

# **AGREEMENT**

**BETWEEN**

**NIPPON KOEI CO., LTD.**

**AND**

**NIPPON ENGINEERING CONSULTANTS CO., LTD**

**AND**

**NIPPON KOEI VIETNAM INTERNATIONAL CO., LTD.**

**FOR**

**CONSULTING SERVICES FOR PACKAGE 3  
TECHNICAL DESIGN, COST ESTIMATION AND  
TENDER ASSISTANCE**

**FOR**

**HANOI CITY RING ROAD NO. 3 CONSTRUCTION PROJECT  
MAI DICH – SOUTH THANG LONG SECTION**

**July 2015**



# PART I. GENERAL CONDITIONS



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**Based on the FIDIC Model JV Agreement 1<sup>st</sup> edition 1992**

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## AGREEMENT

### CONDITIONS AND TERMS

**This Agreement** is made the 1<sup>st</sup> day of July 2015

#### By and Among

Nippon Koei Co., Ltd., having address at No.4, Kojimachi 5-chome, Chiyoda-ku, Tokyo, Japan (hereinafter called "NK");

Nippon Engineering Consultants Co., Ltd., having address at 3-23-1 Komagome, Toshima-ku, Tokyo, Japan (hereinafter called "NE");

Nippon Koei Vietnam International Co., Ltd., having address on 10th Fl., Tower A, Handi Resco Bld., 521 Kim Ma St., Ngoc Khanh Ward, Ba Dinh Dist., Hanoi, Vietnam (hereinafter called "NKV");

Whereas Project Management Unit Thang Long (hereinafter called "the Client") wishes to obtain Consulting Services for Package 3: Technical Design, Cost Estimation and Tender Assistance for Hanoi Ring Road No. 3 Construction Project, Mai Dich – South Thang Long Section (hereinafter called "the Project");

And whereas NK & NE & NKV (hereinafter called "the Members") have agreed to form a joint venture to provide the said professional engineering services,

Now it is hereby agreed as follows:

### 1. DEFINITIONS AND INTERPRETATION

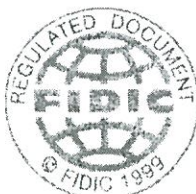
**DEFINITIONS** 1.1 The following words and expressions shall have the meanings assigned to them, except where the context otherwise requires:

1.1.1 "Client" means the person, firm, company or body named in Schedule 1 and none other, except its legal successors and permitted assigns;

1.1.2 "Project" means the undertaking or proposed or actual works named in Schedule 1 in connection with which the Client intends or has commenced to proceed and requires professional services;

1.1.3 "Works" means the permanent works to be constructed, including the goods and equipment to be supplied to the Client, for the achievement of the Project;

1.1.4 "Joint Venture" means the joint venture formed between the Members in accordance with this Agreement;



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1.1.5 "Invitation" means the invitation of the Client to a Member or Members to submit a proposal for the provision of professional engineering services for the Project;

1.1.6 "Proposal" means the proposal to be prepared and submitted by the Joint Venture in response to the Invitation;

1.1.7 The Joint Venture Agreement, hereinafter referred to as "this Agreement", comprises the document entitled Conditions and Terms together with Schedules 1 to 4 attached there to and such other documents as may be specified in Schedule 1 to form part of this Agreement;

1.1.8 "Services Agreement" means the agreement between the Client and the Leading Member of the Joint Venture for the provision of professional services for the Project;

1.1.9 "Services" means all the services to be performed by the Joint Venture in accordance with the Proposal or the Services Agreement, as the case may be;

1.1.10 "Country" means the country named in Schedule 1 where the Project is located;

1.1.11 "Members" means the individuals or firms which have agreed to Joint Venture in connection with the Project;

1.1.12 "Leading Member" means the member which will sign the Services Agreement on behalf of the Joint Venture and appoint the Joint Venture's Representative for liaison with the Client and, unless otherwise agreed by the Members, a Services Manager for direction of the conduct of the Services;

1.1.13 Except where otherwise specified, "day" means the period between any one midnight and the next, and "month" means a period of one month according to the Gregorian calendar commencing with any day in the month; and

1.1.14 "Document" means written, drawn, typed, printed, magnetized or photographic material which is capable of being copied.

1.1.15 Words importing the singular also include the plural and the masculine includes the feminine and vice-versa where the context requires.

1.1.16 The headings in this Agreement shall not be taken into consideration in its interpretation.

1.1.17 Unless otherwise stated, all references to clauses are references to clauses numbered in the Conditions and Terms of this Agreement and not to those in any other document attached or incorporated by them.

## 2. JOINT VENTURE

2.1 The Members hereby establish a joint venture being an unincorporated association under the name of NK & NE & NKV or such other name as the Members shall unanimously agree from time to time (hereinafter



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called the "Joint Venture") for the purposes of:

- preparing and submitting the, Proposal to the Client;
  - providing any further information the Client may require or negotiating with the Client on any matters requiring negotiation in connection with the Proposal;
  - entering into the Services Agreement with the Client, if the Proposal is accepted; and
  - performing all the Services to be undertaken for the Project by the Joint Venture under the Services Agreement.
- 2.2 The Members hereby appoint the Leading Member and, pursuant to Clause 3.6, the representative of the Joint Venture, and confirm the addresses of the Joint Venture and the addresses of the Members respectively, as stated in Schedule 1.
- 2.3 Unless otherwise agreed in writing by the Members, this Agreement shall not terminate if a Member changes its name or is taken over by, or merged with, another company or partnership provided that such successor name, company or partnership is an independent professional firm acceptable to the Client.

### 3. PROPOSAL SUBMISSION

- 3.1 The Members shall make all reasonable endeavours to obtain from the Client the award of the Services Contract in accordance with the conditions of the Invitation or such conditions as may subsequently be agreed between the Client and the Joint Venture.
- 3.2 The preparation and submission of the Proposal shall be undertaken jointly by the Members. The Members shall cooperate with the Leading Member. The Members shall perform with all reasonable skill, care and diligence their respective functions as allotted by the Policy Committee until the award of the Services Agreement to the Joint Venture or until the provisions of Clauses 16.1 and 16.3 have been satisfied.
- 3.3 Once the proposal has been submitted to the Client no changes may be made or additional information or explanations given without the consent of all the Members until the Services Agreement is effective.
- 3.4 The Leading Member shall enter into the Services Agreement, if it is awarded, in accordance with the Proposal, or the Proposal as amended, subsequent to its submission, by agreement between the Client and the Members of the Joint Venture.
- 3.5 Upon the execution of this Agreement, each of the Members shall grant a Power of Attorney in favour of a person nominated by it as its Representative, as designated in Schedule 1. The Representatives of each Member will constitute the Policy Committee of the Joint Venture. Under the Power of Attorney granted him, the Representative of a Member shall thereby have authority to sign the Proposal and the Services Agreement on behalf of and in the name of that Member. The signature of its Representative shall bind each Member in respect of all obligations and



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liabilities it assumes under this Agreement.

