

**Selection of Technical Consultant  
For Planning and Design of Physical  
Infrastructure including Roads for Layer-II of  
Naya Raipur, Chhattisgarh**

Tender No. 2437/CEP/NRDA/2014/17

**SEPTEMBER 2014**

**VOLUME -II**



**NAYA RAIPUR DEVELOPMENT AUTHORITY**

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Sector-19, Naya Raipur (C.G.)

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**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:

- a. “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;
- b. “Agreement” means this Agreement, together with all the Annexure;
- c. “Consultancy Fee” shall have the meaning set forth in Clause 6.2;
- d. “Confidential Information” shall have the meaning set forth in Clause 3.3;
- e. “Conflict of Interest” shall have the meaning set forth in Clause 3.2 read with the provisions of the Agreement;
- f. “Dispute” shall have the meaning set forth in Clause 10.2.1;
- g. “Effective Date” means the date on which this Agreement comes into force and effect pursuant to Clause 2.1;
- h. “Government” means the Government of Chhattisgarh; or Govt. of India as the case may be.
- i. “Member”, in case the Consultant consists of a joint venture or consortium of more than one entity, means any of these entities, and “Members” means all of these entities;
- j. “Personnel” means hired by the Consultant or by any Sub- Consultant as employees and assigned to the performance of the Services or any part thereof;
- k. “Party” means the Authority or the Consultant, as the case may be, and Parties means both of them;
- l. “Services” means the work to be performed by the Consultant pursuant to this Agreement, as described in the Terms of Reference hereto;
- m. “RFP” means the Request for Proposal document in response to which the Consultant’s proposal for providing Services was accepted;
- n. “Sub-Consultant” means any entity to which the Consultant subcontracts any part of the Services; and
- o. “Third Party” means any person or entity other than the Government, the Authority, the Consultant or a Sub-Consultant.
- p. “Authority” means CEO,NRDA, Naya Raipur
- q. “PMC” means Project Management consultant appointed by NRDA, Naya Raipur.

All terms and words not defined herein shall, unless the context otherwise requires, have the meaning assigned to them in the RFP.

1.1.2. The following documents along with all addenda issued thereto shall be deemed to form and be read and construed as integral part of this Agreement and in case of any contradiction between or among them the priority in which a document would prevail over other would be as laid down below beginning from the highest priority to the lowest priority:

- a. Agreement;
- b. Annexures 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 Consultant. The Consultant 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 Consultant shall be as set forth in the Agreement; in particular:

- a. the Consultant shall carry out the Services in accordance with the provisions of the Agreement; and
- b. the Authority shall make payments to the Consultant 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 are 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 Consultant, be given by facsimile and by letter delivered by hand to the address given and marked for attention of the Consultant's Representative set out below in Clause 1.10 or to such other person as the Consultant may from time to time designate by notice to the Authority; provided that notices or other communications to be given to an address outside Faridabad [*name of the place where the Consultant has its registered office*] may, if they are subsequently confirmed by sending a copy thereof by registered acknowledgement due, air mail or by courier, be sent by facsimile Consultant may from time to time designate by notice to the Authority;

- b. in the case of the Authority, be given by facsimile 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 1.10 or to such other person as the Authority may from time to time designate by notice to the Consultant; provided that if the Consultant does not have an office in Raipur it may send such notice by facsimile 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.

**1.8. Location**

The Services shall be performed at the site of the Project in accordance with the provisions of RFP and at such locations as are incidental thereto, including the offices of the Consultant.

**1.9. Not Used**

**1.10. Authorized representatives**

- 1.10.1. 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 Consultant, as the case may be, may be taken or executed by the officials specified in this Clause 1.10.
- 1.10.2. The Authority may, from time to time, designate one of its officials as the Authority Representative. Unless otherwise notified, the Authority Representative shall be:

<b>ATTN. OF:</b>	<b>Amit Katariya</b>
DESIGNATION	Chief Executive Officer
ADDRESS :	Naya Raipur Development Authority Mantralaya, Near Mahanadi Bhavan, Capital Complex, Sector-19, Naya Raipur 492 002, Chhattisgarh
PHONE	+ 91 771 2511500
WEBSITE :	www.nayaraipur.com
E-MAIL ADDRESS:	ceo@nayaraipur.com

The Consultant may designate one of its employees as Consultant's Representative. Unless otherwise notified, the Consultant's Representative shall be:

**1.11. Taxes and duties**

Unless otherwise specified in the Agreement, the Consultant shall pay all 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 Consultant shall commence the Services and activate the local office and deploy the technical support within a period of 45 (forty five ) days from the date of signing the agreement. , unless otherwise agreed by the Parties.

