals for modification made by the other Party.

## 2.7 Force Majeure

### 2.7.1 Definition

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

### 2.7.2 No breach of Agreement



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

**2.7.3 Measures to be taken**

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

**2.7.4 Extension of time**

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

**2.7.5 Payments**

During the period of its inability to perform the Services as a result of an event of Force Majeure, the Consultant shall be entitled to be reimbursed for additional costs reasonably and necessarily incurred by it during such period for the purposes of the Services and in reactivating the Services after the end of such period.

**2.7.6 Consultation**

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

**2.8 Suspension of Agreement**

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

**2.9 Termination of Agreement**

**2.9.1 By the KMRL**

The **KMRL** 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 2.9.1, terminate this Agreement if:

- (a) the Consultant fails to remedy any breach hereof or any failure in the performance of its obligations hereunder, as specified in a notice of suspension pursuant to Clause 2.8 hereinabove, within 30 (thirty) days of receipt of such notice of suspension or within such further period as the **KMRL** may have subsequently granted in writing;
- (b) the Consultant becomes insolvent or bankrupt or enters into any agreement with its creditors for relief of debt or take advantage of any law for the benefit of debtors or goes into liquidation or receivership whether compulsory or voluntary;
- (c) the Consultant fails to comply with any final decision reached as a result of arbitration proceedings pursuant to Clause 9 hereof;
- (d) the Consultant submits to the **KMRL** a statement which has a material effect on the rights, obligations or interests of the **KMRL** and which the Consultant knows to be false;
- (e) any document, information, data or statement submitted by the Consultant in its Proposals, based on which the Consultant was considered eligible or successful, is found to be false, incorrect or misleading;
- (f) as the result of Force Majeure, the Consultant is unable to perform a material portion of the Services for a period of not less than 60 (sixty) days; or
- (g) the **KMRL**, in its sole discretion and for any reason whatsoever, decides to terminate this Agreement.

### 2.9.2 By the Consultant

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

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

### 2.9.3 Cessation of rights and obligations

Upon termination of this Agreement pursuant to Clauses 2.3 or 2.9 hereof, or upon expiration of this Agreement pursuant to Clause 2.4 hereof, all rights and obligations of the Parties hereunder shall cease, except (i) such rights and obligations as may have accrued on the date of termination or expiration, or which expressly survive such Termination; (ii) the obligation of confidentiality set forth in Clause 3.3 hereof; (iii) the Consultant's obligation to permit inspection, copying and auditing of such of its accounts and records set forth in Clause 3.6, as relate to the Consultant's Services provided under this Agreement; and (iv) any right or remedy which a Party may have under this Agreement or the Applicable Law.

#### 2.9.4 Cessation of Services

Upon termination of this Agreement by notice of either Party to the other pursuant to Clauses 2.9.1 or 2.9.2 hereof, the Consultant shall, immediately upon dispatch or receipt of such notice, take all necessary steps to bring the Services to a close in a prompt and orderly manner and shall make every reasonable effort to keep expenditures for this purpose to a minimum. With respect to documents prepared by the Consultant and equipment and materials furnished by the **KMRL**, the Consultant shall proceed as provided respectively by Clauses 3.9 or 3.10 hereof.

#### 2.9.5 Payment upon Termination

Upon termination of this Agreement pursuant to Clauses 2.9.1 or 2.9.2 hereof, the **KMRL** shall make the payment of remuneration pursuant to Clause 6 hereof for Services satisfactorily performed prior to the date of termination, to the Consultant (after offsetting against these payments any amount that may be due from the Consultant to the **KMRL**):

#### 2.9.6 Disputes about Events of Termination

If either Party disputes whether an event specified in Clause 2.9.1 or in Clause 2.9.2 hereof has occurred, such Party may, within 30 (thirty) days after receipt of notice of termination from the other Party, refer the matter to arbitration pursuant to Clause 9.4 hereof, and this Agreement shall not be terminated on account of such event except in accordance with the terms of any resulting arbitral award.

### 3. OBLIGATIONS OF THE CONSULTANT

#### 3.1 General

##### 3.1.1 Standards of Performance

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

##### 3.1.2 Terms of Reference

The scope of services to be performed by the Consultant is specified in the Terms of Reference (the "**TOR**") at Annex-1 of this Agreement. The Consultant shall provide the Deliverables specified therein in conformity with the time schedule stated therein.

##### 3.1.3 Applicable Laws

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

#### 3.2 Conflict of Interest

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

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

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

**3.2.3 Prohibition of conflicting activities**

Neither the Consultant nor 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 assigned to them under this Agreement;
- (b) after the termination of this Agreement, such other activities as may be specified in the Agreement; or
- (c) at any time, such other activities as have been specified in the RFP as Conflict of Interest.

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

The remuneration of the Consultant pursuant to Clause 6 hereof 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.

3.2.5 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, the **KMRL** shall be entitled to terminate this Agreement forthwith by a communication in writing to the Consultant, without being liable in any manner whatsoever to the Consultant, if it determines that the Consultant has, directly or indirectly or through an agent, engaged in any Prohibited Practices in the Selection Process or before or after entering into of this Agreement. In such an event, the **KMRL** shall forfeit and appropriate the performance security, if any, as mutually agreed genuine pre-estimated compensation and damages payable to the **KMRL** towards, *inter alia*, the time, cost and effort of the **KMRL**, without prejudice to the **KMRL**'s any other rights or remedy hereunder or in law.

- 3.2.6 Without prejudice to the rights of the **KMRL** under Clause 3.2.5 above and the other rights and remedies which the **KMRL** may have under this Agreement, if the Consultant is found by the **KMRL** 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 the **KMRL** to have directly or indirectly or through an agent, engaged or indulged in any Prohibited Practices.
- 3.2.7 For the purposes of Clauses 3.2.5 and 3.2.6, the following terms shall have the meaning hereinafter respectively assigned to them:
- (a) **"corrupt practice"** means the offering, giving, receiving or soliciting, directly or indirectly, of anything of value to influence the actions of any person connected with the Selection Process (for removal of doubt, offering of employment or employing or engaging in any manner whatsoever, directly or indirectly, any official of the **KMRL** 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 the **KMRL**, shall be deemed to constitute influencing the actions of a person connected with the Selection Process); or (ii) engaging in any manner whatsoever, whether during the Selection Process or after the issue of LOA or after the execution of the Agreement, as the case may be, any person in respect of any matter relating to the Project or the LOA or the Agreement, who at any time has been or is a legal, financial or technical adviser the **KMRL** in relation to any matter concerning the Project;
  - (b) **"fraudulent practice"** means a misrepresentation or omission of facts or suppression of facts or disclosure of incomplete facts, in order to influence the Selection Process;
  - (c) **"coercive practice"** means impairing or harming, or threatening to impair or harm, directly or indirectly, any person or property to influence any person's participation or action in the Selection Process or the exercise of its rights or performance of its obligations by the **KMRL** under this Agreement;
  - (d) **"undesirable practice"** means (i) establishing contact with any person connected with or employed or engaged by the **KMRL** with the objective of canvassing, lobbying or in any manner influencing or attempting to influence the Selection Process; or (ii) having a Conflict of Interest; and
  - (e) **"restrictive practice"** means forming a cartel or arriving at any understanding or arrangement among Applicants with the objective of restricting or manipulating a full and fair competition in the Selection Process.

### 3.3 Confidentiality

The Consultant, 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 the **KMRL** to the Consultant, its Sub-Consultants and the Personnel; any information provided by or relating to the **KMRL**, its technology, technical processes, business affairs or finances or any information relating to the **KMRL's** employees, officers or other professionals or suppliers, customers, or Consultants of the **KMRL**; and any other information which the Consultant is under

an obligation to keep confidential in relation to the Project, the Services or this Agreement ("**Confidential Information**"), without the prior written consent of the **KMRL**.

