

Original

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SuperIntending Engineer
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Livelihood Improvement Project
BWDB, Dhaka

CONTRACT FOR CONSULTANTS' SERVICES

Time-Based

Project Name: Haor Flood Management and Livelihood Improvement Project

Loan Agreement No.: BD-P80

Contract No.: BWDB/HFM&LIP/S-01

between

Bangladesh Water Development Board

and

Nippon Koei Co., Ltd
BETS Consulting Services Ltd.
Center for Natural Resource Studies

APRIL, 2015

(A.K.M. Shamsul Alam)
SuperIntending Engineer
Haor Flood Management &
Livelihood Improvement Project
BWDB, Dhaka.

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I. Form of Contract

TIME-BASED

This CONTRACT (hereinafter called the "Contract") is made the21st..... day of the month of April, 2015, between, on the one hand, **Bangladesh Water Development Board (BWDB)** (hereinafter called the "Client") and, on the other hand, a Joint Venture consisting of the following entities, each of which will be jointly and severally liable to the Client for all the Consultant's obligations under this Contract, namely, Nippon Koei Co. Ltd., BETS Consulting Services Ltd. and Center for Natural Resource Studies (hereinafter collectively called the "Consultant").

WHEREAS

- (a) the Client has requested the Consultant to provide certain consulting services as defined in this Contract (hereinafter called the "Services");
- (b) the Consultant, having represented to the Client that it has the required professional skills, expertise and technical resources, has agreed to provide the Services on the terms and conditions set forth in this Contract;
- (c) by an Agreement dated 16 June 2014 (hereinafter called the Loan Agreement) between the Govt. of Bangladesh (hereinafter called the Borrower) and Japan International Cooperation Agency (hereinafter called "JICA"), JICA has agreed to make a loan to the Borrower for the purpose of financing Haor Flood Management and Livelihood Improvement Project (BWDB Part). (hereinafter called the Project);

NOW THEREFORE the parties hereto hereby agree as follows:

1. The following documents attached hereto shall be deemed to form an integral part of this Contract:
 - (a) Appendix J: Minutes of Contract Negotiation;
 - (b) The Special Conditions of Contract (SCC);
 - (c) The General Conditions of Contract (GCC);
 - (d) The following Appendices:

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- Appendix A: Description of Services
- Appendix B: Reporting Requirements
- Appendix C: Expert Schedule
- Appendix D: Remuneration Cost Estimates
- Appendix E: Reimbursable Cost Estimates
- Appendix F: Summary of Cost Estimates
- Appendix G: Services, Facilities and Equipment to be provided by the Client
- Appendix H: Form of Advance Payments Security
- Appendix I: Acknowledgment of Compliance with Guidelines for the Employment of Consultants under Japanese ODA Loans

In the event of any ambiguity or conflict between the documents listed above, the order of precedence shall be the order in which the documents are listed in this Clause 1.

2. The mutual rights and obligations of the Client and the Consultant shall be as set forth in the Contract, in particular:
 - (a) the Consultant shall carry out the Services in accordance with the provisions of the Contract;
 - (b) the Client shall make payments to the Consultant in accordance with the provisions of the Contract;
 - (c) Subject to subparagraph (d) hereunder, and notwithstanding any other provisions of this Contract, payments under this Contract shall not exceed **JPY 246,048,000** in foreign currency/currencies, and **BDT 705,040,178** in local currency. Except as otherwise agreed between the Client and the Consultant:
 - (i) Foreign currency payments to the Consultant hereunder will be made in JPY;
 - (ii) Local currency payments to the Consultant hereunder will be made in BDT.
 - (d) The maximum amount specified in subparagraph (c) here above has been fixed on the understanding that the Client will make available free of charge to the Consultant the exemptions, assistance, services and facilities provided for under Clause 5 of the General Conditions of Contract and in Appendix G as required for the purposes of the Services. If any such exemptions, assistance, services and facilities are not supplied, the parties shall consult regarding what additional allowance (if any) should be made to the Consultant as a result thereof to cover necessary additional expenses not envisaged in the cost estimates in Appendices D and E.

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

<p>For and on behalf of Bangladesh Water Development Board</p> <p><i>[Signature]</i></p> <p>Md. Fakhrul Abedin Project Director, Haor Flood Management and Livelihood Improvement Project, BWDB, Dhaka</p>	<p>For and on behalf of the Joint Venture of Nippon Koei Co. Ltd (NK), Japan, BETS Consulting Services Ltd (BETS), Bangladesh and Centre for Natural Resources Studies (CNRS), Bangladesh</p> <p><i>[Signature]</i></p> <p>Junichi TAKAHASHI General Manager Marketing and Promotion Department Nippon Koei Co. Ltd.</p>
	<p><i>[Signature]</i></p> <p>Dr. Abdus Shabur Managing Director BETS Consulting Services Ltd. Dhaka</p>
	<p><i>[Signature]</i></p> <p>Mr. M. Anisul Islam Director Center for Natural Resource Studies (CNRS), Bangladesh.</p>

Witness :

<p>1. <i>[Signature]</i></p> <p>HASAN MAHMUD Sub-Divisional Engineer HFMLIP, BWDB, Dhaka.</p>	<p>2. <i>[Signature]</i></p> <p>Toshimitsu Tanaka Representative, Dhaka Liaison Office, Nipponkoei</p>
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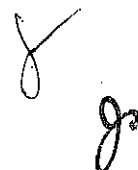
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General Conditions of Contract

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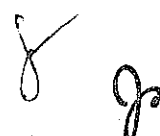
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1. GENERAL PROVISIONS

1.1 Definitions

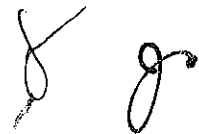
Unless the context otherwise requires, the following terms whenever used in this Contract have the following meanings:

- (a) "Applicable Guidelines" means the Guidelines for the Employment of Consultants under Japanese ODA Loans, published on the date specified in the Special Conditions of Contract (SCC).
 - (b) "Applicable Law" means the laws and any other instruments having the force of law in the Client's country, or in such other country as may be specified in the SCC, as they may be issued and in force from time to time.
 - (c) "Borrower" means the Government, Government agency or other entity that signs the Loan Agreement with JICA.
 - (d) "Client" means the executing agency that signs the Contract for the Services with the selected Consultant.
 - (e) "Consultant" means any entity or individual including a Joint Venture selected by the Client to provide the Services under the signed Contract.
 - (f) "Contract" means the legally binding written agreement signed between the Client and the Consultant and includes all the attached documents listed in paragraph 1 of the Form of Contract (the General Conditions (GCC), the Special Conditions (SCC), and the Appendices).
 - (g) "day" means calendar day unless indicated otherwise.
 - (h) "Effective Date" means the date on which this Contract comes into force and effect pursuant to Clause GCC 2.1.
 - (i) "Experts" means, collectively, Key Experts, Non-Key Experts, or any other professional personnel of the Consultant, Sub-consultant or JV member(s) assigned by the Consultant to perform the Services or any part thereof under the Contract.
 - (j) "Foreign Currency" means any currency other than the currency of the Client's country.
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- (k) "GCC" means these General Conditions of Contract.
- (l) "Government" means the Government of the Client's country.
- (m) "JICA" means Japan International Cooperation Agency.
- (n) "Joint Venture" means an association with or without a legal personality distinct from that of its members, of more than one Consultant where one member has the authority to conduct all businesses for and on behalf of any and all the members of the JV, and where the members of the JV are jointly and severally liable to the Client for the performance of the Contract.
- (o) "Key Expert(s)" means an individual professional whose skills, qualifications, knowledge and experience are critical to the performance of the Services under the Contract and whose Curricula Vitae (CV) was taken into account in the technical evaluation of the Consultant's Proposal.
- (p) "Local Currency" means the currency of the Client's country.
- (q) "Non-Key Expert(s)" means an individual professional provided by the Consultant or its Sub-consultant to perform the Services or any part thereof under the Contract.
- (r) "Party" means the Client or the Consultant, as the case may be, and "Parties" means both of them.
- (s) "SCC" means the Special Conditions of Contract by which the GCC may be amended or supplemented but not over-written.
- (t) "Services" means the work to be performed by the Consultant pursuant to this Contract, as described in Appendix A.
- (u) "Sub-consultant(s)" means an entity or an individual to whom/which the Consultant subcontracts any part of the Services while remaining solely liable for the execution of the Contract.
- (v) "Third Party" means any person or entity other than the Government, the Client, the Consultant or a Sub-consultant.

1.2 Relationship between the Parties

Nothing contained herein shall be construed as establishing a relationship of master and servant or of principal and agent as between the Client and the Consultant. The Consultant, subject to



this Contract, has complete charge of Experts and Sub-consultants, if any, performing the Services and shall be fully responsible for the Services performed by them or on their behalf hereunder.

1.3 Law Governing Contract

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

1.4 Language

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

1.5 Headings

The headings shall not limit, alter or affect the meaning of this Contract.

1.6 Communications

1.6.1 Any communication required or permitted to be given or made pursuant to this Contract shall be in writing in the language specified in Clause GCC 1.4. Any such communication 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 SCC.