**2.3. Termination of Agreement for failure to commence Services**

If the Consultant does not commence the Services within the period specified in Clause 2.2 above, the Authority may terminate the agreement by issuing not less than 2 (two) weeks' notice to the Consultant and declare this Agreement to be null and void.

**2.4. Expiration of Agreement**

Unless terminated earlier pursuant to Clause 2.9 hereof, this Agreement shall expire when the Services have been completed and a period of 90 (ninety) days has elapsed after all payments due under this Agreement, have been made.

**2.5. Entire Agreement**

2.5.1. This Agreement and the Annexures 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 Consultant arising out of the provisions of the RFP shall continue to subsist and shall be deemed as 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**

2.6.1. Modification of the terms and conditions of this Agreement, may only be made by written agreement between the Parties. However, each Party shall give due consideration to any proposals for modification made by the other Party.

2.6.2. However, modification in the Terms of Services may be made by NRDA at any stage by giving 30 days prior notice to the consultant. In such a case the fees may be increased or decreased as the case may be on pro rata basis.

2.6.3. In case of delay caused due to any reasons except due to the default of consultant, the period of service agreement may be extended with or without additional fees for which decision of the Authority shall be final and binding on all 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, strikes, lockouts or other industrial action (except where such strikes, lockouts or other industrial action are within the power of the Party invoking Force Majeure to prevent), confiscation or any other action by government agencies.

- b. Force Majeure shall not include (i) any event which is caused by the negligence or intentional action of a Party or such Party's Sub- Consultant 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 Services as a result of an event of Force Majeure, the Consultant 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 Consultant has, as the result of an event of Force Majeure, become unable to perform a material portion of the Services, the Parties shall consult with each other with a view to agreeing on appropriate measures to be taken in the circumstances.

**2.8. Suspension of Agreement**

The Authority may, by written notice of suspension to the Consultant, suspend all payments to the Consultant hereunder if the Consultant 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 Services; provided that such notice of suspension (i) shall specify the nature of the breach or failure, and (ii) shall provide an opportunity to the Consultant to remedy such breach or failure within a period not exceeding thirty (30) days after receipt by the Consultant of such notice of suspension.

**2.9. Termination of Agreement**

**2.9.1. By the Authority**

The Authority may, by not less than 30 (thirty) days' written notice of termination to the Consultant, 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 Consultant 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 Consultant becomes insolvent or bankrupt or enters into any agreement with its creditors for relief of debt or take advantage of any law for the benefit of debtors or goes into liquidation or receivership whether compulsory or voluntary;
- c. the Consultant fails to comply with any final decision reached as a result of arbitration proceedings pursuant to Clause 10 hereof;
- d. the Consultant submits to the Authority a statement which has a material effect on the rights, obligations or interests of the Authority and which the Consultant knows to be false;
- e. any document, information, data or statement submitted by the Consultant in its Proposals, based on which the Consultant was considered eligible or successful, is found to be false, incorrect or misleading;
- f. The Consultant fails to perform the obligation under this agreement to the satisfaction of the Authority;
- g. as the result of Force Majeure, the Consultant is unable to perform a material portion of the Services for a period of not less than 60 (sixty) days; or
- h. the Authority, in its sole discretion and for any reason whatsoever, decides to terminate this Agreement.

