

SECTION 6: STANDARD CONTRACT

CONTENTS		
Sl. No.	Description	Page No.
I.	SECTION 1: FORM OF CONTRACT	5
II.	SECTION 2 GENERAL CONDITIONS OF CONTRACT	8
1.	Definitions and Interpretations	8
1.1	Definitions	8
1.2	Relation between the Parties	8
1.3	Law Governing the Contract	9
1.4	Headings	9
1.5	Notices	9
1.6	Location	9
1.7	Authorized Representatives	10
1.8	Taxes and Duties	10
2.	Commencement, Completion, Modification and Termination of Contract	10
2.1	Effectiveness of Contract	10
2.2	Termination of Contract for Failure to Become Effective	10
2.3	Commencement of Services	10
2.4	Expiration of Contract	10
2.5	Entire Agreement	10
2.6	Modification	11
2.7	Force Majeure	11
2.7.1	Definition	11
2.7.2	No Breach of Contract	12
2.7.3	Measures to be taken	12
2.7.4	Extension of Time	12
2.7.5	Payments	12
2.7.6	Consultation	12
2.8	Suspension	12
2.9	Termination	13
2.9.1	By the Employer	13
2.9.2	By the Consultants	14
2.9.3	Cessation of Rights and Obligations	14
2.9.4	Cessation of Services	14
2.9.5	Payment upon Termination	15
2.9.6	Disputes about Events of Termination	15
3.	Obligations of the Consultants	15
3.1	General	15
3.1.1	Standard of Performance	15
3.1.2	Law Governing Services	16
3.2	Conflict of Interests	16
3.2.1	Consultants not to Benefit from Commissions, discounts etc.	16
3.2.2	Consultants and Affiliates not to be otherwise interested in Project	16
3.2.3	Prohibition of Conflicting Activities	16

3.3	Confidentiality	17
3.4	Liability of the Consultants	17
3.5	Insurance to be taken out by the Consultants	17
3.6	Accounting, Inspection and Auditing	17
3.7	Consultants' Actions requiring Employer's prior Approval	18
3.8	Reporting Obligations	18
3.9	Documents prepared by the Consultants to be the Property of the Employer	18
4.	Consultants' Personnel	18
4.1	General	18
4.2	Description of Personnel	18
4.3	Approval of Personnel	19
4.4	Working Hours, Overtime, Leave etc.	19
4.5	Removal and/or Replacement of Personnel	19
5.	Obligations of the Employer	20
5.1	Assistance and Exemptions	20
5.2	Changes in the Applicable Law	20
5.3	Services, Facilities and Property of the Employer	20
5.4	Payment	20
6.	Payment to the Consultants	20
6.1	Cost Estimates; Ceiling Amount	20
6.2	Currency of Payment	20
6.3	Mode of Billing and Payment	20
7.	Responsibility for accuracy of the project document	22
7.1	General	22
7.2	Retention money	22
7.3	Penalty	22
7.4	Action for deficiency in services	23
7.4.1	Consultants liability towards the Employer	23
7.4.2	Warning / Debarring	23
8.	Fairness and Good Faith	23
8.1	Good Faith	23
8.2	Operation of the Contract	23
9.	SETTLEMENT OF DISPUTES	24
9.1	Amicable Settlement	24
9.2	Dispute Settlement	24
10	Legal Jurisdiction	24
11	Governing Law	24
12	Amendments and Modification	24
III	SECTION 3 TERMS OF REFERENCE	25
IV	SECTION 4 SCHEDULE OF PRICES	26
V	APPENDICES	27
	Appendix A: Terms of reference containing, inter-alia, the Description of the Services and Reporting Requirements	

	Appendix B: Consultants' Key Personnel and Sub Professional Personnel, Tas assignment, work programme, manning schedule, qualification requirements of key personnel, schedule for submission of various report.	
	Appendix C: Minutes of Financial/ Contract Negotiations meeting with the Consultant, If any.	
	Appendix D: Copy of letter of invitation	
	Appendix E: Copy of letter of acceptance	
	Appendix F: Minutes of the pre-bid meeting, Addendum if any Security	
	Appendix G: Copy of Bank Guarantee for Performance	