1.6.2 A Party may change its address for notice hereunder by giving the other Party any communication of such change to the address specified in the SCC.

1.7 Location

The Services shall be performed at such locations as are specified in Appendix A and, where the location of a particular task is not so specified, at such locations, whether in the Client's country or elsewhere, as the Client may approve.

1.8 Authority of Lead Member

In case the Consultant is a Joint Venture, the members hereby authorize the member specified in the SCC to act on their behalf in exercising all the Consultant's rights and obligations towards the Client under this Contract, including without limitation the receiving of instructions and payments from the Client.

1.9 Authorized Representatives

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

1.10 Corrupt and Fraudulent Practices

The Consultant is required to comply with JICA's policy in regard to corrupt and fraudulent practices as declared in Appendix I.

1.11 Monitoring by JICA

Without assuming the responsibilities of the Client or the Consultant, JICA may monitor the Services as necessary in order to satisfy itself that it is being carried out in accordance with appropriate standards and is based on acceptable data. As appropriate, JICA may take part in discussions between the Client and the Consultant. However, JICA shall not be liable in any way for the performance of the Services by reason of such monitoring or participation in discussions. Neither the Client nor the Consultant shall be released from any responsibility of this Contract by reason of JICA's monitoring or participation in discussion.

1.12 Difference of Opinion

In the case of a difference of opinion between the Client and the Consultant on any important matters involving professional judgment that might affect the proper evaluation or execution of the Project, the Client shall allow the Consultant to submit promptly to the Client a written report and, simultaneously, to submit a copy to JICA. The Client shall forward the report to JICA with its comments in time to allow JICA to study it and communicate with the Client before any irreversible steps are taken in the matter. In cases of urgency, the Consultant has the right to request the Client and/or JICA that the matter be discussed immediately between the Client and JICA.

2. COMMENCEMENT, COMPLETION, MODIFICATION AND TERMINATION OF CONTRACT**2.1 Effectiveness of Contract**

Unless otherwise specified in the SCC, this Contract shall come into force and effect on the date (the "Effective Date") when:


- (a) This Contract has been signed by the Parties; and
- (b) This Contract has been reviewed and concurred by JICA.

Upon fulfillment of the conditions indicated above, the Client shall issue a written notice to the Consultant which confirms the Effective Date and instructs the Consultant to deliver an advance payment security and an invoice for advance payment to the Client.

The Consultant shall submit the required advance payment security and the invoice for the advance payment, pursuant to Clause GCC 6.5 (a), within fourteen (14) days or within such other period specified in the SCC following the receipt of the notice specified in this Clause GCC 2.1.

2.2 Termination of Contract for Failure to Become Effective

Unless a different period of time is otherwise specified in the SCC, if this Contract has not become effective within four (4) months after the date of the Contract signed by the Parties, the Consultant or the Client may, by not less than twenty one (21) days written notice



to the other Party, declare this Contract to be null and void, and in the event of such a declaration by either Party, neither Party shall have any claim against the other Party with respect hereto.

2.3 Commencement of Services

2.3.1 Subject to Clause GCC 6.5 (a), the Consultant shall begin carrying out the Services not later than fourteen (14) days from the receipt of the advance payment.

2.3.2 The Consultant shall confirm the availability of Key Experts before the commencement of the Services.

2.4 Expiration of Contract

Subject to Clause GCC 2.7.3 (c) and unless terminated earlier pursuant to Clause GCC 2.9, this Contract shall expire at the end of such time period, as specified in the SCC, after the commencement of the Services specified in Clause GCC 2.3.

2.5 Entire Agreement

This Contract contains all covenants, stipulations and provisions agreed by the Parties. No agent or representative of either Party has authority to make, and the Parties shall not be bound by or be liable for, any statement, representation, promise or agreement not set forth herein.

2.6 Modifications

2.6.1 Modifications or Variations

(a) Any modification or variation of the terms and conditions of this Contract, including any modification or variation of the scope of 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.

(b) In case of substantial modifications or variations, the prior written concurrence of JICA is required.

2.6.2 Extension

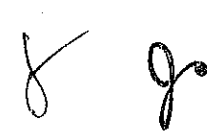
(a) If the Consultant has been delayed or impeded in the performance of any of its obligations under this Contract by any of the reasons specified in paragraphs (i) through (vi) of this Clause 2.6.2 (a), the contract term as set forth in Clause GCC 2.4 shall be extended by such period as shall be fair and reasonable in all the circumstances and as shall fairly reflect the delay or impediment sustained by the Consultant, and an appropriate adjustment in the Contract Price (which includes both remuneration and/or reimbursable expenses) shall be made accordingly.



- (i) Any modifications or variations pursuant to Clause GCC 2.6.1;
 - (ii) Any occurrence of Force Majeure pursuant to Clause GCC 2.7;
 - (iii) Any suspension by the Client pursuant to Clause GCC 2.8.1 (b), suspension or reduction in the rate of performance of the Services pursuant to Clause GCC 2.8.2;
 - (iv) Any unreasonable delay by the Client in giving his decision, approval or consent (where required) to the documents (e.g. designs, plans, etc.) prepared and submitted by the Consultant;
 - (v) Any act or omission of or any default or breach of this Contract by the Client or any act or omission of any other Consultants and/or contractors employed by the Client; or
 - (vi) Any other matter mentioned in this Contract as giving rise to an entitlement to an extension of the contract term.
- (b) Except where otherwise provided elsewhere in this Contract, the Consultant shall submit to the Client a notice of a claim for an extension of the contract term and/or adjustment in the Contract Price, together with particulars of the event or circumstance justifying such extension and adjustment, as soon as reasonably practicable after the occurrence of such event or circumstance. As soon as reasonably practicable after the receipt of such notice and supporting particulars of the claim, the Client and the Consultant shall agree upon the extended period and/or the adjusted Contract Price.
- (c) The Consultant shall at all times use all commercially reasonable endeavors to minimize any delay in the performance of its obligations under this Contract.

2.7 Force Majeure

2.7.1 Definition

- (a) For the purposes of this Contract, "Force Majeure" means an event which is beyond the reasonable control of a Party, is not foreseeable, is unavoidable, and which makes a Party's performance of its obligations hereunder impossible or so impractical as reasonably to be considered impossible in the circumstances, and subject to those requirements, includes, but is not limited to, war, riots, terrorism, civil disorder, earthquake, fire, explosion, storm, flood or other adverse weather conditions, strikes, lockouts or other industrial action, confiscation or any other action by Government agencies.
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- (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 Experts, Sub-consultants or agents or employees, nor (ii) any event which a diligent Party could reasonably have been expected both to take into account at the time of the conclusion of this Contract, and avoid or overcome in the carrying out of its obligations hereunder.
- (c) Force Majeure shall not include insufficiency of funds or failure to make any payment required hereunder.

2.7.2 No Breach of Contract

The failure of a Party to fulfill any of its obligations hereunder shall not be considered to be a breach of, 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 has taken all reasonable precautions, due care and reasonable alternative measures, all with the objective of carrying out the terms and conditions of this Contract.

2.7.3 Measures to be Taken

- (a) A Party affected by an event of Force Majeure shall continue to perform its obligations under the Contract as far as is reasonably practical, and shall take all reasonable measures to minimize the consequences of any event of Force Majeure.
- (b) A Party affected by an event of Force Majeure shall notify the other Party of such event as soon as possible, and in any case not later than fourteen (14) days following the occurrence of such event, providing evidence of the nature and cause of such event, and shall similarly give written notice of the restoration of normal conditions as soon as possible.
- (c) Any period within which a Party shall, pursuant to this Contract, complete any action or task, shall be extended for a period equal to the time during which such Party was unable to perform such action as a result of Force Majeure.
- (d) During the period of their inability to perform the Services as a result of an event of Force Majeure, the Consultant, upon instructions by the Client, shall either:
 - (i) demobilize, in which case the Consultant shall be reimbursed for additional costs they reasonably and necessarily incurred, and, if required by the Client, in reactivating the Services; or



- (ii) continue the Services to the extent reasonably possible, in which case the Consultant shall continue to be paid under the terms of this Contract and be reimbursed for additional costs reasonably and necessarily incurred.
- (e) In the case of disagreement between the Parties as to the existence or extent of Force Majeure, the matter shall be settled according to Clause GCC 8.

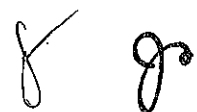
2.8 Suspension

2.8.1 By the Client

- (a) The Client may, by written notice of suspension to the Consultant, suspend in whole or part, the Services if an event shall have happened and be continuing, in which the Consultant fails to perform any of its obligations under this Contract, including the carrying out of the Services, provided that such notice of suspension shall:
 - (i) specify the nature of the failure, and
 - (ii) request the Consultant to remedy such failure within a period not exceeding twenty-eight (28) days after receipt by the Consultant of such notice of suspension.
- (b) If the Project or the Services are suspended by the Client for any reason other than those provided in Clause GCC 2.8.1 (a) more than twenty-eight (28) days, over the term of this Contract, the Consultant shall be paid for all services performed and reimbursable expenses incurred prior to the receipt of a notice of suspension.
- (c) During any suspension of the Services under Clause GCC 2.8.1 (b), the Consultant shall be compensated for any costs of maintaining fixed assets, the costs of leases or other items acquired for the Project, as well as all expenses reasonably incurred by, including but not limited to, temporary demobilization, reassignment of the Experts. In addition, upon resumption of the Services, the Client shall compensate the Consultant for expenses incurred as a result of the resumption of its services, and the Consultant's schedules (Expert and other relevant schedules) shall be appropriately adjusted.