**2.9.2. By the Consultant**

The Consultant may, by not less than 30 (thirty) 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 Consultant pursuant to this Agreement and not subject to dispute pursuant to Clause 10 hereof within 45 (forty-five) days after receiving written notice from the Consultant 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 forty-five (45) days (or such longer period as the Consultant may have subsequently granted in writing) following the receipt by the Authority of the Consultant's notice specifying such breach;
- c. as the result of Force Majeure, the Consultant is unable to perform a material portion of the Services for a period of not less than 60 (sixty) days; or
- d. The Authority fails to comply with any final decision reached as a result of arbitration pursuant to Clause 10 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, (ii) the obligation of confidentiality set forth in Clause 3.3 hereof, (iii) the Consultant' obligation to permit inspection, copying and auditing of its accounts and records , and 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 Consultant shall, immediately upon dispatch or receipt of such notice, take all necessary steps to bring the Services to a close in a prompt and orderly manner and shall make every reasonable effort to keep expenditures for this purpose to a minimum. With respect to documents prepared by the Consultant and equipment and materials furnished by the Authority, the Consultant shall proceed as provided respectively by Clauses 3.9 or 3.10 hereof.

**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 Consultant (after offsetting against these payments any amount that may be due from the Consultant to the Authority):

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



prompt and orderly termination of the Agreement including the cost of the return travel of the Consultant's personnel.

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 10 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 CONSULTANT**

**3.1. General**

3.1.1. Standards of Performance

The Consultant shall perform the Services 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 Consultant 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 with Sub-Consultants or Third Parties.

3.1.2. Terms of Reference

The Terms of Services to be performed by the Consultant are specified in the Terms of Services (the "TOR") at Volume1 of this Agreement. The Consultant shall provide the deliverables specified therein in conformity with the time schedule stated therein.

3.1.3. Applicable Laws

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

**3.2. Conflict of Interest**

3.2.1. The Consultant shall not have a Conflict of Interest and any breach hereof shall constitute a breach of the Agreement. (Refer Annexure )

3.2.2. Prohibition of conflicting activities

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

- (a) during the term of this 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. Consultant not to benefit from commissions discounts, etc.
- The remuneration of the Consultant pursuant to Clause 6 hereof shall constitute the Consultant' sole remuneration in connection with this Agreement or the Services and the Consultant 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 Consultant shall use its best efforts to ensure that any Sub-Consultant, as well as the Personnel and agents of either of them, similarly shall not receive any such additional remuneration.
- 3.2.4. The Consultant and its Personnel shall observe the highest standards of ethics and have not 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 Consultant, without being liable in any manner whatsoever to the Consultant, if it determines that the Consultant 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, 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 3.2.5 above and the other rights and remedies which the Authority may have under this Agreement, if the Consultant 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 Consultant shall not be eligible to participate in any tender or RFP issued during a period of 2 (two) years from the date the Consultant 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 3.2.5 and 3.2.6, 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 Project;

- (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 Consultant, its Sub-Consultants and the Personnel of either of them shall not, either during the term or within two 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 Consultant, its Sub-Consultants and the 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 Consultant is under an obligation to keep confidential in relation to the Project, the Services or this Agreement (“**Confidential Information**”), without the prior written consent of the Authority.

Notwithstanding the aforesaid, the Consultant, its Sub-Consultants and the 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 Consultant, its Sub- Consultants and the Personnel of either of them or becomes a part of the public knowledge from a source other than the Consultant, its Sub- Consultants 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 Law or judicial or administrative or arbitral process or by any Governmental Instrumentalities, provided that for any such disclosure, the Consultant, its Sub-Consultants and the 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;
- (iv) is provided to the professional advisers, agents, auditors or representatives of the Consultant or its Sub-Consultants or Personnel of either of them, as is reasonable under the circumstances; provided, however, that the Consultant or its Sub-Consultants or Personnel of either of them, as the case may be, shall require their professional advisers, agents, auditors or its representatives, to undertake in writing to keep such Confidential Information, confidential and shall use its best efforts to ensure compliance with such undertaking.

#### **3.4. Liability of the Consultant**

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

##### **3.4.2. Consultant's liability towards the Authority**

The Consultant 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 Consultant or on the part of any person or firm acting on behalf of the Consultant in carrying out the Services, the Consultant, 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 (a) the Consultancy Fee set forth in Clause 6.2. of this Agreement, or (b) the proceeds the Consultant may be entitled to receive from any insurance maintained by the Consultant to cover such a liability in accordance with Clause 3.5, whichever of (a) or (b) is higher.

This limitation of liability shall not affect the Consultant's liability, if any, for damage to Third Parties caused by the Consultant or any person or firm acting on behalf of the Consultant in carrying out the Services.

