

RFP For Annual Maintenance Contract For Server, Desktops, Laptops, Printers, Scanners, Fax Machine, UPS & Other IT Items

VOLUME-II

DRAFT IT ANNUAL MAINTENANCE CONTRACT AGREEMENT (Schedule-2)



NAYA RAIPUR DEVELOPMENT AUTHORITY

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SCHEDULE 2 IT AMC AGREEMENT

Appointment of IT AMC Agency for Naya Raipur Development Offices in Naya Raipur

AGREEMENT No. _____

This AGREEMENT (hereinafter called the “**IT AMC Agency Agreement**” or “**Information Technology Equipment Annual Maintenance Contract**”) is made on the _____ day of the month of 2015, between, on the one hand, Naya Raipur Development Authority which is a special area development authority established by GoCG under the Chhattisgarh Nagar Tatha Gram Nivesh Adhiniyam, 1973 for development and administration of Naya Raipur (hereinafter called the “**Authority**”) which expression shall include their respective successors and permitted assigns, unless the context otherwise requires) and, on the other hand, M/s who will act as a IT AMC Agency (hereinafter called the “**IT AMC Agency**” or “**Information Technology Equipment Annual Maintenance Contractor**”) which expression shall include their respective successors and permitted assigns.

WHEREAS

- (A) The Authority vide its Request for Proposal for selection of an IT AMC Agency who shall be responsible for undertake comprehensive annual maintenance contract of its IT infrastructure which include Server, Desktops, Laptops, Printers, Scanners, Fax Machine, UPS & Other IT Items for a period of 1 (one) year, (the “**Assignment**”), in conformity with the Scope of Work as provided in RFP of the Assignment;
- (B) The IT AMC Agency submitted its proposals for the aforesaid work, whereby the IT AMC Agency represented to the Authority that it had the required professional skills, and in the said proposals the IT AMC Agency also agreed to provide the Services to the Authority on the terms and conditions as set forth in the RFP and this Agreement; and
- (C) The Authority, on acceptance of the aforesaid proposals of the IT AMC Agency, awarded the Assignment to the IT AMC Agency vide its Letter of Award dated _____ (the “**LOA**”); and
- (D) in pursuance of the LOA, the parties have agreed to enter into this Agreement.

NOW, THEREFORE, the parties hereto hereby agree as follows:

1. GENERAL

1.1 Definitions and Interpretation

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

- 1. “**Agreement**” means this Agreement, together with all the Annexes;
- 2. “**Agreement Value**” shall have the meaning set forth in Clause 6.1.1;
- 3. “**Applicable Laws**” means the laws and any other instruments having the force of law in India as they may be issued and in force from time to time;
- 4. “**Confidential Information**” shall have the meaning set forth in Clause 3.3;
- 5. “**Conflict of Interest**” shall have the meaning set forth in Clause 3.2 read with the provisions of RFP;
- 6. “**Consultancy Period**” shall have the meaning set forth in Clause 6.1.2;
- 7. “**Dispute**” shall have the meaning set forth in Clause 9.2.1;

8. **“Effective Date”** means the date on which this Agreement comes into force and effect pursuant to Clause 2.1;
9. **“Government”** means the Government of India;
10. **“INR, Re. or Rs.”** means Indian Rupees;
11. **“Party”** means the Authority or the IT AMC Agency, as the case may be, and Parties means both of them;
12. **“Performance Security”** shall have the meaning set forth in Clause 3.4.5;
13. **“Personnel”** means persons hired by the IT AMC Agency as employees and assigned to the performance of the Services or any part thereof;
14. **“RFP”** means the Request for Proposal document in response to which the IT AMC Agency proposal for providing Services was accepted;
15. **“Services”** means the work to be performed by the IT AMC Agency pursuant to this Agreement, as described in the Scope of Services hereto;
16. **“Third Party”** means any person or entity other than the Government, the Authority, or IT AMC Agency.

All terms and words not defined herein shall, unless the context otherwise requires, have the meaning assigned to them in the RFP. Schedule-2: Forms of Agreement.

