

National Highways Authority of India

Request for Proposal (RFP)

Appointment of Safety Consultants

For

**Four-laning of Indore to MP/Gujarat Border
Section of NH-59 from Km. 9.500 to Km. 171.00
in the State of MP**

National Highways Authority of India
Ministry of Road Transport & Highways, Govt. of India

**Appointment of Safety Consultants for Four-laning of Indore to MP/Gujarat
Border Section of NH-59 from Km. 9.500 to Km. 171.00 in the State of MP**

Request for Proposal
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Disclaimer

The information contained in this Request for Proposal document (“RFP”) or subsequently provided to Applicants, whether verbally or in documentary or any other form by or on behalf of the Authority or any of its employees or advisers, is provided to Applicants on the terms and conditions set out in this RFP and such other terms and conditions subject to which such information is provided.

This RFP is not an agreement and is neither an offer nor invitation by the Authority to the prospective Applicants or any other person. The purpose of this RFP is to provide interested parties with information that may be useful to them in the formulation of their Proposals pursuant to this RFP. This RFP includes statements, which reflect various assumptions and assessments arrived at by the Authority in relation to the Consultancy. Such assumptions, assessments and statements do not purport to contain all the information that each Applicant may require. This RFP may not be appropriate for all persons, and it is not possible for the Authority, its employees or advisers to consider the objectives, technical expertise and particular needs of each party who reads or uses this RFP. The assumptions, assessments, statements and information contained in this RFP, may not be complete, accurate, adequate or correct. Each Applicant should, therefore, conduct its own investigations and analysis and should check the accuracy, adequacy, correctness, reliability and completeness of the assumptions, assessments and information contained in this RFP and obtain independent advice from appropriate sources.

Information provided in this RFP to the Applicants is on a wide range of matters, some of which depends upon interpretation of law. The information given is not an exhaustive account of statutory requirements and should not be regarded as a complete or authoritative statement of law. The Authority accepts no responsibility for the accuracy or otherwise for any interpretation or opinion on the law expressed herein.

The Authority, its employees and advisers make no representation or warranty and shall have no liability to any person including any Applicant under any law, statute, rules or regulations or tort, principles of restitution or unjust enrichment or otherwise for any loss, damages, cost or expense which may arise from or be incurred or suffered on account of anything contained in this RFP or otherwise, including the accuracy, adequacy, correctness, reliability or completeness of the RFP and any assessment, assumption, statement or information contained therein or deemed to form part of this RFP or arising in any way in this Selection Process.

The Authority also accepts no liability of any nature whether resulting from negligence or otherwise however caused arising from reliance of any Applicant upon the statements contained in this RFP.

The Authority may in its absolute discretion, but without being under any obligation to do so, update, amend or supplement the information, assessment or assumption contained in this RFP.

The issue of this RFP does not imply that the Authority is bound to select an Applicant or to appoint the Selected Applicant, as the case may be, for the Consultancy and the Authority reserves the right to reject all or any of the Proposals without assigning any reasons whatsoever.

The Applicant shall bear all its costs associated with or relating to the preparation and submission of its Proposal including but not limited to preparation, copying, postage, delivery fees, expenses associated with any demonstrations or presentations which may be required by the Authority or any other costs incurred in connection with or relating to its Proposal. All such costs and expenses will remain with the Applicant and the Authority shall not be liable in any manner whatsoever for the same or for any other costs or other expenses incurred by an Applicant in preparation or submission of the Proposal, regardless of the conduct or outcome of the Selection Process.

INVITATION OF PROPOSAL

INTRODUCTION

1. Background

- 1.1 National Highways Authority of India (NHAI) is engaged in development of National Highways entrusted to it by Ministry of Road Transport & Highways. As part of this endeavor, the Authority has taken up development of some of the highways through Public Private Partnership (PPP) on Design, Build, Finance and Operate (DBFO) basis.
- 1.2 It is stipulated in the Model Concession Agreements (MCA) of the PPP Projects that the Concessionaire shall develop, implement and administer a surveillance and safety programme for providing a safe environment on or about the Project Highways and / or shall comply with the safety requirements set forth in Schedule 'L' of Model Concession Agreement (MCA) for BOT projects and Schedule-H of the MCA of OMT projects (Please refer to the Annexure).
- 1.3 It is also stipulated in the Model Concession Agreement that NHAI shall appoint an experienced and qualified firm or organization as a "Safety Consultant" for carrying out safety audit of the Project Highway in accordance with the safety requirements set forth in Schedule-L or Schedule-H (whichever applicable) for the aforesaid Phases of Project.
- 1.4 NHAI has empanelled firms as safety consultant for carrying out safety audit of the project highway in accordance with the safety requirement set forth in the Schedules mentioned above. Only those consultants who have been empanelled by NHAI are eligible to submit their financial proposal and work shall be awarded on least cost basis.

1.2 Requests for Proposal

NHAI had invited applications from the interested firms for empanelment as safety consultants for carrying out safety audit of the project highway in accordance with the safety requirement set forth in Schedule 'L' of MCA of the PPP projects and Schedule 'H' of MCA for OMT projects.

The Consultants were given two options for category of assignment (Category A for 600± 50 km and Category B for 1200±50 km). For empanelment under category-A, at least one each of the four Key Personnel (*viz.*, Sr. Road Safety Auditor and Team Leader, Road Safety Auditor / Highway Engineer cum Dy. Team Leader, World Zone Safety Auditor, Traffic Planner / Engineer) were required. Similarly for empanelment under category-B, at least one Team Leader and two personnel each of the rest three key personnel mentioned above were required.

In response to the invitation of application for above mentioned assignment, following 11 firms / organizations have submitted their application on the due date i.e. on 01.04.2013:

Sl. No.	Name of Firm
1	M/s Louise Berger Group Inc., Gurgaon
2.	M/s Lion Engineering Consultants, Bhopal
3	M/s RITES Ltd., Gurgaon
4	M/s Aarvee Associates Architect Engineers & Consultants P. Ltd.
5	M/s CRAPHTS Consultants (I) P. Ltd.
6	M/s Third Rock Consultants P. Ltd. in JV with Nippon Koei (I) P. Ltd.
7	M/s Shweta Technophile Consultants P. Ltd., Ghaziabad
8	M/s Design Aid, New Delhi
9	M/s Consulting Engineers Group Ltd.
10	M/s HAKS Engineers Architects and Land Surveyors. P.C. in association with Info Trans Engineers P. Ltd.
11	M/s Feedback Infrastructure Service P. Ltd.

Competent Authority has approved for the empanelment of all the firms (as per their option of category) for BOT projects on DBFOT basis / OMT projects for one year and directed that who do not meet the project specific RFP requirement in the evaluation at empanelment stage will have to provide requisite key personnel having at least qualifying marks as per project specific RFP. Further, for expeditious disposal, all ROs has been requested for inviting RFP at their own level, keeping in view the status of each project and do the procurement in consultation with Technical Division at HQ.

NHAI has empanelled the firms as safety consultants as per their option of category opted at the time of empanelment and now intends to appoint the empanelled firms or organizations for its various projects (PPP projects on DBFOT basis or OMT projects). The details of the projects for which safety consultant are to be appointed are given in the RFP. Some survey activities as detailed in this RFP, which are vital to know Road condition and having direct bearing on Road Safety Audit are part of the Scope of work. Survey results are to be co-related with other Road Safety Audit Reports.

Only those consultants who have been empanelled by NHAI are eligible to submit their financial proposal. Further, consultants have been empanelled on the basis of strength of key personnel and their qualification & experience. Those key personnel who do not meet the project specific RFP requirement proposed in the evaluation at empanelment stage will have to provide requisite key personnel meeting the least qualifying marks as per project specific RFP.

The indicative list of projects, falling in different states, is mentioned in this RFP. The Financial Proposal, however, has to be submitted separately for each project for which the firm may wish to apply in the format given in Appendix-II.

Bidding for all the projects is open to all the consultants. The consultants may apply for only those projects in which they do not find or anticipate conflict of interest as defined in this RFP. If a bidder applies for both Independent Engineer and Safety Auditor, the project awarded first shall prevail. A consultant empanelled under category-A may apply for more than 600 ± 50 km; however, they would be awarded projects of length not more than 600 ± 50 km. Similarly, consultant empanelled under category-B may apply for more than 1200 ± 50 km; however, they would be awarded projects of length not more than 1200 ± 50 km. It is to clarify that a consultant may apply for even only single project; however they would have to field the team comprising of requisite key personnel required as per their category of empanelment indicated in the Empanelment Document.