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:

- (i) 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;
- (ii) was obtained from a third party with no known duty to maintain its confidentiality;
- (iii) is required to be disclosed by Applicable Laws or judicial or administrative or arbitral process or by any governmental instrumentalities, provided that for any such disclosure, the Consultant, its Sub-Consultants and the Personnel of either of them shall give the **KMRL**, prompt written notice, and use reasonable efforts to ensure that such disclosure is accorded confidential treatment; and
- (iv) is provided to the professional advisers, agents, auditors or representatives of the Consultant or 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.

### **3.4 Liability of the Consultant**

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

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

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

- (i) for any indirect or consequential loss or damage; and
- (ii) for any direct loss or damage that exceeds (a) the Agreement Value set forth in Clause 6.1.2 of this Agreement, or (b) the proceeds the Consultant may be entitled to receive from any insurance maintained by the Consultant to cover such a liability in accordance with Clause 3.5.2, whichever of (a) or (b) is higher.

3.4.4 This limitation of liability specified in Clause 3.4.3 shall not affect the Consultant's liability, if any, for damage to Third Parties caused by the Consultant or any person or firm acting on behalf of the Consultant in carrying out the Services subject, however, to a limit equal to 3 (three) times the Agreement Value.

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

3.5.1

- (a) 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 the **KMRL**, insurance against the risks, and for the coverages, as specified in the Agreement and in accordance with good industry practice.
- (b) 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 to the **KMRL**, 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. If the Consultant fails to effect and keep in force the aforesaid insurances for which it is responsible pursuant hereto, the **KMRL** shall, apart from having other recourse,
- (c) 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 the **KMRL**.
- (d) Except in case of Third Party liabilities, the insurance policies so procured shall mention the **KMRL** 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 the **KMRL** as the sole beneficiary of the Consultant or require an undertaking to that effect.

3.5.2 The Parties agree that the risks and coverage~~s~~ shall include but not be limited to the following:

- (a) Third Party liability insurance as required under Applicable Laws, with a minimum coverage of Rs. 6 (six) crore;
- (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.

The indemnity limit in terms of "Any One Accident" (AOA) and "Aggregate limit on the policy period" (AOP) should not be less than the amount stated in Clause 6.1.2 of the Agreement. In case of consortium, the policy should be in the name of Lead Member and not in the name of individual Members of the consortium.

### 3.6 Accounting, inspection and auditing

The Consultant shall:

- (a) keep accurate and systematic accounts and records in respect of the Services provided under this Agreement, in accordance with internationally accepted accounting principles and in such form and detail as will clearly identify all relevant time charges and cost, and the basis thereof (including the basis of the Consultant's costs and charges); and
- (b) permit the **KMRL** or its designated representative periodically, and up to one year from the expiration or termination of this Agreement, to inspect the same and make copies thereof as well as to have them audited by auditors appointed by the **KMRL**.

### 3.7 Consultant's actions requiring the KMRL's prior approval

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

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

### 3.8 Reporting obligations

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

### 3.9 Documents prepared by the Consultant to be property of the KMRL

- 3.9.1 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 the **KMRL**, and all intellectual property rights in such Consultancy Documents shall vest with the **KMRL**. Any Consultancy Document, of which the ownership or the intellectual property rights do not vest with the **KMRL** under law, shall automatically stand assigned to the **KMRL** as and when such Consultancy Document is created and the Consultant agrees to execute all papers and to perform such other acts as the **KMRL** may deem necessary to secure its rights herein assigned by the Consultant.
- 3.9.2 The Consultant shall, not later than termination or expiration of this Agreement, deliver all Consultancy Documents to the **KMRL**, 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 the **KMRL**.
- 3.9.3 The Consultant shall hold the **KMRL** 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 unauthorised 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 the **KMRL**.

### 3.10 Equipment and materials furnished by the KMRL

Equipment and materials made available to the Consultant by the **KMRL** shall be the property of the **KMRL** and shall be marked accordingly. Upon termination or expiration of this Agreement, the Consultant shall furnish forthwith to the **KMRL**, an inventory of such equipment and materials and shall dispose of such equipment and materials in accordance with the instructions of the **KMRL**. While in possession of such equipment and materials, the Consultant shall, unless otherwise instructed by the **KMRL** in writing, insure them in an amount equal to their full replacement value.



### 3.11 Providing access to Project Office and Personnel

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

### 3.12. Accuracy of Documents

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. Subject to the provisions of Clause 3.4, it shall indemnify the **KMRL** 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.

## 4. CONSULTANT'S PERSONNEL AND SUB-CONSULTANTS

### 4.1 General

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

### 4.2 Deployment of Personnel

4.2.1 The designations, names and the estimated periods of engagement in carrying out the Services by each of the Consultant's Personnel are described in Annex-2 of this Agreement. The estimate of Personnel costs and man-day rates are specified in Annex-3 of this Agreement.

4.2.2 If additional work is required beyond the scope of the Services specified in the Terms of Reference, the estimated periods of engagement of Personnel, set forth in the Annexes of the Agreement may be increased by agreement in writing between the **KMRL** and the Consultant, provided that any such increase shall not, except as otherwise agreed, cause payments under this Agreement to exceed the Agreement Value set forth in Clause 6.1.2.

### 4.3 Approval of Personnel

4.3.1 The Professional Personnel listed in Annex-2 of the Agreement are hereby approved by the **KMRL**. No other Professional Personnel shall be engaged without prior approval of the **KMRL**.

4.3.2 If the Consultant hereafter proposes to engage any person as Professional Personnel, it shall submit to the **KMRL** its proposal along with a CV of such person in the form provided at Appendix-I (Form-12) of the RFP. **KMRL** may approve or reject such proposal within 14 (fourteen) days of receipt thereof. In case the proposal is rejected, the Consultant may propose an alternative person for the **KMRL's** consideration. In the event the **KMRL** does not reject a proposal within 14 (fourteen) days of the date of receipt thereof under this Clause 4.3, it shall be deemed to have been approved by the **KMRL**.

### 4.4 Substitution of Key Personnel

The **KMRL** expects all the Key Personnel specified in the Proposal to be available during implementation of the Agreement. The **KMRL** will not consider any substitution of Key Personnel except under compelling circumstances beyond the control of the Consultant and the concerned Key Personnel. Such substitution shall be limited to not more than two Key Personnel subject to equally or better qualified and experienced personnel being provided to the satisfaction of the **KMRL**. Without prejudice to the foregoing, substitution of one Key Personnel shall be permitted subject to reduction of remuneration equal to 20% (twenty per cent) of the total remuneration specified for the Key Personnel who is proposed to be substituted. In case of a second substitution, such reduction shall be equal to 50% (fifty per cent) of the total remuneration specified for the Key Personnel who is proposed to be substituted. Any further substitution and substitution of the team leader may lead to termination of the Agreement. Those key personnel not found suitable during the course of agreement shall be replaced by the consultant immediately to the satisfaction of the **KMRL**.

**4.5 Working hours, overtime, leave, etc.**

The Personnel shall not be entitled to be paid for overtime nor to take paid sick leave or vacation leave except as specified in the Agreement, and the Consultant's remuneration shall be deemed to cover these items. All leave to be allowed to the Personnel is excluded from the mandays of service set forth in Annex-2. Any taking of leave by any Personnel for a period exceeding 7 (seven) days shall be subject to the prior approval of the **KMRL**, and the Consultant shall ensure that any absence on leave will not delay the progress and quality of the Services.

**4.6 Resident Team Leader and Project Manager**

The person designated as the Team Leader of the Consultant's Personnel shall be responsible for the coordinated, timely and efficient functioning of the Personnel. In addition, the Consultant shall designate a suitable person as Project Manager (the "**Project Manager**") who shall be responsible for day to day performance of the Services.

**4.7 Sub-Consultants**

Sub-Consultants listed in Annex-4 of this Agreement are hereby approved by the **KMRL**. The Consultant may, with prior written approval of the **KMRL**, engage additional Sub-Consultants or substitute an existing Sub-Consultant. The hiring of Personnel by the Sub-Consultants shall be subject to the same conditions as applicable to Personnel of the Consultant under this Clause 4.

