

II. General Conditions of Contract

1. GENERAL PROVISIONS

1.1 Definitions

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

- (a) "Applicable Law" means the Khyber Pakhtunkhwa Public Procurement Act, thereunder Rules 2014.
- (b) "Procuring Entity PE" means the implementing department which signs the contract
- (c) "Consultant" means a professional who can study, design, organize, evaluate and manage projects or assess, evaluate and provide specialist advice or give technical assistance for making or drafting policies, institutional reforms and includes private entities, consulting firms, legal advisors, engineering firms, construction managers, management firms, procurement agents, inspection agents, auditors, international and multinational organizations, investment and merchant banks, universities, research institutions, government agencies, nongovernmental organizations, and individuals.
- (d) "Contract" means the Contract signed by the Parties and all the attached documents listed in its Clause 1, that is General Conditions (GC), the Special Conditions (SC), and the Appendices.
- (e) "Contract Price" means the price to be Paid for the Performance of the Services, in accordance with Clause 6;
- (f) "Effective Date" means the date on which this Contract comes into force and effect pursuant to Clause GC 2.1.
- (g) "Foreign Currency" means any currency other than the currency of the PE's country.
- (h) "GC" means these General Conditions of Contract.
- (i) "Government" means the Government of Khyber Pakhtunkhwa.
- (j) "Local Currency" means Pak Rupees.
- (k) "Member" means any of the entities that make up the joint venture/consortium/association, and "Members" means all these entities.
- (l) "Party" means the PE or the Consultant, as the case may be, and "Parties" means both of them.
- (m) "Personnel" means Persons hired by the Consultant or by any Sub Consultants and assigned to the Performance of the Services or any Part thereof.
- (n) "SC" means the Special Conditions of Contract by which the GC may be amended or supplemented.
- (o) "Services" means the consulting services to be performed by the Consultant pursuant to this Contract, as described in the Terms of References.
- (p) "Sub-Consultants" means any Person or entity to whom/which the Consultant subcontracts any Part of the Services.
- (q) "In writing" means communicated in written form with proof of receipt.

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1.2 Law Governing Contract

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

1.3 Language

This Contract is executed in the language specified in the SC, which shall be the binding and controlling language for all matters relating to the meaning or interpretation of this Contract.

1.4 Notices

1.4.1. Any notice, request or consent required or permitted to be given or made pursuant to this Contract shall be in writing. Any such notice, request or consent shall be deemed to have been given or made when delivered in Person to an authorized representative of the Party to whom the communication is addressed, or when sent to such Party at the address specified in the SC.

1.4.2 A Party may change its address for notice hereunder by giving the other Party notice in writing of such change to the address specified in the SC.

1.5 Location

The Services shall be performed at such locations as are specified in special condition of contract and, where the location of a Particular task is not so specified, at such locations, whether in the Government's country or elsewhere, as the PE may approve.

1.6 Authority of Member in Charge

In case the Consultant consists of a joint venture/ consortium/ association of more than one individual firms, the Members hereby authorize the individual firms or specified in the SC to act on their behalf in exercising all the Consultant's rights and obligations towards the PE under this Contract, including without limitation the receiving of instructions and Payments from the PE.

1.7 Authorized Representative

Any action required or permitted to be taken, and any document required or permitted to be executed under this Contract by the PE or the Consultant may be taken or executed by the officials specified in the SC.

1.8 Taxes & Duties

The Consultant, Sub-Consultants, and their Personnel shall Pay such direct or indirect taxes, duties, fees, and other impositions levied under the Applicable Law as specified in the SC, the amount of which is deemed to have been included in the Contract Price.

1.9 Fraud / Corruption

A. If the PE determines that the Consultant and/or its Personnel, sub-contractors, sub-consultants, services providers and suppliers has engaged in corrupt, fraudulent, collusive, coercive, or obstructive practices, in competing for or in executing the Contract, then the PE may, after giving 14 days' notice to the Consultant, terminate the Consultant's employment under the Contract, and may resort to other remedies including blacklisting/disqualification as provided in KPPR 2014.

Any Personnel of the Consultant who engages in corrupt, fraudulent, collusive, coercive, or obstructive practice during the execution of the Contract, shall be removed in accordance with Sub-Clause 4.2.

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Integrity Pact

B. If the Consultant or any of his Sub-consultants, agents or servants is found to have violated or involved in violation of the Integrity Pact signed by the Consultant as Appendix-G to this Form of Contract, then the PE shall be entitled to:

- (a) recover from the Consultant an amount equivalent to ten times the sum of any commission, gratification, bribe, finder's fee or kickback given by the Consultant or any of his Sub-consultant, agents or servants;
- (b) terminate the Contract; and
- (c) Recover from the Consultant any loss or damage to the PE as a result of such termination or of any other corrupt business practices of the Consultant or any of his Sub-consultant, agents or servants.

On termination of the Contract under Sub-Para (b) of this Sub Clause, the Consultant shall proceed in accordance with Sub Clause 1.9 A. Payment upon such termination shall be made under Sub-Clause 1.9 A after having deducted the amounts due to the PE under 19 B Sub-Para (a) and (c).

2. COMMENCEMENT, COMPLETION, MODIFICATION AND TERMINATION OF CONTRACT

2.1 Effectiveness of Contract

This Contract shall come into effect on the date the Contract is signed by either Parties or such other later date as may be stated in the SC. The date the Contract comes into effect is defined as the Effective Date.

2.2 Commencement of Services

This Contract shall come into effect on the date the Contract is signed by either Parties or such other later date as may be stated in the SC. The date the Contract comes into effect is defined as the Effective Date.

2.3 Expiration of Contract

Unless terminated earlier pursuant to Clause GC 2.6 hereof, this Contract shall expire at the end of such time period after the Effective Date as specified in the SC.

