

**Tender
for Installation & Management
of
Welcome Posts, Facility Kiosks and Display of Signage
and Info kiosk in Naya Raipur**

Volume - II General Condition of Contract (DRAFT AGREEMENT)

AUGUST - 2014

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

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

- 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. TENDER DOCUMENT; 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 Bidder. The Bidder shall, subject to this Agreement, have complete charge of Personnel performing the Contract and shall be fully responsible for the Contract performed by them or on their behalf hereunder.

1.3. Rights and obligations

The mutual rights and obligations of the Authority and the Bidder shall be as set forth in the Agreement; in particular:

- a. the Bidder shall carry out the Contract in accordance with the provisions of the Agreement; and
- b. the Authority shall make payments to the Bidder 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 Bidder, be given by facsimile and by letter delivered by hand to the address given and marked for attention of the Bidder's Representative set out below in Clause 1.10 or to such other person as the Bidder 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 Bidder 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 Bidder 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 Bidder; provided that if the Bidder 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 Contract shall be performed at the site of the Project in accordance with the provisions of TENDER DOCUMENT and at such locations as are incidental thereto, including the offices of the Bidder.

1.9. Bidder's obligation

The bidder shall be responsible for the Installation & Management of Welcome Posts, Facility Kiosks and Display of Signage and Info kiosk at such locations and numbers as directed by Authority, in Naya Raipur at his own cost and risk. The bidder shall obtain electric connection at his own cost. The bidders shall provide and manage the following at his own cost –

- (i) House keeping
- (ii) Front Office Staff
- (iii) Security of the Facility

- (iv) Live Band show
- (v) Leaser show (Light and Sound)
- (vi) Publicity and Marketing of Naya Raipur Project

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 Bidder, 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:

ATTN. OF: Amit Katariya

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.gov.in

E-MAIL ADDRESS: ceo@nayaraipur.com

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

1.11. Taxes and duties

Unless otherwise specified in the Agreement, the Bidder 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 Contract

The Bidder shall commence the Contract within a period of 15 (fifteen) days from the Effective Date, unless otherwise agreed by the Parties.

2.3. Termination of Agreement for failure to commence Contract

If the Bidder does not commence the Contract 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 Bidder 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 Contract 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 Bidder arising out of the provisions of the TENDER DOCUMENT 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 TENDER DOCUMENT 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 Contract may be made by NRDA at any stage by giving 30 days prior notice to the Bidder. 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 Bidder, the period of Contract 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- Bidder 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 Contract as a result of an event of Force Majeure, the Bidder shall be entitled to be reimbursed for additional costs reasonably and necessarily incurred by it during such period for the purposes of the Contract and in reactivating the Contract after the end of such period.

2.7.6. Consultation

Not later than 30 (thirty) days after the Bidder has, as the result of an event of Force Majeure, become unable to perform a material portion of the Contract, 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 Bidder, suspend all payments to the Bidder hereunder if the Bidder 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 Contract; provided that such notice of suspension (i) shall specify the nature of the breach or failure, and (ii) shall provide an opportunity to the Bidder to remedy such breach or failure within a period not exceeding thirty (30) days after receipt by the Bidder 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 Bidder, 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 Bidder 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 Bidder 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 Bidder fails to comply with any final decision reached as a result of arbitration proceedings pursuant to Clause 10 hereof;
- d. the Bidder submits to the Authority a statement which has a material effect on the rights, obligations or interests of the Authority and which the Bidder knows to be false;
- e. any document, information, data or statement submitted by the Bidder in its Proposals, based on which the Bidder was considered eligible or successful, is found to be false, incorrect or misleading;
- f. the Bidder fails to perform the obligation under this agreement to the satisfaction of the Authority;
- g. as the result of Force Majeure, the Bidder is unable to perform a material portion of the Contract 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 Bidder

The Bidder 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 Bidder 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 Bidder 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 Bidder may have subsequently granted in writing) following the receipt by the Authority of the Bidder's notice specifying such breach;
- c. as the result of Force Majeure, the Bidder is unable to perform a material portion of the Contract 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 Bidder 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 Contract

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 Bidder shall, immediately upon dispatch or receipt of such notice, take all necessary steps to bring the Contract 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 Bidder and equipment and materials furnished by the Authority, the Bidder 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 Bidder(after offsetting against these payments any amount that may be due from the Bidder to the Authority):

- (vii) remuneration pursuant to Clause 6 hereof for Contract satisfactorily performed prior to the date of termination; and
- (viii) 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 Bidder'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 BIDDER

3.1. General

3.1.1. Standards of Performance

The Bidder shall perform the Contract 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 Bidder shall always act, in respect of any matter relating to this Agreement or to the Contract, as a faithful adviser to the Authority, and shall at all times support and safeguard the Authority's legitimate interests in any dealings with Bidder or Third Parties.