**5. OBLIGATIONS OF THE KMRL**

**5.1 Assistance in clearances etc.**

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

- (a) provide the Consultant, its Sub-Consultants and Personnel with work permits and such other documents as may be necessary to enable the Consultant, its Sub-Consultants or Personnel to perform the Services;
- (b) issue to officials, agents and representatives of the Government all such instructions as may be necessary or appropriate for the prompt and effective implementation of the Services.

**5.2 Access to land and property**

The **KMRL** warrants that the Consultant shall have, free of charge, unimpeded access to the site of the project in respect of which access is required for the performance of Services; provided that if such access shall not be made available to the Consultant as and when so required, the Parties shall agree on (i) the time extension, as may be appropriate, for the performance of Services, and (ii) the additional payments, if any, to be made to the Consultant as a result thereof pursuant to Clause 6.1.3.

### **5.3 Change in Applicable Law**

If, after the date of this Agreement, there is any change in the Applicable Laws with respect to taxes and duties which increases or decreases the cost or reimbursable expenses incurred by the Consultant in performing the Services, by an amount exceeding 2% (two per cent) of the Agreement Value specified in Clause 6.1.2, 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.

### **5.4 Payment**

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

## **6. PAYMENT TO THE CONSULTANT**

### **6.1 Cost estimates and Agreement Value**

- 6.1.1 An abstract of the cost of the Services payable to the Consultant is set forth in Annex-5 of the Agreement.
- 6.1.2 Except as may be otherwise agreed under Clause 2.6 and subject to Clause 6.1.3, 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 ), which does not include the Additional Costs specified in Annex-5 (the "**Additional Costs**").
- 6.1.3 Notwithstanding anything to the contrary contained in Clause 6.1.2, if pursuant to the provisions of Clauses 2.6 and 2.7, the Parties agree that additional payments shall be made to the Consultant in order to cover any additional expenditures not envisaged in the cost estimates referred to in Clause 6.1.1 above, the Agreement Value set forth in Clause 6.1.2 above shall be increased by the amount or amounts, as the case may be, of any such additional payments.

### **6.2 Currency of payment**

All payments shall be made in Indian Rupees. The Consultant shall be free to convert Rupees into any foreign currency as per Applicable Laws.

### **6.3 Mode of billing and payment**

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

- (a) The Consultant shall be paid for its services as per the Payment Schedule at Annex-6 of this Agreement, subject to the Consultant fulfilling the following conditions:

- (i) No payment shall be due for the next stage till the Consultant completes, to the satisfaction of the **KMRL**, the work pertaining to the preceding stage.
- (ii) The **KMRL** shall pay to the Consultant, only the undisputed amount.
- (b) The **KMRL** shall cause the payment due to the Consultant to be made within 30 (thirty) days after the receipt by the **KMRL** of duly completed bills with necessary particulars (the "Due Date"). Interest at the rate of 10% (ten per cent) per annum shall become payable as from the Due Date on any amount due by, but not paid on or before, such Due Date.
- (c) The final payment under this Clause shall be made only after the physical commencement of the project by the concessionaire and a final statement, identified as such, shall have been submitted by the Consultant and approved as satisfactory by the **KMRL**. The Services in each stage of payment as specified in Annex 6 shall be deemed completed and finally accepted by the **KMRL** and the deliverables shall be deemed approved by the **KMRL** as satisfactory upon expiry of 90 (ninety) days after receipt of the final deliverable by the **KMRL** unless the **KMRL**, within such 90 (ninety) day period, gives written notice to the Consultant specifying in detail, the deficiencies in the Services. The Consultant shall thereupon promptly make any necessary corrections and/or additions, and upon completion of such corrections or additions, the foregoing process shall be repeated. The **KMRL** shall make the payment upon acceptance or deemed acceptance of the final deliverable by the **KMRL**.
- (d) Any amount which the **KMRL** has paid or caused to be paid in excess of the amounts actually payable in accordance with the provisions of this Agreement shall be reimbursed by the Consultant to the **KMRL** within 30 (thirty) days after receipt by the Consultant of notice thereof. Any such claim by the **KMRL** for reimbursement must be made within 1 (one) year after the agreement period in accordance with Clause 6.3 (d). Any delay by the Consultant in reimbursement by the due date shall attract simple interest @ 12% (twelve per cent) per annum.
- (e) 10% (ten per cent) of the Agreement Value has been earmarked as Final Payment to be made to the Consultant upon physical commencement of the project. In the event physical commencement of the project does not happen within one year of the Effective Date, the Final Payment shall not become due to the Consultant.
- (f) All payments under this Agreement shall be made to the account of the Consultant as may be notified to the **KMRL** by the Consultant.

## 7. LIQUIDATED DAMAGES AND PENALTIES

### 7.1 Performance Security

7.1.1 The **KMRL** shall retain by way of performance security (the "Performance Security"), 5% (five per cent) of all the amounts due and payable to the Consultant, to be appropriated against breach of this Agreement or for recovery of liquidated damages as specified in Clause 7.2 herein. The balance remaining out of the Performance Security shall be returned to the Consultant at the end of 3 (three) months after the expiration of this Agreement pursuant to Clause 2.4 hereof.

7.1.2 The Consultant may, in lieu of retention of the amounts as referred to in Clause 7.1.1 above, furnish a Bank Guarantee substantially in the form specified at Annex-7 of this Agreement.

### 7.2 Liquidated Damages

**7.2.1 Liquidated Damages for error/variation**

In case any error or variation is detected in the reports submitted by the Consultant and such error or variation is the result of negligence or lack of due diligence on the part of the Consultant, the consequential damages thereof shall be quantified by the **KMRL** 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.

**7.2.2 Liquidated Damages for delay**

In case of delay in completion of Services, KD1, KD3 & KD4 specified in Annexure 6 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 10% (ten per cent) of the Agreement Value will be imposed and shall be recovered by appropriation from the Performance Security or otherwise. However, in case of delay due to reasons beyond the control of the Consultant, suitable extension of time shall be granted.

**7.2.3 Encashment and appropriation of Performance Security**

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

**7.3 Penalty for deficiency in Services**

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

**8. FAIRNESS AND GOOD FAITH**

**8.1 Good Faith**

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

**8.2 Operation of the Agreement**

The Parties recognize that it is impractical in this Agreement to provide for every contingency which may arise during the life of the Agreement, and the Parties hereby agree that it is their intention that this Agreement shall operate fairly as between them, and without detriment to the interest of either of them, and that, if during the term of this Agreement either Party believes that this Agreement is operating unfairly, the Parties will use their best efforts to agree on such action as may be necessary to remove the cause or causes of such unfairness, but failure to agree on any action pursuant to this Clause shall not give rise to a dispute subject to arbitration in accordance with Clause 9 hereof.

**9. SETTLEMENT OF DISPUTES**

**9.1 Amicable settlement**

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

## 9.2 Dispute resolution

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

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

## 9.3 Conciliation

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

## 9.4 Arbitration

9.4.1 Any Dispute which is not resolved amicably by conciliation, as provided in Clause 9.3, shall be finally decided by reference to arbitration by an Arbitral Tribunal appointed in accordance with Clause 9.4.2. Such arbitration shall be held in accordance with the Rules of Arbitration of the International Centre for Alternative Dispute Resolution, New Delhi (the "Rules"), or such other rules as may be mutually agreed by the Parties, and shall be subject to the provisions of the Arbitration and Conciliation Act, 1996. The venue of such arbitration shall be Kochi and the language of arbitration proceedings shall be English/Malayalam.

9.4.2 There shall be {an Arbitral Tribunal of three arbitrators, of whom each Party shall select one, and the third arbitrator shall be appointed by the two arbitrators so selected, and in the event of disagreement between the two arbitrators, the appointment} {a sole arbitrator whose appointment} shall be made in accordance with the Rules. \$

9.4.3 The arbitrators shall make a reasoned award (the "Award"). Any Award made in any arbitration held pursuant to this Clause 9 shall be final and binding on the Parties as from the date it is made, and the Consultant and the **KMRL** agree and undertake to carry out such Award without delay.