Payments will be made on the basis of deliverable and not on man months. However, for ensuring proper output and deliverables, minimum number of key personnel required for carrying out the task and their experience and qualification has been detailed in this RFP document as well as in the empanelment document.

As consultants will be quoting for only those projects for which conflict of interest does not apply, and total length of projects quoted will not be the same, therefore, for bringing the financial proposal of all the consultants at par, the cost quoted by the consultants shall be converted for equivalent length of 100 km for comparison purpose.

The Performance Security to be submitted by the successful bidder will be 5% of the contract value. The Performance Security should be valid for the duration of services plus six months.

The conditions regarding award of the work to firms are stipulated in the RFP.

1.3 Due diligence by Applicants

Applicants are encouraged to inform themselves fully about the assignment and the local conditions before submitting the Proposal by paying a visit to the authority and the project site, sending written queries to the authority, and attending a Pre-Proposal Conference on the date and time specified in Clause 1.10.

1.4 Sale of RFP Document

RFP document can also be downloaded from the Official Website of the Authority from **22.07.2013 on 10:00 AM to 21.08.2013 15:00 PM.**

1.5 Validity of the Proposal

The Proposal shall be valid for a period of not less than 90 days from the Proposal Due Date (the “PDD”).

1.6 Brief description of the Selection Process

Selection for project specific work will be done on least cost basis.

1.7 Currency conversion rate and payment

1.7.1 For the purposes of evaluation of Applicants, [Rate of conversion applicable on 15 days prior to the last date of submission of bids per US\$ shall be considered as the applicable currency conversion rate. In case of any other currency, the same shall first be converted to US\$ as on the date 15 days prior to the Proposal Due Date, and the amount so derived in US\$ shall be converted into INR at the aforesaid rate. The conversion rate of such currencies shall be the daily representative exchange rates published by the International Monetary Fund for the relevant date.

1.7.2 All payments to the Consultant shall be made in INR in accordance with the provisions of this RFP. The Consultant may convert INR into any foreign currency as per Applicable Laws and the exchange risk, if any, shall be borne by the Consultant.

1.8 Schedule of Selection Process –

The Authority would endeavor to adhere to the following schedule

<u>Event Description</u>	<u>Date</u>
1. Last date for receiving queries/clarifications	[02.08.2013]
2. Pre-Proposal Conference	[06.08.2013]
3. Authority response to queries	[13.08.2013]
4. Proposal Due Date or PDD	[22.08.2013]
5. Opening of Proposal	[22.08.2013]
6. Letter of Award (LOA)	[05.09.2013]
7. Signing of Agreement	[17.09.2013]
8. Validity of Applications	90 days of Proposal Due Date

1.9 Pre-Proposal visit to the Site and inspection of data

Prospective applicants may visit the site and review the available data at any time prior to PDD. For this purpose, they will provide notice to the nodal officer specified below at least two days prior to the visit:

Phone: (0755)-2426698

Mobile: 09424463177

Email: robhopal@nhai.org

1.10 Pre-Proposal Conference

The date, time and venue of Pre-Proposal Conference shall be:

Date: 06.08.2013
Time: 11:00 hrs
Venue: Bhopal (MP)

1.11 Communications

1.11.1 All communications including the submission of Proposal should be addressed to:

Office of the Chief General Manager (T), NHAI, Regional Office, E-2/167, Arera Colony,
Bhopal-462016

Phone: 0755-2426698 Fax: 0755-2426638
Email: robhopal@nhai.org

1.11.2 The Official Website of the Authority is: <http://www.nhai.org>

[Note: Please open the page ‘*****’ and then page ‘*****’ to access all the posted and uploaded documents related to this RFP].

1.11.3 All communications, including the envelopes, should contain the following information, to be marked at the top in bold letters:

“RFP Notice No. **NHAI/RO-MP/BPL/2013-14/01**”

2. INSTRUCTIONS TO APPLICANTS

2.1 Scope of Proposal

2.1.1 Detailed description of the objectives, scope of services, deliverables and other requirements relating to this consultancy are specified in this RFP. Only empanelled firms are eligible to apply in this RFP proposal. The manner in which the proposal is required to be submitted, evaluated and accepted is explained in this RFP.

2.1.2 Applicants are advised that the selection of Consultant shall be on the basis of an evaluation by the Authority through the Selection Process specified in this RFP. Applicants shall be deemed to have understood and agreed that no explanation or justification for any aspect of the Selection Process will be given and that the Authority's decisions are without any right of appeal whatsoever.

2.1.3 The Applicant shall submit its proposal in the form and manner specified in this RFP. Upon selection, the Applicant shall be required to enter into an agreement with the Authority in the format specified in the RFP.

1. Only those consultants who have been empanelled by NHAI are eligible to submit the financial proposal.
2. The proposal shall be prepared and submitted strictly in the prescribed formats contained in a sealed envelope marked as:

“Appointment of safety consultant for “Four-laning of Indore to MP/Gujarat Border Section of NH-59 from Km. 9.500 to Km. 171.00 in the State of MP” of NHAI”

“Do not open, except in the presence of the Evaluation Committee”

3. The consultants are requested to ensure that they are quoting for projects for which conflict of interest does not apply. In case of conflict of interest, their proposal may be rejected summarily without assigning any reason and if the project has already been awarded the same may be cancelled at any time even after award of the project. As total length of projects quoted may not be the same, therefore, for bringing the financial proposal of all the consultants at par, the cost quoted by the consultants shall be converted to equivalent length of 100 km for comparison purpose.
4. Financial quote for equivalent 100 km will be evaluated on least cost basis. After evaluation of financial quote, the consultancy assignment will be awarded to the consultant in the order of their preferences. The award of specific projects assignment to each consultant shall depend upon:
 - i) Inter-se priority given by the Consultant in their financial bid and
 - ii) Overall project length that can be awarded according to the team of key personnel proposed by bidder, i.e. Team for length of 600 + 50 km and 1200+50 km respectively.

2.1.4 Key Personnel - The consultancy team shall consist of the following key personnel (the “Key Personnel”) who shall discharge their respective responsibilities are specified below

S. No	Position	Nos.	
		Category – A	Category – B
1	Road Safety Auditor-cum-Team Leader	1	1
2	Dy. Road Safety Auditor cum Highway Engineer	1	2
3	Work Zone Safety Auditor	1	2
4	Traffic Planner/Engineer	1	2
Total		4	7

(I) Sr. Road Safety Auditor-cum-Team Leader:

Essential Qualifications:

- a. Graduate in Civil Engineering from Recognized University.
- b. Minimum 15 years of experience in highway sector in senior position associated with preparation of DPR/ Supervision/ Construction/Safety Audit/Work Zone Safety / Traffic Planning etc. of 2/4/6-lanes highway projects and worked as Team Leader of NH / SH projects for at least 5 years or retired not below the rank of Superintending Engineer of Central/State Govt./PSU or equivalent.

Preferential Qualifications:

- a. Post Graduation in Traffic/Transportation/Safety /Highway Engineering.
- b. Knowledge and exposure of National/International code of practice on road safety audit through his/her CV.
- c. Experience of road safety / work zone safety audit assignments or traffic/transport planning.

(ii) Road Safety Auditor/ Highway Engineer -cum- Dy. Team Leader :

Essential Qualifications:

- a. Graduate in Civil Engineering from Recognized University.
- b. Minimum 10 years of experience in highway sector in senior position associated with preparation of DPR/ Supervision/ Construction/Safety Audit/Work Zone Safety/Traffic Planning etc. of 2/4/6 lanes highway projects and worked as Dy. Team Leader/Resident Engineer of NH/SH projects for at least 3 years or retired not below the rank of Executive Engineer of Central/State Govt./PSU or equivalent.

Preferential Qualifications:

- a. Post Graduation in Traffic/Transportation/Safety /Highway Engineering.
- b. Knowledge and exposure of National/International code of practice on road safety audit through his/her CV. Experience of road safety / work zone safety audit assignments or traffic/transport planning

(iii) Work Zone Safety Auditor:

Essential Qualifications:

- a. Graduate in Civil Engineering from Recognized University.
- b. Minimum 7 years of experience in highway sector associated with preparation of DPR/ Supervision/ Construction/ Safety audit/ Work zone safety/ Traffic Planning etc. of 2/4/6 lanes highway projects and worked as Dy. Team Leader/Resident Engineer of NH/SH projects for at least 2 years or retired not below the rank of Executive Engineer of Central/State Govt./PSU or equivalent.