2.8.2 By the Consultants

Without prejudice to entitlement to financing charges on late payments under Clause GCC 6.6, the Consultant may suspend the Services or reduce the rate of performance of the Services after twenty-eight (28) days prior notice to the Client, if the



Client fails to pay the Consultant the amount due, pursuant to Clause GCC 6.5 (c). In no event shall the suspension of the Services or reduction of the rate of performance of the Services pursuant to this Clause GCC 2.8.2 be subject to termination of this Contract by the Client pursuant to Clause GCC 2.9.1.

2.9 Termination

This Contract may be terminated by either Party as per provisions set up below:

2.9.1 By the Client

The Client may terminate this Contract in case of the occurrence of any of the events specified in paragraphs (a) through (f) of this Clause GCC 2.9.1. In such an occurrence the Client shall give at least twenty-eight (28) days' written notice of termination to the Consultant in case of the events referred to in (a) through (e); and at least fifty-six (56) days' written notice in case of the event referred to in (f):

- (a) If the Consultant fails to remedy a failure in the performance of its obligations hereunder, as specified in a notice of suspension pursuant to Clause GCC 2.8.1 (a);
- (b) If the Consultant becomes (or, if the Consultant consists of more than one entity, if any of its members becomes) insolvent or bankrupt or enter into any agreements with their creditors for relief of debt or take advantage of any law for the benefit of debtors or go into liquidation or receivership whether compulsory or voluntary;
- (c) If the Consultant fails to comply with any final decision reached as a result of arbitration proceedings pursuant to Clause GCC 8;
- (d) 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 fifty-six (56) days;
- (e) If the Consultant fails to confirm availability of Key Experts as required in Clause GCC 2.3.2;
- (f) If the Client, in its sole discretion and for any reason whatsoever, decides to terminate this Contract.

Furthermore, if the Client determines that the Consultant has engaged in corrupt, fraudulent, collusive, coercive or obstructive practices, in competing for or in executing the Contract, then the



Client may, after giving fourteen (14) days' written notice to the Consultant, terminate this Contract.

**2.9.2 By the
Consultant**

The Consultant may terminate this Contract, by not less than twenty-eight (28) days' written notice to the Client, in case of the occurrence of any of the events specified in paragraphs (a) through (e) of this Clause GCC 2.9.2.

- (a) If the Client fails to pay any money due to the Consultant pursuant to this Contract and not subject to dispute pursuant to Clause GCC 8 within forty-two (42) days after receiving written notice from the Consultant that such payment is overdue.
- (b) 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 fifty-six (56) days.
- (c) If the Client fails to comply with any final decision reached as a result of arbitration pursuant to Clause GCC 8.
- (d) If the Client is in material breach of its obligations pursuant to this Contract and has not remedied the same within forty-two (42) days (or such longer period as the Consultant may have subsequently approved in writing) following the receipt by the Client of the Consultant's notice specifying such breach.
- (e) If the Services are suspended pursuant to Clause GCC 2.8.1 (b) for more than eighty-four (84) days.

**2.9.3 Cessation of
Rights and
Obligations**

Upon termination of this Contract pursuant to Clauses GCC 2.2 or GCC 2.9, or upon expiration of this Contract pursuant to Clause GCC 2.4, 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, (ii) the obligation of confidentiality set forth in Clause GCC 3.3, (iii) the Consultant's obligation to permit inspection, copying and auditing of their accounts and records set forth in Clause GCC 3.6, and (iv) any right which a Party may have under the Applicable Law.

**2.9.4 Cessation of
Services**

Upon termination of this Contract by notice of either Party to the other pursuant to Clauses GCC 2.9.1 or GCC 2.9.2, 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



expenses for this purpose to a minimum. With respect to equipment, vehicles and materials provided by the Client, the Consultant shall proceed as provided by Clause GCC 3.9.

2.9.5 Payment upon Termination

Upon termination of this Contract pursuant to Clauses GCC 2.9.1 or GCC 2.9.2, the Client shall make the following payments to the Consultant:

- (a) remuneration pursuant to Clause GCC 6.2 for Services satisfactorily performed prior to the effective date of termination, and reimbursable expenses pursuant to Clause GCC 6.2 for expenses actually incurred prior to the effective date of termination; and
- (b) in the case of termination pursuant to paragraphs (d) and (f) of Clause GCC 2.9.1 and to GCC 2.9.2, reimbursement of any reasonable cost incidental to the prompt and orderly termination of this Contract including demobilization, associated overhead cost, the cost of the return travel of the Experts and their eligible dependents, and all other expenses, damages and losses resulting from the termination.

2.9.6 Disputes about Events of Termination

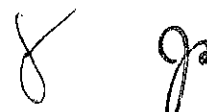
If either Party disputes whether an event specified in paragraphs (a) through (e) of Clause GCC 2.9.1 or in Clause GCC 2.9.2 has occurred, such Party may, within forty-two (42) days after receipt of notice of termination from the other Party, refer the matter for dispute settlement in accordance with the procedures stated in Clause GCC 8, and this Contract shall not be terminated on account of such event unless otherwise settled in accordance with GCC 8.

3. OBLIGATIONS OF THE CONSULTANT

3.1 General

3.1.1 Standard of Performance

- (a) The Consultant shall perform the Services and carry out the Services 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 adviser to the Client, and shall at all times support and safeguard the Client's legitimate interests in any dealings with the third parties.



- (b) The Consultant shall employ and provide such qualified and experienced Experts and Sub-consultants as are required to carry out the Services.
- (c) The Consultant may subcontract part of the Services to an extent and with such Key Experts and Sub-consultants as may be approved in advance by the Client. Notwithstanding such approval, the Consultant shall retain full responsibility for the Services.

3.1.2 Law Applicable to Services

The Consultant shall perform the Services in accordance with the Contract and the Applicable Law and shall take all practicable steps to ensure that any of its Experts and Sub-consultants, comply with the Applicable Law. The Client shall notify the Consultant in writing of relevant local customs, and the Consultant shall, after such notification, respect such customs.

3.2 Conflict of Interest

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



3.2.1 Consultant Not to Benefit from Commissions, Discounts, etc.

- (a) The payment to the Consultant pursuant to Clause GCC 6 shall constitute the Consultant's only payment in connection with this Contract and, subject to Clause GCC 3.2.2, the Consultant shall not accept for its own benefit any trade commission, discount or similar payment in connection with activities pursuant to this Contract or in the discharge of its obligations hereunder, and the Consultant shall use its best efforts to ensure that any Sub-consultants, as well as the Experts and agents of either of them, similarly shall not receive any such additional payment.
- (b) Furthermore, if the Consultant, as part of the Services, has the responsibility of advising the Client on the procurement of goods, works or services, the Consultant shall comply with the Applicable Guidelines and JICA's Guidelines for Procurement under Japanese ODA Loans, as amended from time to time and shall at all times exercise such responsibility in the best interest of the Client. Any discounts or commissions obtained by the Consultant in the exercise of such procurement responsibility shall be for the account of the Client.

3.2.2 Consultant, and Affiliates Not to Engage in Certain

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



- Activities** goods, works or services or non-consulting services resulting from or directly related to the Services for the preparation or implementation of the Project, unless otherwise indicated in the SCC.
- 3.2.3 Prohibition of Conflicting Activities** The Consultant shall not engage, and shall cause its Experts as well as its Sub-consultants not to engage, either directly or indirectly, in any business or professional activities that would conflict with the activities assigned to them under this Contract.
- 3.2.4 Strict Duty to Disclose Conflicting Activities** The Consultant has an obligation and shall ensure that its Experts and Sub-consultants shall have an obligation to disclose any situation of actual or potential conflict that impacts their capacity to serve the best interest of their Client, or that may reasonably be perceived as having this effect. Failure to disclose said situations may lead to the termination of its Contract.
- 3.3 Confidentiality** Except with the prior written consent of the Client, the Consultant and the Experts 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 Experts make public the recommendations formulated in the course of, or as a result of, the Services.
- 3.4 Liability of the Consultant**
- (a) The Consultant shall be responsible for, and shall indemnify the Client, in respect of loss of or damage to equipment and materials furnished by the Client, or purchased by the Consultant in whole or in part with funds provided by the Client.
 - (b) The Consultant undertakes full responsibility in respect of life, health, and accidents for the Experts and for the dependents of any such Expert.
 - (c) The Consultant shall indemnify the Client from and against any and all claims, liabilities, obligations, losses, damages, penalties, actions, judgment, suits, proceedings, demands, costs, expenses and disbursements of whatsoever nature that may be imposed on, incurred by or asserted against the Client during or in connection in the Services by reason of: (i) infringement or alleged infringement by the Consultant of any patent or other protected right; or (ii) plagiarism or alleged plagiarism by the Consultant.
 - (d) The Consultant shall ensure that all goods and services (including without limitation all computer hardware, software and systems) procured by the Consultant out of funds provided or reimbursed by the Client or used by the Consultant in the
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carrying out of the Services do not violate or infringe any industrial property or intellectual property right or claim of any Third Party.