- 3.6 Subject to directions of the Policy Committee, the Representative of the Leading Member shall be the representative of the Joint Venture for the purpose of correspondence and discussion with the Client on matters involving the interpretation of the Services Agreement and alterations to its terms and to the Services to be performed.

#### **4. PERFORMANCE OF THE WORK**

- 4.1 The work to be performed under the Services Agreement shall be carried out in accordance with the terms and conditions of the Services Agreement and this Agreement. In the event of any inconsistency between the terms of the Services Agreement and this Agreement regarding the Performance of the work, the Services Agreement shall prevail, subject to Clauses 4.3 and 4.4 below.
- 4.2 Each Member shall be responsible for fulfilling the obligations prescribed in Schedule 3 in accordance with the terms of the Services Agreement to the satisfaction of the Client, subject to Clauses 4.3. and 4.4 below.
- 4.3 The apportionment of the Joint Venture's obligations between the Parties in accordance with Schedule 3 can be amended by agreement between the Members, subject to the consent of the Client if required by the Services Agreement.
- 4.4 Any alterations or additions to the Services to be carried out under the Services Agreement shall be made only with the consent or on the instructions of the Client in accordance with the Services Agreement. Responsibility for carrying out additional obligations shall be as agreed between the Members, subject to the consent of the Client if required by the Services Agreement.

#### **5. LANGUAGE AND LAW**

- 5.1 The following shall be stated in Schedule 1:
- the language in which this Agreement shall be written and interpreted; and
  - the country or state, the law of which shall apply to this Agreement.

#### **6. EXCLUSIVITY**

- 6.1 Unless otherwise agreed by the Members, no member shall engage in any activity related to the Project other than as a Member of the Joint Venture and in accordance with the terms and conditions of this Agreement. Each Member warrants that its subsidiaries and other firms or individuals over which it has control will comply with this requirement.

#### **7. EXECUTIVE AUTHORITY**

- 7.1 No Member shall have authority to bind or to make any commitment on behalf of the Joint Venture or of any other Member unless such authority



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is expressed in writing by the Members jointly in regard to the Joint Venture, or by a Member individually in regard to the (other) Member.

- 7.2 From the date of this Agreement until the award of the Services Agreement to the Leading Member of the Joint Venture or until this Agreement shall terminate in accordance with its terms, whichever is the earlier, the following matters shall require the unanimous consent of the Members: for the purpose of submitting the Proposal, the respective responsibilities and obligations to be undertaken by the Members under the Services Agreement, subject to the conditions of the Invitation., for the purpose of submitting the Proposal, the prices and terms and conditions of payment comprised in the Proposal as applicable to the Joint Venture generally, and to the Members separately, subject to the conditions of the Invitation: and any communication to, or response to communication from, the Client either written or oral and any commitment of any kind to the Client or any other party in connection with the Proposal.
- 7.3 From the date of the award of the Services Agreement to the Leading Member, decisions on the policies of the Joint Venture shall be vested in a Policy Committee comprising the Representative of each of the Members specified in accordance with Clause 3.5.
- 7.4 Each Member shall provide notice of its Representative on the Policy Committee and shall give prior notice of any change in such appointments, temporary or otherwise, as may occur from time to time.
- 7.5 The representative of the Leading Member on the Policy Committee shall be the Chairman of the Committee. The Chairman shall ordinarily convene the meetings of the Committee and may invite others whom he wishes to attend, in order to inform or advise the Representatives, or to record the proceedings of the Committee.
- 7.6 In the event of there being disagreement between members of the Policy Committee on matters not otherwise prescribed in this Agreement the Chairman shall be entitled to use a casting vote
- 7.7 Meetings of the Policy Committee shall take place at least as frequently as prescribed in Schedule 1, unless otherwise agreed by the Members. A Member may convene a meeting of the Committee at any time by giving at least fourteen days notice in writing to the Members.
- 7.8 Minutes shall be kept, in the language named in Schedule 1, of all meetings of the Policy Committee and copies of all such minutes shall be circulated to the Members.
- 7.9 The Members respectively agree to act (and agree that their respective representatives on the Policy Committee shall act) at all times in the best interests of the Joint Venture in taking any actions relating to the Project and shall use all reasonable endeavours to settle any disputes arising between them in connection with the Joint Venture.
- 7.10 Each Member shall appoint a Local Representative in each locality where that Member is to work. The Local Representative of a Member shall be responsible for the obligations to be undertaken by it in the said locality and for performance of its responsibilities in that locality under this Agreement.

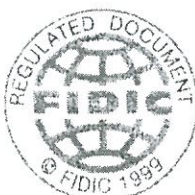


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- 7.11 Each Member shall notify the other of its Local Representative and responsibilities assigned to him and shall give prior notice of any change in such appointments or assignments of responsibilities as may occur from time to time.
- 7.12 A Services Manager shall be appointed. Unless otherwise agreed by the Members, the Leading Member shall appoint him and will be entitled to subsequently remove him from that position and appoint a replacement.
- 7.13 The Services Manager shall manage and supervise the performance of the work under the Services Agreement in accordance with the directions of the Policy Committee, and shall report to the Policy Committee on the performance and progress of the work as and when required by that Committee.
- 7.14 The Local Representatives shall work under the direction of the Services Manager

## 8. DOCUMENTS

- 8.1 All documents produced by a Member or the Members in connection with the Project which are made available to persons other than the Members shall bear the name of the Joint Venture.
- 8.2 All documents prepared by either of the Members in connection with the performance of work under the Services Agreement, and which are submitted to the Client or are to be made available to third parties, shall be signed by the Services Manager, unless they concern the interpretation of the Services Agreement or alteration to its terms or Services to be performed.
- 8.3 Each Member shall have unrestricted access to any work carried out by Members in connection with the Project.
- 8.4 Copies of all documents submitted to the Client by or on behalf of the Joint Venture by a Member shall be circulated to the Members as soon as reasonably practicable following such submission.
- 8.5 During the period of the Agreement and after the termination of this Agreement without limit in point of time, no Member shall disclose to any person any information which it obtains through its participation in the Joint Venture (and shall ensure that its employees shall observe such restrictions) unless the said information:
- becomes public knowledge;
  - must be disclosed for the proper performance of the services;
  - is published with the approval of the Joint Venture and, when required under the Services Agreement, of the Client. No member shall utilize photographs, or other data describing the Project, in promoting its own business, without the approval of the other Member.
- 8.6 Except as may be otherwise provided under the Services Agreement or in Schedule 1, the copyright in documents produced by a particular Member in connection with the Project is granted to the Members and each



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Member hereby licenses the Members to use and reproduce documents produced by it.