Preferential Qualifications :

- a. Post Graduate in Traffic/ Transportation/ Safety Engineering.
- b. Knowledge and exposure of National/International code of practice on road safety audit through his/her CV.
- c. Experience of road safety/ work zone safety audit assignments or traffic/transport planning.

(iv) Traffic Planner/ Engineer:**Essential Qualifications:**

- a. Graduate in Civil Engineering or Architecture from Recognized University.
- b. Minimum professional experience of 7 years in highway projects associated with preparation of DPR/ Supervision/ Construction/Safety audit/Work zone safety/Traffic Planning etc. of 2/4/6 lanes highway projects and worked as Dy. Team Leader/Resident Engineer for at least 2 years or retired not below the rank of Executive Engineer of Central/State Govt./PSU or equivalent.

Preferential Qualifications:

- a. Master's Degree in Transport Planning/ Transport Engineering.
- b. Experience of traffic and/or transport planning.

2.1.5 SUBMISSION OF DOCUMENTS: Sealed proposals should reach, at the address NHAJ, **Office of the Chief General Manager (T), Regional Office-MP, E-2/167, Arera Colony, Bhopal-462016** for communication not later than **11:00 hours on 22.08.2013**. The proposals shall be opened on the same day at **11:30 hours** in the presence of firms/organizations who chose to be present at **Office of the Chief General Manager (T), Regional Office-MP, E-2/167, Arera Colony, Bhopal-462016**. NHAJ shall not be liable for any delay in submission of the proposal within the stipulated period on any account whatsoever.

2.1.6 The firms / organizations shall submit the details on issued / downloaded RFP and in hard bound form with all pages numbered serially from first to last page and with certification on the front page about the no. of pages it contains and by giving an index of submissions. The applications submitted in other forms like spiral bound, loose, etc. shall be rejected. No copies of proposals shall be submitted.

2.1.7 Financial proposal in the prescribed format (Appendix - II) includes breakdown of cost: of full key personal team assignment. Incomplete submission of financial proposal is liable to be rejected.

2.1.8 The financial proposal shall be strictly unconditional and unqualified, otherwise the same shall be declared as non-responsive.

2.2 Information for Firms

2.2.1 The proposal of the firm is liable to be rejected, if the firm makes any false or misleading statement in the proposal, without prejudice to the rights of NHAJ to initiate further proceedings against the said firm(s).

2.2.2 At any time before the submission of proposals, NHAJ may, for any reason, whether at its own initiative or in response to a clarification requested by a consulting firm, modify the Documents by amendment. The amendment will be notified in writing through fax to all consulting firms who have collected the RFP document and will be hosted on the website of NHAJ. All amendments will be binding on participating firms.

2.2.3. Coordinator: - The firm shall designate its Senior Technical Director or Senior officer who has experience in Road / Bridge construction as the coordinator for the assignment. The coordinator on date of commencement of services under this assignment shall visit the site and acquaint himself with the project / assignment. Thereafter, the coordinator shall be responsible for coordination of activities under the contract, interaction with NHAJ and signing all letters / reports on behalf of the firm. The inputs including site visits / visits to office of NHAJ during the entire period of services / contract of the Coordinator shall be incidental to this assignment and no separate payment shall be made in this regard.

2.2.4 The consultant shall as a part of this assignment will impart training to, NHAJ staff, IE staff and concessionaire in development and work zone safety Audit from National / International

faculty and experts at local training institute of repute like IAHE or CRRI or nearby IITs or Engineering Collages of repute. The aforesaid academic institution shall be identified in consultation with NHAI. The Workshop and Training will be for 4 days each with participation of NHAI officers, Independent Engineer and concessionaire. Before starting the assignment, one workshop will be held at / by approved institute for the projects (all awarded projects to each consultant) to finalize methodology and work plan of the audit and studies for development and construction phase as detailed in this RFP. NHAI would invite independent safety expert at the cost of consultant. The cost of such training cum workshop programme for maximum 15 persons for each project would be deemed to be included in the financial proposal of each project which will also include boarding / lodging arrangement, codes and stationeries etc. for participants. In addition to this, a 2 days site specific training will be conducted by the consultant for each awarded project including local NGOs /Safety agencies etc. with support staff of consultant, Independent Engineer and concessionaire and this will also included in the cost.

2.2.5 Expected Inputs of Experts and Support Staff:

2.2.6 Schedule 'L' prescribes the timelines for the assignments of Safety Consultants for various stages of a project (development, construction and operation). In case of development period, Para 4.3 of Schedule 'L' envisages that safety audit shall be completed in a period of 3 months. However, the drawings containing the design details to be provided by the Concessionaire (Ref. Para 4.2 of Schedule 'L') and collection of any data required for various audits is an ongoing process during the entire construction period of the project. Hence, the Safety Consultant shall review the set of drawings/ designs as and when provided to them by NHAI during the construction period of the project from safety perspective. Input of key personnel can be intermittent as per the project requirement; However bidder will have to indicate the man month of personnel with breakup of cost for each personnel to be engaged in the work plan as part of their financial bid in the prescribed format. It may be noted that CVs of only those key personal having intermittent input will be considered if the assignment on hands as on 7 days prior to PDD do not exceed 6 (six) and they are not engaged in any other work. **The firm will have to furnish information regarding deployment of their key personnel with intermittent inputs in the number of projects already undertaken and the personnel deployed thereon.**

2.2.7 The firms/ organizations shall make their own assessment of key and support personnel to undertake the assignment. Additional staff or personnel if required (e.g for fire, Mechanical safety etc) to complete the assignment in the prescribed time, must be provided, within the total quoted cost only. NHAI shall not be responsible for any wrong assessment by the firms / organizations and shall not in any case bear any additional cost arising therefrom. The firms should assess the inputs at site and office for each expert and support staff for completing the assignment within the above timelines, which shall be indicated by the firm in the Financial Proposal. The firms should make its own arrangements for office space, equipment, computer hardware/ software, etc. A certificate may be recorded by the Project Director, NHAI about the presence of experts and support staff at site for release of payment as per cost breakup given by the consultant.

2.2.8 Deliverables

S.No	Report	Timeline
Development Stage		
1	Inception Report	Within 20days of signing of contract agreement and organizing training/workshop
2	Report on Training and Workshop including finalization of Methodology and implementation plan	Within 7 days of workshop
3	Collection of Road accident data and analysis of fatal and grievously injured accident with black spot identification	Within two month from commencement of services.
4	Draft Safety Report –	Within 3 months of signing the contract
5	Final Safety Report	Within 15 days of receiving comments by NHAI/IE/Concessionaire
Construction / Maintenance Stage		
1.	Collection of Road accident data and analysis of fatal and grievously injured accident with black spot identification	Monthly.
2.	Submission of GAP report	At the start of Construction / Maintenance stage
3	Reports on all activities which were planned, actually executed and planned for the next month.	Monthly.
4.	Road Safety Audit Report	First report on construction Zone(s) works within one months of commencement of construction / maintenance works
5.	Submission of audit report of work zone safety	Each quarter for the period of construction / maintenance of project till COD
6	Quarterly Safety Reports	Each quarter for the period of construction / maintenance of project till COD
7.	One day workshop report.	Every Six month
8	Final Safety report	Within three month of COD

N.B. :- It will be expected from the consultant to submit road safety audit report the time of COD of the project also