9.4.4 The Consultant and the **KMRL** agree that an Award may be enforced against the Consultant and/or the **KMRL**, as the case may be, and their respective assets wherever situated.

9.4.5 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.**

**SIGNED, SEALED AND DELIVERED**

**SIGNED, SEALED AND DELIVERED**

For and on behalf of

For and on behalf of

Consultant:

KMRL:

(Signature)

(Signature)

(Name)

(Name)

Designation)

(Designation)

(Address)

(Address)

(Fax No.)

(Fax No.)

In the presence of:

1.

2.

\$ In case the Agreement Value specified in Clause 6.1.2 of this Agreement does not exceed Rs. 1 (one) crore, a sole arbitrator shall be appointed. In case the Agreement Value specified in Clause 6.1.2 of this Agreement is more than Rs. 1 (one) crore, a KMRL shall be appointed. ***Depending upon the Agreement Value, one of the two curly parentheses shall be deleted from Clause 9.4.2.***

**Annexure-1**

**Terms of Reference**

*(Refer Clause 3.1.2 of Schedule-2)*

**(Reproduce Schedule-1 of RFP)**



**Annexure-2**

**Deployment of Personnel**

*(Refer Clause 4.2 of Schedule-2)*

**(Reproduce as per Form-13 of Appendix-I)**

**Annexure-3**

**Estimate of Personnel Costs**

*(Refer Clause 4.2 of Schedule-2)*

**(Reproduce as per Form-3 of Appendix-II)**

**Annexure-4**

**Approved Sub-Consultant(s)**

*(Refer Clause 4.7.of Schedule-2)*

**(Reproduce as per Form-15 of Appendix-I)**

**Annexure-5**

**Cost of Services**

*(Refer Clause 6.1 of Schedule-2)*

**(Reproduce as per Form-2 of Appendix-II)**

**Annexure-6**  
**Payment Schedule**

<b>Key Date No.</b>	<b>Prescription of Deliverables</b>	<b>*Week No.</b>	<b>Payment</b>
KD1	Preliminary Report	2	10%
KD2	Revenue Model& Existing Situation Analysis	12	10%
KD3	Master Plan	12	10%
KD4	Feasibility Report & Strategic Transit Oriented Development	20	20%
KD5	Technical Bid Evaluation Report	30	10%
KD5 A	Revenue Estimation and Strategic Implementation Plan as part of Final Report		
KD6	Execution of Agreement with the selected PPP/BOT/JV Partner	34	30%
KD7	Completion of Services with the physical commencement of the project by the selected partner	52	10%
	Total		100

Notes:

1. *The above payments shall be made to the Consultant provided that the payments to be made at anytime shall not exceed the amount certified by the Consultant in its Statement of Expenses.*
2. *All Reports shall first be submitted as draft reports for comments of the **KMRL**. The **KMRL** shall provide its comments no later than 3 (three) weeks from the date of receiving a draft report and in case no comments are provided within such 3 (three) weeks, the Consultant shall finalize its report. Provided, however, that the **KMRL** may take upto 4 (four) weeks in providing its comments on the Draft Feasibility Report.*
3. *Feasibility Report shall be completed in 20(twenty) weeks excluding the time taken by the **KMRL** in providing its comments on the Draft Feasibility Report. The Consultant may take 1 (one) week for submitting its Final Feasibility Report after receipt of comments from the **KMRL**.*
4. *Final payment of 10% (ten per cent) shall be released upon completion of Services in their entirety,.*

**Annexure- 7**

**Bank Guarantee for Performance Security (Refer Clause 7.1.2 of Schedule-2)**

To [The Director (Projects), KMRL In consideration of \*\*\*\*\* acting on behalf of the **KMRL** (hereinafter referred as the "**KMRL**", which expression shall, unless repugnant to the context or meaning thereof, include its successors, administrators and assigns) having awarded to M/s \_\_\_\_\_, having its office at (hereinafter referred as the "Consultant" which expression shall, unless repugnant to the context or meaning thereof, include its successors, administrators, executors and assigns), vide the **KMRL's** Agreement No \_\_\_\_\_ dated \_\_\_\_\_ valued at Rs \_\_\_\_\_ (Rupees \_\_\_\_\_), (hereinafter referred to as the "Agreement") Consultancy Services for implementing 'METRO CITY' project at Kakkanad Kochi and the Consultant having agreed to furnish a Bank Guarantee amounting to Rs \_\_\_\_\_ (Rupees \_\_\_\_\_) to the **KMRL** for performance of the said Agreement.

1 We, ..... (hereinafter referred to as the "Bank") at the request of the Consultant do hereby undertake to pay to the **KMRL** an amount not exceeding Rs \_\_\_\_\_ (Rupees \_\_\_\_\_) against any loss or damage caused to or suffered or would be caused to or suffered by the **KMRL** by reason of any breach by the said Consultant of any of the terms or conditions contained in the said Agreement.

2 We, .....(indicate the name of the Bank) do hereby undertake to pay the amounts due and payable under this Guarantee without any demur, merely on a demand from the **KMRL** stating that the amount/claimed is due by way of loss or damage caused to or would be caused to or suffered by the **KMRL** by reason of breach by the said Consultant of any of the terms or conditions contained in the said Agreement or by reason of the Consultant's failure to perform the said Agreement. Any such demand made on the bank shall be conclusive as regards the amount due and payable by the Bank under this Guarantee. However, our liability under this Guarantee shall be restricted to an amount not exceeding Rs.....(Rupees \_\_\_\_\_).

3 We, ..... (indicate the name of Bank) undertake to pay to the **KMRL** any money so demanded notwithstanding any dispute or disputes raised by the Consultant in any suit or proceeding pending before any court or tribunal relating thereto, our liability under this present being absolute and unequivocal. The payment so made by us under this bond shall be a valid discharge of our liability for payment there under and the Consultant shall have no claim against us for making such payment.

4 We, .....(indicate the name of Bank) further agree that the Guarantee herein contained shall remain in full force and effect during the period that would be taken for the performance of the said Agreement and that it shall continue to be enforceable till all the dues of the **KMRL** under or by virtue of the said Agreement have been fully paid and its claims satisfied or discharged or till the **KMRL** certifies that the terms and conditions of the said Agreement have been fully and properly carried out by the said Consultant and accordingly discharges this Guarantee. Unless a demand or claim under this Guarantee is made on us in writing on or before a period of one year from the date of this Guarantee, we shall be discharged from all liability under this Guarantee thereafter.

5 We, ..... (indicate the name of Bank) further agree with the **KMRL** that the **KMRL** shall have the fullest liberty without our consent and without affecting in any manner our obligations hereunder to vary any of the terms and conditions of the said Agreement or to extend time of performance by the said Consultant from time to time or to postpone for any time or from time to time any of the powers exercisable by the **KMRL** against the said Consultant and to forbear or enforce any of the terms and conditions relating to the said Agreement and we shall not be relieved from our liability by reason of any such variation, or extension being granted to the said Consultant or for any forbearance, act or omission on the part of the **KMRL** or any indulgence by the **KMRL** to the said Consultant or any such matter or thing whatsoever which under the law relating to sureties would, but for this provision, have the effect of so relieving us.

6 This Guarantee will not be discharged due to the change in the constitution of the Bank or the Consultant(s).

7 We, .....(indicate the name of Bank) lastly undertake not to revoke this Guarantee during its currency except with the previous consent of the **KMRL** in writing.

8 For the avoidance of doubt, the Bank's liability under this Guarantee shall be restricted to Rs. \*\*\* crore (Rupees \*\*\*\*\* crore) only. The Bank shall be liable to pay the said amount or any part thereof only if the **KMRL** serves a written claim on the Bank in accordance with paragraph 2 hereof, on or before [\*\*\* (indicate date falling 180 days after the date of this Guarantee)].