I .SECTION 1: FORM OF CONTRACT

CONTRACT FOR: *[Please insert name of project]*

CONTRACT NUMBER: *[Please insert project number]*

THIS CONTRACT is made

BETWEEN :*[EMC] (hereinafter referred to as "the Client")]*

AND :*[Please insert name of Consultant] (hereinafter referred to as "the Consultant")*

[Please insert nodal officer and communication address of the consultant]

WHEREAS:

- A. the Employer has requested the Consultants to provide certain consulting services as defined in the General Conditions attached to this Contract *(hereinafter called the "Services")*;and
- B. the Consultants, having represented to the Employer that they have the required professional skills, personnel and technical resources, have agreed to provide the Services on the terms and conditions set forth in this Contract.

C. NOW THEREFORE the parties hereto hereby agree as follows:

1. Documents

This Contract shall be comprised of the following documents:

Section 1 Form of Contract

Section 2 General Conditions

Section 3 Terms of Reference

Section 4 Schedule of Prices

Appendices:

Appendix A:	Terms of reference containing, inter-alia, the Description of the Services and Reporting Requirements
Appendix B:	Consultants' Key Personnel and Sub Professional Personnel, Task assignment, work programme, manning schedule, qualification requirements of key personnel, schedule for submission of various report.
Appendix C:	Minutes of Financial/ Contract Negotiations meeting with the Consultant, If any.
Appendix D:	Copy of letter of invitation

Appendix E:	Copy of letter of acceptance
Appendix F:	Minutes of the pre-bid meeting, Addendum if any
Appendix-G:	Copy of Bank Guarantee for Performance Security

This Contract constitutes the entire agreement between the Parties in respect of the Consultants obligations and supersedes all previous communications between the Parties, other than as expressly provided for in Section 3 .

2. The mutual rights and obligations of the Employer and the Consultants shall be as set forth in the Contract; in particular

(a) The Consultants shall carry out the Services in accordance with the provisions of the Contract; and

(b) Employer shall make payments to the Consultants in accordance with the provisions of the Contract.

3. Commencement and Duration of the Services

The Consultant shall start the Services on *[please insert date]* ("the Start Date") and shall complete them by..... *[please insert date]* ("the End Date") unless this Contract is terminated earlier in accordance with its terms and conditions.

4. Financial Limit

Payments under this Contract shall not, in any circumstances, exceed _____ *[please insert total amount in numbers and words]* exclusive of any government tax, if applicable ("the Financial Limit").

5. Time of the Essence

Time shall be of the essence as regards the performance by the Consultant of its obligations under this Contract.

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 Client</p> <p>Signature:</p> <p>Name:</p> <p>Date:</p> <p>Witness on behalf of Client</p> <p>1.</p> <p>2.</p>	<p>For and on behalf of Consultant</p> <p>Signature:</p> <p>Name:</p> <p>Date:</p> <p>Witness on behalf of Consultant</p> <p>1.</p> <p>2.</p>
---	---

II. SECTION 2: GENERAL CONDITIONS OF CONTRACT

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

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

- (a) "Applicable Law" means the laws and any other instruments having the force of law.
- (b) "Contract" means the Contract signed by the Parties, to which these General Conditions of Contract are attached, together with all the documents listed in Clause 1 of such signed Contract;
- (c) "Effective Date" means the date on which this Contract comes into force and effect pursuant to Clause GC 2.1;
- (d) "GCC" means these General Conditions of Contract;
- (e) "Government" means the Government of Kerala;
- (f) "currency" means the Indian National Rupee;
- (g) "Personnel" means persons hired by the Consultants as approved by EMPLOYER as employees and assigned to the performance of the Services or any part thereof.
- (h) "Party" means the Employer or the Consultants, as the case may be, and Parties means both of them;
- (i) "Services" means the work to be performed by the Consultants pursuant to this Contract for the purposes of the Project;
- (j) "Sub-consultant" means any entity to which the Consultants subcontract any part of the Services in accordance with the provisions of Clause GC 3.7.
- (k) "Third Party" means any person or entity other than the Government, the Employer, the Consultants or a Sub-consultant and;

1.2 Relation between the Parties

Nothing contained herein shall be construed as establishing a relation of master and servant or of agent and principal as between the Employer and the Consultants. The Consultants, subject to this Contract, have complete

charge of Personnel performing the Services and shall be fully responsible for the Services performed by them or on their behalf hereunder

1.3 Language

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

1.4 Heading

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

1.5 Notices

1.5.1. Any notice, request or consent required or permitted to be given or made pursuant to this Contract shall be in writing. Any such notice, request or consent shall be deemed to have been given or made when delivered in person to an authorized representative of the Party to whom the communication is addressed, or when sent by registered mail or facsimile to such Party at the address as specified.