2.3 Conflict of Interest

- 2.3.1 An Applicant shall not have a conflict of interest that may affect the Selection Process or the Consultancy (the “Conflict of Interest”). Any Applicant found to have a Conflict of Interest shall be disqualified. In the event of disqualification, the Authority shall forfeit and appropriate the Bid Security as mutually agreed genuine pre-estimated compensation and damages payable to the Authority for, inter alia, the time, cost and effort of the Authority including consideration of such Applicant’s Proposal, without prejudice to any other right or remedy that may be available to the Authority hereunder or otherwise.
- 2.3.2 The Authority requires that the Consultant provides professional, objective, and impartial advice and at all times hold the Authority’s interests paramount, avoid conflicts with other assignments or its own interests, and act without any consideration for future work. The Consultant shall not accept or engage in any assignment that would be in conflict with its prior or current obligations to other clients, or that may place it in a position of not being able to carry out the assignment in the best interests of the Authority.
- 2.3.3 Some guiding principles for identifying and addressing Conflicts of Interest have been illustrated in the Guidance Note at Schedule-3. Without limiting the generality of the above, an Applicant shall be deemed to have a Conflict of Interest affecting the Selection Process, if:
- (a) the Applicant, its consortium member (the “Member”) or Associate (or any constituent thereof) and any other Applicant, its consortium member or Associate (or any constituent thereof) have common controlling shareholders or other ownership interest; provided that this disqualification shall not apply in cases where the direct or indirect shareholding or ownership interest of an Applicant, its Member or Associate (or any shareholder thereof having a shareholding of more than 5 per cent of the paid up and subscribed share capital of such Applicant, Member or Associate, as the case may be) in the other Applicant, its consortium member or Associate is less than 5% (five per cent) of the subscribed and paid up equity share capital thereof; provided further that this disqualification shall not apply to any ownership by a bank, insurance company, pension fund or a public financial institution referred to in section 4A of the Companies Act, 1956. For the purposes of this Clause 2.3.3(a), indirect shareholding held through one or more intermediate persons shall be computed as follows: (aa) where any intermediary is controlled by a person through management control or otherwise, the entire shareholding held by such controlled intermediary in any other person (the “Subject Person”) shall be taken into account for computing the shareholding of such controlling person in the Subject Person; and (bb) subject always to sub-clause (aa) above, where a person does not exercise control over an intermediary, which has shareholding in the Subject Person, the computation of indirect shareholding of such person in the Subject Person shall be undertaken on a proportionate basis; provided, however, that no such shareholding shall be reckoned under this sub-clause (bb) if the shareholding of such person in the intermediary is less than 26% (twenty six per cent) of the subscribed and paid up equity shareholding of such intermediary; or
 - (b) a constituent of such Applicant is also a constituent of another Applicant; or
 - (c) such Applicant or its Associate receives or has received any direct or indirect subsidy or grant from any other Applicant or its Associate; or
 - (d) such Applicant has the same legal representative for purposes of this Application as any other Applicant; or
 - (e) such Applicant has a relationship with another Applicant, directly or through common third parties, that puts them in a position to have access to each others’ information about, or to influence the Application of either or each of the other Applicant; or
 - (f) there is a conflict among this and other consulting assignments of the Applicant

- (including its personnel and Sub-consultant) and any subsidiaries or entities controlled by such Applicant or having common controlling shareholders. The duties of the Consultant will depend on the circumstances of each case. While providing consultancy services to the Authority for this particular assignment, the Consultant shall not take up any assignment that by its nature will result in conflict with the present assignment; or
- (g) a firm which has been engaged by the Authority to provide goods or works or services for a project, and its Associates, will be disqualified from providing consulting services for the same project save and except as provided in Clause 2.3.4; conversely, a firm hired to provide consulting services for the preparation or implementation of a project, and its Members or Associates, will be disqualified from subsequently providing goods or works or services related to the same project; or
- (h) the Applicant, its Member or Associate (or any constituent thereof), and the bidder or Concessionaire, if any, for the Project, its contractor(s) or sub-contractor(s) (or any constituent thereof) have common controlling shareholders or other ownership interest; provided that this disqualification shall not apply in cases where the direct or indirect shareholding or ownership interest of an Applicant, its Member or Associate (or any shareholder thereof having a shareholding of more than 5% (five per cent) of the paid up and subscribed share capital of such Applicant, Member or Associate, as the case may be,) in the bidder or Concessionaire, if any, or its contractor(s) or sub-contractor(s) is less than 5% (five per cent) of the paid up and subscribed share capital of such Concessionaire or its contractor(s) or sub-contractor(s); provided further that this disqualification shall not apply to ownership by a bank, insurance company, pension fund or a Public Financial Institution referred to in section 4A of the Companies Act, 1956. For the purposes of this sub-clause (h), indirect shareholding shall be computed in accordance with the provisions of sub-clause (a) above. For purposes of this RFP, Associate means, in relation to the Applicant, a person who controls, is controlled by, or is under the common control with such Applicant (the "Associate"). As used in this definition, the expression "control" means, with respect to a person which is a company or corporation, the ownership, directly or indirectly, of more than 50% (fifty per cent) of the voting shares of such person, and with respect to a person which is not a company or corporation, the power to direct the management and policies of such person by operation of law or by contract.

2.3.4 An Applicant eventually appointed to provide Consultancy for this Project, and its Associates, shall be disqualified from subsequently providing goods or works or services related to the construction and operation of the same Project and any breach of this obligation shall be construed as Conflict of Interest; provided that the restriction herein shall not apply after a period of 5 (five) years from the completion of this assignment or to consulting assignments granted by banks/ lenders at any time; provided further that this restriction shall not apply to consultancy/ advisory services performed for the Authority in continuation of this Consultancy or to any subsequent consultancy/ advisory services performed for the Authority in accordance with the rules of the Authority. For the avoidance of doubt, an entity affiliated with the Consultant shall include a partner in the Consultant's firm or a person who holds more than 5% (five per cent) of the subscribed and paid up share capital of the Consultant, as the case may be, and any Associate thereof.

2.4 Number of Proposals

No Applicant shall submit more than one Application for each project. An Applicant shall not be entitled to submit another application in any case otherwise; their proposal will be rejected without assigning any reason.

2.5 Cost of Proposal

The Applicants shall be responsible for all of the costs associated with the preparation of

their proposals and their participation in the Selection Process including subsequent negotiation, visits to the Authority, Project site etc. The Authority will not be responsible or in any way liable for such costs, regardless of the conduct or outcome of the Selection Process.

2.6 Site visit and verification of information

Applicants are encouraged to submit their respective Proposals after visiting the Project site and ascertaining for themselves the site conditions, traffic, location, surroundings, climate, access to the site, availability of drawings and other data with the Authority, Applicable Laws and regulations or any other matter considered relevant by them.

2.7 Acknowledgement by Applicant

2.7.1 It shall be deemed that by submitting the Proposal, the Applicant has:

- (a) made a complete and careful examination of the RFP;
- (b) received all relevant information requested from the Authority;
- (c) acknowledged and accepted the risk of inadequacy, error or mistake in the information provided in the RFP or furnished by or on behalf of the Authority or relating to any of the matters referred to in Clause 2.6 above;
- (d) satisfied itself about all matters, things and information, including matters referred to in Clause 2.6 herein above, necessary and required for submitting an informed Application and performance of all of its obligations there under;
- (e) acknowledged that it does not have a Conflict of Interest; and
- (f) agreed to be bound by the undertaking provided by it under and in terms hereof.

2.7.2 The Authority shall not be liable for any omission, mistake or error on the part of the Applicant in respect of any of the above or on account of any matter or thing arising out of or concerning or relating to RFP or the Selection Process, including any error or mistake therein or in any information or data given by the Authority.

2.8 Right to reject any or all Proposals

2.8.1 Notwithstanding anything contained in this RFP, the Authority reserves the right to accept or reject any Proposal and to annul the Selection Process and reject all Proposals, at any time without any liability or any obligation for such acceptance, rejection or annulment, and without assigning any reasons thereof.

2.8.2 Without prejudice to the generality of Clause 2.8.1, the Authority reserves the right to reject any Proposal if:

- (a) at any time, a material misrepresentation is made or discovered, or
- (b) the Applicant does not provide, within the time specified by the Authority, the supplemental information sought by the Authority for evaluation of the Proposal.
- (c) if Key Personal indicated by a firm matches with the Key Personal of another Empanelled firm, proposals of both the firms will be rejected without assigning any reasons thereof.
- (d) Misrepresentation / improper response by the Applicant may lead to the disqualification of the Applicant. If the Applicant is the Lead Member of a consortium, then the entire consortium may be disqualified / rejected. If such disqualification / rejection occurs after the Proposals have been opened and the highest ranking (i.e. bidder with least quote) Applicant gets disqualified / rejected, then the Authority reserves the right to consider the next best Applicant, or take any other measure as may be deemed fit in the sole discretion of the Authority, including annulment of the Selection Process.

B. DOCUMENTS

2.9 Contents of the RFP

2.9.1 This RFP comprises the Disclaimer set forth hereinabove, the contents as listed below and will additionally include any Addendum / Amendment issued

Request for Proposal

- 1 Introduction
- 2 Instructions to Applicants
- 3 Criteria for Evaluation
- 4 Fraud and corrupt practices
- 5 Pre-Proposal Conference
- 6 Miscellaneous

Schedules

- Form of Agreement
- Terms of Reference
- Deployment of Personnel
- Estimate of Personnel Costs
- Approved Sub-Consultant(s)
- Cost of Services
- Payment Schedule
- Bank Guarantee for Performance Security

3 Guidance Note on Conflict of Interest Appendices

Appendix-II: Financial Proposal

- Covering Letter
- Financial Proposal
- Estimate of Personnel Costs

2.10 Clarifications

2.10.1 Applicants requiring any clarification on the RFP may send their queries to the Authority in writing before the date mentioned in the Schedule of Selection Process at Clause 1.8. The envelopes shall clearly bear the following identification:

“Queries/Request for Additional Information concerning RFP for.....”