- 1.1.2** The following documents along with all addenda issued thereto shall be deemed to form and be read and construed as integral parts of this Agreement and in case of any contradiction between or among them the priority in which a document would prevail over another would be as laid down below beginning from the highest priority to the lowest priority:
- a) Agreement;
 - b) Annexes of Agreement;
 - c) RFP; and
 - d) Letter of Award.

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 Authority and the IT AMC Agency. The IT AMC Agency shall, subject to this Agreement, have complete charge of Personnel performing the Services and shall be fully responsible for the Services performed by them or on their behalf hereunder.

1.3 Rights and obligations

The mutual rights and obligations of the Authority and the IT AMC Agency shall be as set forth in the Agreement, in particular:

- (a) the IT AMC Agency shall carry out the Services in accordance with the provisions of the Agreement; and
- (b) The Authority shall make payments to the IT AMC Agency in accordance with the provisions of the Agreement.

1.4 Governing law and jurisdiction

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

1.5 Language

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

1.6 Table of contents and headings

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

1.7 Notices

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

- (a) in the case of the IT AMC Agency, be given by facsimile or e-mail and by letter delivered by hand to the address given and marked for attention of the IT AMC Agency's Representative set out below in Clause 1.9 or to such other person as the IT AMC Agency may from time to time designate by notice to the Authority; provided that notices or other communications to be given to an address outside Raipur may, if they are subsequently confirmed by sending a copy thereof by registered acknowledgement due, air mail or by courier, be sent by facsimile or e-mail to the number as the IT AMC Agency may from time to time specify by notice to the Authority;
- (b) in the case of the Authority, be given by facsimile or e-mail and by letter delivered by hand and be addressed to the Authority with a copy delivered to the Authority Representative set out below in Clause 1.9 or to such other person as the Authority may from time to time designate by notice to the IT AMC Agency; provided that if the IT AMC Agency does not have an office in Raipur it may send such notice by facsimile or e-mail and by registered acknowledgement due, air mail or by courier; and
- (c) any notice or communication by a Party to the other Party, given in accordance herewith, shall be deemed to have been delivered when in the normal course of post it ought to have been delivered and in all other cases, it shall be deemed to have been delivered on the actual date and time of delivery; provided that in the case of facsimile or e-mail, it shall be deemed to have been delivered on the working days following the date of its delivery.

1.8 Location

The Services shall be performed at the offices of NRDA in accordance with the provisions of RFP and at such locations as are incidental thereto, including the offices of the IT AMC Agency.

1.9 Authorised Representatives

- 1.9.1** Any action required or permitted to be taken, and any document required or permitted to be executed, under this Agreement by the Authority or the IT AMC Agency, as the case may be, may be taken or executed by the officials specified in this Clause 1.9.1

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

Chief Executive Officer

Naya Raipur Development Authority, 1st Floor Utility Block Capital
Complex Sector-19, Naya Raipur 492002, Chhattisgarh
Phone-0771-2511500
Fax-0771-2511400
Email: ceo@nayaraipur.com

- 1.9.3** The IT AMC Agency may designate one of its employees as its Representative. Unless otherwise notified, the IT AMC Agency's Representative shall be:

Name & Designation: -----
IT AMC Agency Name & Address -----
Tel: -----
Mobile: -----
Fax: -----
Email: -----

1.11 Taxes and duties

Unless otherwise specified in the Agreement, the IT AMC Agency shall pay all such taxes, duties, fees and other impositions as may be levied under the Applicable Laws and the Authority shall perform such duties in regard to the deduction of such taxes as may be lawfully imposed on it.

2. COMMENCEMENT, COMPLETION AND TERMINATION OF AGREEMENT

2.1 Effectiveness of Agreement

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

2.2 Commencement of Services

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

2.3 Termination of Agreement for failure to commence Services

If the IT AMC Agency does not commence the services within the period specified in Clause 2.2 above, the Authority may, by not less than 2 (two) weeks' notice to the IT AMC Agency, declare this Agreement to be null and void, and in the event of such a declaration, the Bid Security of the IT AMC Agency shall stand forfeited.