1.5.2 Notice will be deemed to be effective as follows.

- (a) in the case of personal delivery or registered mail or courier, on delivery; and
- (b) In the case of facsimiles, 24 hours following confirmed transmission.

A party may change its address for notice hereunder by giving the other Party notice of such change at the address mentioned as under;

Employer:	Consultant:
Director Energy Management Centre SrikrishnaNagar, Sreekaryam, Trivandrum 695017, Kerala, India Tel: +91-471-2594922,2594924, FAX:- 0471 – 2594923 Email : emck@keralaenergy.gov.in	

1.6 Location

The Services shall be performed at such locations as are specified in TOR

1.7 Authorized Representatives

Any action required or permitted to be taken, and any document required or permitted to be executed, under this Contract by the Employer or the Consultants may be taken or executed by the authorized representative.

1.8 Taxes and Duties

The Consultants shall pay all such taxes, duties, fees and other impositions as may be levied under the Applicable Law

2. COMMENCEMENT, COMPLETION, MODIFICATION AND TERMINATION OF CONTRACT

2.1 Effectiveness of Contract

This Contract shall come into force and effect on the date of the Employer's notice to the Consultants instructing the Consultants to begin carrying out the Services.

2.2 Termination of Contract for Failure to Become Effective

If this Contract has not become effective within such time period after the date of the Contract signed by the Parties as shall be specified in the SC, either Party may, by not less than One (1) months 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

The Consultants shall begin carrying out the Services at the end of such time period after the Effective Date **as mentioned Employer Notice to begin services.**

2.4 Expiration of Contract

Unless terminated earlier pursuant to Clause GC 2.9 hereof, this Contract shall expire when services have been completed and all payments have been made at the end of such time period after the Effective Date.

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 Modification

Modification of the terms and conditions of this Contract, including any modification of the scope of the Services, may only be made by written agreement between the Parties. Pursuant to Clause GC 7.2 hereof, however, each party shall give due consideration to any proposals for modification made by the other Party.

2.7 Force Majeure

2.7.1 Definition

(a) For the purposes of this Contract, "Force Majeure" means an event which is beyond the reasonable control of a Party, and which makes a Party's performance of its obligations hereunder impossible or so impractical as reasonably to be considered impossible in the circumstances, and includes, but is not limited to, war, riots, civil disorder, earthquake, fire, explosion, storm, flood or other adverse weather conditions, strikes, lockouts or other industrial action (except where such strikes, lockouts or other industrial action are within the power of the Party invoking Force Majeure to prevent), confiscation or any other action by Government agencies.

(b) Force Majeure shall not include (i) any event which is caused by the negligence or intentional action of a Party or such Party's Sub consultants or agents or employees, nor (ii) any event which a diligent Party could reasonably have been expected to both (A) take into account at the time of the conclusion of this Contract and (B) avoid or overcome in the carrying out of its obligations hereunder.

(c) Force Majeure shall not include insufficiency of funds or failure to make any payment required hereunder.

2.7.2 No Breach of 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 take all reasonable measures to remove such Party's inability to fulfill its obligations hereunder with a minimum of delay.

(b) A party affected by an event of Force Majeure shall notify the other Party of such event as soon as possible, and in any event not later than fourteen (14) days following the occurrence of such event, providing evidence of the nature and cause of such event, and shall similarly give notice of the restoration of normal conditions as soon as possible

(c) The Parties shall take all reasonable measures to minimize the event of Force Majeure consequences of any

2.7.4 Extension of Time

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

2.7.5 Payments related to force majeure

Both the parties will have to bear their own cost during the force majeure.