- (e) The Consultant shall indemnify, protect and defend at their own expense the Client, and its agents and employees from and against any and all actions, claims, losses or damages arising out of Consultant's failure to exercise the skill and care required under Clause GCC 3.1.1 provided, however:
 - (i) that the Consultant is notified of such actions, claims, losses or damages not later than twelve (12) months after conclusion of the Services, unless a different period of time is otherwise specified in the SCC;
 - (ii) that the ceiling on Consultant's liability shall be limited to the amount indicated in the SCC, except that such ceiling shall not apply to actions, claims, losses or damages caused by Consultant's gross negligence or reckless conduct;
 - (iii) that Consultant's liability under Clause GCC 3.1.1 shall be limited to actions, claims, losses or damages directly caused by such failure to exercise the said skill and care, and shall not include liability for any actions, claims, losses or damages arising out of occurrences incidental or indirectly consequential to such failure.
- (f) Upon request of the Client, the Consultant shall, at its own cost and expense, re-perform the Services in the event of Consultant's failure to exercise the skill and care required under Clause GCC 3.1.1.
- (g) Notwithstanding the provisions of paragraph (a) of this Clause GCC 3.4, the Consultant shall have no liability whatsoever for actions, claims, losses or damages occasioned by (i) the Client's overriding a decision or recommendation of the Consultant or requiring the Consultant to implement a decision or recommendation with which the Consultant does not agree; or (ii) the improper execution of the Consultant's instructions by agents, employees or independent contractors of the Client.

**3.5 Insurance to be
Taken Out by the
Consultant**

The Consultant (i) shall take out and maintain, and shall cause any Sub-consultants to take out and maintain, at its (or the Sub-consultants', as the case may be) own cost but on terms and conditions approved by the Client, insurance against the risks, and for the coverage specified in the SCC, and (ii) at the Client's request, shall provide evidence to the Client showing that such insurance has



been taken out and maintained and that the current premiums therefore have been paid. The Consultant shall ensure that such insurance is in place prior to commencing the Services as stated in GCC 2.3

**3.6 Accounting,
Inspection and
Auditing**

The Consultant (i) shall keep accurate and systematic accounts and records in respect of the Services hereunder, in accordance with internationally accepted accounting principles and in such form and detail as will clearly identify all relevant time changes and costs, and the bases thereof, and (ii) shall periodically permit the Client or its designated representative, and up to five years from the expiration or termination of this Contract, to inspect the same and make copies thereof as well as to have them audited by auditors appointed by the Client, if so required by the Client as the case may be.

3.7 Reporting

**3.7.1 Reporting
Obligations**

The Consultant shall submit to the Client the reports and documents specified in Appendix B, in the form, in the numbers and within the time periods set forth in the said Appendix.

**3.7.2 Serious
Hindrances**

The Consultant shall report to the Client and JICA promptly the occurrence of any event or condition which might delay or prevent completion of any significant part of the Project in accordance with the schedules and to indicate what steps shall be taken to meet the situation. When the Client receives such a report from the Consultant, the Client shall immediately forward a copy of it to JICA, together with its comments.

**3.8 Property of the
Reports and
Records**

The Consultant retains the design rights and other intellectual property rights and copyrights of all documents prepared by him under this Contract. Unless otherwise stated in the SCC, the Client shall be entitled to use them or copy them only for the Project and the purpose for which they are intended, and need not obtain the Consultant's permission to copy for such use.

**3.9 Equipment,
Vehicles and
Materials
Furnished by the
Client**

Equipment, vehicles and materials made available to the Consultant by the Client, or purchased by the Consultant wholly or partly with funds provided by the Client, shall be the property of the Client and shall be marked accordingly. Upon termination or expiration of this Contract, the Consultant shall make available to the Client an inventory of such equipment, vehicles and materials and shall dispose of such equipment, vehicles and materials in accordance with the Client's instructions. While in possession of such equipment, vehicles and materials, the Consultant, unless otherwise instructed by

the Client in writing, shall insure them at the expense of the Client in an amount equal to their full replacement value.

3.10 Equipment and Materials Provided by the Consultant

Any equipment or materials brought into the Client's country by the Consultant or its Experts and used either for the Project or personal use shall remain the property of the Consultant or the Experts concerned, as applicable.

4. CONSULTANTS' EXPERTS AND SUB-CONSULTANTS

4.1 Description of Experts

(a) The title, agreed job description, minimum qualification and time-input estimates to carry out the Services of each of the Consultant's Experts are described in Appendix C.

(b) With the prior approval of the Client, the Consultant may make adjustment in the periods of time indicated in Appendix C, as may be appropriate to ensure the efficient performance of the Services and provided that such adjustments will not cause payments made under the Contract to exceed the maximum amount payable as specified in Clause GCC 6.1.

4.2 Replacement of Key Experts

(a) Except as the Client may otherwise agree in writing, no changes shall be made in the Key Experts.

(b) Notwithstanding the above, the substitution of Key Experts during Contract execution may be considered only based on the Consultant's written request and due to circumstances outside the reasonable control of the Consultant, including but not limited to death or medical incapacity. In such case, the Consultant shall forthwith provide as a replacement, a person of equivalent or better qualifications and experience, and at the same rate of remuneration.

4.3 Approval of Additional Key Expert

If during execution of the Contract, additional Key Experts are required to carry out the Services, the Consultant shall submit to the Client for review and approval a copy of their Curricula Vitae (CVs). If the Client does not object in writing (stating the reasons for the objection) within twenty one (21) days from the date of receipt of such CVs, such additional Key Experts shall be deemed to have been approved by the Client.

The rate of remuneration payable to such new additional Key Experts shall be based on the rates for other Key Experts position which require similar qualifications and experience.



4.4 Removal of Experts or Sub-consultants

- (a) If the Client finds that any of the Experts or Sub-consultants has committed serious misconduct or has been charged with having committed a criminal action, or shall the Client determine that Consultant's Experts or Sub-consultants have engaged in corrupt, fraudulent, collusive, coercive or obstructive practice while performing the Services, the Consultant shall, at the Client's written request, provide a replacement.
- (b) In the event that any of Experts or Sub-consultants is found by the Client to be incompetent or incapable in discharging assigned duties, the Client, specifying the grounds therefore, may request the Consultant to provide a replacement.
- (c) Any replacement of the removed Experts or Sub-consultants shall possess equivalent or better qualifications and experience and shall be acceptable to the Client.

4.5 Replacement/ Removal of Experts – Impact on Payments

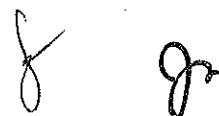
Except as the Client may otherwise agree, (i) the Consultant shall bear all additional travel and other costs arising out of or incidental to any removal and/or replacement, and (ii) the remuneration to be paid for any of the Experts provided as a replacement shall not exceed the remuneration which would have been payable to the Experts replaced or removed.

4.6 Working Hours, Overtime, Leave, etc.

- (a) Working hours and holidays for Experts are set forth in Appendix C. To account for travel time to/from the Client's country, Experts carrying out Services inside the Client's country shall be deemed to have commenced or finished work in respect of the Services such number of days before their arrival in, or after their departure from, the Client's country as is specified in Appendix C.
- (b) The Experts shall not be entitled to be paid for overtime nor to take paid sick leave or vacation leave except as specified in Appendix C, and the Consultant's remuneration shall be deemed to cover these items.
- (c) Any taking of leave by Key Experts shall be subject to the prior approval by the Consultant who shall ensure that absence for leave purposes will not delay the progress and/or impact adequate supervision of the Services.

5. OBLIGATIONS OF THE CLIENT**5.1 Assistance and Exemptions**

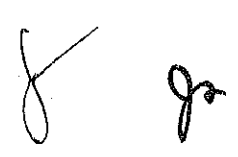
Unless otherwise specified in the SCC, the Client shall use its best efforts to:



- (a) Assist the Consultant with obtaining work permits and such other documents as shall be necessary to enable the Consultant to perform the Services.
- (b) Assist the Consultant with promptly obtaining, for the Experts and, if appropriate, their eligible dependents, all necessary entry and exit visas, residence permits, exchange permits and any other documents required for their stay in the Client's country while carrying out the Services under the Contract.
- (c) Facilitate prompt clearance through customs of any property required for the Services and of the personal effects of the Experts and their eligible dependents.
- (d) Issue to officials, agents and representatives of the Government all such instructions and information as may be necessary or appropriate for the prompt and effective implementation of the Services.
- (e) Assist the Consultant and the Experts and any Sub-consultants employed by the Consultant for the Services with obtaining exemption from any requirement to register or obtain any permit to practice their profession or to establish themselves either individually or as a corporate entity in the Client's country according to the applicable law in the Client's country.
- (f) Assist the Consultant, any Sub-consultants and the Experts of either of them with obtaining the privilege, pursuant to the applicable law in the Client's country, of bringing into the Client's country reasonable amounts of foreign currency for the purposes of the Services or for the personal use of the Experts and of withdrawing any such amounts as may be earned therein by the Experts in the execution of the Services.
- (g) Provide to the Consultant any such other assistance as may be specified in the SCC.