The Authority shall Endeavour to respond to the queries within the period specified therein but not later than 7 (seven) days prior to the Proposal Due Date. The responses will be sent by fax or e-mail. The Authority will post the reply to all such queries on the Official Website and copies thereof will also be circulated to all Applicants who have purchased the RFP document without identifying the source of queries.

2.10.2 The Authority reserves the right not to respond to any questions or provide any clarifications, in its sole discretion, and nothing in this Clause 2.10 shall be construed as obliging the Authority to respond to any question or to provide any clarification.

2.11 Amendment of RFP

- 2.11.1 At any time prior to the deadline for submission of Proposal, the Authority may, for any reason, whether at its own initiative or in response to clarifications requested by an Applicant, modify the RFP document by the issuance of Addendum/ Amendment and posting it on the Official Website and by conveying the same to the prospective Applicants (who have purchased the RFP document) by fax or e-mail.
- 2.11.2 All such amendments will be notified in writing through fax or e-mail to all Applicants who have purchased the RFP document. The amendments will also be posted on the Official Website along with the revised RFP containing the amendments and will be binding on all Applicants.
- 2.11.3 In order to afford the Applicants a reasonable time for taking an amendment into account, or for any other reason, the Authority may, in its sole discretion, extend the Proposal Due Date.

C. PREPARATION AND SUBMISSION OF PROPOSAL

2.12 Language

The Proposal with all accompanying documents (the “Documents”) and all communications in relation to or concerning the Selection Process shall be in English language and strictly on the forms provided in this RFP. No supporting document or printed literature shall be submitted with the Proposal unless specifically asked for and in case any of these Documents is in another language, it must be accompanied by an accurate translation of the relevant passages in English, in which case, for all purposes of interpretation of the Proposal, the translation in English shall prevail.

2.13 Format and signing of Proposal

- 2.13.1 The Applicant shall provide all the information sought under this RFP. The Authority would evaluate only those Proposals that are received in the specified forms and complete in all respects.
- 2.13.2 The Applicant shall prepare one original set of the Proposal (together with originals/ copies of Documents required to be submitted along therewith pursuant to this RFP) and clearly marked “ORIGINAL”.
- 2.13.3 The Proposal shall be typed or written in indelible ink and signed by the authorized signatory of the Applicant who shall initial each page, in blue ink. All the alterations, omissions, additions, or any other amendments made to the Proposal shall be initialed by the person(s) signing the Proposal. The Proposals must be properly signed by the authorized representative (the “Authorized Representative”) as detailed below:
- (a) by the proprietor, in case of a proprietary firm; or
 - (b) by a partner, in case of a partnership firm and/or a limited liability partnership/JV ;
or
 - (c) by a duly authorized person holding the Power of Attorney, in case of a Limited Company or a corporation; or
 - (d) by the authorized representative of the Lead Member, in case of consortium.
- 2.13.4 Applicants should note the Proposal Due Date, as specified in Clause 1.8, for submission of Proposals. Except as specifically provided in this RFP, no supplementary material will be entertained by the Authority, and that evaluation will be carried out only on the basis

of Documents received by the closing time of Proposal Due Date as specified in Clause 2.17.1. Applicants will ordinarily not be asked to provide additional material information or documents subsequent to the date of submission, and unsolicited material if submitted will be summarily rejected. For the avoidance of doubt, the Authority reserves the right to seek clarifications under and in accordance with the provisions of Clause 2.23.

- 2.14.4 If an individual Key Personnel makes a false averment regarding his qualification, experience or other particulars, or his commitment regarding availability for the Project is not fulfilled at any stage after signing of the Agreement, he shall be liable to be debarred for any future assignment of the Authority for a period of 5 (five) years. The award of this consultancy to the Applicant may also be liable to cancellation in such an event.
- 2.14.7 The Authority reserves the right to verify all statements, information and documents, submitted by the Applicant in response to the RFP. Any such verification or the lack of such verification by the Authority to undertake such verification shall not relieve the Applicant of its obligations or liabilities hereunder nor will it affect any rights of the Authority there under.
- 2.14.8 In case it is found during the evaluation or at any time before signing of the Agreement or after its execution and during the period of subsistence thereof, that one or more of the eligibility conditions have not been met by the Applicant or the Applicant has made material misrepresentation or has given any materially incorrect or false information, the Applicant shall be disqualified forthwith if not yet appointed as the Consultant either by issue of the LOA or entering into of the Agreement, and if the Selected Applicant has already been issued the LOA or has entered into the Agreement, as the case may be, the same shall, notwithstanding anything to the contrary contained therein or in this RFP, be liable to be terminated, by a communication in writing by the Authority without the Authority being liable in any manner whatsoever to the Applicant or Consultant, as the case may be.

In such an event, the Authority shall forfeit and appropriate the Bid Security as mutually agreed pre-estimated compensation and damages payable to the Authority for, inter alia, time, cost and effort of the Authority, without prejudice to any other right or remedy that may be available to the Authority.

2.15 Financial Proposal

- 2.15.1 Applicants shall submit the financial proposal in the formats at Appendix-II (the "Financial Proposal") clearly indicating the total cost of the Consultancy (Item [G] of Form-2 of Appendix-II) in both figures and words, in Indian Rupees, and signed by the Applicant's Authorized Representative. In the event of any difference between figures and words, the amount indicated in words shall prevail. In the event of a difference between the arithmetic total and the total shown in the Financial Proposal, the lower of the two shall prevail.
- 2.15.2 While submitting the Financial Proposal, the Applicant shall ensure the following:
- (i) All the costs associated with the assignment shall be included in the Financial Proposal. These shall normally cover remuneration for all the Personnel (Expatriate and Resident, in the field, office etc), accommodation, air fare, equipment, printing of documents, surveys, geo-technical investigations etc. The total amount indicated in the Financial Proposal shall be without any condition attached or subject to any assumption, and shall be final and binding. In case any assumption or condition is indicated in the Financial Proposal, it shall be considered non-responsive and liable to be rejected.

(ii) The Financial Proposal shall take into account all expenses and tax liabilities. For the avoidance of doubt, it is clarified that all taxes shall be deemed to be included in the costs shown under different items of the Financial Proposal. Further, all payments shall be subject to deduction of taxes at source as per Applicable Laws.

(iii) Costs (including break down of costs) shall be expressed in INR.

2.16 Submission of Proposal

2.16.1 The Applicants shall submit the Proposal in hard bound form with all pages numbered serially and by giving an index of submissions. Each page of the submission shall be initialed by the Authorized Representative of the Applicant as per the terms of the RFP. In case the proposal is submitted on the document downloaded from Official Website, the Applicant shall be responsible for its accuracy and correctness as per the version uploaded by the Authority and shall ensure that there are no changes caused in the content of the downloaded document. In case of any discrepancy between the downloaded or photocopied version of the RFP and the original RFP issued by the Authority, the latter shall prevail.

2.16.2 The Proposal will be sealed in an outer envelope which will bear the address of the Authority, RFP Notice number, Consultancy name as indicated at Clauses 1.11.1 and 1.11.3 and the name and address of the Applicant. It shall bear on top, the following: **“Do not open, except in presence of the Authorized Person of the Authority”**

If the envelope is not sealed and marked as instructed above, the Authority assumes no responsibility for the misplacement or premature opening of the contents of the Proposal submitted and consequent losses, if any, suffered by the Applicant.

2.16.4 The Financial Proposal shall be typed or written in indelible ink and signed by the Authorized Representative of the Applicant. All pages of the original Technical Proposal and Financial Proposal must be numbered and initialed by the person or persons signing the Proposal.

2.16.5 The completed Proposal must be delivered on or before the specified time on Proposal due Date. Proposals submitted by fax, telex, telegram or e-mail shall not be entertained.

2.16.6 The Proposal shall be made in the Forms specified in this RFP. Any attachment to such Forms must be provided on separate sheets of paper and only information that is directly relevant should be provided. This may include photocopies of the relevant pages of printed documents. No separate documents like printed annual statements, company brochures, copy of contracts etc. will be entertained.