2.4 Modifications or Variations

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

2.5 Force Majeure

The failure on the Part of the Parties to Perform their obligation under the contract will not be considered a default if such failure is the result of natural calamities, disasters and circumstances beyond the control of the parties.

2.5.2 No Breach of Contract

The failure of a Party to fulfill any of its obligations under the contract shall not be considered to be a breach

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of, or default under, this Contract insofar as such inability arises from an event of Force Majeure, provided that the Party affected by such an event (a) has taken all reasonable precautions, due care and reasonable alternative measures in order to carry out the terms and conditions of this Contract, and (b) has informed the other Party as soon as possible about the occurrence of such an event.

2.5.3 Extension of Time

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

2.5.4 Payments

During the period of their inability to Perform the Services as a result of an event of Force Majeure, the Consultant shall be entitled to continue to be Paid under the terms of this Contract, as well as to be reimbursed for additional costs reasonably and necessarily incurred by them during such period for the purposes of the Services and in reactivating the Service after the end of such period

2.6 Termination

2.6.1 By the PE

The PE may terminate this Contract in case of the occurrence of any of the events specified in Paragraphs (a) through (f) of this Clause GC 2.6.1. In such an occurrence the PE shall give a not less than thirty (30) days' written notice of termination to the Consultant, and sixty (60) days' in the case of the event referred to in (e).

(a) If the Consultant does not remedy the failure in the Performance of their obligations under the Contract, within thirty (30) days after being notified or within any further period as the PE may have subsequently approved in writing.

(b) If the Consultant becomes insolvent or bankrupt.

(c) If the Consultant, in the judgment of the PE has engaged in corrupt or fraudulent practices in competing for or in executing the Contract.

(d) If, as the result of Force Majeure, the Consultant(s) are unable to perform a material portion of the Services for a period of not less than sixty (60) days.

(e) If the PE, in its sole discretion and for any reason whatsoever, decides to terminate this Contract.

(f) If the Consultant fails to comply with any final decision reached as a result of arbitration proceedings pursuant to Clause GC 8 hereof.

2.6.2 By the Consultant

The Consultants may terminate this Contract, by not less than thirty (30) days' written notice to the PE, such notice to be given after the occurrence of any of the events specified in Paragraphs (a) through (c) of this Clause GC 2.6.2:

(a) If the PE fails to pay any money due to the Consultant pursuant to this Contract without consultants fault.

(b) Pursuant to Clause GC 7 hereof within forty-five (45) days after receiving written notice from the Consultant that such Payment is overdue.

(c) If, as the result of Force Majeure, the Consultant is unable to perform a material portion of the Services for a period of not less than sixty (60) days.

(d) If the PA fails to comply with any final decision reached as a result of arbitration pursuant to Clause GC 8 hereof.

2.6.3. Payment Upon Termination

Upon termination of this Contract pursuant to Clauses GC 2.6.1 or GC 2.6.2, the PE shall make the following Payments to the Consultant:

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- (a) Payment pursuant to Clause GC 6 for Services satisfactorily Performed prior to the effective date of termination;
- (b) except in the case of termination pursuant to Paragraphs (a) through, and (f) of Clause GC 2.6.1, reimbursement of any reasonable cost incident to the prompt and orderly termination of the Contract, including the cost of the return travel of the Personnel and their eligible dependent's.

3. OBLIGATIONS OF THE CONSULTANT

3.1 General

3.1.1 Standard of Performance

The Consultant shall Perform the Services and carry out their obligations hereunder with all due diligence, efficiency and economy, in accordance with generally accepted professional standards and practices, and shall observe sound management practices, and employ appropriate technology and safe and effective equipment, machinery, materials and methods. The Consultant shall always act, in respect of any matter relating to this Contract or to the Services, as faithful advisers to the PE, and shall at all times support and safeguard the PE's legitimate interests in any dealings with Sub-Consultants or third parties.

3.2 Conflict of Interests

The Consultant shall hold the PE's interests Paramount, without any consideration for future work, and strictly avoid conflict with other assignments or their own corporate interests.

3.2.1 Consultants not to Benefit from Commissions, Discounts, etc.

The Payment of the Consultant pursuant to Clause GC 6 shall constitute the Consultant's only Payment in connection with this Contract or the Services, and the Consultant shall not accept for their own benefit any trade commission, discount, or similar Payment in connection with activities pursuant to this Contract or to the Services or in the discharge of their obligations under the Contract, and the Consultant shall use their best efforts to ensure that the Personnel, any Sub-Consultants, and agents of either of them similarly shall not receive any such additional Payment.

3.2.2 Consultant and Affiliates not to be Otherwise Interested in Project

The Consultant agrees that, during the term of this Contract and after its termination, the Consultant and any entity affiliated with the Consultant, as well as any Sub-Consultants and any entity affiliated with such Sub Consultants, shall be disqualified from providing goods, works or services (other than consulting services) resulting from or directly related to the Consultant's Services for the preparation or implementation of the project.

3.2.3 Prohibition of Conflicting Activities

The Consultant shall not engage, and shall cause their Personnel as well as their Sub-Consultants and their Personnel not to engage, either directly or indirectly, in any business or professional activities which would conflict with the activities assigned to them under this Contract

3.3 Confidentiality

Except with the prior written consent of the PE, the Consultant and the Personnel shall not at any time communicate to any Person or entity any confidential information acquired in the course of the Services, nor shall the Consultant and the Personnel make public the recommendations formulated in the course of, or as a result of, the Services.

3.4 Insurance to be Taken Out by the Consultant

Rule 29(2), The Consultant (a) shall take out and maintain, and shall cause any Sub Consultants to take out and maintain, at their (or the Sub-Consultants', as the case may be) own cost but on terms and conditions approved by the PE, insurance against the risks, and for the coverage, as shall be specified in the SC; and

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(b) at the PE's request, shall provide evidence to the PE showing that such insurance has been taken out and maintained and that the current premiums have been Paid.