5.2 Access to Project Site

The Client warrants that the Consultant shall have, free of charge, unimpeded access to the Project site in respect of which access is required for the performance of the Services. The Client will be responsible for any damage to the Project site or any property thereon resulting from such access and will indemnify the Consultant and each of the Experts in respect of liability for any such damage, unless such damage is caused by the willful default or negligence of the Consultant or any Sub-consultants or the Experts of either of them.



5.3 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 in the Client's country 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 hereto, and corresponding adjustments shall be made to the ceiling amounts specified in Clause GCC 6.1(b).

5.4 Services, Facilities and Property of the Client

- (a) The Client shall make available to the Consultant and the Experts, for the purposes of the Services and free of any charge, the services, facilities and property described in Appendix G at the times and in the manner specified in said Appendix G.
- (b) In case that such services, facilities and property shall not be made available to the Consultant as and when specified in Appendix G, the Parties shall agree on (i) any time extension that it may be appropriate to grant to the Consultant for the performance of the Services, (ii) the manner in which the Consultant shall procure any such services, facilities and property from other sources, and (iii) the additional payments, if any, to be made by the Client to the Consultant as a result thereof pursuant to Clause GCC 6.1 (c).

5.5 Counterpart Personnel

- (a) The Client shall make available to the Consultant free of charge such professional and support counterpart personnel, to be nominated by the Client with the Consultant's advice, if specified in Appendix G.
- (b) If counterpart personnel are not provided by the Client to the Consultant as and when specified in Appendix G, the Parties shall agree on (i) any time extension that it may be appropriate to grant to the Consultant for the performance of the Services, (ii) how the affected part of the Services shall be carried out, and (iii) the additional payments, if any, to be made by the Client to the Consultant as a result thereof pursuant to Clause GCC 6.1 (c).
- (c) Professional and support counterpart personnel, excluding Client's liaison personnel, shall work under the exclusive direction of the Consultant. If any member of the counterpart personnel fails to perform adequately any work assigned to such member by the Consultant that is consistent with the position occupied by such member, the Consultant may



request the replacement of such member, and the Client shall not unreasonably refuse to act upon such request.

**5.6 Payment
Obligation**

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

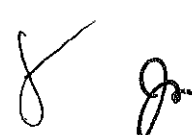
6. PAYMENTS TO THE CONSULTANT

**6.1 Cost Estimates;
Ceiling Amount**

- (a) An estimate of the cost of the Services is set forth in Appendix D (Remuneration) and Appendix E (Reimbursable expenses).
- (b) Payments under this Contract shall not exceed the ceilings in foreign currency and in local currency specified in the SCC.
- (c) For any payments in excess of the ceilings specified in GCC 6.1 (b), an amendment to the Contract shall be signed by the Parties referring to the provision of this Contract that evokes such amendment.

**6.2 Remuneration
and Reimbursable
Expenses**

- (a) The Client shall pay to the Consultant (i) remuneration that shall be determined on the basis of time actually spent by each Expert in the performance of the Services after the date of commencing the Services or such other date as the Parties shall agree in writing; and (ii) reimbursable expenses that are actually and reasonably incurred by the Consultant in the performance of the Services.
- (b) All payments shall be at the rates set forth in Appendix D and Appendix E.
- (c) Unless otherwise provided in the SCC, the remuneration rates and reimbursable expenses shall be adjusted in accordance with the adjustment formula specified in the SCC for the duration of the Contract.
- (d) The remuneration rates shall cover: (i) such salaries and allowances as the Consultant shall have agreed to pay to the Experts as well as factors for social charges and overheads (bonuses or other means of profit-sharing shall not be allowed as an element of overheads), (ii) the cost of backstopping by home office staff not included in the Experts' list in Appendix C, (iii) the Consultant's fee.
- (e) Any rates specified for Experts not yet appointed shall be provisional and shall be subject to revision, with the written



approval of the Client, once the applicable remuneration rates and allowances are known.

- 6.3 Taxes and Duties**
- (a) The Consultant, Sub-consultants and Experts are responsible for meeting any and all tax liabilities arising out of the Contract except as otherwise provided in the SCC.
 - (b) If so specified in the SCC, all local identifiable indirect taxes and direct tax are exempt from, reimbursed to the Consultant or are paid by the Client on behalf of the Consultant.

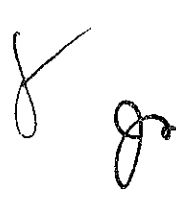
- 6.4 Currency of Payment**
- Any payment under this Contract shall be made in the currency(ies) specified in the SCC.

- 6.5 Mode of Billing and Payment**
- Billings and payments in respect of the Services shall be made as follows:

- (a) Within twenty eight (28) days after the receipt of the advance payment security and the invoice for advance payment, the Client shall pay to the Consultant an advance payment, as an interest-free loan for mobilization and cash flow support, as specified in the SCC. The advance payment security shall be in the amount (or amounts) and in the currency (or currencies) of the advance payment specified in the SCC. Such security (i) is to remain effective until the advance payment has been fully set off, and (ii) is to be in the form set forth in Appendix H, or in such other form as the Client shall have approved in writing. The advance payments will be set off by the Client in equal installments against the statements for the number of months of the Services specified in the SCC until said advance payments have been fully set off.
- (b) As soon as practicable and not later than fourteen (14) days after the end of each calendar month during the period of the Services, or after the end of each time intervals otherwise indicated in the SCC, the Consultant shall submit to the Client, in duplicate, itemized invoices, accompanied by the receipts or other appropriate supporting documents, of the amounts payable pursuant to Clauses GCC 6.4 and GCC 6.5 for such interval, or any other period indicated in the SCC. Separate invoices shall be submitted for expenses incurred in foreign currency and in local currency. Each invoice shall show remuneration and reimbursable expenses separately.
- (c) The Client shall pay the Consultant's invoices within fifty-six



(56) days after the receipt by the Client of such itemized invoices with supporting documents. Only such portion of an invoice that is not satisfactorily supported may be withheld from payment. Should any discrepancy be found to exist between actual payment and costs authorized to be incurred by the Consultant, the Client may add or subtract the difference from any subsequent payments.

- (d) The final payment under this Clause 6.5 (d) shall be made only after the final report and a final invoice, identified as such, shall have been submitted by the Consultant and approved as satisfactory by the Client. The Services shall be deemed completed and finally accepted by the Client and the final report and final invoice shall be deemed approved by the Client as satisfactory eighty-four (84) days after receipt of the final report and final invoice by the Client unless the Client, within such eighty-four (84) day period, gives written notice to the Consultant specifying in detail deficiencies in the Services, the final report or final invoice. The Consultant shall thereupon promptly make any necessary corrections, and thereafter the foregoing process shall be repeated. Any amount that the Client has paid or caused to be paid in accordance with this Clause GCC 6.5 (d) in excess of the amounts actually payable in accordance with the provisions of this Contract shall be reimbursed by the Consultant to the Client within twenty-eight (28) days after receipt by the Consultant of notice thereof. Any such claim by the Client for reimbursement must be made within fourteen (14) calendar months after receipt by the Client of a final report and a final invoice approved by the Client in accordance with the above.
 - (e) All payments under this Contract shall be made to the accounts of the Consultant specified in the SCC.
 - (f) Payments in respect of remuneration or reimbursable expenses, which exceed the cost estimates for these items as set forth in Appendices D and E, may be charged to the respective contingencies provided for foreign and local currencies only if such expenses were approved by the Client prior to being incurred.
 - (g) With the exception of the final payment under (d) above, payments do not constitute acceptance of the Services nor relieve the Consultant of any obligations hereunder.
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**6.6 Interest on
Delayed Payments**

If the Consultant does not receive payment in accordance with Clause GCC 6.5 (c), the Consultant shall be entitled to receive financing charges compounded monthly on the amount unpaid during the period of delay. This period shall be deemed to commence on the date for payment specified in Clause GCC 6.5 (c), irrespective of the date on which any notice is issued by the Consultant.

Unless otherwise stated in the SCC, these financing charges shall be calculated at the annual rate of three (3) percentage points above the discount rate of the central bank in the country of the currency of payment, or if not available, the interbank offered rate, and shall be paid in such currency.

The Consultant shall be entitled to this payment without formal notice or statement, and without prejudice to any other right or remedy provided by the Applicable Law or this Contract.

7. FAIRNESS AND 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**

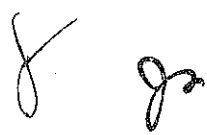
The Parties shall seek to resolve any dispute amicably by mutual consultation.