2.16.7 The rates quoted shall be firm throughout the period of performance of the assignment upto and including acceptance of the Feasibility Report by the Authority and discharge of all obligations of the Consultant under the Agreement.

2.17 Proposal Due Date

2.17.1 Proposal should be submitted at or before 1100 hrs on the Proposal Due Date specified at Clause 1.8 at the address provided in Clause 1.11 in the manner and form as detailed in this RFP. A receipt thereof should be obtained from the person specified therein.

2.17.2 The Authority may, in its sole discretion, extend the Proposal Due Date by issuing an Addendum in accordance with Clause 2.11 uniformly for all Applicants.

2.18 Late Proposals

Proposals received by the Authority after the specified time on Proposal Due Date shall not be eligible for consideration and shall be summarily rejected.

2.19 Modification/ substitution/ withdrawal of Proposals

- 2.19.1 The Applicant may modify, substitute, or withdraw its Proposal after submission, provided that written notice of the modification, substitution, or withdrawal is received by the Authority prior to Proposal Due Date. No Proposal shall be modified, substituted, or withdrawn by the Applicant on or after the Proposal Due Date.
- 2.19.2 The modification, substitution, or withdrawal notice shall be prepared, sealed, marked, and delivered in accordance with Clause 2.16, with the envelopes being additionally marked “MODIFICATION”, “SUBSTITUTION” or “WITHDRAWAL”, as appropriate.
- 2.19.3 Any alteration / modification in the Proposal or additional information or material supplied subsequent to the Proposal Due Date, unless the same has been expressly sought for by the Authority, shall be disregarded.

2.20 Bid Security

- 2.20.1 The Applicant shall furnish as part of its Proposal, a bid security of [Rs. 5,000 (five thousand)] 8 in the form of a Demand Draft issued by one of the Nationalized/ Scheduled Banks in India in favour of the **NHAI, RO Bhopal** payable at **Bhopal** (the “Bid Security”), returnable not later than 30 (thirty) days from PDD except in case of the two highest ranked Applicants as required in Clause 2.24.1. In the event that the first ranked Applicant commences the assignment as required in Clause 2.29, the second ranked Applicant, who has been kept in reserve, shall be returned its Bid Security forthwith, but in no case not later than 120 (one hundred and twenty) days from PDD. The Selected Applicant’s Bid Security shall be returned, upon the Applicant signing the Agreement and completing the Deliverables assigned to it for the first 2 (two) months of the Consultancy in accordance with the provisions thereof.
- 2.20.2 Any Bid not accompanied by the Bid Security shall be rejected by the Authority as non-responsive.
- 2.20.3 The Authority shall not be liable to pay any interest on the Bid Security and the same shall be interest free.
- 2.20.4 The Applicant, by submitting its Application pursuant to this RFP, shall be deemed to have acknowledged that without prejudice to the Authority’s any other right or remedy hereunder or in law or otherwise, the Bid Security shall be forfeited and appropriated by the Authority as the mutually agreed pre-estimated compensation and damage payable to the Authority for, inter alia, the time, cost and effort of the Authority in regard to the RFP including the consideration and evaluation of the Proposal under the following conditions:
- (a) If an Applicant submits a non-responsive Proposal;
 - (b) If an Applicant engages in any of the Prohibited Practices specified in Section- 4 of this RFP;
 - (c) If an Applicant withdraws its Proposal during the period of its validity as specified in this RFP and as extended by the Applicant from time to time;

- (d) In the case of the Selected Applicant, if the Applicant fails to reconfirm its commitments during negotiations as required vide Clause 2.24.1;
- (e) In the case of a Selected Applicant, if the Applicant fails to sign the Agreement or commence the assignment as specified in Clauses 2.28 and 2.29 respectively; or
- (f) If the Applicant is found to have a Conflict of Interest as specified in Clause 2.3.

D. EVALUATION PROCESS

2.21 Evaluation of Proposals

- 2.21.1 The Authority shall open the Proposals at 1130 hours on the Proposal Due Date, at the place specified in Clause 1.11.1 and in the presence of the Applicants who choose to attend.
- 2.21.2 Proposals for which a notice of withdrawal has been submitted in accordance with Clause 2.19 shall not be opened.
- 2.21.4 The Authority reserves the right to reject any Proposal which is non-responsive and no request for alteration, modification, substitution or withdrawal shall be entertained by the Authority in respect of such Proposals.
- 2.21.5 The Authority shall subsequently examine and evaluate Proposals in accordance with the Selection Process specified in the RFP.
- 2.21.6 A date, time and venue will be notified to all Applicants for opening of Financial Proposals. Before opening of the Financial Proposals, the list of pre-qualified and shortlisted Applicants be read out. The opening of Financial Proposals shall be done in presence of respective representatives of Applicants who choose to be present. The Authority will not entertain any query or clarification from Applicants who fail to qualify at any stage of the Selection Process.
- 2.21.7 Applicants are advised that Selection will be entirely at the discretion of the Authority. Applicants will be deemed to have understood and agreed that no explanation or justification on any aspect of the Selection Process or Selection will be given.
- 2.21.8 Any information contained in the Proposal shall not in any way be construed as binding on the Authority, its agents, successors or assigns, but shall be binding against the Applicant if the Consultancy is subsequently awarded to it.

2.22 Confidentiality

Information relating to the examination, clarification, evaluation, and recommendation for the selection of Applicants shall not be disclosed to any person who is not officially concerned with the process or is not a retained professional adviser advising the Authority in relation to matters arising out of, or concerning the Selection Process. The Authority will treat all information, submitted as part of the Proposal, in confidence and will require all those who have access to such material to treat the same in confidence. The Authority may not divulge any such information unless it is directed to do so by any statutory entity that has the power under law to require its disclosure or is to enforce or assert any right or privilege of the statutory entity and/or the Authority.

2.23 Clarifications

- 2.23.1 To facilitate evaluation of Proposals, the Authority may, at its sole discretion, seek

clarifications from any Applicant regarding its Proposal. Such clarification(s) shall be provided within the time specified by the Authority for this purpose. Any request for clarification(s) and all clarification(s) in response thereto shall be in writing.

- 2.23.2 If an Applicant does not provide clarifications sought under Clause 2.23.1 above within the specified time, its Proposal shall be liable to be rejected. In case the Proposal is not rejected, the Authority may proceed to evaluate the Proposal by construing the particulars requiring clarification to the best of its understanding, and the Applicant shall be barred from subsequently questioning such interpretation of the Authority.

E. APPOINTMENT OF CONSULTANT

2.24 Negotiations

- 2.24.1 The Selected Applicant may, if necessary, be invited for negotiations. The negotiations shall generally not be for reducing the price of the Proposal, but will be for re-confirming the obligations of the Consultant under this RFP. Issues such as deployment of Key Personnel, understanding of the RFP, methodology and quality of the work plan shall be discussed during negotiations. **A Key Personnel who do not score 70% (seventy per cent) marks as required under Clause 22(ii) of document for empanelment shall be replaced by the Applicant with a better or equivalent candidate to the satisfaction of the Authority.** In case the Selected Applicant fails to reconfirm its commitment, the Authority reserves the right to designate the next ranked Applicant as the Selected Applicant and invite it for negotiations.

- 2.24.2 The Authority will examine the CVs of all other Professional Personnel and those not found suitable shall be replaced by the Applicant to the satisfaction of the Authority.

2.25 Substitution of Key Personnel

- 2.25.1 Firm will not normally be allowed to change key personnel as proposed at the time of empanelment; unless and until, it has been allowed by NHAI to substitute in case of any incapacity or due to health or exceeding the maximum permissible intermittent input as mentioned in this RFP. Substitution will, however, be permitted, subject to equally or better qualified and experienced personnel being provided to the satisfaction of the Authority.

- 2.25.2 The Authority expects all the Key Personnel to be available during implementation of the Agreement. The Authority will not consider substitution of Key Personnel except for reasons of any incapacity or due to health. Such substitution shall ordinarily be limited to one Key Personnel subject to equally or better qualified and experienced personnel being provided to the satisfaction of the Authority.

2.26 Indemnity

The Consultant shall, subject to the provisions of the Agreement, indemnify the Authority for an amount not exceeding 3 (three) times the value of the Agreement for any direct loss or damage that is caused due to any deficiency in services.