3.1.2. Terms of Reference

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

3.1.3. Applicable Laws

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

3.2. Conflict of Interest

3.2.1. The Bidder 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 Bidder nor its Bidder 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 TENDER DOCUMENT as Conflict of Interest. 3.2.3. Bidder not to benefit from commissions discounts, etc.

The remuneration of the Bidder pursuant to Clause 6 hereof shall constitute the Bidder' sole remuneration in connection with this Agreement or the Contract and the Bidder 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 Contract or in the discharge of its obligations hereunder, and the Bidder shall use its best efforts to ensure that any Bidder, as well as the Personnel and agents of either of them, similarly shall not receive any such additional remuneration.

3.2.3. The Bidder 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 Bidder, without being liable in any manner whatsoever to the Bidder, if it determines that the Bidder 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.

3.2.4. 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 Bidder 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 Bidder shall not be eligible to participate in any tender or TENDER DOCUMENT issued during a period of 2 (two) years from the date the Bidder 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 Contract 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 Bidder, its Bidder 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 Bidder, its Bidder 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 Bidder is under an obligation to keep confidential in relation to the Project, the Contract or this Agreement (**“Confidential Information”**), without the prior written consent of the Authority.

Notwithstanding the aforesaid, the Bidder, its Bidder and the Personnel of either of them may disclose Confidential Information to the extent that such Confidential Information:

- a. was in the public domain prior to its delivery to the Bidder, its Sub- Bidder and the Personnel of either of them or becomes a part of the public knowledge from a source other than the Bidder, its Sub- Bidder and the Personnel of either of them;
- b. was obtained from a third party with no known duty to maintain its confidentiality;
- c. 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 Bidder, its Bidder 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;
- d. is provided to the professional advisers, agents, auditors or representatives of the Bidder or its Bidder or Personnel of either of them, as is reasonable under the circumstances;

provided, however, that the Bidder or its Bidder 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.

3.3. Liability of the Bidder

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

3.4.2. Bidder's liability towards the Authority

The Bidder 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 Contract rendered by it.

3.4.3. The Parties hereto agree that in case of negligence or willful misconduct on the part of the Bidder or on the part of any person or firm acting on behalf of the Bidder in carrying out the Contract, the Bidder, 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 Contract Value set forth in Clause 6.2. of this Agreement, or (b) the proceeds the Bidder may be entitled to receive from any insurance maintained by the Bidder 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 Bidder's liability, if any, for damage to Third Parties caused by the Bidder or any person or firm acting on behalf of the Bidder in carrying out the Contract.

3.5. Insurance to be taken out by the Bidder

The Bidder shall be responsible to take out and maintain, and shall cause any Sub Bidder to take out and maintain, at its (or the Bidder's, as the case may be) own cost but on terms and conditions approved by the Authority, insurance against the risks for the complete contract period including O&M period, 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 Bidders.

3.6. Not used

3.7. Bidder's actions requiring the Authority's prior approval

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

- (a) entering into a subcontract for the performance of any part of the Contract, it being understood (i) that the selection of the Sub- Bidder 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 Bidder shall remain fully liable for the performance of the Contract by the Bidder and its Personnel pursuant to this Agreement; or
- (b) any other action that may be specified in this Agreement.

3.8. Reporting obligations

The Bidder 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 Bidder to be property of the Authority

3.9.1. All plans, drawings, specifications, designs, reports and other documents prepared by the Bidder in performing the Contract shall become and remain the property of the Authority, and the Bidder shall, not later than termination or expiration of this Agreement, deliver all such documents to the Authority, together with a detailed inventory thereof. The Bidder 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 Bidder 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 Bidder 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 this Contract. 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 Bidder or arises out of its failure to conform to good industry practice. The Bidder shall also be responsible for promptly correcting, at its own cost and risk, the drawings including any re-survey / investigations.

4. BIDDER'S PERSONNEL.

4.1. General

The Bidder shall employ and provide such qualified and experienced Personnel as may be required to carry out the Contract.

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 Bidder, its Bidder and Personnel with work permits and such other documents as may be necessary to enable the Bidder, its Bidder or Personnel to perform the Contract;
- (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 Contract.