For

Name of Bank:

Seal of the Bank:

Dated, the..... day of ....., 20

(Signature, name and designation of the authorised signatory)

NOTES:

- (i) The Bank Guarantee should contain the name, designation and code number of the officer(s) signing the Guarantee.
- (ii) The address, telephone no. and other details of the Head Office of the Bank as well as of issuing Branch should be mentioned on the covering letter of issuing Branch.

### SCHEDULE-3

(See *Clause 2.3.3 under Instruction to Applicants*)

#### Guidance Note on Conflict of Interest

- 1 This Note further explains and illustrates the provisions of Clause 2.3 of the RFP and shall be read together therewith in dealing with specific cases.
- 2 Consultants should be deemed to be in a conflict of interest situation if it can be reasonably concluded that their position in a business or their personal interest could improperly influence their judgment in the exercise of their duties. The process for selection of consultants should avoid both actual and perceived conflict of interest.
- 3 Conflict of interest may arise between the **KMRL** and a consultant or between consultants and present or future concessionaries/ Consultants. Some of the situations that would involve conflict of interest are identified below:
  - (a) The **KMRL** and consultants:
    - (i) Potential consultant should not be privy to information from the **KMRL** which is not available to others; or
    - (ii) potential consultant should not have defined the project when earlier working for the **KMRL**; or
    - (iii) potential consultant should not have recently worked for the **KMRL** overseeing the project.
  - (b) Consultants and concessionaires/Consultants:
    - (i) No consultant should have an ownership interest or a continuing business interest or an on-going relationship with a potential concessionaire/ Consultant save and except relationships restricted to project-specific and short-term assignments; or
    - (ii) no consultant should be involved in owning or operating entities resulting from the project; or
    - (iii) no consultant should bid for works arising from the project.

The participation of companies that may be involved as investors or consumers and officials of the **KMRL** who have current or recent connections to the companies involved, therefore, needs to be avoided.
- 4 The normal way to identify conflicts of interest is through self-declaration by consultants. Where a conflict exists, which has not been declared, competing companies are likely to bring this to the notice of the **KMRL**. All conflicts must be declared as and when the consultants become aware of them.



5. Another approach towards avoiding a conflict of interest is through the use of "Chinese walls" to avoid the flow of commercially sensitive information from one part of the consultant's company to another. This could help overcome the problem of availability of limited numbers of experts for the project. However, in reality effective operation of "Chinese walls" may be a difficult proposition. As a general rule, larger companies will be more capable of adopting Chinese walls approach than smaller companies. Although, "Chinese walls" have been relatively common for many years, they are an increasingly discredited means of avoiding conflicts of interest and should be considered with caution. As a rule, "Chinese walls" should be considered as unacceptable and may be accepted only in exceptional cases upon full disclosure by a consultant coupled with provision of safeguards to the satisfaction of the **KMRL**.
6. Another way to avoid conflicts of interest is through the appropriate grouping of tasks. For example, conflicts may arise if consultants drawing up the terms of reference or the proposed documentation are also eligible for the consequent assignment or project.
7. Another form of conflict of interest called "scope-creep" arises when consultants advocate either an unnecessary broadening of the terms of reference or make recommendations which are not in the best interests of the **KMRL** but which will generate further work for the consultants. Some forms of contractual arrangements are more likely to lead to scope-creep. For example, lump-sum contracts provide fewer incentives for this, while time and material contracts provide built in incentives for consultants to extend the length of their assignment.
8. Every project contains potential conflicts of interest. Consultants should not only avoid any conflict of interest, they should report any present/ potential conflict of interest to the **KMRL** at the earliest. Officials of the **KMRL** involved in development of a project shall be responsible for identifying and resolving any conflicts of interest. It should be ensured that safeguards are in place to preserve fair and open competition and measures should be taken to eliminate any conflict of interest arising at any stage in the process.

## Appendices

## APPENDIX-I

(See Clause 2.1.3 under Instruction to Applicants)

## TECHNICAL PROPOSAL

Form-1

## Letter of Proposal

(On Applicant's letter head)

(Date and Reference)

To,

Sub: Appointment of Transaction Advisor for development of 'METRO CITY' project at Kakkanad, Kochi.

Dear Sir,

With reference to your RFP Notification dated ....., I/we, having examined all relevant documents and understood their contents, hereby submit our Proposal for selection as Transaction Advisor/Consultant for developing 'METRO CITY' project in 17.315 acres of land at Kakkanad under Public Private Partnership / Joint Venture (JV) by forming Special Purpose Vehicle. The proposal is unconditional and unqualified.

1. All information provided in the Proposal and in the Appendices is true and correct and all documents accompanying such Proposal are true copies of their respective originals.
2. This statement is made for the express purpose of appointment as the Consultant for the aforesaid Project.
3. I/We shall make available to the **KMRL** any additional information it may deem necessary or required for supplementing or authenticating the Proposal.
4. I/We acknowledge the right of the **KMRL** to reject our application without assigning any reason or otherwise and hereby waive our right to challenge the same on any account whatsoever.
5. I/We certify that in the last three years, we or any of our Associates have neither failed to perform on any contract, as evidenced by imposition of a penalty by an arbitral or judicial authority or a judicial pronouncement or arbitration award against the Applicant, nor been expelled from any project or contract by any public authority nor have had any contract terminated by any public authority 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 Addendum issued by the **KMRL**;
  - (b) I/We do not have any conflict of interest in accordance with Clause 2.3 of the RFP Document;
  - (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 Clause 4.3 of the RFP document, in respect of any tender or request for proposal issued by or any agreement entered into with the **KMRL** or any other public sector enterprise or any government, Central or State; and
  - (d) I/We hereby certify that we have taken steps to ensure that in conformity with the provisions of Section 4 of the RFP, no person acting for us or on our behalf will engage in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice.

7. I/We understand that you may cancel the Selection Process at any time and that you are neither bound to accept any Proposal that you may receive nor to select the Consultant, without incurring any liability to the Applicants in accordance with Clause 2.8 of the RFP document.
8. I/We declare that we/any member of the consortium, are/is not a Member of a/any other Consortium applying for Selection as a Consultant.
9. I/We certify that in regard to matters other than security and integrity of the country, we or any of our Associates have not been convicted by a Court of Law or indicted or adverse orders passed by a regulatory authority which would cast a doubt on our ability to undertake the Consultancy for the Project or which relates to a grave offence that outrages the moral sense of the community.
10. I/We further certify that in regard to matters relating to security and integrity of the country, we have not been charge-sheeted by any agency of the Government or convicted by a Court of Law for any offence committed by us or by any of our Associates.
11. I/We further certify that no investigation by a regulatory authority is pending either against us or against our Associates or against our CEO or any of our Directors/Managers/ employees.
12. I/We hereby irrevocably waive any right or remedy which we may have at any stage at law or howsoever otherwise arising to challenge or question any decision taken by the KMRL and/ or the Government of Kerala in connection with the selection of Consultant or in connection with the Selection Process itself in respect of the above mentioned Project.
13. The Bid Security of Rs. \*\*\*\*\* (Rupees in the form of a Demand Draft is attached, in accordance with the RFP document.
14. I/We agree and understand that the proposal is subject to the provisions of the RFP document. In no case, shall I/we have any claim or right of whatsoever nature if the Consultancy for the Project is not awarded to me/us or our proposal is not opened or rejected.
15. I/We agree to keep this offer valid for 180 (ninety) days from the Proposal Due Date specified in the RFP.
16. A Power of Attorney in favor of the authorized signatory to sign and submit this Proposal and documents is attached herewith in Form 4.
17. In the event of my/our firm/ consortium being selected as the Consultant, I/we agree to enter into an Agreement in accordance with the form at Schedule-2 of the RFP. We agree not to seek any changes in the aforesaid form and agree to abide by the same.
18. I/We have studied RFP and all other documents carefully and also surveyed the Project site. We understand that except to the extent as expressly set forth in the Agreement, we shall have no claim, right or title arising out of any documents or information provided to us by the **KMRL** or in respect of any matter arising out of or concerning or relating to the Selection Process including the award of Consultancy.
19. The Financial Proposal is being submitted in a separate cover. This Technical Proposal read with the Financial Proposal shall constitute the Application which shall be binding on us.
20. I/We agree and undertake to abide by all the terms and conditions of the RFP Document. In witness thereof, I/we submit this Proposal under and in accordance with the terms of the RFP Document.