**3.5. Insurance to be taken out by the Consultant**

The Consultant shall be responsible to take out and maintain, and shall cause any Sub- Consultant to take out and maintain, at its (or the Sub-Consultant's, as the case may be) own cost but on terms and conditions approved by the Authority, insurance against the risks, and for the coverage's in accordance with good industry practice. The Authority shall not be liable towards any insurance claims by or against the second party and or its sub consultants.

3.6. Not used

**3.7. Consultant's actions requiring the Authority's prior approval**

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

- (a) Substitute / replace any of the members of the Key Personnel listed in Annexure III.
- (b) entering into a subcontract for the performance of any part of the Services, it being understood (i) that the selection of the Sub- Consultant and the terms and conditions of the subcontract shall have been approved in writing by the Authority prior to the execution of the subcontract, and (ii) that the Consultant shall remain fully liable for the performance of the Services by the Sub-Consultant and its Personnel pursuant to this Agreement; or
- (c) any other action that may be specified in this Agreement.

**3.8. Reporting obligations**

The Consultant shall submit to the Authority the reports and documents specified in the Agreement, in the form, in the numbers and within the time periods set forth therein.

**3.9. Documents prepared by the Consultant to be property of the Authority**

- 3.9.1. All plans, drawings, specifications, designs, reports and other documents prepared by the Consultant in performing the Services shall become and remain the property of the Authority, and the Consultant shall, not later than termination or expiration of this Agreement, deliver all such documents to the Authority, together with a detailed inventory thereof. The Consultant may retain a copy of such documents. Restrictions about the future use of these documents shall be as specified in the Agreement.
- 3.9.2. The Consultant shall not use these documents for purposes unrelated to this Agreement without the prior written approval of the Authority.

**3.10. Accuracy of Documents**

The Consultant shall be responsible for accuracy of the data collected by it directly or procured from other agencies/authorities, the designs, drawings, estimates and all other details prepared by it as part of these services. Subject to the provisions of Clause 3.4, it shall indemnify the Authority against any inaccuracy in its work which might surface during implementation of the Project, if such inaccuracy is the result of any negligence or inadequate due diligence on part of the Consultant or arises out of its failure to

conform to good industry practice. The Consultant shall also be responsible for promptly correcting, at its own cost and risk, the drawings including any re-survey / investigations.

#### **4. CONSULTANT'S PERSONNEL AND SUB-CONSULTANTS**

##### **4.1. General**

The Consultant shall employ and provide such qualified and experienced Personnel as may be required to carry out the Services. The personnel, listed as key professionals submitted along with the RFP , shall only be deployed in the project.

##### **4.2. Approval of Personnel**

4.2.1. The Personnel listed in Annexure III of the Agreement (“**Key Personnel**”) shall not be replaced or substituted at all. In case the replacement is inevitable and is beyond the control of the consultant the substitution shall only be done with the prior approval of the AUTHORITY and subject to the provisions mentioned hereunder.

4.2.2. If the Consultant hereafter proposes to engage any person as Professional Personnel, it shall submit to the Authority its proposal along with a CV of such person in the form provided at “Section II” of the RFP. the Authority may approve or reject such proposal within 14 (fourteen) days of receipt thereof. In case the proposal is rejected, the Consultant may propose an alternative person for the Authority’s consideration. In the event the Authority does not reject a proposal within fourteen (14) days of the date of receipt thereof under this Clause 4.2.2, it shall be deemed to have been approved by the Authority.

4.2.3. At least THREE Key Personnel must be employees of the Consultant at all the times during the period of this Agreement.

4.2.4. Subject to other provisions of this Agreement, no alternative to Key Personnel can be proposed by the Consultant.

4.2.5. Maximum of only two Key Personnel can be replaced during the tenure of the assignment with equivalent or higher qualification and experience with prior permission from the Authority

4.2.6. Any change in more than two Key Personnel during the tenure of the assignment would attract a one-time penalty of 1% of the Consultancy Fee for the assignment for each such change.

4.2.7. Notwithstanding anything contrary contained in this Agreement, the Consultant shall not have the right to substitute Principal Architect of the Project during the tenure of the assignment.