5.2. Payment

In consideration of the Contract performed by the Bidder under this Agreement, the Authority shall make the payment of the contract amount as per the following schedule –

PAYMENT SCHEDULE

Description	Payment
(1) After Installation	25% of Contract value
(2) After completion of the Champion League Event	30% of Contract value
(3) On Shifting of the facilities to the New site	25% of Contract value
(4) After completion of Rajyostava	20% of Contract value
(5) Refund of Performance Security	Amount retained

5% (Five Percent) amount from the payment at serial no. (1) to (4) above shall be deducted as performance security.

5.3. Access to land and property

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

6. TIME SCHEDULE, DELIVERABLES AND PAYMENT SCHEDULE TO THE BIDDER

6.1. Time Period

The project shall be commissioned within 105 days from the date of Execution of Contract Agreement. The payment Schedule shall be as per section II of Volume I of the TENDER DOCUMENT document. The deliverables should be strictly as per the Work Plan submitted by the Bidder.

Note: 1. Authority shall deduct taxes at source, from the amounts payable as per applicable laws.

The Authority would endeavor to provide its comments or approval on documents submitted by the Bidder 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.

6.2. Currency of payment

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

7.1 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, subject to a maximum of 5% (five percent) of the Contract Value, shall be imposed and shall be recovered from the payments due or by appropriation from the Performance Security or otherwise. The CEO, NRDA shall decide the amount of liquidated damage for the delay, whose decision shall be final and binding. However, in case of delay due to reasons beyond the control of the Bidder, suitable extension of time may be granted by the Authority

7.1.1. 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 Bidder in the event of breach of this Agreement or for recovery of liquidated damages specified in this Clause 7.2.

7.2. Penalty for deficiency in Contract

In addition to the liquidated damages not amounting to penalty, beyond that as specified in Clause 7.2, warning may be issued to the Bidder for minor deficiencies on its part. In the case of significant deficiencies in Contract 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 Contract are observed, an additional levy of compensation up to a maximum of 5% of the Contract Value shall be made on the consultant. In this regard, the decision of CEO, 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 Bidder to perform such additional Contract which are not within the Terms of Reference as specified. The Bidder shall agree to perform such Additional Contract 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 Bidder documents/ information/ reports as may be required by the Bidder to enable it to provide the Contract. The Authority undertakes and agrees to furnish to the Bidder from time to time such other documents/ reports/ information in its possession and/or knowledge as it may consider relevant to perform the Contract, 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 Bidder, its agents, specifically for the purpose of rendering the Contract, shall vest with the Authority unless otherwise agreed, between the Authority and the Bidder. 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 Contract to be provided by the Bidder.

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.

10.4. Arbitration

10.4.1. Any Dispute which is not resolved amicably by conciliation, as provided in Clause 10.3, shall be finally decided by reference to arbitration by a Board of Arbitrators appointed in accordance with Clause 10.4.2. 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.

10.4.2. There shall be a Board of three arbitrators, of whom each Party shall select one, and the third arbitrator shall be appointed by the two arbitrators so selected, and in the event of disagreement between the two arbitrators, the appointment shall be made in accordance with the Rules.

10.4.3. The arbitrators shall make a reasoned award (the "Award"). Any Award made in any arbitration held pursuant to this Clause 10 shall be final and binding on the Parties as from the date it is made, and the Bidder and the Authority agree and undertake to carry out such Award without delay.

10.4.4. The Bidder and the Authority agree that an Award may be enforced against the Bidder and/or the Authority, as the case may be, and their respective assets wherever situated.

10.4.5. 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."

10.4.6. Any dispute arising during the procedure of selection of the Bidder, shall also be subjected to settlement of disputes as per clause 10 as above

11. APPLICABLE LAWS

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

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. Bidder 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 Bidder should avoid both actual and perceived conflict of interest.

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

(a) Authority and Bidders:

(i) Potential Bidder should not be privy to information from the Authority which is not available to others.

(ii) Potential Bidder should not have defined the project when earlier working for the Authority.

(iii) Potential Bidder should not have recently worked for the Authority overseeing the project.

(b) Bidder and concessionaires/contractors:

(i) No Bidder should have an ownership interest or a continuing business interest or relationship with a potential concessionaire/ contractor.

(ii) No Bidder should be involved in owning or operating entities resulting from the project.

(iii) No Bidder 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 Bidders. 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 Bidder 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 Bidder'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 Bidder 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 Bidder 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 Bidder 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 Bidders. 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 Bidder to extend the length of their assignment.

8. Every project contains potential conflicts of interest. Bidder 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.