3.5 Consultant's Actions Requiring PE's Prior Approval

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

- (a) entering into a subcontract for the Performance of any Part of the Services,
- (b) appointing such members of the Personnel not listed by name in Appendix C, and
- (c) any other action that may be specified in the SC.

3.6 Reporting Obligations

(a) The Consultant shall submit to the PE the reports and documents specified in (PE may insert appendix) hereto, in the form, in the numbers and within the time Period set forth in the said Appendix.

(b) Final reports shall be delivered in CD ROM in addition to the hard copies specified in said Appendix.

3.7 Documents Prepared by the Consultant to be the Property of the PE

(a) All plans, drawings, specifications, designs, reports, other documents and software submitted by the Consultant under this Contract shall become and remain the property of the PE, and the Consultant shall, not later than upon termination or expiration of this Contract, deliver all such documents to the PE, together with a detailed inventory thereof.

(b) The Consultant may retain a copy of such documents and software. Restrictions about the future use of these documents, if any, shall be specified in the SC.

3.8 Accounting, Inspection and Auditing

3.8.1 The Consultant shall keep, and shall cause its Sub-consultants to keep, accurate and systematic accounts and records in respect of the Contract, in accordance with internationally accepted accounting principles and in such form and detail as will clearly identify relevant time changes and costs.

The Consultant shall Permit, and shall cause its Sub-consultants to Permit, the PE and/or Persons appointed by the PE to inspect its accounts and records relating to the Performance of the Contract and the submission of the Proposal to provide the Services, and to have such accounts and records audited by auditors appointed by the PE if requested by the PE. The Consultant's attention is drawn to Clause 1.9.1 which provides, inter alia, that acts intended to materially impede the exercise of the PE's inspection and audit rights provided for under Clause 3.8 constitute a prohibited practice subject to contract termination (as well as to a determination of ineligibility pursuant to the PE's prevailing sanctions procedures.)

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4. CONSULTANT'S PERSONNEL

4.1 Description of Personnel

The Consultant shall employ and provide such qualified and Personnel experienced Personnel and Sub-Consultants as are required to carry out the Services. The titles, agreed job descriptions, minimum qualifications, and estimated Period of engagement in the carrying out of the Services of the Consultant's Key Personnel are described in Appendix C. The Key Personnel and Sub-Consultants listed by title as well as by name in Appendix C are hereby approved by the PE.

4.2 Removal and/or Replacement of Personnel

(a) Except as the PE may otherwise agree, no changes shall be made in the Key Personnel. If, for any reason beyond the reasonable control of the Consultant, such as retirement, death, medical incapacity, among others, it becomes necessary to replace any of the Key Personnel, the Consultant shall provide as a replacement a Person of equivalent or better qualifications.

(b) If the PE finds that any of the Personnel have (i) committed serious misconduct or have been charged with having committed a criminal action, or (ii) have reasonable cause to be dissatisfied with the Performance of any of the Personnel, then the Consultant shall, at the PE's written request specifying the grounds thereof, provide as a replacement a Person with qualifications and experience acceptable to the PE.

(c) The Consultant shall have no claim for additional costs arising out of or incidental to any removal and/or replacement of Personnel.

5. OBLIGATIONS OF THE PE

5.1 Assistance and Exemptions

The PE shall use its best efforts to ensure that the Government shall provide the Consultant such assistance and exemptions as specified in the SC.

5.2 Change in the Applicable Law Related to Taxes and Duties

If, after the date of this Contract, there is any change in the Applicable Law with respect to taxes and duties which increases or decreases the cost incurred by the Consultant in Performing the Services, then the remuneration and reimbursable expenses otherwise Payable to the Consultant under this Contract shall be increased or decreased accordingly by agreement between the parties, and corresponding adjustments shall be made to the amounts referred to in Clauses GC 6.2 or (b), as the case may be.

5.3 Services and Facilities

The PE shall make available free of charge to the Consultant the Services and Facilities listed under Appendix F.

6. PAYMENTS TO THE CONSULTANT

6.1 Lump-sum Payment

The total Payment due to the Consultant shall not exceed the Contract Price which is an all-inclusive fixed lump-sum covering all costs required to carry out the Services described in Appendix A. Except as

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provided in Clause 5.2, the Contract Price may only be increased above the amounts stated in Clause If the Parties have agreed to additional Payments in accordance with Clause 2.4.

6.2 Contract Price

The price Payable in Pak Rupees/foreign currency/ is set forth in the SC.

6.3 Payment for Additional services

For the purpose of determining the remuneration due for additional services as may be agreed under Clause 2.4, a breakdown of the lump sum price is provided in Appendices D and E.

6.4 Terms and Conditions of Payment

Payments will be made to the account of the Consultant and according to the Payment schedule stated in the SC. Unless otherwise stated in the SC, the first Payment shall be made against the provision by the Consultant of an advance Payment guarantee for the same amount, and shall be valid for the period stated in the SC. Such guarantee shall be in the form set forth in Appendix G hereto, or in such other form, as the PE shall have approved in writing. Any other Payment shall be made after the conditions listed in the SC for such Payment have been met, and the Consultant has submitted an invoice to the PE specifying the amount due.

7. GOOD FAITH

7.1 Good Faith

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

8. SETTLEMENT OF DISPUTES

8.1 Amicable Settlement

The parties agree that the avoidance or early resolution of disputes is crucial for a smooth execution of the Contract and the success of the assignment. The parties shall use their best efforts to settle amicably all disputes arising out of or in connection with this Contract or its interpretation.