If either Party objects to any action or inaction of the other Party, the objecting Party may file a written Notice of Dispute to the other Party providing in detail the basis of the dispute. The Party receiving the Notice of Dispute will consider it and respond in writing within fourteen (14) days after receipt. If that Party fails to respond within fourteen (14) days, or the dispute cannot be amicably settled within fourteen (14) days following the response of that Party, Clause GCC 8.2 shall apply.

**8.2 Dispute
Resolution**

Any dispute between the Parties as to matters arising pursuant to this Contract that cannot be settled amicably according to Clause GCC 8.1 shall be submitted by either Party for settlement proceedings in accordance with the following provisions:

- (a) Contract with foreign Consultants (or, in case of a Joint Venture, where the Lead Member is a foreign Consultant)



2.4	The time period shall be 96 (Ninety Six) months.
3.4 (e) (ii)	The ceiling on Consultants' liability shall be limited to Contract amount.
3.5	<p>The risks and the coverage shall be as follows:</p> <p>(a) <u>Third Party motor vehicle liability insurance in respect of motor vehicles operated in the Client's country by the Consultant or its Experts or any Sub-consultants or their Experts, with a minimum coverage in accordance with the applicable law in the Client's country.</u></p> <p>(b) <u>professional liability insurance, with a minimum coverage of 300 million Japanese Yen;</u></p> <p>(c) employer's liability and workers' compensation insurance in respect of the Experts 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 Experts, any such life, health, accident, travel or other insurance as may be appropriate; and</p> <p>(d) insurance against loss of or damage to (i) equipment purchased in whole or in part with funds provided under this Contract, and (ii) the Consultant's property used in the performance of the Services.</p>
3.8	The Client is entitled to use the documents prepared by the Consultant under this Contract for other projects, without prior written permission of the Consultant.
6.1(b)	<p>The ceiling in foreign currency or currencies is: JPY 246,048,000</p> <p>The ceiling in local currency is: BDT 705,040,178</p> <p>Any local indirect taxes chargeable in respect of this Contract for the Services provided by the Consultant are included in the ceiling amount of this Contract.</p>
6.2(c)	The following adjustment clause will be used for price escalation.




1. Adjustment of remuneration

Payments for remuneration made in accordance with Clause GCC 6.2(a) in foreign and local currency(ies) shall be adjusted as follows:

- (a) Remuneration paid in foreign currency pursuant to the rates set forth in Appendix D shall be adjusted every 12 months (and, the first time, with effect for the remuneration earned in the 13th calendar month after the date of the Contract) by applying the following formula:

$$R_f = R_{fo} \times \frac{I_f}{I_{fo}}$$

where:

R_f is the adjusted remuneration;

R_{fo} is the remuneration payable on the basis of the rates set forth in Appendix D for remuneration payable in foreign currency;

I_f is the official index for salaries in the country of the foreign currency for the first month for which the adjustment is supposed to have effect; and

I_{fo} is the official index for salaries in the country of the foreign currency for the month of the date of the Contract.

The Consultant shall state here the name, source institution, and any necessary identifying characteristics of the official index for salaries corresponding to I_f and I_{fo} in the adjustment formula for remuneration paid in foreign currency:

Health, Labor and Welfare Ministry of Japan (index for salary specific research, professional and technical services.)
www.mhlw.go.jp

- (b) Remuneration paid in local currency pursuant to the rates set forth in Appendix D shall be adjusted every 12 months (and, for the first time, with effect for the remuneration earned in the 13th calendar month after the date of the Contract) by applying the following formula:

$$R_l = R_{lo} \times \frac{I_l}{I_{lo}}$$

where:

R_l is the adjusted remuneration;

R_{lo} is the remuneration payable on the basis of the rates set

forth in Appendix D for remuneration payable in local currency;

I_t is the relevant index for salaries in the Client's country for the first month for which the adjustment is to have effect and;

I_o is the official index for salaries in the Client's country for the month of the date of the Contract.

The Client shall state here the name, source institution, and any necessary identifying characteristics of the official index for salaries corresponding to I_t and I_o in the adjustment formula for remuneration paid in local currency: General CPI(Consumer Price Index) Published by Bangladesh Bank

2. Adjustment of reimbursable expenses

Payments for reimbursable expenses made in accordance with Clause GC 6.2(a) in foreign and local currency shall be adjusted as follows:

Reimbursable expenses pursuant to the rates set forth in Appendix E shall be adjusted every 12 months (and, for the first time, with effect for the reimbursable expenses in the 13th calendar month after the date of the Contract) by applying the following formula for each of the currencies of payment under the Contract:

$$R_f = R_o \times \frac{I_t}{I_o}$$

where P is the adjusted reimbursable expenses, P_o is the reimbursable expenses payable on the basis of the rates set forth in Appendix E for reimbursable expenses, I is the relevant official index in the country of the currency for the first month for which the adjustment is to have effect and, I_o is the relevant official index in the country of the currency for the month of the date of the Contract.

The Index I for each of the currencies of payment under the Contract shall be adjusted as follows:

For Japanese Yen: Japanese Ministry of Internal Affairs and Communications Statistic Bureau- Consumer Price index for the foreign currency

For Bangladesh Taka: General CPI(Consumer Price Index) Published by Bangladesh Bank

6.3 (a) and (b)

- "The Client shall pay on behalf of the Consultant, the Sub-consultants and the Experts"

any local taxes, duties, fees, levies and other impositions imposed, under the applicable law in the Client's country, on the Consultant, the Sub-consultants and the Experts in respect of:

- (a) any payments whatsoever made to the Consultant, Sub-consultants and the Experts (other than nationals or permanent residents of the Client's country), in connection with the carrying out of the Services;
- (b) any equipment, materials and supplies brought into the Client'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 by them;
- (c) any equipment imported for the purpose of carrying out the Services and paid for out of funds provided by the Client and which is treated as property of the Client;
- (d) any property brought into the Client's country by the Consultant, any Sub-consultants or the Experts (other than nationals or permanent residents of the Client's country), or the eligible dependents of such Experts for their personal use and which will subsequently be withdrawn by them upon their respective departure from the Client's country, provided that:
 - (i) the Consultant, Sub-consultants and Experts shall follow the usual customs procedures of the Client's country in importing property into the Client's country; and
 - (ii) if the Consultant, Sub-consultants or Experts do not withdraw but dispose of any property in the Client's country upon which customs duties and taxes have been exempted, the Consultant, Sub-consultants or Experts, as the case may be, (a) shall bear such customs duties and taxes in conformity with the regulations of the Client's country, or (b) shall reimburse them to the Client if they were paid by the Client at the time the property in question was brought into the Client's country.



	<p>(e) any goods and services procured locally by the Consultant or Sub-consultants for the purpose of carrying out the Services.</p> <p>The Client shall facilitate for the tax exemption certificate from NBR for Japanese companies and Japanese employees</p>
6.4	<p>The currencies of payment shall be the following:</p> <p>(i) Japanese Yen (JPY)</p> <p>(ii) Bangladesh Taka (BDT)</p>
6.5(a)	<p>The amount of the advance payment is:</p> <ul style="list-style-type: none"> - 14.5 % of contract price including Provisional Sum and Contingencies: JPY 35,676,960 (BDT 25,837,254) in foreign currency; and - 14.5 % of contract price including Provisional Sum and Contingencies : BDT 72,676,653 in local currency. <p>The Total Advance payment equivalent in BDT is 98,513,907.</p> <p>The advance payment securities shall be in the amounts and in the currencies of the advance payment.</p> <p>The advance payment will be set off by the Client from the first invoices by deducting 20 % of the invoiced amount until the advance payment is fully set off.</p>
6.5(e)	<p>The accounts are:</p> <ul style="list-style-type: none"> - for foreign currency: Bank name: Bank of Tokyo-Mitsubishi UFJ Ltd, Branch name: Head office Address: 7-1, Marunouchi 2-chome, Chiyoda-ku , Tokyo Japan Account name: Nippon Koei Co., Ltd. Account Number: 001. 9041470 Swift Code BOTKJPJT - for local currency:-to be informed when a bank account of the local currency is opened.
6.6	<p>The interest rate is: 1%</p>

Appendix A:

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8

Description of Services

1 BACKGROUND

1.1 Background

The Upper Meghna River Basin in Bangladesh has been suffered from frequent floodings due to the high inflow runoffs and the limited conveyance capacity of the river channels. The flooded water spreads into the depressed areas in the low lying alluvial fan and forms so called "Haor". In the Haor area, from time to time certain magnitudes of floods occur in the pre-monsoonal period bringing damages to the paddy to be harvested. Flood control in the Haor area has been one of the substantial concerns of the Government of Bangladesh (hereinafter referred to as "GOB"). On the other hand, reinforcement of agriculture and fisheries, and upgrade of rural infrastructure in that area are also the concerns of GOB as the key interventions for improvement of living standard of the residents therein.

GOB has received a loan from the Japan International Cooperation Agency (hereinafter referred to as "JICA") to finance the Haor Flood Management and Livelihood Improvement Project (hereinafter referred to as "the Project") which is to manage the recurrent flood and to enhance living standard through livelihood improvement.