4.2.8. The Principal Architect, himself shall be in contact with the Authority during the planning and design period on regular basis so that the process of approval is done in time. For this purpose the Principal Architect and other Key Professionals shall attend meetings, whenever required at NRDA, Naya Raipur or any other place in India as decided by NRDA, Naya Raipur. They shall submit and explain explicitly the analysis, planning and designing aspects through 3D/ Power point and other modes during such presentations as required. The cost of all the above shall be deemed to have been included in the Proposal quoted.

4.2.9. The Architect to be deputed in the local office team which shall be deployed at NRDA, Naya Raipur construction site during the execution shall be one, who has been associated with the project during planning and designing stage.

**5. OBLIGATIONS OF THE AUTHORITY**

**5.1. Assistance in clearances etc.**

Unless otherwise specified in the Agreement, the Authority shall make best efforts to ensure that the Government shall:

- (a) provide the Consultant, its Sub-Consultants and Personnel with work permits and such other documents as may be necessary to enable the Consultant, its Sub-Consultants or Personnel to perform the Services;
- (b) issue to officials, agents and representatives of the Government all such instructions as may be necessary or appropriate for the prompt and effective implementation of the Services.

**5.2. Payment**

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

**5.3. Access to land and property**

The Authority warrants that the Consultant shall have, free of charge, unimpeded access to the site of the project in respect of which access is required for the performance of Services;

**6. TIME SCHEDULE, DELIVERABLES AND PAYMENT SCHEDULE TO THE CONSULTANT**

**6.1. Time Period**

The period of completion for the project as described in ToR and scope of work shall be as below.

Part	Project	No of weeks
	Preparation of Master Plan for Infrastructure including road Network for Layer-II	<del>32</del> -36 weeks

**6.2. Consultancy Fee**

6.2.1. Except as may be otherwise agreed under Clause 2.6 , the payments under this Agreement shall not exceed the Consultancy Fee specified herein (the “**Consultancy Fee**”). The Parties agree that the Consultancy Fee is as follow:

Total lump sum fees of Rs -----/(Rs. -----) for the Cost of Consultancy project as per Terms of References for Master Plan of infrastructure of Layer-II.

6.2.2. The fee is inclusive of all taxes and inclusive of all out of pocket expenses including the, site visits, expenses of travel, documentation, communication and local office expenses incurred by consultants for carrying out the Services. The above amount is excluding applicable

service tax. Any or all the visits to NRDA office/site during the planning and design shall not be paid for separately and shall be deemed to have been considered in the fee quoted.

6.2.3. The Consultancy Fee shall be payable as below:

**Preparation of Master Plan for Infrastructure including road Network for Layer-II**

The detailed schedule of payment shall be:-

Stages	Description of Deliverable	Time Schedule	Running Payment in %	Cumulative payment
Stage I	Preparation of the Base Map and Submission of Inception report as per section –II of RFP	4-6 Wks after Commencement of	5% of Consultancy Fee based on the estimated cost approved by NRDA	5%
Stage II	<b>On Approval of Report on studies and Analysis and Development Plan road network for Layer-II as per section –II of RFP</b>	8 Wks after Stage I	25% of Consultancy Fee based on the estimated cost approved by NRDA	30%
Stage III	<b>On Approval Detailed Topographic, Hydrographic and demarcation plan and details of roads, report on ownership record and other survey as per section –II of RFP</b>	8-10 Wks after Stage	20% of Consultancy Fee based on the estimated cost approved by NRDA	50%
Stage IV	On approval of Draft Master Plan for Infrastructure as per section –II of RFP	8 Wks after Stage III	25% of Consultancy Fee based on the estimated cost approved by NRDA	75%
Stage V	On approval of Master Plan for Infrastructure and Phasing Plan. as per	4Wks after Stage IV	25% of Consultancy Fee based on the estimated cost approved by NRDA	100%



Stages	Description of Deliverable	Time Schedule	Running Payment in %	Cumulative payment
	section –II of RFP			

**Note:**

1. 5% will be deducted from each of the payments as performance security which will be refunded without interest after three months of successful completion of project subject to conditions enclosed in the service agreement.
2. Authority shall deduct taxes at source, from the amounts payable as per applicable laws.
3. The Authority would endeavor to provide its comments or approval on documents submitted by the consultant within 15 days from the date of submission. The above timeline is independent of the time that may be required for approval and providing comment on the document submitted
4. In special circumstances where it is observed that 75% of the work of any stage as per the table 6.2.3 is completed by the consultant , the CEO/ NRDA may consider the release of part payment for the work carried out. The decision of The CEO will be final and binding on consultant.