2.4 Expiration of Agreement

Unless terminated earlier pursuant to Clauses 2.3 or 2.9 hereof, this Agreement shall, unless extended by the Parties by mutual consent, expire at the end of the Assignment Period as defined in Clause 6.1.2 from the Effective Date.

2.5 Entire Agreement

- 2.5.1** This Agreement and the Annexes together constitute a complete and exclusive statement of the terms of the agreement between the Parties on the subject hereof, and no amendment or modification hereto shall be valid and effective unless such modification or amendment is agreed to in writing by the Parties and duly executed by persons especially empowered in this behalf by the respective Parties. All prior written or oral understandings, offers or other

communications of every kind pertaining to this Agreement are abrogated and withdrawn; provided, however, that the obligations of the IT AMC Agency arising out of the provisions of the RFP shall continue to subsist and shall be deemed to form part of this Agreement.

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

2.6 Modification of Agreement

Modification of the terms and conditions of this Agreement, including any modification of the scope of the Services, may only be made by written agreement between the Parties.

2.7 Force Majeure

2.7.1 Definition

- a. For the purposes of this Agreement, “**Force Majeure**” means an event which is beyond the reasonable control of a Party, and which makes a Party’s performance of its obligations hereunder impossible or so impractical as reasonably to be considered impossible in the circumstances, and includes, but is not limited to, war, riots, civil disorder, earthquake, fire, explosion, storm, flood or other adverse weather conditions, 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 agents or employees, nor (ii) any event which a diligent Party could reasonably have been expected to both (A) take into account at the time of the conclusion of this Agreement, and (B) avoid or overcome in the carrying out of its obligations hereunder.
- c. Force Majeure shall not include insufficiency of funds or failure to make any payment required hereunder.

2.7.2 No breach of Agreement

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

2.7.3 Measures to be taken

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

2.7.4 Extension of time

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

2.7.5 Payments

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

2.7.6 Consultation

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

2.8 Suspension of Agreement

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

2.9 Termination of Agreement

2.9.1 By the Authority

The Authority may, by not less than 60 (sixty) days' written notice of termination to the IT AMC Agency, such notice to be given after the occurrence of any of the events specified in this Clause 2.9.1, terminate this Agreement if:

- a. the IT AMC Agency fails to remedy any breach hereof or any failure in the performance of its obligations hereunder, as specified in a notice of suspension pursuant to Clause 2.8 hereinabove, within 30 (thirty) days of receipt of such notice of suspension or within such further period as the Authority may have subsequently granted in writing;
- b. the IT AMC Agency fails to comply with any final decision reached as a result of arbitration proceedings pursuant to Clause 9 hereof;
- c. any document, information, data or statement submitted by the IT AMC Agency in its Proposals, based on which the IT AMC Agency was considered eligible or successful, is found to be false, incorrect or misleading;
- d. as the result of Force Majeure, the IT AMC Agency is unable to perform a material portion of the Assignment for a period of not less than 30 (thirty) days; or
- e. the Authority, in its sole discretion and for any reason whatsoever, decides to terminate this Agreement;

2.9.2 By the IT AMC AGENCY

The IT AMC AGENCY may, by not less than 60 (sixty) days' written notice to the Authority, such notice to be given after the occurrence of any of the events specified in this Clause 2.9.2, terminate this Agreement if:

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

2.9.3 Cessation of rights and obligations

Upon termination of this Agreement pursuant to Clauses 2.3 or 2.9 hereof, or upon expiration of this Agreement pursuant to Clause 2.4 hereof, all rights and obligations of the Parties hereunder shall cease, except (i) such rights and obligations as may have accrued on the date of termination or expiration, or which expressly survive such Termination; (ii) the obligation of confidentiality set forth in Clause 3.3 hereof; and (iv) any right or remedy which a Party may have under this Agreement or the Applicable Law.

2.9.4 Cessation of Services

Upon termination of this Agreement by notice of either Party to the other pursuant to Clauses 2.9.1 or 2.9.2 hereof, the IT AMC Agency 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.