2.7.6 Consultation

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

2.8 Suspension

The Employer may, by written notice of suspension to the Consultants, suspend all payments to the Consultants hereunder if the Consultants fail to perform any of their obligations under this Contract, including the carrying out

of the Services, provided that such notice of suspension (i) shall specify the nature of the failure, and (ii) shall request the Consultants to remedy such failure within a period not exceeding thirty (30) days after receipt by the Consultants of such notice of suspension

2.9 Termination

2.9.1 By the Employer

The Employer may, by not less than thirty (30) days' written notice of termination to the Consultants (except in the event listed in paragraph (f) below, for which there shall be a written notice of not less than sixty (60) days), such notice to be given after the occurrence of any of the events specified in paragraphs (a) through (f) of this Clause 2.9.1, terminate this Contract:

- (a) if the Consultants fail to remedy a failure in the performance of their obligations hereunder, as specified in a notice of suspension pursuant to Clause 2.8 hereinabove, within thirty (30) days of receipt of such notice of suspension or within such further period as the Employer may have subsequently approved in writing;
- (b) if the Consultants become 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 Consultants fail to comply with any final decision reached as a result of arbitration proceedings pursuant to Clause 8 hereof;
- (d) if the Consultants submit to the Employer a statement which has a material effect on the rights, obligations or interests of the Employer and which the Consultants know to be false;
- (e) if, as the result of Force Majeure, the Consultants are unable to perform a material portion of the Services for a period of not less than sixty (60) days; or
- (f) if the Employer, in its sole discretion and for any reason whatsoever, decides to terminate this Contract.

2.9.2 By the Consultants

The Consultants may, by not less than thirty (30) day's written notice to the Employer, such notice to be given after the occurrence of any of the events specified in paragraphs (a) through (d) of this Clause 2.9.2, terminate this Contract:

- (a) if the Employer fails to pay any money due to the Consultants pursuant to this Contract and not subject to dispute pursuant to Clause 8 hereof within forty-five (45) days after receiving written notice from the Consultants that such payment is overdue;
- (b) if the Employer is in material breach of its obligations pursuant to this Contract and has not remedied the same within forty-five (45) days (or such longer period as the Consultants may have subsequently approved in writing) following the receipt by the Employer of the Consultants' notice specifying such breach;
- (c) if, as the result of Force Majeure, the Consultant are unable to perform a material portion of the Services for a period of not less than sixty (60) days; or
- (d) if the Employer fails to comply with any final decision reached as a result of arbitration pursuant to Clause 8 hereof

2.9.3 Cessation of Rights and Obligations

Upon termination of this Contract pursuant to Clauses 2.2 or 2.9 hereof, or upon expiration of this Contract pursuant to Clause 2.4 hereof, all rights and obligations of the Parties hereunder shall cease, except (i) such rights and obligations as may have accrued on the date of termination or expiration, (ii) the obligation of confidentiality set forth in Clause 3.3 hereof, (iii) the Consultant's obligation to permit inspection, copying and auditing of their accounts and records set forth in Clause 3.6 (ii) hereof, 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 2.9.1 or 2.9.2 hereof, the Consultants shall, immediately upon dispatch or receipt of such notice, take all necessary steps to bring the

Services to a close in a prompt and orderly manner and shall make every reasonable effort to keep expenditures for this purpose to a minimum. With respect to documents prepared by the Consultants and equipment and materials furnished by the Employer, the Consultants shall proceed as provided, respectively, by Clauses 3.9 or 3.10 hereof.

2.9.5 Payment upon Termination

Upon termination of this Contract pursuant to Clauses 2.9.1 or 2.9.2 hereof, the Employer shall make the following payments to the Consultants (after offsetting against these payments any amount that may be due from the Consultant to the Employer):

- i) remuneration pursuant to Clause 6 hereof for Services satisfactorily performed prior to the effective date of termination
- ii) reimbursable expenditures pursuant to Clause 6 hereof for expenditures actually incurred prior to the effective date of termination; and

2.9.6 Disputes about Events of Termination

If either Party disputes whether an event specified in paragraphs (a) through (e) of Clause 2.9.1 or in Clause 2.9.2 hereof has occurred, such Party may, within forty-five (45) days after receipt of notice of termination from the other Party, refer the matter to arbitration pursuant to Clause 9.2 hereof, and this Contract shall not be terminated on account of such event except in accordance with the terms of any resulting arbitral award.