Yours faithfully,

(Signature, name and designation of the authorised signatory)

(Name and seal of the Applicant / Lead Member)

**APPENDIX-I**

**Form-2**

**Particulars of the Applicant**

1.1	Title of Consultancy: <b>Selection of Transaction Advisor for the development of Project at Kakkanad, Kochi.</b>
1.2	Title of Project: <b>METRO CITY Project at Kakkanad, Kochi</b>
1.3	State whether applying as Sole Firm or Lead Member of a consortium: Sole Firm or Lead Member of a consortium
1.4	State the following:  Name of Company or Firm: Legal status (e.g. incorporated private company, unincorporated business, partnership etc.): Country of incorporation: Registered address:  Year of Incorporation: Year of commencement of business: Principal place of business: Brief description of the Company including details of its main lines of business Name, designation, address and phone numbers of authorised signatory of the Applicant: Name: Designation: Company: Address:  Phone No.: Fax No. : E-mail address:
1.5	If the Applicant is Lead Member of a consortium, state the following for each of the other Member Firms: (i) Name of Firm: (ii) Legal Status and country of incorporation (iii) Registered address and principal place of business.
1.6	For the Applicant, (in case of a consortium, for each Member), state the following information: (i) In case of non Indian Firm, does the Firm have business presence in India? Yes/No If so, provide the office address (es) in India. (ii) Has the Applicant or any of the Members in case of a consortium been penalized by any organization for poor quality of work or breach of contract in the last five years? Yes/No (iii) Has the Applicant/Member ever failed to complete any work awarded to it by any public authority/entity in last five years? Yes/No (iv) Has the Applicant or any member of the consortium been blacklisted by any Government department/Public Sector Undertaking in the last five years? Yes/No (v) Has the Applicant or any of the Members, in case of a consortium, suffered bankruptcy/insolvency in the last five years? Yes/No <i>Note: If answer to any of the questions at (ii) to (v) is yes, the Applicant is not eligible for this consultancy assignment.</i>

1.7	<p>Does the Applicant's firm/company (or any member of the consortium) combine functions as a consultant or adviser along with the functions as a Consultant and/or a manufacturer?</p> <p style="text-align: right;">Yes/No</p> <p>If yes, does the Applicant (and other Member of the Applicant's consortium) agree to limit the Applicant's role only to that of a consultant/ adviser to the <b>KMRL</b> and to disqualify themselves, their Associates/ affiliates, subsidiaries and/or parent organization subsequently from work on this Project in any other capacity?</p> <p style="text-align: right;">Yes/No</p> <p>Does the Applicant intend to borrow or hire temporarily, personnel from Consultants, manufacturers or suppliers for performance of the Consulting Services?</p> <p style="text-align: right;">Yes/No</p> <p>If yes, does the Applicant agree that it will only be acceptable as Consultant, if those Consultants, manufacturers and suppliers disqualify themselves from subsequent execution of work on this Project (including tendering relating to any goods or services for any other part of the Project) other than that of the Consultant?</p> <p style="text-align: right;">Yes/No</p> <p>If yes, have any undertakings been obtained (and annexed) from such Consultants, manufacturers, etc. that they agree to disqualify themselves from subsequent execution of work on this Project and they agree to limit their role to that of consultant/ adviser for the <b>KMRL</b> only?</p> <p style="text-align: right;">Yes/No</p> <p style="text-align: right;">(Signature, name and designation of the authorised signatory) For and on behalf of</p>
-----	---

**APPENDIX-I**

**Form-3**

**Statement of Legal Capacity**

*(To be forwarded on the letter head of the Applicant)*

Ref. Date:

To

\* \*\*

Dear Sir,

Sub: RFP for Selection of Transaction Advisor for developing 'METRO CITY' project in 17.315 acres of land at Kakkanad.

I/We hereby confirm that we, the Applicant (along with other members in case of consortium, constitution of which has been described in the Proposal\*), satisfy the terms and conditions laid down in the RFP document.

I/We have agreed that ..... (insert Applicant's name) will act as the Lead Member of our consortium.

I/We have agreed that..... (insert individual's name) will act as our Authorized Representative/ will act as the Authorized Representative of the consortium on our behalf and has been duly authorized to submit our Proposal. Further, the authorized signatory is vested with requisite powers to furnish such proposal and all other documents, information or communication and authenticate the same.

Yours faithfully,

(Signature, name and designation of the authorised signatory)

For and on behalf of

*\*Please strike out whichever is not applicable*

**APPENDIX-I**

**Form-4**

**Power of Attorney**

Know all men by these presents, we,..... (name of Firm and address of the registered office) do hereby constitute, nominate, appoint and authorize Mr. / Ms. son/daughter/wife and presently residing at....., who is presently employed with us and holding the position of..... as our true and lawful attorney (hereinafter referred to as the "Authorized Representative") to do in our name and on our behalf, all such acts, deeds and things as are necessary or required in connection with or incidental to submission of our Proposal for and selection as the Transaction Advisor/Consultant for developing '**METRO CITY**' project in 17.315 acres of land at Kakkanad under Public Private Partnership / Joint Venture (JV) by forming Special Purpose Vehicle. proposed to be developed by the KMRL including but not limited to signing and submission of all applications, proposals and other documents and writings, participating in pre-bid and other conferences and providing information/ responses to the KMRL, representing us in all matters before the KMRL, signing and execution of all contracts and undertakings consequent to acceptance of our proposal and generally dealing with the KMRL in all matters in connection with or relating to or arising out of our Proposal for the said Project and/or upon award thereof to us till the entering into of the Agreement with the KMRL.

AND, we do hereby agree to ratify and confirm all acts, deeds and things lawfully done or caused to be done by our said Authorized Representative pursuant to and in exercise of the powers conferred by this Power of Attorney and that all acts, deeds and things done by our said Authorized Representative in exercise of the powers hereby conferred shall and shall always be deemed to have been done by us.

IN WITNESS WHEREOF WE,..... THE ABOVE NAMED PRINCIPAL HAVE EXECUTED THIS

POWER OF ATTORNEY ON THIS.....DAY OF....., 20\*\*

For (Signature, name, designation and address)

Witnesses:

1.

2.

Notarised

Accepted

(Signature, name, designation and address of the Attorney)

Notes:



*The mode of execution of the Power of Attorney should be in accordance with the procedure, if any, laid down by the applicable law and the charter documents of the executant(s) and when it is so required the same should be under common seal affixed in accordance with the required procedure. The Power of Attorney should be executed on a non-judicial stamp paper of Rs. 100 (one hundred) and duly notarized by a notary public.*

*Wherever required, the Applicant should submit for verification the extract of the charter documents and other documents such as a resolution/power of attorney in favour of the person executing this Power of Attorney for the delegation of power hereunder on behalf of the Applicant.*

*For a Power of Attorney executed and issued overseas, the document will also have to be legalized by the Indian Embassy and notarized in the jurisdiction where the Power of Attorney is being issued. However, Applicants from countries that have signed the Hague Legislation Convention, 1961 need not get their Power of Attorney legalized by the Indian Embassy if it carries a conforming Apostle certificate.*

**APPENDIX-I**

**Form-5**

**Financial Capacity of the Applicant**

Sl. No.	Financial Year	Annual Revenue (Rs./US \$ #in million)
1.		
2.		
3.		
<b>Certificate from the Statutory Auditor/Chartered Accountant<sup>S</sup></b>		
<p>This is to certify that .....(name of the Applicant) has received the payments shown above against the respective years on account of professional fees.</p> <p>Name of the audit firm:</p> <p>Seal of the audit firm</p> <p>Date: _____ Signature, name and designation of the authorized signatory)</p>		

***(Refer Clause 2.2.2 (B) Under Instruction to Applicant)***

- S** In case the Applicant does not have a statutory auditor, it shall provide the certificate from its chartered accountant that ordinarily audits the annual accounts of the Applicant.
- #** will be converted to Indian Rupee by the evaluation committee based on prevalent rates of conversion at the time of evaluation.