8.2 Dispute Resolution

Any dispute between the parties as to matters arising pursuant to this Contract that cannot be settled amicably within thirty (30) days after receipt by one party of the other Party's request for such amicable settlement may be submitted by either party for settlement in accordance with the provisions specified in the SC

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III. Special Conditions of Contract

(Clauses in brackets { } are optional; all notes should be deleted in final text)

Number of Amendments of, and Supplementsto, Clauses in the GC ClauseGeneralConditions of Contract

{1.1} Khyber Pakhtunkhwa Public Procurement Act and Khyber Pakhtunkhwa Public Procurement Rules

2014.

1.3 The language is English.

1.4 Theaddresses are:

Procuring Entity: _____

Attention: _____

Facsimile: _____

E-mail: _____

Consultant:

Attention:

Facsimile:

E-mail:

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{1.6}

{The Member in Charge is *[insert name of member]*}

Note: *If the Consultant consists of a joint venture/ consortium/ association of more than one entity, the name of the entity whose address is specified in Clause SC 1.6 should be inserted here. If the Consultant consists only of one entity, this Clause SC 1.8 should be deleted from the SC.*

1.7

The Authorized Representatives are:

For the PE: _____

For the Consultant: _____

1.8

PE shall specify all relevant taxes including stamp duty and service charges to be borne by the consultant. In case there is exemption from any rates, taxes, the same shall be mentioned here.

The Consultant must be informed in Clause Reference 3.7 of the Data Sheet about which alternative the PE wishes to apply.

The PE warrants that the Consultant, the Sub-Consultants and the Personnel shall be exempt from (or that the PE shall Pay on behalf of the Consultant, the Sub-Consultants and the Personnel, or shall reimburse the Consultant, the Sub-Consultants and the Personnel for) any indirect taxes, duties, fees, levies and other impositions imposed, under the Applicable Law, on the Consultant, the Sub-Consultants and the Personnel in respect of:

- (a) any Payments whatsoever made to the Consultant, Sub-Consultants and the Personnel (other than nationals or Permanent residents of Pakistan), in connection with the carrying out of the Services;
- (b) any equipment, materials and supplies brought into the Government's country by the Consultant or Sub-Consultants for the purpose of carrying out the Services and which, after having been brought into such territories, will be subsequently withdrawn there from by them;
- (c) any equipment imported for the purpose of carrying out the Services and Paid for out of funds provided by the PE and which is treated as property of the PE;
- (d) any property brought into the province by the international Consultant, any Sub-Consultants or the Personnel or the eligible dependents of such Personnel for their Personal use and which will subsequently be withdrawn there from by them upon their respective departure from the Government's country, provided that:

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- (1) the Consultant, Sub-Consultants and Personnel, and their eligible dependents, shall follow the usual customs procedures of the Government's country in importing property into the Government's country; and
- (2) if the Consultant, Sub-Consultants or Personnel, or their eligible dependents, do not withdraw but dispose of any property in the Pakistan for which customs duties and taxes have been exempted, the Consultant, Sub-Consultants or Personnel, as the case may be, (i) shall bear such customs duties and taxes in conformity with the regulations of the Government's country, or (ii) shall reimburse them to the PE if they were Paid by the PE at the time the property in question was brought into the Government's country.

2.2 The date for the commencement of Services is *[insert date]*.

2.3 The time period shall be *[insert time period, e.g.: twelve months, eighteen months]*

3.4 The risks and the coverage shall be as follows:

- (a) Third party motor vehicle liability insurance in respect of motor vehicles operated by the Consultant or its Personnel or any Sub Consultants or their Personnel, with a minimum coverage of *[insert amount and currency]*;
- (b) Third party liability insurance, with a minimum coverage of *[insert amount and currency]*;
- (c) professional liability insurance, with a minimum coverage of *[insert amount and currency]*;
- (d) employer's liability and workers' compensation insurance in respect of the Personnel of the Consultant and of any Sub-Consultants, in accordance with the relevant provisions of the Applicable Law, as well as, with respect to such Personnel, any such life, health, accident, travel or other insurance as may be appropriate; and
- (e) insurance against loss of or damage to (i) equipment purchased in whole or in Part with funds provided under this Contract, (ii) the Consultant's property used in the Performance of the Services, and (iii) any documents prepared by the Consultant in the Performance of the Services.

Note: Delete what is not applicable

3.4.1 Liability of the Consultants

The Consultants are liable for the consequence of errors and omissions on their part or on the part of the P.E in so far as the supervision of the Project is concerned to the extent and with the limitations as mentioned herein below.

If the PE suffers any losses or damages as a result of proven faults, errors or omissions in the supervision of the work, the Consultants shall make good such losses or damages, subject to the conditions that the maximum liability as aforesaid shall not exceed twice the total contract cost of the Consultants in accordance with the terms of the Contract.

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The liability of the Consultants expires after one (1) year from the stipulated date of completion of the work at site.

The Consultants may, to protect themselves, insure themselves against their liabilities but this is not obligatory. The extent of the insurance shall be up to the limit specified in second Para above. The Consultants shall procure the necessary cover before commencing the Services and the cost of procuring such cover shall be borne by the Consultants up to a limit of one percent of the total remuneration of the Consultants for every year of keeping such cover effective.

The PE is obliged to rely on the information's, submissions, reporting, recommendations and advices made by the Consultants or their sub Consultants, for the consequences thereof, the Consultants shall be responsible and they shall make the PE harmless.

The Consultant shall be responsible for, and shall indemnify the PE of furnishing their professional services and against any and all risks, claims liabilities, obligations, losses, damages, penalties, action, judgment, suites, proceedings, demands, cost, expenses and disbursement whatsoever nature that may be imposed on, incurred by or asserted against the PE arising from the negligent acts of the Consultants in the performance of professional services under this Agreement.