- 8.7 Except as provided in Clause 8.6, each Member shall indemnify the Members against all claims, liabilities, damages, costs and expenses sustained as a result of re-using the designs, drawings and other documents produced for the Project on other projects.

## 9. PERSONNEL

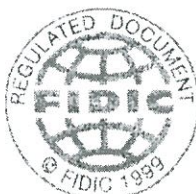
- 9.1 Each Member shall assign a sufficient number of its employees to the Project so that the provisions of this Agreement are complied with and the Services are carried out in accordance with the Services Agreement. Unless specifically agreed otherwise, the Joint Venture shall have no employees of its own.
- 9.2 Each Member shall be responsible for all actions of its staff and shall continue to be responsible in all ways for its own obligations as employer of its employees.
- 9.3 Notwithstanding the foregoing provisions of this Clause, each Member may allow any person, firm or corporation over which it exercises management control to fulfill any of the obligations for which it is responsible under this Agreement provided that, in such circumstances, the control of and responsibility for those obligations shall at all times remain vested in the Member.
- 9.4 Each Member shall be entitled to invite, subject to the approval of the Client (if required) and to the agreement of the Members, sub-consultants to carry out any of that Member's obligations, provided that in such circumstances the control of and responsibility for undertaking those obligations shall at all times remain vested in the Member in question
- 9.5 The engagement of Sub-consultants by the Joint Venture shall be subject to the provisions of Clause 7.

## 10. ASSIGNMENT AND THIRD PARTIES

- 10.1 No Member shall sell, assign, mortgage, pledge, transfer or in any way dispose of any rights or interests under this Agreement, or its interests in any sums payable by the Client other than by a charge in favour of its bankers of any monies due or to become due under the Agreement, without the prior written consent of the Members.
- 10.2 This Agreement is exclusively for the benefit of the Members and shall not be construed as conferring, either directly or indirectly, any rights or causes of action upon third parties.

## 11. SEVERABILITY

- 11.1 If any part of any provision of this Agreement is found by an arbitrator or Court or other competent authority to be void or unenforceable, such part



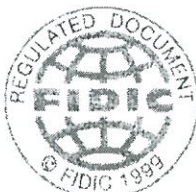
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of the provision shall be deemed to be deleted from this Agreement and the remainder of such provision and the remaining provisions of this Agreement shall continue in full force and effect.

- 11.2 Notwithstanding the foregoing, the Members shall thereupon negotiate in good faith in order to agree the terms of a mutually satisfactory provision to be substituted for the part of the provision found to be void or unenforceable.

## 12. MEMBER IN DEFAULT

- 12.1 In the event of insolvency of a Member, the other Member is hereby irrevocably constituted and appointed to act for it in all matters affecting performance of this Agreement.
- 12.2 A Member that delays or fails to fulfil its obligations in whole or in part under this Agreement shall be deemed in default and shall indemnify the other Member in respect of the consequences.
- 12.3 A notice in writing from the Client that the performance of obligations under the Services Agreement is unsatisfactory or that the continued involvement of a Member is no longer required in whole or in part shall for the purposes of this Clause mean that the Member concerned is in default unless otherwise agreed by the other Member.
- 12.4 If the default of a Member shall be such that the Member in question shall be substantially in breach of its obligations hereunder, the other Member shall be entitled to reassign the work concerned.
- 12.5 Any actions taken by the other Member against the defaulting Member pursuant to this Clause shall be without prejudice to any rights to which he may be entitled at law against the defaulting Member.
- 12.6 If a reassignment of work under the Services Agreement is made in accordance with the Clause, the defaulting Member shall not obstruct the Member who undertakes the reassigned work and shall provide him with access to all documents and information necessary for its proper performance.
- 12.7 Any sums received by the Joint Venture in payment for the defaulting Member's obligations already undertaken shall be used to compensate any loss or damage resulting from the default of that Member. The defaulting Member shall remain responsible for providing guarantees and bonds relevant to the obligations allocated to that Member prior to such reassignment until the completion of the Services,
- 12.8 If all of the defaulting Member's obligations are reassigned in accordance with the Clause, the other Member shall be entitled to and shall: carry on and complete the performance of the Services Agreement without the participation of the defaulting Member, its successors, receivers or other legal representatives and continue to act in accordance with the terms of this Agreement (as amended to take account of the non participation of the defaulting Member); and retain for the performance of the Services Agreement all equipment and materials purchased therefore and all assets owned by the Joint Venture at the time of the default by the defaulting



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Member until the completion of the Services. The defaulting Member, its successors, receivers or other legal representatives shall execute and do all deeds, documents and things necessary to enable the said equipment and materials to continue to be so used and to enable the Joint Venture to continue without its involvement.

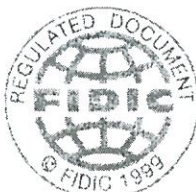
- 12.9 Upon completion or earlier termination of the Services Agreement and receipt of all amounts due thereunder, the remaining Member shall account to the Member in default which shall be entitled to receive an amount equal to any sums provided by the defaulting Member towards any general funds which shall not previously have been expended, plus such Member's share of any funds of the Joint Venture due to it, reduced by any losses or damage occasioned by its default.
- 12.10 In the event that the share of the losses chargeable to the defaulting Member exceeds any sums provided by the defaulting Member to any general funds and the share of any funds of the Joint Venture due to it in accordance with the terms of this Agreement, the defaulting Member shall promptly pay the excess to the remaining Member.