2.9.5 Payment upon Termination

Upon termination of this Agreement pursuant to Clauses 2.9.1 or 2.9.2 hereof, the Authority shall make the following payments to the IT AMC Agency (after offsetting against these payments any amount that may be due from the IT AMC Agency to the Authority):

- i. remuneration pursuant to Clause 6 hereof for services satisfactorily performed prior to the date of termination;
- ii. except in the case of termination pursuant to sub-clauses (a) through (c) of Clause 2.9.1 hereof, reimbursement of any reasonable cost incidental to the prompt and orderly termination of the Agreement.

2.9.6 Disputes about Events of Termination

If either Party disputes whether an event specified in Clause 2.9.1 or in Clause 2.9.2 hereof has occurred, such Party may, within 30 (thirty) days after receipt of notice of termination from the other Party, refer the matter to arbitration pursuant to Clause 9 hereof, and this Agreement shall not be terminated on account of such event except in accordance with the terms of any resulting arbitral award.

3. OBLIGATIONS OF THE IT AMC AGENCY

3.1 General

3.1.1 Standards of Performance

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

3.1.2 Scope of Services

The scope of services to be performed by the IT AMC Agency is specified at Annex-1 of this Agreement.

3.1.3 Applicable Laws

The IT AMC Agency shall perform the Services in accordance with the Applicable Laws and shall take all practicable steps to ensure that all Personnel of the IT AMC Agency comply with the Applicable Laws.

3.2 Conflict of Interest

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

3.2.2 Prohibition of conflicting activities

The IT AMC Agency nor its Personnel shall engage, either directly or indirectly, in any of the following activities:

- a. during the term of this Agreement, any business or professional activities which would conflict with the activities assigned to them under this Agreement;
- b. after the termination of this Agreement, such other activities as may be specified in the Agreement; or
- c. at any time, such other activities as have been specified in the RFP as Conflict of Interest.

3.2.3 IT AMC Agency not to benefit from commissions discounts, etc.

The remuneration of the IT AMC Agency pursuant to Clause 6 hereof shall constitute the IT AMC Agency's sole remuneration in connection with this Agreement or the Services and the IT AMC Agency shall not accept for its own benefit any trade commission, discount or similar payment in connection with activities pursuant to this Agreement or

to the services or in the discharge of its obligations hereunder, and the IT AMC Agency shall use its best efforts to ensure that any of its Personnel shall not receive any such additional remuneration.

3.2.4 The IT AMC Agency and its Personnel shall observe the highest standards of ethics and shall not have engaged in and shall not hereafter engage in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice (collectively the "**Prohibited Practices**"). Notwithstanding anything to the contrary contained in this Agreement, the

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

3.2.5 Without prejudice to the rights of the Authority under Clause 3.2.4 above and the other rights and remedies which the Authority may have under this Agreement, if the IT AMC Agency is found by the Authority to have directly or indirectly or through an agent, engaged or indulged in any Prohibited Practices, during the Selection Process or before or after the execution of this Agreement, the IT AMC Agency shall not be eligible to participate in any tender or RFP issued during a period of 2 (two) years from the date the IT AMC Agency is found by the Authority to have directly or indirectly or through an agent, engaged or indulged in any Prohibited Practices.

3.2.6 For the purposes of Clauses 3.2.4 and 3.2.5, the following terms shall have the meaning hereinafter respectively assigned to them:

- a. **“corrupt practice”** means the offering, giving, receiving or soliciting, directly or indirectly, of anything of value to influence the actions of any person connected with the Selection Process (for removal of doubt, offering of employment or employing or engaging in any manner whatsoever, directly or indirectly, any official of the Authority who is or has been associated in any manner, directly or indirectly with Selection Process or LOA or dealing with matters concerning the Agreement before or after the execution thereof, at any time prior to the expiry of one year from the date such official resigns or retires from or otherwise ceases to be in the service of the Authority, shall be deemed to constitute influencing the actions of a person connected with the Selection Process); or (ii) engaging in any manner whatsoever, whether during the Selection Process or after the issue of LOA or after the execution of the Agreement, as the case may be, any person in respect of any matter relating to the Project or the LOA or the Agreement, who at any time has been or is a legal, financial or technical adviser the Authority in relation to any matter concerning the Assignment;
- b. **“fraudulent practice”** means a misrepresentation or omission of facts or suppression of facts or disclosure of incomplete facts, in order to influence the Selection Process;
- c. **“coercive practice”** means impairing or harming, or threatening to impair or harm, directly or indirectly, any person or property to influence any person's participation or action in the Selection Process or the exercise of its rights or performance of its obligations by the Authority under this Agreement;
- d. **“undesirable practice”** means (i) establishing contact with any person connected with or employed or engaged by the Authority with the objective of canvassing, lobbying or in any manner influencing or attempting to influence the Selection Process; or (ii) having a Conflict of Interest; and
- e. **“restrictive practice”** means forming a cartel or arriving at any understanding or arrangement among Applicants with the objective of restricting or manipulating a full and fair competition in the Selection Process.

3.3 Confidentiality

The IT AMC Agency, and its Personnel of either of them shall not, either during the term or within one years after the expiration or termination of this Agreement disclose any proprietary information, including information relating to reports, data, drawings, design software or other material, whether written or oral, in electronic or magnetic format, and the contents thereof; and any reports, digests or summaries created or derived from any of the foregoing that is provided by the Authority to the IT AMC Agency, its Personnel; any information provided by or relating to the Authority, its technology, technical processes, business affairs or finances or any information relating to the Authority's employees, officers or other professionals or suppliers, customers, or contractors of the Authority; and any other information which the IT AMC Agency is under an obligation to keep confidential in relation to the Assignment, the Services or this Agreement ("**Confidential Information**"), without the prior written consent of the Authority.

Notwithstanding the aforesaid, the IT AMC Agency, its Personnel of either of them may disclose Confidential Information to the extent that such Confidential Information:

- i. was in the public domain prior to its delivery to the IT AMC Agency, its Personnel of either of them or becomes a part of the public knowledge from a source other than the IT AMC Agency, and the Personnel of either of them;
- ii. was obtained from a third party with no known duty to maintain its confidentiality;
- iii. is required to be disclosed by Applicable Laws or judicial or administrative or arbitral process or by any governmental instrumentalities, provided that for any such disclosure, the IT AMC Agency, its Personnel of either of them shall give the Authority, prompt written notice, and use reasonable efforts to ensure that such disclosure is accorded confidential treatment; and

3.4 Liability of the IT AMC Agency

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

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

3.4.3 The Parties hereto agree that in case of negligence or willful misconduct on the part of the IT AMC Agency in carrying out the Services, the IT AMC Agency, with respect to damage caused to the Authority's property, shall not be liable to the Authority:

- i. for any indirect or consequential loss or damage; and
- ii. for any direct loss or damage that exceeds the Agreement Value set forth in Clause 6.1.1 of this Agreement.

3.4.4 This limitation of liability specified in Clause 3.4.3 shall not affect the IT AMC Agency's liability, if any, for damage to Third Parties caused by the IT AMC Agency in carrying out the services subject, however to a limit equal to the Agreement Value.

3.4.5. PERFORMANCE SECURITY

The IT AMC Agency shall for the performance of its obligation under this Agreement required to furnish at the time of signing of this Agreement a Performance Security (the "**Performance Security**") in the form of a demand draft/Pay order drawn on any Scheduled Nationalised Bank

in India in favour of CEO, Naya Raipur Development Authority payable at Raipur/ Naya Raipur of **Rs. 25,000 (twenty five thousand)**. The IT AMC Agency at its sole discretion may request Authority to consider its Bid Security submitted in response to the RFP as its partial payment of Performance Security and accordingly furnish an additional demand draft/Pay order drawn on any Scheduled Nationalised Bank in India in favour of CEO, Naya Raipur Development Authority ,payable at Raipur/ Naya Raipur of **Rs. 15,000 (fifteen thousand)** towards the full payment of the Performance Security as specified in clause 3.4.5.