**Note:** Please do not attach any printed Annual Financial Statement

APPENDIX-I

Form-6

Particulars of Key Personnel

Sl. No.	Designation of Key Personnel	Name	Educational Qualification	Length of Professional Experience	Present Employment		No. of Eligible Assignments
					Name of Firm	Employed Since	
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
1.	PPP Expert cum Project Manager (Team Leader)						
2.	Financial Expert (the Financial Expert)						
3.	Real Estate Expert						
4.	Legal Expert						

Refer Form 9 of Appendix I Experience of Key Personnel

## APPENDIX-I

### Form-7

#### **Proposed Methodology and Work Plan**

**A. The proposed methodology and work plan shall be described as follows:**

1. Understanding of TOR (not more than two pages)

The Applicant shall clearly state its understanding of the TOR and also highlight its important aspects. The Applicant may supplement various requirements of the TOR and also make precise suggestions if it considers this would bring more clarity and assist in achieving the Objectives laid down in the TOR.

2. Methodology and Work Plan (not more than three pages)

The Applicant will submit its methodology for carrying out this assignment, outlining its approach toward achieving the Objectives laid down in the TOR. The Applicant will submit a brief write up on its proposed team and organization of personnel explaining how different areas of expertise needed for this assignment have been fully covered by its proposal. In case the Applicant is a consortium, it should specify how the expertise of each firm is proposed to be utilized for this assignment. The Applicant should specify the sequence and locations of important activities, and provide a quality assurance plan for carrying out the Consultancy Services.

**B. Outline scheme model proposal based on minimum requirements of KMRL. (Refer Para 1.1 of Schedule I TOR)**

The applicant shall prepare an outline project for the site after making requisite preliminary studies and suggest a product mix, base revenue model and project structure with the minimum requirements of KMRL. Applicant shall make a presentation of the above at a subsequent date intimated by KMRL.

Note: Marks will be deducted for writing lengthy and out of context responses

**APPENDIX-I**

**Form-8**

**Abstract of Eligible Assignments of the Applicant**

*(Refer Clause 3.1)*

Sl. No.	Name of Project	Name of Client	Estimated capital cost of Project (Rs. in crore/ US\$ <sup>#</sup> million)	Payment of professional fees received by the Applicant (in Rs. crore)
(1)	(2)	(3)	(4)	(5)
1				
2				
3				
4				

# will be converted to Indian Rupee by the evaluation committee based on prevalent rates of conversion at the time of evaluation.

@ The Applicant should provide details of only those projects that have been undertaken by it under its own name.

\* The names and chronology of Eligible Projects included here should conform to the project-wise details submitted in Form-10 of Appendix-I.

**Certificate from the Statutory Auditor/Chartered Accountant<sup>\$</sup>**

This is to certify that the information contained in Column 5 above is correct as per the accounts of the Applicant and/ or the clients.

Name of the audit firm:

Seal of the audit firm

Date:

(Signature, name and designation of the authorized signatory)

\$ In case the Applicant does not have a statutory auditor, it shall provide the certificate from its chartered accountant that ordinarily audits the annual accounts of the Applicant.

Note: The Applicant may attach separate sheets to provide brief particulars of other relevant experience of the

**APPENDIX-I**

**Form-9**

**Abstract of Eligible Assignments of Key Personnel<sup>@</sup>**

*(Refer Clause 3.1)*

Name of Key Personnel:

Designation

Sl. No.	Name of Project*	Name of Client	Estimated capital cost of project (in Rs. cr./ US\$# million)	Name of firm for which the Key Personnel worked	Designation of the Key Personnel on the assignment	Date of completion of the assignment	Man days spent
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)

@ Use separate Form for each Key Personnel

\* The names and chronology of projects included here should conform to the project-wise details submitted in Form-11 of Appendix-I. Note: The Applicant may attach separate sheets to provide brief particulars of other relevant experience of the Key Personnel.

# Will be converted to Indian rupee by the evaluation committee based on prevalent rates of conversion at the time of evaluation

## APPENDIX-I

Form-10

## Eligible Assignments of Applicant

<b>Name of Applicant:</b>	
<b>Name of the Project:</b>	
<b>Particulars of the Project</b>	
<b>Description of services performed by the Applicant firm:</b>	
<b>Name of client and Address:(Indicate whether public or private entity)</b>	
<b>Name, telephone no. and fax no. of client's representative:</b>	
<b>Estimated capital cost of Project (in Rs. Crore/US \$# in Million):</b>	
<b>Payment received by the Applicant (in Rs. Crore/US \$# in Million):</b>	
<b>Start date and finish date of the services (month/ year):</b>	
<b>Brief description of the Project:</b>	

- # Will be converted to Indian rupee by the evaluation committee based on prevalent rates of conversion at the time of evaluation

## Notes:

- 1 Use separate sheet for each Eligible Project.
- 2 The Applicant may attach separate sheets to provide brief particulars of other relevant experience of the Applicant.

**APPENDIX-I**

**Form-11**

**Eligible Assignments of Key Personnel**

<b>Name of Key Personnel</b>	
<b>Designation of Key Personnel:</b>	
<b>Name of the Project:</b>	
<b>Particulars of the project</b>	
<b>Name of Consulting Firm where employed:</b>	
<b>Description of services performed by the Key Personnel (including designation):</b>	
<b>Name of client and Address: (indicate whether public or private)</b>	
<b>Name, telephone no. and fax no. of client's representative:</b>	
<b>Estimated capital cost of the Project (in Rs. crore or US\$# million):</b>	
<b>Start date and finish date of the services (month/year):</b>	
<b>Brief description of the Project:</b>	
<b>It is certified that the aforesaid information is true and correct to the best of my knowledge and belief. (Signature and name of Key Personnel)</b>	

# Will be converted to Indian rupee by the evaluation committee based on prevalent rates of conversion at the time of evaluation.

Notes:

- 1 Use separate sheet for each Eligible Project.
- 2 The Applicant may attach separate sheets to provide brief particulars of other relevant experience of the Key Personnel.



**APPENDIX-I**

**Form-12**

**Curriculum Vitae (CV) of Key Personnel**

- 1 Proposed Position:
- 2 Name of Personnel:
- 3 Date of Birth:
- 4 Nationality:
- 5 Educational Qualifications:
- 6 Employment Record: (Starting with present position, list in reverse order every employment held.)
- 7 List of projects on which the Personnel has worked Name of project Description of responsibilities
- 8 Details of the current assignment and the time duration for which services are required for the current assignment.

Certification:

- 1 I am willing to work on the Project and I will be available for entire duration of the Project assignment as required.
- 2 I, the undersigned, certify that to the best of my knowledge and belief, this CV correctly describes myself, my qualifications and my experience.

Place .....

(Signature and name of the Key Personnel)

(Signature and name of the authorized signatory of the Applicant)

Notes:

- 1. Use separate form for each Key Personnel
- 2. The names and chronology of assignments included here should conform to the project-wise details submitted in Form-8 of Appendix-I.
- 3. Each page of the CV shall be signed in ink by both the Personnel concerned and by the Authorised Representative of the Applicant firm along with the seal of the firm. Photocopies will not be considered for evaluation.

**APPENDIX-I**

**Form-13**

**Deployment of Personnel**

Sl. No.	Designation	Name	Man-Days (MD)		Week Numbers																				
			At Project site	Away from Project site (specify)	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21
1.																									
2.																									
3.																									
4.																									
5.																									
6.																									
7.																									
8.																									
9.																									
10.																									
11.																									
<b>Total Mandays</b>																									



**APPENDIX-I**

**Form-15**

**Proposal for Sub-Consultant(s)**

<b>1. Details of the Firm</b>				
Firm's Name, Address and Telephone				
Name and Telephone No. of the Contact Person				
Fields of Expertise				
No. of Years in business in the above Fields				
<b>2. Services that are proposed to be sub contracted:</b>				
<b>3. Person who will lead the Sub-Consultant</b>				
Name:				
Designation:				
Telephone No:				
Email:				
<b>4. Details of Firm's previous experience</b>				
Name of Work	Name, address and telephone no. of Client	Total Value of Services Performed	Duration of Services	Date of Completion of Services
1.				
2.				
3.				