### 13. DURATION OF THE AGREEMENT

- 13.1 If it has been jointly established by the Members that the Proposal will not be accepted by the Client or if it has not been accepted by the Client within the period allowed for acceptance in accordance with the Proposal or any extension of that period subsequently agreed between the Client and the Joint Venture, this Agreement shall thereupon terminate forthwith.
- 13.2 If the Proposal is accepted by the Client, this Agreement shall continue to have full force and effect and shall continue the same when the Services Agreement is entered into with the Client, until confirmation has been received from the Client that the Services have been completed, or the Services Agreement has been terminated, and all accounts relating to the Services between the Joint Venture and the Client and third parties and between the Members are acknowledged as settled.
- 13.3 Provided that the terms of this Agreement shall nevertheless continue to bind the Members to such extent and for so long as may be necessary to give effect to the rights and obligations specified in the Agreement.

### 14. LIABILITY

- 14.1 Each of the Members warrants that it will indemnify and keep indemnified the other Member against all legal liabilities arising out of or in connection with the performance, or otherwise, of its obligations under this Agreement.
- 14.2 In the event of it being alleged by one Member in writing that any legal liability is attributable to the other Member or to the Members, the Members shall use reasonable endeavours to reach agreement on the liabilities to be borne by each of the Members, and in the event of the Members failing to so agree, a proper apportionment shall be determined



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by arbitration in accordance with Clause 19.

## **15. INSURANCE**

- 15.1 Unless otherwise agreed by the members, each Member individually shall make all reasonable efforts to maintain insurance coverage in the amounts stated in Schedule 1 as protection against all legal liabilities arising out of or in connection with the performance, or otherwise, of its obligations under this Agreement.
- 15.2 Each Member shall make all reasonable efforts to maintain insurance cover in the amounts stated in Schedule 1 for public/ third party liability insurance and any other insurances necessary to comply with the Services Agreement.

## **16. PROMOTIONAL AND PROJECT COSTS, PROFITS, LOSSES AND REMUNERATION**

- 16.1 Each Member shall be reimbursed the costs and expenses incurred by it in connection with the promotion, preparation, negotiation and submission of the Proposal, as prescribed in Schedule
- 16.2 If Schedule 4 does not prescribe the reimbursement of promotional costs and expenses each Member shall bear the costs and expenses which it incurs.
- 16.3 All payments to the Members shall be made in accordance with Schedule 4 and the financial policy of the Joint Venture is as set out in that Schedule.

## **17. FINANCIAL ADMINISTRATION AND ACCOUNTING**

- 17.1 Each Member shall be responsible for keeping its own accounts in respect of payments due to it and for its own financial affairs generally. Each Member shall be responsible for dealing with its own income tax affairs, and its own social security affairs where relevant, and for accounting accordingly to the relevant authorities.
- 17.2 The Members shall agree on which Member shall be responsible for provision of Financial Administration Services as set out in Schedule 2.

## **18. GUARANTEES AND BONDS**

- 18.1 Unless otherwise agreed by the Members, the Members severally shall provide guarantees and bonds in proportion to their respective shares in the Services sufficient for the total of guarantees and bonds required of the Joint Venture by the Client. The Members severally shall be responsible for administration and extensions, if required, of the guarantees and bonds they have provided.



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## 19. ARBITRATION

- 19.1 Any dispute arising in connection with this Agreement which cannot be resolved by the Members in accordance with the terms of this Agreement shall be settled by arbitration in accordance with the Rules stipulated in Schedule 1. The Members agree to comply with the awards resulting from arbitration and waive their rights to any form of appeal insofar as such waiver can validly be made.
- 19.2 Judgement upon the award rendered in any arbitration proceedings may be entered in any court having jurisdiction by any of the Members or application may be made to such court for a judicial acceptance of the award and an order for enforcement (as the case may be).

## 20. NOTICES

- 20.1 Notices under the Agreement shall be in writing and will take effect from receipt at the address stated in Schedule 1. Delivery can be by hand or facsimile message against a written confirmation of receipt or by registered letter or by telex subsequently confirmed by letter.
- 20.2 The official address of the Joint Venture to be included on all documentation signed in the name of the Joint Venture shall be as designated in Schedule 1 hereto or such other address as shall be agreed from time to time by the Members, subject to the requirements of the Services Agreement.

## 21. SOLE AGREEMENT AND VARIATION

- 21.1 This Agreement is as specified in Clause 1. 1.7 and is the sole agreement between the Members and supersedes any previous agreements between them relating to the matters referred to herein. Variations and addenda may be made to this Agreement, including the admission of new members to the Joint Venture, by written instrument which shall be effective upon being signed by all Members (or on their behalf by their Representatives), provided that if a Member is considered by the other Member to be in default pursuant to Clause 12 his agreement and signature is not required.



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## PART II. SPECIAL CONDITIONS



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**Joint Venture Agreement**  
**for**  
**Consulting Services for Package 3:**  
**Technical Design, Cost Estimation and Tender Assistance**  
**for**  
**Hanoi Ring Road No. 3 Construction Project, Mai Dich – South Thang Long**  
**Section**

**This Agreement** is entered into on the 1<sup>st</sup> date of July 2015.

**By and Among**

Nippon Koei Co., Ltd., having address at No.4, Kojimachi 5-chome, Chiyoda-ku, Tokyo, Japan (hereinafter called “NK”);

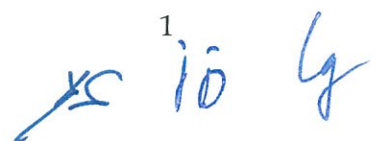
Nippon Engineering Consultants Co., Ltd., having address at 3-23-1 Komagome, Toshima-ku, Tokyo, Japan (hereinafter called “NE”);

Nippon Koei Vietnam International Co., Ltd., having address on 10th Fl., Tower A, HandiResco Bld., 521 Kim Ma St., Ngoc Khanh Ward, Ba Dinh Dist., Hanoi, Vietnam (hereinafter called "NKV").

Whereas Project Management Unit Thang Long (hereinafter called “the Client”) wishes to obtain Consulting Services for Package 3: Technical Design, Cost Estimation and Tender Assistance for Hanoi Ring Road No. 3 Construction Project, Mai Dich – South Thang Long Section(hereinafter called "the Project");

And whereas NK & NE & NKV(hereinafter collectively called "the Members”) wish to jointly perform the Service pursuant to the Contract No.1725/HD-PMUTLdated19<sup>th</sup> June 2015entered into between the Client and the Members (hereinafter called “the Main Contract”);

**Now therefore**, in consideration of the premises and their mutual covenants hereinafter set forth, the Members hereby agree as follows:

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**Joint Venture Agreement**  
**Part I General Conditions**

The General Conditions governing this Agreement shall be as stated in “**Joint Venture Agreement for Consulting Services for Package 3: Technical Design, Cost Estimation and Tender Assistance for Hanoi Ring Road No. 3 Construction Project, Mai Dich – South Thang Long Section**”, made on 1<sup>st</sup> day of July 2015, Part I General Conditions.