**6.3. Currency of payment**

All payments shall be made in Indian Rupees. The Consultant shall be free to convert Rupees into any foreign currency as per Applicable Laws, at their cost

**7. PERFORMANCE SECURITY, LIQUIDATED DAMAGES AND PENALTIES**

**7.1. Performance security**

7.1.1. The Authority shall retain by way of performance Security (the “Performance Security”), 5% (five percent) of all the amounts due and payable to the Consultant, to be appropriated against breach of this Agreement or for recovery of liquidated damages as specified in Clause 7.2 and clause 7.3 herein. The balance remaining out of the Performance Security shall be returned to the Consultant at the end of 3 (three) months after the expiration of this Agreement pursuant to Clause 2.4 hereof.

**7.2. Liquidated Damages**

**7.2.1. Liquidated Damages for delay**

In case of delay in submission of any deliverable, as specified in Annexure 1, liquidated damages, not exceeding an amount equal to 0.2% (zero point two percent) of the Consultancy Fee per week, subject to a maximum of 5% (five percent) of the Consultancy Fee, shall be imposed and shall be recovered from the payments due or by appropriation from the Performance Security or otherwise. However, in case of delay due to reasons beyond the control of the Consultant, suitable extension of time may be granted by the Authority

**7.2.2. Encashment and appropriation of Performance Security**

The Authority shall have the right to invoke and appropriate the proceeds of the Performance Security, in whole or in part, without notice to the Consultant in the event of breach of this Agreement or for recovery of liquidated damages specified in this Clause 7.2.

**7.3. Penalty for deficiency in Services**

In addition to the liquidated damages not amounting to penalty, beyond that as specified in Clause 7.2, warning may be issued to the Consultant for minor deficiencies on its part. In the case of significant deficiencies in Services causing adverse effect on the Project or on the reputation of the Authority, other penal action as detailed below including debarring for a specified period may also be initiated.

If major deficiency is significant nature in the services are observed, an additional levy of compensation up to a maximum of 5% of the consultancy fee shall be made on the consultant. In this regard, the decision of Director NRDA, Naya Raipur will be final binding.

**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 realization 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 10 hereof.

**9. OTHER CONDITIONS**

9.1 In the event the Authority desires the Consultant to perform such additional services which are not within the Terms of Reference as specified. The Consultant shall agree to perform such Additional Services on such renegotiated, modified and new terms and conditions as may be mutually agreed by the Parties.

9.2 The Authority shall provide to the Consultant documents/ information/ reports as may be required by the Consultant to enable it to provide the Services. The Authority undertakes and agrees to furnish to the Consultant from time to time such other documents/ reports/ information in its possession and/or knowledge as it may consider relevant to perform the Services, as and when such information is received by/ available with the Authority.

9.3 All intellectual property conceived, originated, devised, developed or created by the Consultant, its agents, specifically for the purpose of rendering the Services, shall vest with the Authority unless otherwise agreed, between the Authority and the Consultant. The Authority as sole owner and shall be entitled to use such intellectual property for the purpose of the Project

Unless otherwise agreed, the Authority shall have the copyright on all the reports, documents, maps etc., authored, prepared or generated during the course of the Services to be provided by the Consultant.

## **10. SETTLEMENT OF DISPUTES**

### **10.1. 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.

### **10.2. Dispute resolution**

10.2.1. 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 10.3.

10.2.2. 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.