The Consultant shall afford response and defense to any question, observation, loss, damages and claims arising out of their workings, performance, act and proceedings, in any forum and shall be held responsible to bear the consequences of such transactions, proceedings and approvals.

Performance Security: The Consultant shall furnish performance security equal to ten (10) % of the Contract Price stated in the Letter of Acceptance (LOA) in the form of CDR or irrevocable bank guarantee in favor of the MD-PKHA valid till completion of the works.

Retention Money: 10% of the amount of invoices of the Consultants will be retained and will be released by the PE after completion of the defect liability period.

{3.5(c)} {The other actions are: *[insert actions]*.}

{3.7(b)} {The Consultant shall not use these documents and software for purposes unrelated to this Contract without the prior written approval of the PE.}
 {The PE shall not use these documents and software for purposes unrelated to this Contract without the prior written approval of the Consultant.}

3.9 The Consultants shall submit to the PE the reports and documents specified in Appendix B in the form, in the numbers, and within the periods set forth in the said Appendix

4.1.1 The Key Personnel and Sub-consultants listed by title as well as by name in Appendix C are deemed to be approved by the PE. In respect of other Key Personnel which the Consultants propose to use in carrying out of the Services, the Consultants shall submit to the PE for review and approval a copy of their biographical data.
 However, in no case the consultant staff be deployed to site till formal approval and written notification / order of the P.E to the consultant against such deployment.

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{5.1} {Neither party shall use these documents and software for purposes unrelated to this Contract without the prior written approval of the other party.}

Note: *List here any assistance or exemptions that the PE may provide under Clause 5.1. If there is no such assistance or exemptions, state "not applicable."*

6.1 Performance security shall not exceed 10% of contract amount

6.3 The amount in Pak Rupees or in foreign Currency *[insert amount]*.

8.2 Disputes shall be settled by complaint redressal committee define in SPPR 2010 or through arbitration Act of 1940.in accordance with the following provisions:

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Appendix G

(INTEGRITY PACT)

DECLARATION OF FEES, COMMISSION AND BROKERAGE ETC. PAYABLE BY THE SUPPLIERS OF GOODS, SERVICES & WORKS IN CONTRACTS WORTH RS. 2.500 MILLION OR MORE

Contract No. _____ Dated _____

Contract Value: _____

Contract Title: _____

[name of Supplier] hereby declares that it has not obtained or

induced the procurement of any contract, right, interest, privilege or other obligation or benefit from Government of Khyber Pakhtunkhwa (GoKP) or any administrative subdivision or Entity thereof or any other entity owned or controlled by GoKP through any corrupt business practice.

Without limiting the generality of the foregoing, [name of Supplier] represents and warrants that it has fully declared the brokerage, commission, fees etc. Paid or Payable to anyone and not given or agreed to give and shall not give or agree to give to anyone within or outside Pakistan either directly or indirectly through any natural or juridical person, including its affiliate, agent, associate, broker, consultant, director, promoter, shareholder, sponsor or subsidiary, any commission, gratification, bribe, finder's fee or kickback, whether described as consultation fee or otherwise, with the object of obtaining or inducing the procurement of a contract, right, interest, privilege or other obligation or benefit in whatsoever form from GoKP, except that which has been expressly declared pursuant hereto.

[name of Supplier] certifies that it has made and will make full disclosure of all agreements and arrangements with all persons in respect of or related to the transaction with GoKP and has not taken any action or will not take any action to circumvent the above declaration, representation or warranty.

[name of Supplier] accepts full responsibility and strict liability for making any false declaration, not making full disclosure, misrepresenting facts or taking any action likely to defeat the purpose of this declaration, representation and warranty. It agrees that any contract, right, interest, privilege or other obligation or benefit obtained or procured as aforesaid shall, without prejudice to any other rights and remedies available to GoKP under any law, contract or other instrument, be voidable at the option of GoKP.

Notwithstanding any rights and remedies exercised by GoKP in this regard, [name of Supplier] agrees to indemnify GoKP for any loss or damage incurred by it on account of its corrupt business practices and further Pay compensation to GoKP in an amount equivalent to ten time the sum of any commission, gratification, bribe, finder's fee or kickback given by [name of Supplier] as aforesaid for the purpose of obtaining or inducing the procurement of any contract, right, interest, privilege or other obligation or benefit in whatsoever form from GoKP.

Name of Buyer:

Signature:

[Seal]

Name of Seller/Supplier:

Signature:

[Seal]

CONTRACT

THIS CONTRACT ("Contract") is entered into this *[insert starting date of assignment]*, by and between *[insert PE 's name]* ("the PE") having its principal place of business at *[insert PE 's address]*, and *[insert Consultant's name]* ("the Consultant") having its principal office located at *[insert Consultant's address]*.

WHEREAS, the PE wishes to have the Consultant Performing the services hereinafter referred to, and

WHEREAS, the Consultant is willing to perform these services,

NOW THEREFORE THE PARTIES hereby agree as follows:

- 1. Services**
- (i) The Consultant shall perform the services specified in Appendix A (Part I&II), "Terms of Reference and Scope of Services," which is made an integral Part of this Contract ("the Services").
 - (ii) The Consultant shall provide the reports listed in Annex B, "Consultant's Reporting Obligations," within the time Period listed in such Annex, and the Personnel listed in Annex C, "Cost Estimate of Services, List of Personnel and Schedule of Rates" to Perform the Services.

2. Term

The Consultant shall perform the Services during the period commencing *[insert start date]* and continuing through *[insert completion date]* or any other period as may be subsequently agreed by the parties in writing.

3. Payment

A. Ceiling

For Services rendered pursuant to Appendix A (Part I&II), the PE shall pay the Consultant an amount not to exceed *[insert amount]*. This amount has been established based on the understanding that it includes all of the Consultant's costs and profits as well as any tax obligation that may be imposed on the Consultant.