The General Conditions are linked with the Conditions of Special Conditions, referred to as Part II, by the corresponding numbering of the Clauses, so that Parts I and II together comprise the conditions governing the rights and obligations of the Members. In case of any inconsistency between the conditions specified in Part I and those in Part II, the conditions contained in Part II shall govern over those of Part I.

**Joint Venture Agreement  
Part II Special Conditions**

The Conditions contained in Part II supplement or modify the General Conditions set forth in Part I. Both shall be read together. Clauses of the General Conditions not specifically modified or supplemented shall remain in effect.

**GENERAL APPLICATIONS**

1. The words "Services Agreement" appearing in Part I, General Conditions shall be deleted and substituted with the words "Main Contract".
2. The words "Services Manager" appearing in Part I, General Conditions shall be deleted and substituted with the words "Project Team Leader".

**1. DEFINITIONS AND INTERPRETATION**

**DEFINITIONS 1.1**

- 1.1.9 Delete the entire text of Clause 1.1.9 and substitute as follows:  
"Services" means all the services to be performed by the Joint Venture in accordance with the Main Contract;"
- 1.1.11 Add the following to Clause 1.1.11 after the word "Project":  
including their legal successors;
- 1.1.13 Delete the word "and" appearing at the end of Clause 1.1.13.
- 1.1.18 Add the following as Clause 1.1.18:  
"Contract Date" means the date on which the Main Contract is made by and between the Client and the Joint Venture.

**2. JOINT VENTURE**

- 2.1 Delete entire text of Clause 2.1 and substitute as follows:  
"The Members hereby establish a joint venture being an unincorporated association under the name of Joint Venture of Nippon Koei Co., Ltd., Nippon Engineering Consultants Co., Ltd., Nippon Koei Vietnam International Co., Ltd., or such other name as the Members shall unanimously agree from time to time (hereinafter called the "Joint Venture") for the purposes of:
- entering into the Main Contract with the Client; and
  - performing all the Services to be undertaken for the Project by

the Joint Venture under the Main Contract.”

2.2 Delete the entire text of Clause 2.2 and substitute as follows :

“The Members covenant and agree with each other that they will: act in the best interests of the Joint Venture in relation to the Project; be just and faithful in their activities and dealings with each other; and perform its obligations and commitments under this Agreement.”

2.3 Delete the entire text of Clause 2.3 and substitute as follows :

“The Members must provide to the Joint Venture the matters set out in the Schedule 3 and in accordance with that Schedule.”

2.4 Add the following as Clause 2.4:

“The Leading Member will take the lead responsibility for the management of the Joint Venture’s affairs and will be responsible for communication with the Client, provided that the other Members shall assist and support the activities by the Leading Member.”

2.5 Add the following as Clause 2.5:

“Warranties”

Each Member represents and warrants to the other Members that:

- 1) it will efficiently and promptly carry out all of its obligations expressed in this Agreement;
- 2) all the Services performed by it shall be to a high professional standard so as to meet the Client requirements;
- 3) in the performance of the Services it will exercise reasonable skill, care and diligence;
- 4) it has full power, authority and legal right to execute, deliver and perform the terms of this Agreement and such acts have been duly authorized by its own board; and
- 5) it is duly incorporated and validly existing under the laws in force in its jurisdiction of incorporation.”

### **3. PROPOSAL SUBMISSION**

Delete Clause 3 entirely.

### **4. PERFORMANCE OF THE WORK**

4.3 Delete the word “Parties” appearing in Clause 4.3 and substitute “Members”.

4.5 Add the following as Clause 4.5:

“Each Member shall be responsible for preparing, submitting and, if required, making any necessary corrections thereof, all reports and documents specified in the Main Contract until obtaining relevant approval from the Client. The entire costs of correcting the Services shall be borne by the Member(s) in charge of such corrections. In case of delay in fulfilling the obligations, any additional cost arising from such delay shall be borne by the Member(s) who has caused such delay.”

## **7. EXECUTIVE AUTHORITY**

7.9 Delete the parenthetic expression “(and agree that their respective representatives on the Policy Committee shall act)” appearing in Clause 7.9.

7.10 Delete Clause 7.10.

7.11 Delete Clause 7.11.

7.13 Delete the entire text of Clause 7.13 and substitute as follows:

7.13.1 The Project Team Leader shall manage and supervise the performance of the Services

7.13.2 The Project Team Leader shall be the representative of the Joint Venture for the purpose of correspondence and discussion with the Client on matters involving the Main Contract including alternations to its terms and to the Services.

7.13.3 The Project Team Leader shall: review performance and report progress to the Client.

7.13.4 In the absence, the Project Team Leader shall be responsible to appoint the person in charge of his duty with the approval from the Policy Committee.

7.14 Delete Clause 7.14.

## **8. DOCUMENTS**

8.5 Delete the words “after the termination of this Agreement without limit in point of time” appearing in Clause 8.5, and substitute “for 3 years from the termination of this Agreement”.

## **9. PERSONNEL**

9.3 Add the following at the end of Clause 9.3:

“Notwithstanding the foregoing, the Project Team Leader possesses the authority to replace any personnel if the personnel is deemed to fail to perform its obligation or fail to comply with the Main Contract or this Agreement.”

9.5 Delete the words “provisions of Clause 7” appearing in Clause 9.5 and substitute “approval by the Client”.

### **13. DURATION OF THE AGREEMENT**

13.1 Delete Clause 13.1.

13.2 Delete the entire text of Clause 13.2 and substitute as follows:

“This Agreement shall have full force and effect when this Agreement is entered into, until confirmation has been received from the Client that the Services have been completed and Defect Notification Period has been finished, or the Main Contract has been terminated, and all accounts relating to the Services between the Joint Venture and the Client and third parties and between the Members are acknowledged as settled.”

### **14. LIABILITY**

14.1 Add the following to Clause 14.1 after the word “liabilities” appearing in second line:

“and any claim as a result of willful acts or negligence of the Member(s)”

14.3 Add the following as Clause 14.3:

“The Members shall be liable to the Client in accordance with the provisions of the Main Contract.”