(Signature and name of the authorized signatory)

Note:

- 1 The Proposal for Sub-Consultant(s) shall be accompanied by the details specified in Forms 12 and 13 of Appendix-I.
- 2 Use separate form for each Sub-Consultant

**APPENDIX-I**

**Form-16**

**UNCONDITIONAL BANK GUARANTEE IN LIEU OF RETENTION MONEY**

To: **Managing Director, Kochi Metro Rail Ltd, 8<sup>th</sup> Floor Revenue Tower, Park Avenue, Kerala**

PIN 682011

WHEREAS \_\_\_\_\_ [*name and address of Consultant*] (hereinafter called the "Consultant") has undertaken, in pursuance of Contract No. \_\_\_\_\_ dated \_\_\_\_\_ to execute \_\_\_\_\_ [*name of Contract and brief description of Works*] (herein after called the "Contract");

AND WHEREAS IT HAS BEEN AGREED BY YOU IN THE SAID contract that the Consultant has option to replace the Retention Money with an irrevocable and unconditional Bank Guarantee, in instalments of \_\_\_\_\_ (*indicate the value*) from a Bank acceptable to you as security for compliance with Consultant's obligations in accordance with the contract.

AND WHEREAS the Consultant has opted to replace the retention money with an irrevocable and unconditional Bank Guarantee;

NOW THEREFORE we hereby affirm that we are the Guarantor and responsible to you, on behalf of the Consultant, up to a total of \_\_\_\_\_ [*amount of Guarantee in figures*], \_\_\_\_\_ [*amount in words*], # such sum being payable in the types and proportions of currencies in which the Contract Price is payable, and we undertake to pay you, upon your first written demand and without cavil or argument, any sum or sums within the limits of \_\_\_\_\_ [*amount of Guarantee*] as aforesaid without your needing to prove or to show grounds or reasons for your demand for the sum specified therein.

We hereby waive the necessity of your demanding the said debt from the Consultant before presenting us with the demand.

We further agree that no change or addition to or other modification of the terms of the Contract or of the Works to be performed there under or of any of the Contract documents which may be made between you and the Consultant shall in any way release us from any liability under this guarantee, and we hereby waive notice of any such change, addition or modification.

This guarantee shall be valid till the Engineer certifies repayment of retention money in accordance with the Conditions of Contract i.e., upto \_\_\_\_\_

**SIGNATURE AND SEAL OF THE GUARANTOR**

Name of the Bank: \_\_\_\_\_

Address: \_\_\_\_\_

Date: \_\_\_\_\_

# *An amount is to be inserted by the Guarantor, representing the amount specified in the Contract, and denominated either in the currency (ies) of the Contract or in a freely convertible currency acceptable to the Employer.*

APPENDIX-II

FINANCIAL PROPOSAL

Form-1

Covering Letter (On Applicant's letter head)

(Date and Reference)

To\* \*\*

Dear Sir,

Subject: Appointment of Selection of Transaction Advisor/Consultant for developing 'METRO CITY' project in 17.315 acres of land at Kakkanad under Public Private Partnership / Joint Venture (JV) by forming Special Purpose Vehicle.

I/We, \_\_\_\_\_ (Applicant's name) herewith enclose the Financial Proposal for selection of my/our firm as Consultant for above.

I/We agree that this offer shall remain valid for a period of 180 (one hundred and eighty) days from the Proposal Due Date or such further period as may be mutually agreed upon.

Yours faithfully,

(Signature, name and designation of the authorised signatory)

Note: The Financial Proposal is to be submitted strictly as per forms given in the RFP.

**APPENDIX-II**  
*(See Clause 2.1.3)*

**Form-2**

**Financial Proposal**

<b>A.</b>	<b>RESIDENT PERSONNEL AND LOCAL COSTS</b>	
I.	Remuneration for Professional Personnel (inclusive of all personal allowances)	
II.	Remuneration for Support Personnel (inclusive of all personal allowances)	
III.	Reports and Document Printing	
IV.	Surveys & Investigations	
V.	Miscellaneous Expenses	
	<b>Sub-total Resident Personnel and Local Costs (A) :</b>	
<b>B.</b>	<b>EXPATRIATE PERSONNEL</b>	
I.	Remuneration for Expatriate Personnel (inclusive of all personal allowances)	
	<b>Sub-total Expatriate Personnel (B):</b>	
	<b>Total of Personnel and Local Costs (A+B):</b>	
<b>C.</b>	<b>POST REPORT CONSULTATIONS</b>	
	<b>2 man days each of:</b>	
I	<b>PPP Expert cum Project Manager (Team Leader)</b>	
II	<b>Financial Expert</b>	
III	<b>Rea; Estate Expert</b>	
IV	<b>Legal Expert</b>	
	<b>Subtotal Post Report Consultations (C):</b>	
<b>D.</b>	<b>SUBTOTAL OF A+B+C</b>	
<b>E.</b>	<b>OVERHEAD EXPENSES @ ..... % of (D)</b>	
<b>F.</b>	<b>SERVICE TAX</b>	
	<b>TOTAL (including taxes) (D+E+F) (in Rs.)</b>	
<b>G.</b>	In Indian Rupees in figures	
	in words	



APPENDIX-II

Form-3

Estimate of Personnel Costs

ID No.	Position	Name	Manday Rate (Rs.)	Total Man Days	Amount (Rs.)
<b>A I. Remuneration for Professional Personnel (including all personal allowances)</b>					
<b>Total</b>					
<b>A II. Remuneration for Support Personnel (including all personal allowances)</b>					
<b>Total</b>					
<b>B I. Remuneration for Expatriate Personnel (including all personal allowances)</b>					
<b>Total</b>					

## APPENDIX- III

### LIST OF BID-SPECIFIC CLAUSES<sup>§</sup>

**A. Clauses and appendices with non-numerical footnotes**

1. Schedule-1: Terms of Reference (TOR)
  - (i) Para 6.2: Time and Payment Schedule
2. Form 3, Appendix -I Statement of Legal capacity
3. Form-5, Appendix-I: Financial Capacity of the Applicant
4. Form 6, Appendix -I : Particulars of Key Personnel
5. Form-8, Appendix-I: Abstract of Eligible Assignments of the Applicant
6. Form-9, Appendix-I: Abstract of Eligible Assignments of Key Personnel
7. Form 10, Appendix-I: Eligible assignments of Applicant
8. Form-11, Appendix-I Eligible assignments of Key persons
9. Appendix-III: List of Bid-specific clauses

**B. Clauses and appendices with curly brackets**

1. Schedule-2: Form of Agreement: Clause 9.4.2: Arbitration

**C. Clauses and appendices with blank spaces**

- 1 Schedule-2: Form of Agreement: Clause 1.10.3 and 6.1.2
- 2 Annex-7, Schedule-2: Bank Guarantee for Performance Security
- 3 Form-1, Appendix-I: Letter of Proposal
- 4 Form-2, Appendix-I: Particulars of the Applicant: Signature
- 5 Form-3, Appendix-I: Statement of Legal Capacity
- 6 Form-4, Appendix-I: Power of Attorney
- 7 Form-5, Appendix-I: Financial Capacity of the Applicant
- 8 Form-12, Appendix-I: Curriculum Vitae (CV) of Key Personnel
- 9 Appendix-II: Financial Proposal: Item E

§ This Appendix-III contains a list of clauses and appendices that would need to be suitably modified for reflecting applicant-specific provisions. This Appendix-III may, therefore, be included in the RFP document to be issued to prospective Applicants. The blank spaces in Appendices may be filled up by the Applicant and the footnotes may be deleted when it submits its proposal.