3. OBLIGATIONS OF THE CONSULTANTS

3.1. General

3.1.1. Standard of Performance

The Consultants shall perform the Services and carry out their obligations hereunder with all due diligence, efficiency and economy, in accordance with generally accepted professional techniques and practices, and shall observe sound management practices, and employ appropriate advanced technology and methods. The Consultants shall always act, in respect of any matter

relating to this Contract or to the Services, as faithful advisers to the Employer, and shall at all times support and safeguard the Employer's legitimate interests in any dealings with Sub-consultants or Third Parties.

3.1.2 Law Governing Services

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

3.2 Conflict of Interests

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

The remuneration of the Consultants pursuant to Clause 6 hereof shall constitute the Consultants' sole remuneration in connection with this Contract or the Services and the Consultants shall not accept for their own benefit any trade commission, discount or similar payment in connection with activities pursuant to this Contract or to the Services or in the Discharge of their obligations hereunder, and the Consultants shall use their best efforts to ensure that any Sub-consultants, as well as the Personnel and agents of either of them, similarly shall not receive any such additional remuneration.

3.2.2 Consultants and Affiliates not to be otherwise interested in Project

The Consultants agree that, during the term of this Contract and after its termination, the Consultants and any entity affiliated with the Consultants, as well as any Sub-consultant and any entity affiliated with such Sub-consultant, shall be disqualified from providing goods, works or services (other than the Services and any continuation thereof) for any project resulting from or closely related to the Services.

3.2.3 Prohibition of Conflicting Activities

Neither the Consultants nor their Sub-consultants nor the Personnel of either of them shall engage, either directly or indirectly, in any of the following activities:

- (a) during the term of this Contract, any business or professional activities which would conflict with the activities assigned to them under this Contract; or
- (b) after the termination of this Contract, such other activities as may be specified by Employer

3.3 Confidentiality

The Consultants, their Sub-consultants and the Personnel of either of them shall not, either during the term or within two (2) years after the expiration of this Contract, disclose any proprietary or confidential information relating to the Project, the Services, this Contract or the Employer's business or operations without the prior written consent of the Employer.

3.4 Liability of the Consultants

The Consultants' liability under this Contract shall be as provided by the Applicable Law.

3.5 Insurance to be taken out by the Consultants

The Consultants (i) shall take out and maintain, and shall cause any Sub consultants to take out and maintain, at their (or the Sub consultants', as the case may be) own cost but on terms and conditions approved by the Employer, insurance against the risks, and for the coverage's, as necessary and (ii) at the Employer's request, shall provide evidence to the Employer showing that such insurance has been taken out and maintained and that the current premiums therefore have been paid.

3.6 Accounting, Inspection and Auditing

The Consultants (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 charges and cost, and the bases thereof (including the bases of the Consultants' costs and charges), and (ii) shall permit the Employer or its designated representative periodically, and up to one year 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 Employer.

3.7 Consultants' Actions requiring Employer's prior Approval

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

- 3.7.1 appointing such members of the Personnel as are listed in Appendix B;
- 3.7.2 entering into a subcontract for the performance of any part of the Services, it being understood (i) that the selection of the Sub-consultant and the terms and conditions of the subcontract shall have been approved in writing by the Employer prior to the execution of the subcontract, and (ii) that the Consultants shall remain fully liable for the performance of the Services by the Sub consultant and its Personnel pursuant to this Contract;

3.8 Reporting Obligations

The Consultants shall submit to the Employer the reports and documents specified in **Appendix A/G** hereto, in the form, in the numbers and within the time periods set forth in the said Appendix.

3.9 Documents prepared by the Consultants to be the Property of the Employer

All plans, drawings, specifications, designs, reports and other documents prepared by the Consultants in performing the Services shall become and remain the property of the Employer, and the Consultants shall, not later than upon termination or expiration of this Contract, deliver all such documents to the Employer, together with a detailed inventory thereof. The Consultants may retain a copy of such documents.