14.4 Add the following as Clause 14.4:

“If all the Members are responsible for a claim, the extent of individual liability of each Member shall be proportional to the degree of responsibility of each Member for such claim. If responsible Member(s) is clearly identified, the liability shall be fully born by such Member(s) regardless of the extent of insurance coverage. If the degree of responsibility cannot be determined, the extent of individual liability shall be pro-rata to the amount of remuneration for respective Member’s shares specified in Schedule 4.”

## 15. INSURANCE

15.1 Delete the entire text of Clause 15.1 and substitute as follows:

“Insurances to be covered for the fulfillment of the Services are stated in Schedule 1 in accordance with the provisions in the Main Contract, and all the Members shall maintain insurance coverage to the extent and with the limitations as stipulated in the terms and conditions of the Main Contract.”

15.2 Delete Clause 15.2.

## 16. PROMOTION AND PROJECT COSTS, PROFITS, LOSSES AND REMUNERATION

16.1 Delete Clause 16.1 and substitute as follows:

“The effective basis of payment by the Client to the Members for the Services shall be set forth in the Main Contract. Upon execution of the Main Contract including any amendments thereto, the basis of payment by the Client as set forth in the Main Contract shall be deemed to be incorporated by reference into this Agreement.”

16.2 Delete Clause 16.2.

16.4 Add the following as Clause 16.4:

“All costs invoiced by any Members must be in line with the amounts listed in the Main Contract.”

16.6 Add the following as Clause 16.6:

“Any cost associated with employment of the sub-consultant(s) including management fee shall be deemed to be included in the contract value of each Member stipulated in the Schedule 4.”

16.7 Add the following as Clause 16.7:

In principle, each Member shall respectively manage and control the input of its personnel resources within allocated M/M designated in the Manning Schedule in the Main Contract for fulfillment of its tasks and obligations. Unless otherwise agreed, no adjustment of the allocated M/M shall be made among the Members. Unless otherwise agreed upon by the Policy Committee prior to its actual mobilization, an additional and non-contractual expert or M/M consumption shall not be remunerated. In case JV Members agree to assign an additional and non-contractual expert from a Member or an additional M/M consumption of contractual

expert for fulfillment of JV's obligations prior to its actual mobilization, the cost shall be shared by the Members pro-rata to the amount of remuneration for their respective shares in the Services, which is stipulated in the Schedule 4.

## 17. FINANCIAL ADMINISTRATION AND ACCOUNTING

17.1 Add the following to Clause 17.1 after word "authorities" in fifth line:

The Leading Member shall provide the Members with necessary support and document to apply tax exemption.

## 19. ARBITRATION

19.1 Delete the entire text of Clause 19.1 and substitute as follows:

"If a dispute arises in connection with this Agreement, a Member or Members declaring the dispute must give to the other Member(s) a notice specifying the dispute and requiring its resolution under this Clause (hereinafter called "Notice of Dispute").

19.2 Delete the entire text of Clause 19.2 and substitute as follows:

"The Members shall enter into negotiations to try and resolve in good faith any dispute which they may in connection with this Agreement."

19.3 Add the following as Clause 19.3:

"If the dispute is not resolved within twenty one (21) days after the Notice of Dispute is given to the other Member, it shall be finally settled by arbitration in accordance with the Rules of Arbitration of the International Chamber of Commerce by one or three arbitrators appointed in accordance with the said Rules. The venue of arbitration shall take place in Singapore, and the language to be used for arbitration shall be English language."

19.4 Add the following as Clause 19.4:

"Judgment on the award rendered in any arbitration proceedings may be entered in any court having jurisdiction agreed by any of the Members or an application may be made to such court for a judicial acceptance of the award and an order for enforcement (as the case may be)."

Add the following as Clause 22:

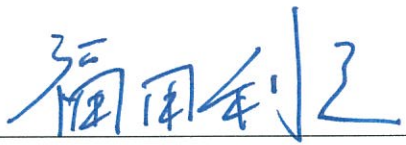
**22. FORCE MAJEURE**

22.1 In case of an event beyond the reasonable control of Member(s) (hereinafter called “Force Majeure”), and which makes Member’s performance of its obligations specified in this Agreement impossible or impractical and includes, but not limited to, war, riots, terrorism, civil disorder, earthquake, fire, explosion, storm flood or other adverse weather conditions, the Members shall discuss and take all reasonable measures to remove such Member’s inability to fulfill its obligations with a minimum delay.

22.2 A Member affected by the Force Majeure shall notify the other Member(s) of such event as soon as possible and in any event not later than fourteen (14) days following the occurrence of such event.”

In Witness whereof the Members have caused this Agreement to be signed in six (6) copies by their duly authorized representatives on the day, month and year first set forth above.

FOR AND ON BEHALF OF NK



**Toshiyuki Fukuda**  
Acting Chief Representative  
Hanoi Representative Office

FOR AND ON BEHALF OF NE



**Satoshi Yoshizaki**  
Chief Representative  
Hanoi Representative Office

FOR AND ON BEHALF OF NKV



**Le Giao**  
General Director

**Schedule 1**  
**Project and Agreement Particulars**

**Clause 1.1 Definitions**

- (1) The Client: Project Management Unit Thang Long(PMUTL)
- (2) The Project: Hanoi Ring Road No. 3 Construction Project, Mai Dich – South Thang Long Section
- (3) The Services: Consulting Service for Package 3: Technical Design, Cost Estimation and Tender Assistance
- (4) Country: The Socialist Republic of Vietnam
- (5) Leading Member: Nippon Koei Co., Ltd. (NK)
- (6) Name and Address of Representatives of the Members:  
  
NK: Mr. Toshiyuki Fukuda, Acting Chief Representative,  
Hanoi Representative Office, 10th Fl., A Tower,  
HandiResco Bld., 521 Kim Ma St., Ngoc Khanh Ward,  
Ba DinhDist.,Hanoi, Vietnam  
  
NE: Satoshi Yoshizaki, Chief Representative, Hanoi  
Representative Office, 5th Fl., 561 Kim Ma St, Ngoc  
Khanh Ward, Ba DinhDist.,Hanoi, Vietnam  
  
NKV: Mr. Le Giao, General Director,10th Fl., A Tower,  
HandiResco Bld., 521 Kim Ma St., Ngoc Khanh Ward,  
Ba DinhDist.,Hanoi, Vietnam

**Clause 5.1 Language and Law**

- (1) This Agreement shall be written in English.
- (2) The Law which is to apply to this Agreement shall be the Laws of Japan.