The Project comprises of the following components:

Component 1: Construction and rehabilitation of flood management infrastructure

Component 2: Construction and rehabilitation of rural development infrastructure

Component 3: Implementation of livelihood improvement activities

Component 3 consists of the following sub-components:

Component 3-1: Agriculture promotion

Component 3-2: Fishery promotion

Component 1 and 3-1 will be implemented by the Bangladesh Water Development Board (hereinafter referred to as "BWDB"), while Component 2 and 3-2 will be implemented by the Local Government Engineering Department (hereinafter referred to as "LGED").

GOB intends to use part of the proceeds of the loan for eligible payments for consulting services for which this ToR is issued for the BWDB portion of the Project.

1.2 Location of the Project

The Project will be implemented in twenty nine (29) Haor area stretches in five (5) districts namely Sunamganj, Habiganj, Netrokona, Kishoreganj and Brahmanbaria in the northeast of Bangladesh.

1.3 Scope of the Project

The scope of the Project (BWDB portion) is as follows.

Component	Item
Component 1	- Rehabilitation of existing flood management infrastructure - Construction of new flood management infrastructure
Component 3-1	- Agriculture Promotion Support Sub-project (APSS) - Small-scale Income Generation Sub-project (SIGS)

The detail project scope: e.g. types of flood management infrastructure, is available at the study referred to 1.5.

The Project (BWDB portion) is expected to be completed by 2023.

1.4 Executing Agency

Bangladesh Water Development Board (BWDB)

1.5 Available Relevant Basic Data and Studies

- Preparatory Survey on Upper Meghna River Basin Watershed Management Improvement Project by JICA
- Data Collection Survey on Water Resources Management in Haor Area of Bangladesh by JICA

2 OBJECTIVES OF CONSULTING SERVICES

The consulting services shall be provided by an international consulting firm (hereinafter referred to as "the Consultant") in association with national consultants in compliance with Guidelines for the Employment of Consultants under Japanese ODA Loans, April 2012.

The objective of the consulting services is to achieve the efficient and proper preparation and implementation of the Project through the following works:

- (1) Detailed design
- (2) Tender assistance
- (3) Construction supervision
- (4) Facilitation of implementation of Environmental Management Plan (EMP), Environmental Monitoring Plan (EMoP) and Resettlement Action Plan (RAP)
- (5) Facilitation of implementation of Agriculture Promotion Support Sub-project (APSS) and Small-scale Income Generation Sub-project (SIGS)
- (6) Technology Transfer

3 SCOPE OF CONSULTING SERVICES

(1) Detailed design

The Consultant shall:

- (a) Review and verify all available primary and secondary data collected during the JICA's preparatory survey for the Project;
- (b) Carry out the required surveys and investigations such as topographical survey, geotechnical

survey, material availability survey, and baseline survey for project evaluation, as applicable to the concerned project components.

- (c) Prepare detailed work plan, progress reports and implementation schedule for the Project to ensure effective monitoring and timely project outputs, and regularly update the same;
- (d) Prepare the detailed design of the Project in sufficient detail to ensure clarity and understanding by BWDB, contractors and other relevant stakeholders. All the design should be in conformity with the Bangladeshi Standards, or with the appropriate international standards. The detailed design will, as a minimum, include construction drawings, detailed cost estimates, necessary calculations to determine and justify the engineering details for the Project, associated contract documentation to include detailed specifications, bill of quantities (BOQ), implementation schedule for the Project. Such detailed specifications will contain those in relation to i) quality control of materials and workmanship, ii) safety, and iii) protection of the environment. The detailed design shall be prepared in close consultation with, and to meet the requirements of BWDB and will be incorporated into the detailed design report to be submitted for approval of JICA; and
- (e) Assist BWDB to formulate Water Management Organizations (WMOs) and to prepare O&M guideline/manual

(2) Tender assistance

The Consultant shall:

- (a) Prepare bidding documents in accordance with the latest version of Standard Bidding Documents by Central Procurement Technical Unit (hereinafter referred to as "CPTU") of Bangladesh for National Procurement of Works together with all relevant specifications, drawings and other documents;
- (b) Prepare bidding documents which includes the clauses to have Contractor comply with the requirement of the Environmental Management Plan (EMP) and JICA Guidelines for environmental and social considerations (April 2010) (JICA Environmental Guidelines);
- (c) Assist BWDB in issuing bid invitation, conducting pre-bid conferences, issuing addendum/corrigendum, and clarifications to bidders' queries;
- (d) Assist BWDB in contract negotiation by preparing agenda and facilitating negotiations including preparation of minutes of negotiation meeting; and
- (e) Assist BWDB in preparation of a draft and final contract agreement.

(3) Construction supervision

The Consultant shall perform his duties during the construction period in accordance with the contracts to be executed between the Employer and the contractors. In this context, the Consultant shall:

- (a) Recommend BWDB concerning variations and claims;
- (b) Recommend BWDB to issue the commencement order to the Contractors;
- (c) Recommend BWDB for acceptance of the Contractor Performance security, advance payment security and required insurances.;
- (d) Review and recommend BWDB for approval of the proposals submitted by the contractors which include work program, method statements, material sources, manpower and equipment

- deployment. In light of Section 3.03 of Guidelines for the Employment of Consultants under Japanese ODA Loans, April 2012, the Consultant shall review the program submitted by the contractors in particular from the point of view of securing the safety during the construction and require them to submit further details, if necessary;
- (e) Recommend BWDB to explain and/or adjust ambiguities and/or discrepancies in the Contract Documents and issue any necessary clarifications or instructions;
 - (f) Review, verify and further detail the design of the works, recommend BWDB to approve the Contractors' working drawings and, if necessary, issue further drawings and/or give instructions to the Contractor;
 - (g) Recommend BWDB to liaise with the appropriate authorities to ensure that all the affected utility services are promptly relocated;
 - (h) Carry out field inspections on the contractor's setting out to ensure that the works are carried out in accordance with drawings and other design details;
 - (i) Regularly monitor physical and financial progress against the milestones as per the contract so as to ensure completion of contract in time;
 - (j) Supervise the works so that all the contractual requirements will be met by the contractors, including those in relation to i) quality of the works, ii) safety and iii) protection of the environment. In light of Section 3.03 of Guidelines for the Employment of Consultants under Japanese ODA Loans (April 2012), the Consultant shall confirm that an accident prevention officer proposed by contractor is duly assigned at the project site and that construction works are carried out according to the safety plan as well as the safety measures prescribed in the work program. If the consultants recognize any questions regarding the safety measures in general including the ones mentioned above, the consultants shall require the contractors to make appropriate improvements.;
 - (k) Supervise field tests, sampling and laboratory test to be carried out by the contractors;
 - (l) Inspect the construction method, equipment to be used, workmanship at the site in accordance with the specifications;
 - (m) Survey and measure the work output performed by the contractors and recommend BWDB to issue payment certificates such as interim payment certificates and final payment certificate as specified in the contract;
 - (n) Recommend BWDB to coordinate the works among different contractors employed for the Project;
 - (o) Modify the designs, technical specifications and drawings, relevant calculations and cost estimates as may be necessary in accordance with the actual site conditions, and recommend BWDB to issue variation orders;
 - (p) Carry out timely reporting to BWDB for any inconsistency in executing the works and suggesting appropriate corrective measures to be applied;
 - (q) Inspect, verify and recommend BWDB to determine claims issued by the parties to the contract (i.e. BWDB and contractors) in accordance with the civil works contract;
 - (r) Perform the inspection of the works and recommend BWDB to issue certificates such as the Taking-Over Certificate, Performance Certificate as specified in the civil works contract;
 - (s) Provide periodic and/or continuous inspection services during defects liability period and if any defects are noted, instruct the contractor to rectify;

- (t) Check and certify as-built drawings for the parts of the works designed by the contractors, if any;
- (u) Assist BWDB to prepare and submit an operation and maintenance manual for the facilities constructed in the Project to BWDB;
- (v) Provide periodic and/or continuous inspection services for the completed works and if any damages, other than defects, are identified, recommend BWDB to provide necessary maintenance works;
- (w) Prepare and submit reports to BWDB, which are detailed in Chapter 6 in relation to the implementation of the Project; and
- (x) Assist BWDB to provide training program for WMOs.