C. Payment Conditions

Payment shall be made in *[specify currency]*, no later than 30 days following submission by the Consultant of invoices in duplicate to the Coordinator designated in Paragraph 4.

**4. Economic
Price
Adjustment**

In order to adjust the remuneration for inflation, a price adjustment provision has been included if the contract has duration of more than 18 months or if the inflation is expected to exceed —% Per annum. The adjustment will be made every 12 months after the date of the contract for remuneration. Remuneration will be adjusted by using the relevant index as Per following provision:
"Payments for remuneration made in accordance with Clause 3 shall be adjusted as follows:

Remuneration pursuant to the rates set forth in Annex C shall be adjusted every 12 months (and, for the first time, with effect for the remuneration earned in the *[13] the* calendar month after the date of the Contract) by

applying the following formula:

$$RI = RIo \times \frac{I}{I_0}$$

where *RI* is the adjusted remuneration, *RIo* is the remuneration Payable on the basis of the rates set forth in Annex C for Payable remuneration, *I* is the official rate of inflation for the first month for which the adjustment is to have effect and, *I₀* is the official rate of inflation for the month of the date of the Contract.”]

5. Project Administration

A. Coordinator

The PE designates Mr./Ms. *[insert name]* as PE’s Coordinator; the Coordinator shall be responsible for the coordination of activities under the Contract, for receiving and approving invoices for Payment, and for acceptance of the deliverables by the PE.

B. Timesheets

During the course of their work under this Contract the Consultant’s employees providing services under this Contract may be required to complete timesheets or any other document used to identify time spent, as instructed by the Coordinator.

C. Records and Accounts

The Consultant shall keep accurate and systematic records and accounts in respect of the Services, which will clearly identify all charges and expenses. The PE reserves the right to audit, or to nominate a reputable accounting firm to audit, the Consultant’s records relating to amounts claimed under this Contract during its term and any extension, and for a period of three months thereafter.

6. Performance Standard

The Consultant undertakes to perform the Services with the highest standards of professional and ethical competence and integrity. The Consultant shall promptly replace any employees assigned under this Contract that the PE considers unsatisfactory.

7. Confidentiality

The Consultants shall not, during the term of this Contract and within two years after its expiration, disclose any proprietary or confidential information relating to the Services, this Contract or the PE’s business or operations without the prior written consent of the PE.

8. Ownership of Material

Any studies, reports or other material, graphic, software or otherwise, prepared by the Consultant for the PE under the Contract shall belong to and remain the property of the PE. The Consultant may retain a copy of such documents and software.

- 9. Consultant Not to be Engaged in Certain Activities** The Consultant agrees that, during the term of this Contract and after its termination, the Consultants and any entity affiliated with the Consultant, shall be disqualified from providing goods, works or services (other than the Services or any continuation thereof) for any project resulting from or closely related to the Services.
- 10. Insurance** The Consultant will be responsible for taking out any appropriate insurance coverage for their Personnel and equipments.
- 11. Assignment** The Consultant shall not assign this Contract or Subcontract any portion thereof it without the PE's prior written consent.
- 12. Law Governing Contract and Language** The Contract shall be governed by the laws of Islamic Republic of Pakistan or the Provincial Government and the language of the Contract shall be English.
- 13. Dispute Resolution** Any dispute arising out of this Contract, which cannot be amicably settled between the Parties, shall be referred to adjudication/arbitration in accordance with the Arbitration Act of 1940

FOR THE PE

FOR THE CONSULTANT

Signed by

Signed by

Title:

Title:

Appendix A

Description of the Services (Part-I)

Terms of Reference

i. Objectives

The objectives of consulting services are to assist PE to implement the Project through the following activities:

- (a) Design Review
- (b) Contractor's Bid Evaluation
- (c) Construction supervision with quality assurance through related field/ laboratory test.
- (d) Processing and approval of payment devices and certification.
- (e) Overall project monitoring and evaluation
- (f) Reporting and responding
- (g) Detailed Survey of the Projects
- (h) Test and Investigations

ii. Scope of Consulting Services

The Employer will be the Government of Khyber Pakhtunkhwa through Managing Director Pakhtunkhwa Highway Authority Communication and Works Department Peshawar (herein after referred to as "Employer"). **The Engineer is Team Leader of the Consultant; and** The Engineer's role is to administer the contract and to ensure that its clauses are respected. The consultant will be fully responsible for quality assurance, quantities, rates and payments to the contractor. The Engineer will make engineering decisions whenever required during the implementation of the contracts. When these decisions require variations in work quantities or sanction of additional items the Engineer will seek the prior approval of PE before issuing the order. The Engineer's Representative (i.e. RE) and his staff are under the overall control of the Engineer, and shall carry out such duties and exercise such authority as may be delegated to them by the Engineer. The Engineer may from time to time delegate to the Engineer's Representative any of the duties and authorities vested in the Engineer and he may at any time revoke such delegation. Any such delegation or revocation shall be in writing and shall not take effect until a copy thereof has been delivered to PE and the contractor.

iii. Specific scope of consulting services

(wherever applicable) is described in this section services other than minor extra, which do not materially affect the scope of the Consultant's Agreement will be authorize by PE at rate and under conditions to be mutually agreed.

A. Construction Supervision

Commencement

- i) To review & authenticate the design of the work
- ii) Evaluation of contractor's Bid
- iii) To give the order to commence the works and issuing variation orders to the contractors, both after consultation with PE.
- iv) To approve the contractor's work program, method statements, sources of materials, etc.
- v) To investigate the suitability of locally available construction materials, and where necessary, locate new quarries and borrow pits and assess the quality and quantity of materials and hauling distance.
- vi) To check systematically the progress of the works and to order the initiation of certain work which is a part of the contract.