**Clause 7 Executive Authority**

**Clause 7.7** Meeting of the Policy Committee shall take place at project office in Hanoi.

**Clause 7.8** Minutes of Meeting of the Policy Committee shall be written in English.

**Clause 8.6 Documents**

- (1) In using any of computer software programs, each Member or his personnel or any Sub-Consultant personnel shall comply with the license agreement given in each software program.

### Clause 15.1 Insurance

Insurances to be covered and maintained by the Members in accordance with the provisions in Article 9 of the Main Contract are classified as follows:

Type of Insurance	Member responsible
(a) Third Party motor vehicle liability insurance in respect of motor vehicles operated in <i>the Socialist Republic of Vietnam</i> by the Consultant or its Personnel or any Sub-Consultants or their Personnel, with a minimum coverage for property damage of 70 million VND and minimum coverage for death of 70 million VND	(a) NKV
(b) Professional liability insurance, with a minimum coverage shall be set at 60.5 billion VND	(b) All Members (Pro-rata base)
(c) Employer's liability and workers' compensation insurance in respect of the Personnel of the Consultant and of any Sub-Consultants, in accordance with the relevant provisions of the Applicable Law, as well as, with respect to such Personnel, any such life, health, accident, travel or other insurance as may be appropriate; and	(c) Each Member individually
(d) Insurance against loss of or damage to (i) equipment purchased in whole or in part with funds provided under the Main Contract, (ii) the Consultant's property used in the performance of the Services, and (iii) any documents prepared by the Consultant in the performance of the Services.	(d) All Members (Pro-rata base)

## Schedule 2

### Financial Administration Services

#### (Clause 17 of the Conditions and Terms)

##### I General stipulations

- (1) The Leading Member shall be responsible for the administration of the Joint Venture, including but not limited of coordination of the share of the Members, maintenance of books and accounting records for Joint Venture in accordance with generally accepted accounting practices, control of performing banking and accounting service.
- (2) Expenditure on the items of “Local Portion of Reimbursable Expenses” in the Main Contract shall be managed by NKV under the directions of the Team Leader or who is appointed as in charge by the Team Leader.
- (3) NKV is assigned to sign contracts with Sub-consultants for Survey Work (Service Trading Technology and Construction Joint Stock Company (T&C)) and for Bridge Design Work (BRITEC).
- (4) The Project Team Leader or his designated representative shall supervise, manage, and certify the work volume completed by the Sub-consultants, based on which NKV will make payments to the Sub-consultants.
- (5) The remuneration values of Members in the Main Contract are shown by the amount and percentage of share (%) in Schedule 4 attached hereto. The Members percentage of share will be utilized to allocate the amount, whether paid or accrued, which are required for the proper performance of the Main Contract, but which are not clearly within the Share of one Member and which may not reasonably be inferred to be within on Member’s Share.

##### II Invoice

- (1) The Leading Member shall reserve the right and be responsible for invoicing to the Client for the Services upon receiving and reviewing the invoices submitted by the respective Members.
- (2) Each Member shall prepare necessary vouchers for payment request and provide to the Leading Member, together with all necessary supporting documents required by the Client and specified in the Main Contract. The Leading Member shall thereafter prepare invoices on behalf of the Members based on the terms of payment provided in the Main Contract.
- (3) The invoices shall be issued in JPY (for NK and NE portions) and VND (for NKV portion) respectively.

##### III Payment

- (1) Revenue in JPY received from the Client shall be transferred to NK's bank account. Revenue in VND received from the Client shall be transferred to NKV's bank account.
- (2) Once receiving the invoiced amount from the Client, NK shall pay to NE its amount in accordance with NE's invoices. All payments by NK to NE shall be made within fifteen (15) days following receipt by NK through the bank transfer to NE's bank account. NE shall notify in written form the name of the bank, account number, and swift code to NK.
- (3) In consideration of the performance of its obligations under this Agreement as Leading Member, Leading Member shall charge management fee.
- (4) An advance payment guarantee will be prepared by the Leading Member, provided that its premium shall be shared by the Members on pro-rata basis as indicated in Schedule 4. The invoice against to the premium of advance payment guarantee by the Bank shall be issued every six months, then Leading Member, NK Tokyo, shall issue the invoices to each Member for sharing the cost.
- (5) The advance payment due to each Member will be set off by the Leading Member as repayment of advance payment, by means of the same procedures as stipulated in the Main Contract.

#### IV Non-reimbursable Expenses

- (1) The costs which cannot be clearly covered in the Main Contract and/or this Agreement but are necessary for the Services performance can be subdivided into:
  - (a) costs which are obviously attributable to one Member (such as overrun on costs by a Member in respect of the work specifically carried out by that Member, etc.)
  - (b) general expenses which are expenses incurred in the interests of all Members in the Project in exceptional circumstances. The Policy Committee shall need to unanimously decide, which general expenses may be charged to the Joint Venture. The Project Manager shall require the Policy Committee's approval before incurring such expenses.
- (2) Each Member shall finance its costs enumerated above in (a) in (1) (in case such necessity arises). The payments shall be reimbursed to the Members if and when payments are received from the Client.
- (3) Only costs (b) in (1) may be charged to the Joint Venture whereas the Leading Member shall be responsible for payment necessary for the Project setup and management out of the management fee. The costs

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referred to under (b) in (1) and unanimously agreed by the Policy Committee that may be charged to the Joint Venture shall (at the end of each three calendar months) be shared between the Members by Members pro-rata excluding the case that such costs have been successfully recovered either partly or wholly by the Consultants from the Client under the Contract.

- (4) Costs which cannot be recovered from the Employer but which are to the general benefit of the Project shall not include any profit element (which means that only actual costs may be charged to the Joint Venture).

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### Schedule 3

#### Allocation of the Obligations

#### (Clause 4 of the Conditions and Terms)

- (1) Each Member shall be responsible for performing and fulfilling the obligations prescribed in the table “**Task Assignment Matrix for Key Experts**” attached in Appendix C of the Main Contract as well as any other requirements in accordance with the terms and conditions of the Main Contract.
- (2) The Members recognize that all of the services intended to be within the share of each Member may not be fully set forth therein. Accordingly, the share of each Member shall be deemed to include also those services which are not specified, but which may reasonably be inferred, e.g. because of their close relation or inter-dependence in function or technical consortium, to be within the share of each Member. Except as otherwise agreed between the Members, each Member shall, at no cost to the other Members, assume all risks and additional unrecoverable costs associated with such services.
- (3) The Leading Member shall act and be responsible, on behalf of NKV, for supervising and controlling the quality, progress and outputs of Survey Work carried out by T&C and Bridge Design Work carried by BRITEC.