2.27 Award of Consultancy

After selection, a Letter of Award (the "LOA") shall be issued, in duplicate, by the Authority to the Selected Applicant and the Selected Applicant shall, within 7 (seven) days of the receipt of the LOA, sign and return the duplicate copy of the LOA in acknowledgement thereof. In the event the duplicate copy of the LOA duly signed by the

Selected Applicant is not received by the stipulated date, the Authority may, unless it consents to extension of time for submission thereof, appropriate the Bid Security of such Applicant as mutually agreed genuine pre-estimated loss and damage suffered by the Authority on account of failure of the Selected Applicant to acknowledge the LOA, and the next highest ranking Applicant may be considered.

2.28 Execution of Agreement

After acknowledgement of the LOA as aforesaid by the Selected Applicant, it shall execute the Agreement within the period prescribed in Clause 1.8. The Selected Applicant shall not be entitled to seek any deviation in the Agreement.

2.29 Commencement of assignment

The Consultant shall commence the Services at the Project site within 7 (seven) days of the date of the Agreement, or such other date as may be mutually agreed. If the Consultant fails to either sign the Agreement as specified in Clause 2.28 or commence the assignment as specified herein, the Authority may invite the second ranked Applicant for negotiations. In such an event, the Bid Security of the first ranked Applicant shall be forfeited and appropriated in accordance with the provisions of Clause 2.20.4.

2.30 Proprietary data

Subject to the provisions of Clause 2.22, all documents and other information provided by the Authority or submitted by an Applicant to the Authority shall remain or become the property of the Authority. Applicants and the Consultant, as the case may be, are to treat all information as strictly confidential. The Authority will not return any Proposal or any information related thereto. All information collected, analyzed, processed or in whatever manner provided by the Consultant to the Authority in relation to the Consultancy shall be the property of the Authority.

3. CRITERIA FOR EVALUATION

3.3 Evaluation of Financial Proposal

3.3.1 The financial evaluation will be carried out as specified in RFP.

3.3.2 For financial evaluation, the total cost indicated in the Financial Proposal, excluding Additional Costs, will be considered. Additional Costs shall include items specified as such in Form-2 of Appendix-II.

3.3.3 The Authority will determine whether the Financial Proposals are complete, unqualified and unconditional. The cost indicated in the Financial Proposal shall be deemed as final and reflecting the total cost of services. Omissions, if any, in costing any item shall not entitle the firm to be compensated and the liability to fulfill its obligations as per the TOR within the total quoted price shall be that of the Consultant.

3.4.2 The Selected Applicant shall be the first ranked Applicant (having the lowest quote). The second ranked Applicant shall be kept in reserve and may be invited for negotiations in case the first ranked Applicant withdraws, or fails to comply with the requirements specified in Clauses of RFP.

4. FRAUD AND CORRUPT PRACTICES

- 4.1 The Applicants and their respective officers, employees, agents and advisers shall observe the highest standard of ethics during the Selection Process. Notwithstanding anything to the contrary contained in this RFP, the Authority shall reject a Proposal without being liable in any manner whatsoever to the Applicant, if it determines that the Applicant has, directly or indirectly or through an agent, engaged in corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice (collectively the “Prohibited” Practices”) in the Selection Process. In such an event, the Authority shall, without prejudice to its any other rights or remedies, forfeit and appropriate the Bid Security or Performance Security, as the case may be, as mutually agreed genuine pre-estimated compensation and damages payable to the Authority for, inter alia, time, cost and effort of the Authority, in regard to the RFP, including consideration and evaluation of such Applicant’s Proposal.
- 4.2 Without prejudice to the rights of the Authority under Clause 4.1 hereinabove and the rights and remedies which the Authority may have under the LOA or the Agreement, if an Applicant or Consultant, as the case may be, is found by the Authority to have directly or indirectly or through an agent, engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice during the Selection Process, or after the issue of the LOA or the execution of the Agreement, such Applicant or Consultant shall not be eligible to participate in any tender or RFP issued by the Authority during a period of 2 (two) years from the date such Applicant or Consultant, as the case may be, is found by the Authority to have directly or through an agent, engaged or indulged in any corrupt practice, fraudulent practice, coercive, practice, undesirable practice or restrictive practice, as the case may be.
- 4.3 For the purposes of this Section, the following terms shall have the meaning hereinafter respectively assigned to them:
- (a) “corrupt practice” means (i) the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence the action of any person connected with the Selection Process (for avoidance of doubt, offering of employment to 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 the Selection Process or the LOA or has dealt with matters concerning the Agreement or arising there from, 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) save as provided herein, engaging in any manner whatsoever, whether during the Selection Process or after the issue of the 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 consultant/ adviser of the Authority in relation to any matter concerning the Project;
 - (b) “fraudulent practice” means a misrepresentation or omission 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 persons or property to influence any person’s participation or action in the Selection Process;
 - (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.

5. PRE-PROPOSAL CONFERENCE

- 5.1 Pre-Proposal Conference of the Applicants shall be convened at the designated date, time and place. Only those Applicants, who have purchased the RFP document or downloaded the same from the Official Website for the Authority, shall be allowed to participate in the Pre-Proposal Conference. A maximum of two representatives of each Applicant shall be allowed to participate on production of an authority letter from the Applicant.
- 5.2 During the course of Pre-Proposal Conference, the Applicants will be free to seek clarifications and make suggestions for consideration of the Authority. The Authority shall Endeavour to provide clarifications and such further information as it may, in its sole discretion, consider appropriate for facilitating a fair, transparent and competitive Selection Process.

6. MISCELLANEOUS

- 6.1 The Selection Process shall be governed by, and construed in accordance with, the laws of India and the Courts at **Bhopal** shall have exclusive jurisdiction over all disputes arising under, pursuant to and/or in connection with the Selection Process.
- 6.2 The Authority, in its sole discretion and without incurring any obligation or liability, reserves the right, at any time, to:
- (a) suspend and/or cancel the Selection Process and/or amend and/or supplement the Selection Process or modify the dates or other terms and conditions relating thereto;
 - (b) consult with any Applicant in order to receive clarification or further information;
 - (c) retain any information and/or evidence submitted to the Authority by, on behalf of and/or in relation to any Applicant; and/or
 - (d) independently verify, disqualify, reject and/or accept any and all submissions or other information and/or evidence submitted by or on behalf of any Applicant.
- 6.3 It shall be deemed that by submitting the Proposal, the Applicant agrees and releases the Authority, its employees, agents and advisers, irrevocably, unconditionally, fully and finally from any and all liability for claims, losses, damages, costs, expenses or liabilities in any way related to or arising from the exercise of any rights and/or performance of any obligations hereunder, pursuant hereto and/or in connection herewith and waives any and all rights and/or claims it may have in this respect, whether actual or contingent, whether present or future.
- 6.4 All documents and other information supplied by the Authority or submitted by an Applicant shall remain or become, as the case may be, the property of the Authority. The Authority will not return any submissions made hereunder. Applicants are required to treat all such documents and information as strictly confidential.
- 6.5 The Authority reserves the right to make inquiries with any of the clients listed by the Applicants in their previous experience record.

DATA SHEET

(As Mentioned in Invitation of Proposal and Information for firms)

1. **The Name of the Assignment is:** **Four-laning of Indore to MP/Gujarat Border Section of NH-59 from Km. 9.500 to Km. 171.00 in the State of MP.**
2. **The Name of the Client is:** National Highways Authority of India
3. **The Description of the Project:** The details of the projects for which safety consultant are to be appointed are given in RFP.

3. **Date and Time of Pre-Proposal Conference held on****Date:** 06.08.2013

Venue: Office of the Chief General Manager (T), Regional Office-MP, E-2/167, Arera Colony, Bhopal-462016 To obtain first hand information on the assignment and on the local conditions, Firms are encouraged to pay a visit to Projects site before submitting a proposal.

5. The proposal shall be valid for **90** days after the last date of submission.
6. The Language of documents and correspondence will be English
7. **The number of copies of the proposal required to be submitted: 1 no.**
8. The date and time of proposal submission are: 22.08.2013 (up to 13:00 hrs)
and the address is as under:-

Office of the Chief General Manager (T), Regional Office-MP, E-2/167, Arera Colony, Bhopal-462016

9. **Commencement of Assignment:** The Consultants shall commence the services within seven (7) days of the date of Signing of Contract Agreement.
10. **Duration of Assignment** The duration of the assignment will be up to the completion of the projects.