### **10.3. Conciliation**

In the event of any Dispute between the Parties, either Party may call upon the **Chief Executive Officer NRDA**, 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 10.2.1 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 10.4. **11.4 Settlement of disputes & Arbitration:-**

Except where otherwise provided in the contract, all questions and disputes relating to the meaning of the specifications, design, drawings and instructions here-in before mentioned and as to the quality of workmanship or materials used on the work or as to any other question, claim, right, matter or thing whatsoever in any way arising out of or relating to the contract, designs, drawings, specifications, estimates, instructions, orders or these conditions or otherwise concerning the works or the execution or failure to execute the same whether arising during the progress of the work or after the cancellation, termination, completion or abandonment thereof shall be dealt with as mentioned hereinafter:

(i) If the contractor considers any work demanded of him to be outside the requirements of the contract, or disputes any drawings, record or decision given in writing by the Engineer-in-Charge on any matter in connection with or arising out of the contract or carrying out of the work, to be unacceptable, he shall promptly within 15 days request the CE (E) in writing for written instruction or decision. Thereupon, the CE (E) shall give his written instructions or decision within a period of one month from the receipt of the contractor's letter.

If the CE(E) fails to give his instructions or decision in writing within the aforesaid period or if the contractor is dissatisfied with the instructions or decision of the CE(E), the contractor may, within 15 days of the receipt of CE(E) decision, appeal to the Chief Executive Officer who shall afford an opportunity to the contractor to be heard, if the latter so desires, and to offer evidence in support of his appeal. The Chief Executive Officer shall give his decision within 30 days of receipt of contractor's appeal. If the contractor is dissatisfied with this decision, the contractor shall within a period of 30 days from receipt of the decision, give notice to the Chairman NRDA for appointment of arbitrator on prescribed Performa given below , failing which the said decision shall be final binding and conclusive and not referable to adjudication by the arbitrator.

(ii) Except where the decision has become final, binding and conclusive in terms of Sub Para (i) above, disputes or difference shall be referred for adjudication through arbitration by a sole arbitrator appointed by the Chief Executive Officer, NRDA, If the arbitrator so appointed is unable or unwilling to act or resigns his appointment or vacates his office due to any reason whatsoever, another sole arbitrator shall be appointed in the manner aforesaid. Such person shall be entitled to proceed with the reference from the stage at which it was left by his predecessor.

It is a term of this contract that the party invoking arbitration shall give a list of disputes with amounts claimed in respect of each such dispute along with the notice for appointment of arbitrator and giving reference to the rejection by the Chief Executive Officer of the appeal. It is also a term of this contract that no person, other than a person appointed by the Chairman NRDA, NRDA as aforesaid, should act as arbitrator and if for any reason that is not possible, the matter shall not be referred to arbitration at all.

It is also a term of this contract that if the contractor does not make any demand for appointment of arbitrator in respect of any claims in writing as aforesaid within 120 days of receiving the intimation from the Engineer-in-charge that the final bill is ready for payment, the claim of the contractor shall be deemed to have been waived and absolutely barred and the NRDA shall be discharged and released of all liabilities under the contract in respect of these claims.

The arbitration shall be conducted in accordance with the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) or any statutory modifications or re-enactment thereof and the rules made there under and for the time being in force shall apply to the arbitration proceeding under this clause. It is also a term of this contract that the arbitrator shall adjudicate on only such disputes as are referred to him by the appointing authority and give separate award against each dispute and claim referred to him and in all cases where the total amount of the claims by any party exceeds Rs. 50,000/-, the arbitrator shall give reasons for the award.

It is also a term of the contract that if any fees are payable to the arbitrator, these shall be paid equally by both the parties. It is also a term of the contract that the arbitrator shall be deemed to have entered on the reference on the date he issues notice to both the parties calling them to submit their statement of claims and counter statement of claims. The venue of the arbitration shall be such place as may be fixed by the arbitrator in his sole discretion. The fees, if any, of the arbitrator shall, if required to be paid before the award is made and published, be paid half and half by each of the parties. The cost of the reference and of the award (including the fees, if any, of the arbitrator) shall be in the discretion of the arbitrator who may direct to any by whom and in what manner, such costs or any part thereof shall be paid and fix or settle the amount of costs to be so paid.

**Notice for Appointment of Arbitrator**

To  
Chief Executive officer

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.....