**Schedule 4**  
**Financial Policy and Remuneration**  
**(Clause 16 of the Conditions and Terms)**

- (1) The financial amounts stipulated in the Main Contract and the share cost among the Members

**SUMMARY OF COSTS**

Item/ Nội dung	Foreign Currency (JPY)/ Ngoại tệ (Yên)		Local Currency (VND)/ Nội tệ (Đồng)	
	NK	NE	NK	NKV
<b>Competitive Components/ Hợp phần cạnh tranh</b>				
1. Remuneration/ Lương	74,200,000	21,100,000	280,000,000	6,961,000,000
2. Reimbursable expenses (other expenses)/ Chi phí khác	19,516,000	6,750,000		3,965,028,000
3. Survey cost at Detailed Design Stage/ Chi phí khảo sát bước TKKT		-		15,310,394,754
<b>A. Total/ Cộng ((1)+(2)+(3))</b>	<b>93,716,000</b>	<b>27,850,000</b>	<b>280,000,000</b>	<b>26,236,422,754</b>
Equivalent to VND/Tương đương VND	16,818,273,360	4,997,961,000	280,000,000	26,236,422,754
<b>Percentage of Share of Competitive Components/ Tỷ lệ phân chia Hợp phần cạnh tranh (%)</b>	<b>34.80</b>	<b>10.34</b>	<b>0.58</b>	<b>54.28</b>
<b>Non-competitive Components/ Hợp phần không cạnh tranh</b>				
<b>4. Tax/ Thuế ((4.1.)+(4.2.)+(4.3.)+(4.4.))</b>	<b>10,124,443</b>	<b>3,008,725</b>	<b>30,249,307</b>	<b>2,623,642,275</b>
<b>Tax for Local Currency/ Thuế cho phần Nội tệ</b>				
4.1. Survey Tax 10% of (3) Thuế GTGT khảo sát 10% của (3)				1,531,039,475
4.2 Design consultant's Tax 10% of ((1)+(2)) Thuế GTGT Tư vấn thiết kế 10% của ((1)+(2))				1,092,602,800
<b>Tax for Foreign Currency/ Thuế cho phần Ngoại tệ</b>				
4.3. CIT Tax/ Thuế TNDN ((A)/(1-5%)*5%)	4,932,421	1,465,789	14,736,842	
4.4. VAT Tax/ Thuế GTGT (((A)+(4.3.))/(1-5%)*5%)	5,192,022	1,542,936	15,512,465	
<b>5. Survey Contingency (10%) and Design Consultant (15%) Dự phòng khảo sát (10%) và Tư vấn thiết kế (15%)</b>	<b>15,576,066</b>	<b>4,628,809</b>	<b>46,537,396</b>	<b>3,486,938,043</b>
5.1. Survey contingency (10%* ((3)+(4.1.))) Dự phòng khảo sát (10% *((3)+(4.1.)))		-		1,684,143,423
5.2. Design Consultant/ Dự phòng Tư vấn thiết kế: - Foreign Currency/ Phần Ngoại tệ (15%*((1)+(2)+(4.3.)+(4.4.))) - Local Currency/ Phần Nội tệ (15%*((1)+(2)+(4.2.)))	15,576,066	4,628,809	46,537,396	1,802,794,620
<b>B. Total/ Cộng ((4)+(5))</b>	<b>25,700,509</b>	<b>7,637,534</b>	<b>76,786,703</b>	<b>6,110,580,318</b>
<b>C. Total/ Tổng cộng (A)+(B)</b>	<b>119,416,509</b>	<b>35,487,534</b>	<b>356,786,703</b>	<b>32,347,003,072</b>
<b>D. Grand Total/ Tổng cộng</b>		<b>154,904,043</b>		<b>32,703,789,775</b>
Exchange rate 1 JPY = 179.46 VND				

(2) Remuneration and Share among the Members

It is agreed that the position H1: Highway/Pavement Engineer 1 will be shifted from NKV portion to NK portion.

**REMUNERATION**

Member/ Thành viên	Remuneration / Lương (JPY)	Remuneration / Lương (VND)	Total Remuneration equivalent to VND/ Lương quy đổi ra VND	Percentage of Share/ Tỷ lệ phân chia (%)
NK	74,200,000	280,000,000	13,595,932,000	66.70
NE	21,100,000		3,786,606,000	18.58
NKV		3,001,000,000	3,001,000,000	14.72
BRITEC		1,943,000,000	-	
<b>Total/ Tổng</b>	<b>95,300,000</b>	<b>5,224,000,000</b>	<b>20,383,538,000</b>	<b>100.00</b>

Exchange rate: 1JPY = 179.46VND

(3) Advance Payment share among the Members

The share of advance payment among JV members is stipulated in the below table.

**ADVANCE PAYMENT**

Item/ Nội dung	Amount/ Số tiền			
	NK		NE	NKV
Competitive Components/ Hợp phần cạnh tranh	(JPY)	(VND)	(JPY)	(VND)
1. Remuneration/ Lương	74,200,000	280,000,000	21,100,000	6,961,000,000
2. Reimbursable expenses (other expenses)/ Chi phí khác	19,516,000		6,750,000	3,965,028,000
3. Survey cost at Detailed Design Stage/ Chi phí khảo sát bước TKKT			-	15,310,394,754
<b>Total/ Cộng ((1)+(2)+(3))</b>	<b>93,716,000</b>	<b>280,000,000</b>	<b>27,850,000</b>	<b>26,236,422,754</b>
Advance Payment (10% of JPY portion and 25% of VND portion)/ Thanh toán Tạm ứng (10% phần tiền Yên Nhật và 25% phần tiền VND)	9,371,600	70,000,000	2,785,000	6,559,105,689
<b>Advance Payment equivalent to VND/ Thanh toán tạm ứng quy đổi ra VND</b>		<b>1,751,827,336</b>	<b>499,796,100</b>	<b>6,559,105,689</b>
<b>Share of Advance Payment/ Tỷ lệ phân chia tạm ứng (%)</b>		<b>19.88</b>	<b>5.67</b>	<b>74.44</b>

Exchange rate: 1 JPY= 179.46 VND