Drawing

- i) To approve and / or issuing working drawings, approving the setting out of the works giving instructions to the contractors and processing amendment and variations.
- ii) To verify and correct the as-built drawings supplied by the Contractor.

Record Keeping

- i) To take/verify measurements and keeping appropriate records of these, which are to be in computer based form.
- ii) To maintain a day by day project diary, correspondence and others which shall record all events pertaining to the administration of the contract, requests from and orders given to the contractor, and any other information which may at a later date be or assistance in resolving queries arising in connection with execution of the works.

Safety

- i) To supervise the contractor in all matters concerning safety and care of the works.
- ii) To direct the contractor to carry out all such work as may be necessary in the opinion of the Engineer to avoid or to reduce the risk in case of any emergency affecting the safety of life or of the works or of adjoining property and advise PE thereof as soon thereafter as is reasonably practicable.

Overall Contract Management

- i) To arrange monthly review meetings with Contractors, PE and other fora.
- ii) To examine and attend the measurement of any work which is about to be covered or put out of view before permanent work is placed thereon and / or to examine and attend the measurement of the completed works in the prescribed form.
- iii) To carry out generally all the duties of the Engineer as specified in the Construction contract.
- iv) To issue necessary notices to the contractor as may be required under the construction contract.
- v) To inspect the works at appropriate intervals during the defects liability period and issuing the defects liability certificate.
- vi) To process the Contractor's possible claims.
- vii) To monitor environmental issues during the construction period, ensuring minimum disruption/damage to the environment and local settlements by approval of the Contractors' work statement/methodology, including monitoring the impact of construction works on the environment and local settlements and providing information to PE and the District Governments in the Monthly Progress Reports.

- viii) To issue a variation order which has financial implications subject to prior approval in writing of PE.
- ix) Accord of Technical Sanction shall be the responsibility of the design consultant which shall be vetted by supervisory consultant.
- x) To determining extension of time, subject to prior approval of PE.
- xi) To advise PE with respect to carrying out the works following an appeal to arbitration or litigation relating to the works.

Financial Management

- i) To check the contractor's accounts, invoices, IPCs, claims and other statements with respect to all aspects of financial regulatory, correctness and the contract.
- ii) To advise PE on all matters relating to the execution of the contract including providing advice on processing of contractor's claims, if any.
- iii) To recommend to PE any liquidated damages to be claimed from the Contractor or other actions which should be taken against the contractor under the construction contract.

Approval and Certificate

- i) To inspect the performance of the works with regard to workmanship and compliance with the specifications and to order, to supervise or perform tests on materials and other work and to approve or disapprove the contractor's work and, if appropriate, his plant and equipment.
- ii) To certify work volume and Interim Certificates for payments.
- iii) To certify completion of part or all of the works, prepare punch list for payment to the contractors.
- iv) To order tests of materials and of completed works, and ordering removal of materials or works, which do not comply with specified requirements.
- v) To order, if required, the uncovering of completed work and or the removal and substitution of proper materials and / or work.
- vi) To inspect the works during the maintenance period and issuing the maintenance certificate.
- vii) To assist in the transfer of the Project from the contractor to PE.

Overall Project Monitoring

- i) To support PE to carry out the overall project monitoring and feedback.
- ii) To establish h systems for recording data and statistics for such monitoring.
- iii) To collect required data and undertake other relevant surveys before construction and immediately after completion of construction of each road for monitoring
- iv) To prepare quarterly progress reports in accordance with the format agreed by PE.
- v) To prepare monthly progress reports;
- vi) To provide PE with complete records and approved Contractor's as-build drawing for the works.
- vii) To prepare completion report for the Project, including information on a contract-wise basis in a form acceptable to PE and carry out Project Benefit Monitoring and Evaluation before and after civil works construction in accordance with the agreed format.

B. Liability of the Consultants

The Consultants are liable for the consequence of errors and omissions on their part or on the part of the P.E in so far as the supervision of the Project is concerned to the extent and with the limitations as mentioned herein below.

If the PE suffers any losses or damages as a result of proven faults, errors or omissions in the supervision of the work, the Consultants shall make good such losses or damages, subject to the conditions that the maximum liability as aforesaid shall not exceed twice the total contract cost of the Consultants in accordance with the terms of the Contract.

The liability of the Consultants expires after one (1) year from the stipulated date of completion of the work at site.

The Consultants may, to protect themselves, insure themselves against their liabilities but this is not obligatory. The extent of the insurance shall be up to the limit specified in second Para above. The Consultants shall procure the necessary cover before commencing the Services and the cost of procuring such cover shall be borne by the Consultants up to a limit of one percent of the total remuneration of the Consultants for every year of keeping such cover effective.

The PE is obliged to rely on the information's, submissions, reporting, recommendations and advices made by the Consultants or their sub Consultants, for the consequences thereof, the Consultants shall be responsible and they shall make the PE harmless.

The Consultant shall be responsible for, and shall indemnify the PE of furnishing their professional services and against any and all risks, claims liabilities, obligations, losses, damages, penalties, action, judgment, suites, proceedings, demands, cost, expenses and disbursement whatsoever nature that may be imposed on, incurred by or asserted against the PE arising from the negligent acts of the Consultants in the performance of professional services under this Agreement.

The Consultant shall afford response and defense to any question, observation, loss, damages and claims arising out of their workings, performance, act and proceedings, in any forum and shall be held responsible to bear the consequences of such transactions, proceedings and approvals.

Performance Security: The Consultant shall furnish performance security equal to ten (10) % of the Contract Price stated in the Letter of Acceptance (LOA) in the form of CDR or irrevocable bank guarantee in favor of the MD-PKHA valid till completion of the works.