4. IT AMC AGENCY'S PERSONNEL

4.1 General

The IT AMC Agency shall employ and provide such qualified and experienced Personnel as may be required to carry out the services.

4.2 Deployment of Personnel

The designations, names and the estimated periods of engagement in carrying out the services by IT AMC Agency's Personnel are described in Annex-3 of this Agreement.

4.3 Approval of Personnel

The Professional Personnel listed in Annex-3 of the Agreement are hereby approved by the Authority. No other Professional Personnel shall be engaged without prior approval of the Authority.

5. OBLIGATIONS OF THE AUTHORITY

5.1 Assistance

Unless otherwise specified in the Agreement, the Authority shall make best efforts to ensure to provide the IT AMC Agency, its Personnel with work permits and such other documents as may be necessary to enable the IT AMC Agency, Personnel to perform the services and issue to officials, and representatives of the Authority all such instructions as may be necessary or appropriate for the prompt and effective implementation of the Assignment.

5.2 Changes in Applicable Law

If, after the date of this Agreement, there is any change in the Applicable Laws with respect to taxes and duties as specified in Clause 6.1.1, then the such taxes & duties payable to the IT AMC Agency under this Agreement shall be increased or decreased accordingly.

5.3 Payment

In consideration of the services performed by the IT AMC Agency under this Agreement, the Authority shall make to the IT AMC Agency such payments and in such manner as is provided in Clause 6 of this Agreement.

6. PAYMENT TO THE IT AMC AGENCY

6.1 Cost Estimates and Agreement Value

6.1.1 An abstract of the cost of the Assignment payable to the IT AMC Agency is set forth in Annex- 2 of the Agreement.

6.1.2 Except as may be otherwise agreed under Clause 2.6, the payments under this Agreement shall not exceed the agreement value specified herein (the "**Agreement Value**"). The Parties agree that the Agreement Value is Rs. (Rupees In words). The total duration of Consultancy shall be 12 (twelve month) month from the Effective Date this Agreement.

6.2 Currency of payment

All payments shall be made in Indian Rupees.

6.3 Mode of billing and payment

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

- a) The IT AMC Agency shall be paid for its services on monthly basis of Agreement Value;
- b) The Authority shall cause the payment due to the IT AMC Agency to be made within 30 (thirty) days after the receipt by the Authority of duly completed bills with necessary particulars (the “**Due Date**”).
- c) Any amount which the Authority has paid or caused to be paid in excess of the amounts actually payable in accordance with the provisions of this Agreement shall be reimbursed by the IT AMC Agency to the Authority within 30 (thirty) days after receipt by the IT AMC Agency of notice thereof. Any such claim by the Authority for reimbursement must be made within 1 (one) year.
- d) Performance Security furnished by IT AMC Agency as specified in clause 3.4.5 of this Agreement shall be released only after 1(one) month after the completion of Consultancy Period as defined in clause 6.1.2.

7. PENALTIES

7.1 Performance Security

The Authority shall retain Performance Security (the “**Performance Security**”) to be appropriated against breach of this Agreement, and appropriation shall be made according to the provision of clause 7.2.

7.2 Penalty for deficiency in Services

In the case of significant deficiencies in services causing adverse effect on the Assignment or on the reputation of the Authority, other penal action including debaring for a specified period may also be initiated as per policy of the Authority. The IT AMC Agency shall deemed to be at breach of this Agreement and shall be liable for Penalty in following manner:

7.2.1 In case, the Service Engineer is unable to report to NRDA office due to any reason, IT AMC Agency must provide a substitute of that Service Engineer, failing to do so a penalty of Rs. 500 (five hundred) per day will be levied on the IT AMC Agency for a maximum period of 1 (one) week or till the time the Service Engineer or substitute Engineer reports to the office of the Authority as the case may be whichever is earlier.

7.2.2 In case, the Service Engineer or substitute Engineer do not report even after 1 (one) week a penalty of Rs. 1000 (one thousand) per day will be levied on the IT AMC Agency for a maximum period of 1 (one) week. Any delay beyond 14 (fourteen) days as specified in clause 7.2.1 & 7.2.2 shall be treated as breach of this Agreement and 10% of the Performance Security of IT AMC Agency shall be appropriated in such case and where the delay is beyond 30(thirty) days the entire Performance Security shall be forfeited and Agreement shall be deemed cancelled.