Dear Sir,

In terms of clause 25 of the agreement, particulars of which are given below, I/we hereby give notice to you to appoint an arbitrator for settlement of disputes mentioned below:

1. Name of applicant
2. Whether applicant is Individual/Prop. Firm/Partnership Firm/Ltd. Co.
3. Full address of the applicant
4. Name of the work and contract number in which arbitration sought
5. Name of the Division which entered into contract
6. Contract amount in the work
7. Date of contract
8. Date of contract Date of initiation of work
9. Stipulated date of completion of work
10. Actual date of completion of work (if completed)
11. Total number of claims made
12. Total amount claimed
13. Date of intimation of final bill (if work is completed)
14. Date of payment of final bill (if work is completed)
15. Amount of final bill (if work is completed)
16. Date of request made to SE for decision
17. Date of receipt of SE's decision
18. Date of appeal to you
19. Date of receipt of your decision.

Specimen signatures of the applicant (only the person/authority who signed the contract should sign)

I/We certify that the information given above is true to the best of my/our knowledge. I/We enclose following documents.

1. Statement of claims with amount of claims.
- 2.
- 3.
- 4.

Yours faithfully,  
(Signatures)

Copy in duplicate to:1. Engineer in Charge,

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**APPLICABLE LAWS**

The procedure of selection of consultant as well as the agreement made on the basis of this RFP shall be governed by Indian laws as applicable in India and in the State of Chhattisgarh.

*(See Clause 3.2)*

**Guidance Note on Conflict of Interest**

1. This Note further explains and illustrates the provisions of Clause 3.2 of the Agreement and shall be read together therewith in dealing with specific cases.
2. Consultants should be deemed to be in a conflict of interest situation if it can be reasonably concluded that their position in a business or their personal interest could improperly influence their judgment in the exercise of their duties. The process for selection of consultants should avoid both actual and perceived conflict of interest.

3. Conflict of interest may arise between the Authority and a consultant or between consultants and present or future concessionaries/ contractors. Some of the situations that would involve conflict of interest are identified below:

(a) Authority and consultants:

- (i) Potential consultant should not be privy to information from the Authority which is not available to others.
- (ii) Potential consultant should not have defined the project when earlier working for the Authority.
- (iii) Potential consultant should not have recently worked for the Authority overseeing the project.

(b) Consultants and concessionaires/contractors:

- (i) No consultant should have an ownership interest or a continuing business interest or relationship with a potential concessionaire/ contractor.
- (ii) No consultant should be involved in owning or operating entities resulting from the project.
- (iii) No consultant should Proposal for works arising from the project.

The participation of companies that may be involved as investors or consumers and officials of the Authority who have current or recent connections to the companies involved, therefore, needs to be avoided.

4. The normal way to identify conflicts of interest is through self-declaration by consultants. Where a conflict exists, which has not been declared, competing companies are likely to bring this to the notice of the Authority. All conflicts must be declared as and when the consultants become aware of them.

5. Another approach to avoiding a conflict of interest is through the use of “Chinese walls” to avoid the flow of commercially sensitive information from one part of the consultant’s company to another. This could help overcome the problem of availability of limited numbers of experts for the project. However, in reality effective operation of “Chinese walls” may be a difficult proposition.

As a general rule, larger companies will be more capable of adopting Chinese walls approach than smaller companies. Although, “Chinese walls” have been relatively common for many years, they are an increasingly discredited means of avoiding conflicts of interest and should be considered with caution. As a rule, “Chinese walls” should be considered as unacceptable and may be accepted in exceptional cases upon full disclosure by a consultant coupled with provision of safeguards to the satisfaction of the Authority.

6. Another way to avoid conflicts of interest is through the appropriate grouping of tasks. For example, conflicts may arise if consultants drawing up the terms of reference or the proposed documentation are also eligible for the consequent assignment or project.

7. Another form of conflict of interest called “scope-creep” arises when consultants advocate either an unnecessary broadening of the terms of reference or make recommendations which are not in the best interests of the Authority but which will generate

further work for the consultants. Some forms of contractual arrangements are more likely to lead to scope-creep. For example, lump-sum contracts provide fewer incentives for this, while time and material contracts provide built in incentives for consultants to extend the length of their assignment.

8. Every project contains potential conflicts of interest. Consultants should not only avoid any conflict of interest, they should report any present/ potential conflict of interest to the Authority at the earliest. Officials of the Authority involved in development of a project shall be responsible for identifying and resolving any conflicts of interest. It should be ensured that safeguards are in place to preserve fair and open competition and measures should be taken to eliminate any conflict of interest arising at any stage in the process.