(4) Facilitation of implementation of Environmental Management Plan (EMP), Environmental Monitoring Plan (EMoP) and Resettlement Action Plan (RAP)

The Consultant shall:

- (a) Prepare the draft of EIA/IEE including EMP and EMoP in accordance with Environmental Conservation Rules 1997 in Bangladesh;
- (b) Assist BWDB in dissemination and explanation of additionally confirmed and identified environmental issues to public including holding public consultations;
- (c) Assist BWDB in obtaining Environmental Clearance from Department of Environment (DOE), Ministry of Environment and Forest in accordance with the planned implementation schedule;
- (d) During the preparation of bidding documents, clearly identify environmental responsibilities as explained in the EIA/IEE and EMP;
- (e) Assist BWDB to review the Construction Contractor's Environmental Program to be prepared by the contractor in accordance with EMP, relevant plans and JICA Environmental Guidelines and to make recommendations to BWDB regarding any necessary amendments for its approval;
- (f) Assist BWDB to implement the measures identified in the EMP;
- (g) Monitor the effectiveness of EMP and negative impacts on environment caused by the construction works, and provide technical advices, including a feasible solution, so that BWDB can improve situation when necessary;
- (h) Assist BWDB in monitoring the compliance with conditions stated in the EPC and the requirements under EMP and JICA Environmental Guidelines;
- (i) Prepare the draft of RAP as necessary by sub-contracting a local firm/NGO based on detailed design in accordance with the agreed resettlement framework, including entitlement matrix and compensation plan; coordinate with various agencies in preparing the procedures for timely land acquisition and disbursement of compensation to project affected persons (PAPs);
- (j) Assist BWDB through sub-contractor in identifying the eligible PAPs, and prepare/update the draft list of eligible PAPs and 'Payment Statement' for individual eligible PAPs. The places where each eligible PAPs will relocate to are necessary to be recorded so that the Executing Agency could implement monitoring on income and living conditions of resettled persons;

- (k) Assist BWDB in conducting social assessment during early stage of the detailed design stage and review the existing income restoration plan and special assistance plan for vulnerable PAPs and revise/update the contents of the plans if necessary based on priorities identified with support of relevant government agencies and Non-Governmental Organizations (NGOs). The following contents should be included in the plans;
 - i. Skills Training
 - ii. Project related Job Opportunities
 - iii. Provision of social welfare grant
 - iv. Provision of Agricultural Extension Services
 - v. Provision of the special allowance to vulnerable PAPs
- (l) Assist BWDB to implement the measures identified in the revised RAP;
- (m) Assist in procurement of Implementation NGO (INGO);
- (n) Monitor land acquisition and compensation activities being undertaken by BWDB and INGO and/or competent authorities, and report the results in monthly progress reports;
- (o) Assist BWDB in facilitating stakeholder's participation (including focus group discussions for vulnerable PAPs) and providing feedback their comments on RAP;
- (p) Assist BWDB in establishment of grievance redress mechanism including formation of Grievance Redress Committee;
- (q) Assist BWDB to ensure that the PAPs are fully aware of the grievance redress procedure and the process of bringing their complaints, investigate the veracity of the complaints, and recommends actions/measures to settle them amicably, fairly and transparently before they go to the redress committee or the courts of law; and
- (r) Provide technical services with grievance redress committee for keeping and updating records when necessary.

(5) Facilitation of implementation of Agriculture Promotion Support Sub-project (APSS) and Small-scale Income Generation Sub-project (SIGS)

Detailed Design Stage

The Consultant shall:

- (a) Prepare technical guideline and operation manuals for APSS and SIGS;
- (b) Review & update, if necessary, the overall work plan for APSS & SIGS prepared under the Preparatory Survey;
- (c) Prepare monitoring & evaluation forms for APSS & SIGS and assist BWDB in establishing APSS & SIGS monitoring & evaluation system;
- (d) Assist BWDB in the preparation of APSS & SIGS Annual Work Plan for 2017/18;
- (e) Assist the inception training of project field staff and staff of concerned line agencies on APSS & SIGS conducted by BWDB;
- (f) Support the establishment of coordination and collaboration system for the implementation of APSS & SIGS among BWDB and line agencies concerned.

Implementation Stage

The Consultant shall:

- (a) Review and update, if necessary, technical guideline and operation manuals for APSS and SIGS;
- (b) Prepare technical guideline and operation manuals for new APSS and SIGS programs & activities;
- (c) Implement mid-term review on APSS & SIGS and assist the preparation of the overall work plan of APSS & SIGS for the remaining period;
- (d) Assist BWDB in the preparation of APSS & SIGS Annual Work Plans; :
- (e) Assist the refresher training of project field staff and staff of concerned line agencies on APSS & SIGS conducted by BWDB;
- (f) Assist and advise the execution of the overall implementation of APSS & SIGS;
- (g) Assist the monitoring & evaluation of APSS & SIGS conducted by BWDB, and
- (h) Support the strengthening of coordination and collaboration system for the implementation of APSS & SIGS among BWDB and line agencies concerned.

(6) Technology transfer

The Consultant shall carry out the technology transfer as an important aspect in design and supervision works. The Consultant shall provide the opportunity to BWDB officers and staffs to be involved in the working team of the Consultant during the design, contract administration and supervision works for their capacity building wherever possible. If requested by BWDB, the Consultant shall brief and demonstrate the survey and design procedure, the construction supervision and contract management process and procedures. The consultant shall assist BWDB and its staff to build their capacity as a part of on the job training under the Project.

Appendix B

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9

Reporting Requirements

REPORTING

Within the scope of the consulting services, the Consultant shall prepare and submit reports and documents to BWDB as shown in the below. The Consultant shall provide electronic copy of each of these reports.

Table 1 Submitted reports and documents to BWDB

Status	Type of Report	Timing	No. of Copies
Detailed Design	Inception Report	1 month after commencement of the services	20
	Monthly Progress report	Every month	20
	Draft Detailed Design Report	12 month after commencement of the service -Mid term detail design report for some haor. 18 month after commencement of the service- Draft detail design report.	20
	Cost Estimate Report	12 month after commencement of the service -Mid term cost estimate report for some haor. 18month after commencement of the service - Cost estimate report.	20
	Final Detailed Design Report	19 month after commencement of the service	20
	Bidding Document Report	12 month after commencement of the service -Mid term report for some haor. 19month after commencement of the service	20
	Land acquisition and Resettlement Monitoring Report	Every month during these implementation period	20
	Environmental Report	At the end of Detailed Design stage	20
	Social Plan Report	At the end of Detailed Design stage	20
Supervision	Operation and Maintenance Manual	Within supervision period	20
	Environmental Monitoring Report	Every 3 months	20
	RAP Monitoring Report	Every 3 month	20
	Construction Completion Report	Within 3 month after completion of	20

		construction	
	Service Completion Report	End of Consulting engineering services	20

Design Stage

- a) **Monthly Progress Report (20 copies):** The Consultant will submit a Monthly Progress Report in the accepted form describing briefly and concisely all activities and progress for the previous month by the 10th day of each month. Problems encountered or anticipated will be clearly stated, together with actions to be taken or recommendations on remedial measures for correction. It will also indicate the work to be performed during the coming month.
- b) **Inception Report (20 copies),** to be submitted in the 1st month after the commencement of the services, presenting the methodologies, schedule, organization, etc.
- c) **Draft Detailed Design Report (20 copies)**
 - i) Mid term detail design report - to be submitted in the 12th month after the commencement of the services, presenting detailed engineering design for some haors.
 - ii) Draft detail design report - to be submitted in the 18th month after the commencement of the services, presenting detailed engineering design of all haors.
- d) **Cost Estimate Report (20 copies)**
 - i) Mid term cost estimate report - to be submitted in the 12th month after the commencement of the services, presenting detailed cost estimate for some haors.
 - ii) Cost estimate report - to be submitted in the 18th month after the commencement of the services, presenting detailed cost estimate.
- e) **Final Detailed Design Report (20 copies),** to be submitted in the 19th month after the commencement of the services, compiling all the items carried out during the services.
- f) **Bidding Document Report (20 copies)**
 - i) Mid term bidding document report - to be submitted in the 12th month after the commencement of the services, presenting the bidding documents and bid evaluation criteria for some haors.
 - ii) Bidding document report - to be submitted in the 19th month after the commencement of the services, presenting the bidding documents and bid evaluation criteria.
- g) **Land Acquisition and Resettlement Monitoring Report (20 copies),** to be submitted at every month during land acquisition and resettlement implementation period. RAP monitoring form will be filled and attached to the Report.
- h) **Environmental Report (20 copies),** to be submitted by the end of the detailed design stage, presenting the draft of EIA, EMP and EMoP prepared.
- i) **Social Plan Report (20 copies),** to be submitted by the end of the detailed design stage, presenting the draft of RAP prepared.

Construction Supervision Stage

- a) Monthly Progress Report (20 copies), to present the details of expert personnel mobilization, progress of work, financial man-month used, problems encountered and the anticipated services for the next period of the services, including progress on resettlement activities.
- b) Operation and Maintenance Manual (20 copies) containing technical procedures for the appropriate operation and maintenance of all project facilities.
- c) Environmental Monitoring Report (20 copies) to be submitted at every three (3) months after the commencement of the services, presenting the environmental impacts and implementation of environmental mitigation measures during and after the construction stage. Environmental monitoring forms will be filled and attached to the report.
- d) RAP Monitoring Report (20 copies) to be submitted at every three (3) months. RAP monitoring form will be filled and attached to the report.
- e) Construction Completion Report (20 copies), to be submitted within three (3) month after completion of construction, which comprises a full size of as-built drawings for all the structures and facilities completed, and the final details of the construction completed together with all data, records, material tests results, field books, etc.
- f) Service Completion Report (20 copies), at the completion of all the consulting engineering services.

Appendix C: Expert Schedule

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