7.2.3 In case of break-down of equipment’s, the IT AMC Agency should attend the complaints within 24 hours and rectify the defects to put the equipment’s in working condition and if

additional time is required for such repairs then IT AMC Agency shall return the original repaired equipment in working condition after 7 days, the penalty of Rs. 500 (five hundred) per day will be levied till the time standby equipment/ original repaired equipment is returned in working condition for a maximum period of 30 days. Any delay beyond 30 (thirty) days as specified in clause 7.2.1 & 7.2.2 shall be treated as breach of this Agreement and 10% of the Performance Security of IT AMC Agency shall be appropriated in such case and where the delay is beyond 30(thirty) days the entire Performance Security shall be forfeited and Agreement shall be deemed cancelled.

7.2.4 In case any equipment which need to be taken out of the premises of the Authority's office a written request shall be forwarded from IT AMC Agency for this purpose. After requisite permission from Authority IT AMC Agency may take such equipment out of Authority office for repair purpose. In such case the equipment shall be repaired and re-installed at Authority office within 1 (One) week. In case of delay in repairing and re-installing of equipment at Authority office beyond 1 (one) week a penalty of Rs. 500 (five hundred) per day shall be levied on the IT AMC Agency, subject to maximum period of 14 days. Any delay beyond 14 (fourteen) days as specified in clause 7.2.1 & 7.2.2 shall be treated as breach of this Agreement and 10% of the Performance Security of IT AMC Agency shall be appropriated in such case and where the delay is beyond 30(thirty) days the entire Performance Security shall be forfeited and Agreement shall be deemed cancelled.

7.2.5 Upon forfeited/appropriation from the Performance Security as per clause 7.2.2, 7.2.3, 7.2.4, the IT AMC Agency shall, within 30 (thirty) days replenish the Performance Security, in case of partial appropriation, to its original level before such appropriation of and in case of forfeited/appropriation of entire Performance Security to provide a fresh Performance Security and the IT AMC Agency shall, within the time so granted replenish or furnish to the Authority a fresh Performance Security as aforesaid, failing which the Authority shall be entitled to terminate this Agreement.

8. FAIRNESS AND GOOD FAITH

8.1 Good Faith

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

8.2 Operation of the Agreement

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

9. SETTLEMENT OF DISPUTES

9.1 Amicable settlement

The Parties shall use their best efforts to settle amicably all disputes arising out of or in

connection with this Agreement or the interpretation thereof.

9.2 Dispute resolution

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

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

9.3 Conciliation

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

9.4 Arbitration

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

9.4.2 There shall be a sole arbitrator whose appointment shall be made in accordance with the Rules.

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

9.4.4 The IT AMC Agency and the Authority agree that an Award may be enforced against the IT AMC Agency and/or the Authority, as the case may be, and their respective assets wherever situated.

9.4.5 This Agreement and the rights and obligations of the Parties shall remain in full force and effect, pending the Award in any arbitration proceedings hereunder.

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

SIGNED, SEALED AND DELIVERED		SIGNED, SEALED AND DELIVERED	
For and on behalf of			
IT AMC Agency:		By the General Manager(NRDA), For Chief Executive Officer, Naya Raipur Development Authority	
(Signature)		(Signature)	
(Name)		(Name)	
(Designation)		(Designation)	
(Address)		(Address)	
(Fax No.)		(Fax No.)	
Countersigned and Accepted for and on behalf of the NRDA by: (Signature)			
In the presence			
1.			
2.			

ANNEX-1-SCOPE OF SERVICES
(Refer Clause 3.1.2)

**Annex-2- COST OF SERVICE
(Reproduce Form 1 of Financial Proposal)**

Annex-3- DEPLOYMENT OF PERSONNEL
(Refer Clause 4.2)

Sr. No.	Name of Personal	Designation	Qualification
1			