4 CONSULTANTS' PERSONNEL

4.2 General

The Consultants shall employ and provide such qualified and experienced Personnel as are required to carry out the Services.

4.3 Description of Personnel

- 4.3.1 The titles, agreed job descriptions, minimum qualification and estimated periods of minimum engagement of the key professionals is to be adhered.
- 4.3.2 If required to comply with the provisions of Clause 3.1.1 of this Contract, adjustments with respect to the estimated periods of engagement of Key personnel(s) is to be increased. The consultant will have to take into account the requirement of personnel and other relevant infrastructure required for timely completion of the project. Based on assessment of required professional and other infrastructure the consultant should quote the rates
- 4.3.3 If additional work is required beyond the scope of the Services specified in TOR, the remuneration shall be fixed on mutually agreed terms.

4.4 Approval of Personnel

In respect of Key Personnel, which the Consultants propose to use in the carrying out of the Services, the Consultants shall submit to the Employer for review and approval a copy of their biographical data. If the Employer does not object in writing (stating the reasons for the objection) within twenty -one (21) calendar days from the date of receipt of such biographical data, such Key Personnel shall be deemed to have been approved by the Employer.

4.5 Removal and/or Replacement of Personnel

- 4.5.1 Once approved by the Employer no changes shall be made in the Key Personnels. If, for any reason beyond the reasonable control of the Consultants, it becomes necessary to replace any of the key Personnel, the Consultants shall forthwith provide as a replacement a person of equivalent or better qualifications.
- 4.5.2 If the Employer (i) finds that any of the key Personnel has committed serious misconduct or has been charged with having committed a criminal action, or (ii) has reasonable cause to be dissatisfied with the performance of any of the key Personnel, then the Consultants shall, at the Employer's written request specifying the grounds therefore, forthwith provide as a

replacement of the person with qualifications and experience acceptable to the Employer. Any such replacement shall be at risk & cost of the consultant.

5 OBLIGATION OF THE EMPLOYER

5.1 Assistance

The Employer shall use its best efforts to ensure that the EMPLOYER shall:

- 5.1.1 assist the Consultants, Sub consultants and Personnel in arranging such documents as shall be necessary to enable the Consultants, Sub consultants or Personnel to perform the Services;
- 5.1.2 issue to officials, agents and representatives of the agency all such instructions as may be necessary or appropriate for the prompt and effective implementation of the Services;

5.2 Change in the Applicable Law

The consultant shall bear all financial implication, if, after the date of this Contract, there is any change in the Applicable Law with respect to taxes and duties.

5.3 Services, Facilities and Property of the Employer

The Employer shall make available to the Consultants and the Personnel, for the purposes of the Services and free of any charge, the services and facilities as mentioned in clause 5.1 and 5.2.

5.4 Payment

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

6 PAYMENT TO THE CONSULTANTS

6.1 The payment shall be made as per Clause 8 mentioned in TOR.

6.2 The payment shall be made through A/c payee cheque, payable at Thiruvananthapuram, in Indian Rupees.

6.3 Mode of Billing and Payment

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

- 6.3.1 Payment Schedule: The Consultant will be paid stage-wise as a percentage of the contract value as per the schedule given in Terms of Reference
- 6.3.2 No payment shall become eligible for the next stage till the consultant completes to the satisfaction of the Employer the work pertaining to the preceding stage.
- 6.3.3 The Employer shall cause the payment of the Consultants above as given in schedule of payment within thirty (30) days after the receipt by the Employer of bills.
- 6.3.4 The final payment under this Clause shall be made only after the final report and a final statement, identified as such, shall have been submitted by the Consultants and approved as satisfactory by the Employer. The Services shall be deemed completed and finally accepted by the Employer and the final report and final statement shall be deemed approved by the Employer as satisfactory ninety (90) calendar days after receipt of the final report and final statement by the Employer unless the Employer, within such ninety (90) day period, gives written notice to the Consultants specifying in detail deficiencies in the Services, the final report or final statement. The Consultants shall thereupon promptly make any necessary corrections, and upon completion of such corrections, the foregoing process shall be repeated. Any amount which the Employer has paid or caused to be paid in accordance with this Clause in excess of the amounts actually payable in accordance with the provisions of this Contract shall be reimbursed by the Consultants to the Employer within thirty (30) days after receipt by the Consultants of notice thereof. Any such claim by the Employer for reimbursement must be made within twelve (12) calendar months after receipt by the Employer of a final report and a final statement approved by the Employer in accordance with the above.