Retention Money: 10% of the amount of invoices of the Consultants will be retained and will be released by the PE after completion of the defect liability period.

Appendix A

Description of the Services

(Part-II)

TERMS OF REFERENCE FOR CONSULTING SERVICES FOR CONSTRUCTION SUPERVISION

I. Objectives

The main objectives of the consultant services described herein is to assist the PKHA in carrying out construction supervision enlisted as follows in the scope of services:

II. Scope of services

The consulting services regarding construction supervision are envisaged to be provided by Consultant with full responsibility of the **work** CONSTRUCTION SUPERVISION OF BALANCE WORK OF ADP SCHEME NO. 1002 / 140877 (2019-20) “CONSTRUCTION OF HARIPUR BYPASS ROAD (24.60 KM)”

The scope of consulting services will include, but not necessarily be limited to the following:

- i) To review all tender documents, designs, cost-estimates, conditions of contract etc already prepared by the design consultants and advise PKHA about their suitability without any additional cost. Prepare a detailed construction program consistent with the implementation schedule for the Project.
- ii) Conducting Road Safety Audit of the designed road as to improve the safety aspects of the road. Road Safety Engineer will identify hazardous location(s) and conditions, conduct a highway safety study, collect and analyses preliminary data, identify and collect field data, select and conduct appropriate detailed studies, evaluate study results, determine safety and operational deficiencies, identify potential safety and operational improvement and to select appropriate improvements. The whole process of Road Safety Audit shall be carried out as per international standard or as adopted by NHA.
- iii) The detailed construction supervision shall include planning, guidance, programming, inspection, monitoring of construction activities and contractor’s performance. Quantity and quality assurance, implementation of work plans and drawings as per design and specifications.
- iv) Preparation and verification of variation orders and maintaining record of correspondence with the contractor and other stakeholders in capacity of the Engineer.
- v) To maintain a good liaison with the PKHA office including all other duties pertinent to the construction phase of the project with the prime objective to complete the work in the best public interest.
- vi) Preparation & submission of monthly progress reports as per PKHA requirements.
- vii) Provide to the Contractor survey data necessary for setting out stakes for carrying out construction including identification of material sources.

- viii) The role of consultant will be obligatory and they shall indemnify the PKHA against all type of qualitatively & quantitatively deficiencies, observations, audit objections, proceeding, inspection reports and monitoring reports etc of various agencies.
- ix) Inspect regularly the contractor's construction equipment, installations, housing, medical facilities etc and ensure that they are adequate and in accordance with the terms and conditions specified in the contracts for civil works.
- x) Maintain a permanent record of all measurements for the work quantities to be paid for and the results of all tests carried out for monitoring the quality of civil works.
- xi) Verify and certify all payments to be made to the contractors both in qualitative as well as in quantitative terms along with the collection and deliverance of the cheques to the contractors will all financial responsibilities.
- xii) Inform PKHA of problems arising in connection with the implementation of civil works and make recommendations for possible solutions.
- xiii) Evaluate and make recommendations to the PKHA in regard to contractor's claims, disputes, contract time extensions and other changes.
- xiv) Prepare periodic cash flow forecasts and certificates for payment including updated cost estimates for construction and supervision.
- xv) Provide timely assistance to the contractors in all matters related to interpretation of the contract documents, ground survey controls, quality control testing and other matters relating to the contracts under the project.
- xvi) Prepare monthly reports fully describing the progress of the works and assistance given by the consultants during the preceding month, as well as identifying problem areas and actions taken to overcome them.
- xvii) Prepare project completion report in a manner satisfactory to the authority and other associated department concerned after substantial completion of the civil works.
- xviii) The consultant shall from its own sources to meet expenses for transportation, boarding communication, lodging etc. for its staff at site and office not covered in the financial proposals.
- xix) Before completion of services the consultant will submit a set of as built cross section of the work done. The final bill will be based on as built cross-section of the work done.
- xx) The consultant will be held responsible for the audit reports and if any over payment or recovery pointed out in the audit para and the recovery become proved the same will be recovered from the supervisory consultant because it was implementation by them.
- xxi) If any recovery pointed out by any investigating agency in the work done implemented and supervise by the consultant, the consultant will be responsible for below specification work and the resulted recovery will be made from consultant.

Appendix B

Reporting Requirements

Reporting Requirements

The Consultant shall submit the following reports (in both Hard and Soft copies):

Submission / Report	Number of Copies	Due Date
(1) Progress Report (Monthly)	03	On every 5 th day of the month
(2) Detailed Quarterly Reports	03	On 5 th of completion of each quarter
(3) Project Completion Report	03	On the completion of defect liability period
(4) Revised PC-1	11	01 Months after written instructions from the PE
(5) Handing/Taking Over Certificate (PC-IV)	03	03 Month after completion of Project
(6) Annual Performance Report (PC-V)	03	01 Year after completion of Project
(7) Submission of as Built Drawings	03	01 Month after completion of Project

Monthly reports and other reports as applicable are to include schedules of contract payments and variation orders, graphical representations of progress against programme, based on the approved contract schedules, charts of physical progress on major items, relevant photographs and details of impediments to the works and proposals for overcoming these. Response to M & E, audit and other forum seeking informations.

Appendix C

Key Personnel and Sub consultants

[List under:

Appendix D

Breakdown of Contract Price in Foreign Currency

[List hereunder cost estimates in foreign currency:

Appendix E

Breakdown of Contract Price in Local Currency

1. (a) Monthly rates for local Personnel (Key Personnel and other Personnel);

(b) Total Remuneration of staff (on the basis of monthly rates)

2. Reimbursable direct costs (non-salary costs)

Appendix F

Services and Facilities to be Provided by the PE

and

**Counterpart Personnel to be made Available
to the Consultants by the PE**