7 RESPONSIBILITY FOR ACCURACY OF PROJECT DOCUMENTS

7.1 General

- 7.1.1 The Consultant shall be responsible for accuracy of the data collected, by him directly or procured from other agencies/authorities, the designs, drawings, estimates and all other details prepared by him as part of these services. He shall indemnify the Authority against any inaccuracy in the work which might surface during implementation of the project. The Consultant will also be responsible for correcting, at his own cost and risk, the drawings including any re - survey / investigations and correcting layout etc. if required during the execution of the Services
- 7.1.2 The Consultant shall be fully responsible for the accuracy of the information and other design drawing / data provided in the report. The Consultant shall indemnify the Employer against any inaccuracy / deficiency in their Report and the Employer shall bear no responsibility for the accuracy of the report submitted by the Consultants.

7.2 Retention Money

An amount equivalent to 10% of the contract value shall be retained at the end of the contract in the form of performance BG for accuracy of design and quantities submitted and the same will be released after the completion of civil contract works or after 24 months whichever is earlier.

7.3 Penalty

In case of delay in completion of services, a penalty equal to 0.02% of the contract price per day for delay upto first 90 days and 0.05% of the contract price per day for subsequent delay subject to a maximum 5% of the contract value will be imposed and shall be recovered from payments due/performance security. However in case of delay due to reasons beyond the control of the consultant, suitable extension of time will be granted.

7.4 Action for Deficiency in Services

7.4.1 Consultants liability towards the Employer

Consultant shall be liable to indemnify the Employer for any direct loss or damage accrued or likely to accrue due to deficiency in service rendered by him upto 25% of the consulting fee.

7.4.2 Warning / Debarring

In addition to the penalty as mentioned in Clause 7.3, warning may be issued to the erring consultants for minor deficiencies. In the case of major deficiencies in the Detailed Project Report involving time and cost overrun and adverse effect on reputation of EMPLOYER, other penal action including debarring for certain period may also be initiated as per policy of EMPLOYER.

8 FAIRNESS AND GOOD FAITH

8.1 Good Faith

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

8.2 Operation of the Contract

The Parties recognize that it is impractical in this Contract to provide for every contingency which may arise during the life of the Contract, and the Parties hereby agree that it is their intention that this Contract shall operate fairly as between them, and without detriment to the interest of either of them, and that, if during the term of this Contract either Party believes that this Contract is operating unfairly, the Parties will use their best efforts to agree on such action as may be necessary to remove the cause or causes of such unfairness, but no failure to agree on any action pursuant to this Clause shall give rise to a dispute subject to arbitration in accordance with Clause 9 hereof.

9 SETTLEMENT OF DISPUTES

9.1 Amicable Settlement

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

9.2 Dispute Settlement

In case the dispute is not resolved amicably, the matter will be referred to the Executive Committee of EMC/ Government of Kerala and its decision would be final and binding on both the parties. Pending the submission of and/or decision on a dispute, difference or claim or until the dispute is resolved; the Consultant shall continue to perform all its obligations under Agreement without prejudice of final adjustment in accordance with such award.

10 LEGAL JURISDICTION

Any legal dispute arising out of the Consultancy Agreement shall be settled at the Court of Law located at Thiruvananthapuram.

11 GOVERNING LAW

This Agreement shall be governed by and constructed in accordance with the laws of India. Neither Client nor the Consultant shall have the right to transfer or assign their responsibilities resulting from this Agreement

12 AMENDMENTS AND MODIFICATIONS

This Agreement constitutes the entire understanding between both the parties relating to the Consultancy and it shall not be amended or modified except as agreed in writing by both the Parties

III.SECTION 3 TERMS OF REFERENCE

[As per RFP]

IV.SECTION 4 SCHEDULES OF PRICES

V.APPENDICES

Appendix A: Terms of reference containing, inter-alia, the Description of the Services and Reporting Requirements

Appendix B: Consultants' Key Personnel and Sub Professional Personnel, Task assignment, work programme, manning schedule, qualification requirements of key personnel, schedule for submission of various report.

Appendix C: Minutes of Financial/ Contract Negotiations meeting with the Consultant, If any.

Appendix D: Copy of letter of invitation

Appendix E: Copy of letter of acceptance

Appendix F: Minutes of the pre-bid meeting, Addendum if any Security

APPENDIX- G

FORM OF PERFORMANCE SECURITY

Ref: _____ Bank Guarantee: _____ Date: _____

To,

Director

Energy Management Centre

SrikrishnaNagar, Sreekaryam,

Trivandrum,

Kerala PIN : 695017

Dear Sir/Madam,

In consideration of "Director, Energy Management Centre, Department of Power, Government of Kerala " (hereinafter referred as the "Employer", which expression shall, unless repugnant to the context or meaning thereof include its successors, administrators and assigns) having awarded to M/s. _____ (hereinafter referred to as the "Consultant" which expression shall unless repugnant to the context or meaning thereof, include its successors, administrators, executors and assigns), a contract by issue of Employer's Contract Agreement No. _____ dated: _____ and the same having been unequivocally accepted by the Consultant, resulting in a Contract valued at _____ for **(name of the project)** _____ (hereinafter called the "Contract") and the Consultant having agreed to furnish a Bank Guarantee to the Employer against the release of retention money as

stipulated by the Employer in the said contract for accuracy of the services performed amounting to Rs. _____ (in figures). (in words _____)
We _____ (Name of the Bank) having its Head Office at _____ (hereinafter referred to as the Bank), which expression shall, unless repugnant to the context or meaning thereof, include its successors, administrators executors and assigns) do hereby guarantee and undertake to pay the Employer immediately on demand any or, all amount payable by the Consultant to the extent of _____ as aforesaid at any time up to _____ @ _____ without any demur, reservation, contest, recourse or protest and/or without any reference to the consultant. Any such demand made by the Employer on the Bank shall be conclusive and binding notwithstanding any difference between the Employer and the Consultant or any dispute pending before any Court, Tribunal, Arbitrator or any other authority. We agree that the Guarantee herein contained shall be irrevocable and shall continue to be enforceable till the Employer discharges this guarantee.

The Employer shall have the fullest liberty without affecting in any way the liability of the Bank under this Guarantee, from time to time to vary it or to extend the time for performance of the contract by the Consultant. The Employer shall have the fullest liberty without affecting this guarantee, to postpone from time to time the exercise of any powers vested in them or of any right which they might have against the Employer and to exercise the same at any time in any manner, and either to enforce or to forbear to enforce any covenants, contained or implied, in the Contract between the Employer and the Consultant any other course or remedy or security available to the Employer. The bank shall not be relieved of its obligations under these presents by any exercise by the Employer of its liberty with reference to the matters aforesaid or any of them or by reason of any other act or forbearance or other acts of omission or commission on the part of the Employer or any other indulgence shown by the Employer or by any other matter or thing whatsoever which under law would but for this provision have the effect of relieving the Bank.

The Bank also agrees that the Employer at its option shall be entitled to enforce this Guarantee against the Bank as a principal debtor, in the first instance without proceeding against the Consultant and notwithstanding any security or other guarantee that the Employer may have in relation to the Consultant's liabilities.

Notwithstanding anything contained herein above our liability under this guarantee is limited to and it shall remain in force upto and including _____ @ _____ and shall be extended from time to time for such period (not exceeding one year), as may be desired by M/s. _____ on whose behalf this guarantee has been given.

Dated this _____ day of _____ 2013 at _____

WITNESS

(Name)

(signature)

(Name)
(signature)

(Official Address)

Designation (with Bank stamp)

Attorney as per Power of Attorney No. _____ Dated _____

Strike out whichever is not applicable.

@ The date will be twenty four months after the date of commencement of services. However its validity should be extendable if requested by EMC.

Note 1: The stamp papers of appropriate value shall be purchased in the name of bank that issues the "Bank Guarantee".

Note 2: The Bank Guarantee will be accepted which is issued by any Scheduled Commercial Bank in India having its office at Thiruvananthapuram