ADDRESS FOR COMMUNICATION

Office of the Chief General Manager (T), Regional Office-MP, E-2/167, Arera Colony, Bhopal-462016

11. Proposal Opening & Evaluation:

- 11.1 **Evaluation of Financial Proposal.**
- 11.2 For financial evaluation, total cost of financial proposal will be considered. This however, does not include (i) service tax, which are reimbursable (ii) any taxes and duties payable in respect of expatriate key personnel.
- 11.3 The evaluation committee will determine whether the financial proposals are complete, unqualified and unconditional. The cost indicated in the financial proposal shall be

deemed as final and reflecting the total cost of services. Omissions, if any, in costing any item shall not entitle the firm to be compensated and the liability to fulfill its obligations as per the terms of reference within the total quoted price shall be that of the consultant. The evaluation shall exclude those taxes, duties, fees, levies and other charges imposed under the applicable law as applicable on foreign and domestic inputs. For bringing the financial proposal of all the Consultants at par, the cost quoted by Consultants shall be converted for equivalent length of 100 km for comparison purpose. The work will be awarded on the least cost basis.

12. PERFORMANCE SECURITY

12.1 The Performance Security to be submitted by the successful bidder will be 5% of the contract value. The Performance Security should be valid for the duration of services plus Six months. The consultant shall furnish within 28 days of the issue of Letter of Acceptance (LOA), an unconditional Bank Guarantee from the Bank (Generally by SBI or its subsidiaries or any Indian nationalized bank or IDBI or ICICI or ICICI Bank or by a foreign bank through a correspondent bank in India) for an amount equivalent to 5% of the total contract value to be received by him towards Performance Security valid for a period of six months beyond the date of completion of services.

12.1 Selection of firm for a particular assignment:

The selection is on Least Cost) basis. For each assignment, quotes are obtained from bidders on the basis of details/ report of the Project mentioned in Appendix VI. The firms are encouraged to visit the site before submitting the Financial Proposal. The firms are to submit financial offer in sealed covers as per the formats given at Appendix II, alongwith (i) a no conflict of interest certificate (specific only to the assignment) with the Concessionaire and the Independent Engineer concerned; Appendix IIA and (ii) the Financial Proposal/ Quote; Appendix II B . The financial proposals of those firms not having any conflict of interest with the Concessionaire and the Independent Engineer concerned and duly short listed only would be opened on the last date/ time in the presence of the firms who choose to attend. The financial proposal shall be strictly unconditional and unqualified, otherwise the same shall be declared as non-responsive.

13. NEGOTIATION

- i) Prior to the expiration period of validity of proposal, the NHAI shall notify the successful firm by registered letter or facsimile and may either issue LOA if negotiations are not required or may invite it to negotiate the contract.
- ii) Negotiations normally take one to two days. The aim is to reach agreement on all points, and initial a draft contract by the conclusion of negotiations
- iii) Negotiations shall commence with a discussion of the proposed work plan, staffing interviewing each key personal to ascertain his overall suitability / availability. Agreement must then be reached on the TOR, the staffing and bar charts, which shall indicate activities, staff, periods in the field and in the home office, staff months, logistics and reporting. Special attention shall be paid to optimize the required outputs from the firm and to define clearly the inputs required from the NHAI to ensure satisfactory implementation of the assignment.
- iv) Having selected a firm, among other things, on the basis of an evaluation of proposed key professional staff, the NHAI expects to negotiate, a contract on the basis of the staff named in the proposal and, prior to contract negotiations, will require assurance that this staff shall be actually available. NHAI shall not consider substitutions during contract negotiations except in cases of unexpected delays in the starting date or incapacity of key professional staff for reasons of health. Removal and/or Replacement of Personnel is as per clause 14.

- v) The negotiations shall be concluded with a review of the draft form of Contract. The NHAI and the firm will finalize the contract to conclude negotiations.
- vi) In case negotiations fail with the first invited firm, the second lowest firm shall be invited and the same procedure shall be followed until successful negotiations are concluded.
- vii) The firms/ organizations shall make their own assessment of key and support personnel to undertake the assignment. Additional staff or personnel if required to complete the assignment in the prescribed time, must be provided, within the total quoted cost only. NHAI shall not be responsible for any wrong assessment by the firms/ organizations and shall not in any case bear any additional cost arising there from.

14. Removal and/or Replacement of Personnel

Except as the Client may otherwise agree, no changes shall be made in the Key Professional Personnel proposed at the time of empanelment. If, for any reason beyond the reasonable control of the Consultants, it becomes necessary to replace any of the Personnel, the Consultants shall forthwith provide as replacement a person of equivalent or better qualifications.

- 14.1 If the Client finds that any of the Personnel has committed serious misconduct or has been charged with having committed a criminal action; or
- 14.2 has reasonable cause to be dissatisfied with the performance of any of the Personnel, then the Consultants shall, at the Client's written request specifying the grounds, therefore forthwith provide as a replacement a person with equivalent or better qualifications and experience acceptable to the Client.

Any of the Personnel provided as a replacement under Clauses 14.1 and 14.2 above, the rate of remuneration applicable to such person as well as any reimbursable expenditures (including expenditures due to the number of eligible dependents) the Consultants may wish to claim as a result of such replacement, shall be subject to the prior written approval by the Client. Except as the Client may otherwise agree, (i) the Consultants shall bear all additional travel and other costs arising out of or incidental to any removal and / or replacement, and (ii) for total replacement up to 50% of key personnel, remuneration shall be reduced for each key personnel by 2.5% of the contract price and for total replacement beyond 50% of the total of key personnel, the client may initiate action for termination / debarment of such Consultant for future projects of NHAI for a period of 2 years.

- 15. Award, Signing of Contract Agreement and Commencement of Services: The Contract shall be awarded through a Letter of Acceptance (LOA) to the preferred/selected firm. On issuance of LOA, preferred bidder will submit the performance security as mentioned above for an amount of 5% of the bid price. The preferred firm shall sign the contract agreement as per the draft enclosed at Appendix-III and commence the services within 7 days from the date of signing of contract. If the preferred firm fails to commence the services, then BG provided by the firm shall be encased by NHAI.

Assignment of Safety Consultant - **No Conflict of Interest Certificate**

Name of Project : Four-laning of Indore to MP/Gujarat Border Section of NH-59 from Km. 9.500 to Km. 171.00 in the State of MP.

Name of Concessionaire: M/s IVRCL Indore-Guj. Tollways Pvt. Ltd.

Name of Independent Engineer (IE) : M/s Euro Studio SL Spain Associates with Feedback Ventures Pvt. Ltd. (JV).

On behalf of our firm/organization and the proposed team members for the assignment of Safety Consultant for above mentioned project, we certify that

- (i) We have no financial interest in any of the above mentioned entities or in the contracts of the Concessionaire and IE of above mentioned project.
- (ii) We have had no previous employment by or financial ties to any of above mentioned entities except for the following fee based consultancy services.

S. No.	Name of Project	Fee received from M/s	Consultancy Fee Received Rs.)

- (iii) We have no professional or personal relationship with the above mentioned entities.
- (iv) In case we are selected for the assignment, we shall not accept any direct/ indirect employment/ consultancy with the above mentioned entities during the period of assignment.
- (v) During the period of assignment, we shall not engage in discussion or make any agreement with the above entities regarding employment/ consultancy after the assignment is over.
- (vi) We shall remain impartial and independent of above entities.
- (vii) We understand that NHAI may forfeit our security or blacklist or debar us for a minimum 2 years period in case any of above certifications is found incorrect.

(Signature of Authorized Representative)

FORMAT FOR SUBMISSION OF THE PROPOSAL FOR APPOINTMENT OF SAFETY
CONSULTANT

- Form – 1: Forwarding Letter
- Form – 2: Details of Firm
- Form – 3: Approach & Methodology proposed for the assignment
- Form – 4: Comments/ Suggestions of the firm
- Form – 5: Work Plan
- Form – 6: Format of CV for proposed key staff

Forwarding Letter

Sub: Safety Consultant for PPP Projects on DBFOT basis/OMT Projects.

-Application for appointment of Safety Consultant.

Dear Sir,

With reference to your RFP document dated *****, I/we, having examined the RFP document and understood its contents, hereby submit my/our Application for appointment of Safety Consultant for PPP Projects on DBFO basis/OMT Projects. The Application is unconditional and unqualified.

2 All information provided in the Application, Appendices and Annexure is true and correct and all documents accompanying such Application are true copies of their respective originals.

3 I/ We acknowledge the right of the Authority to reject our Application without assigning any reason or otherwise and hereby waive our right to challenge the same on any account whatsoever.

4 I/We certify that in the last three years, I/we or any of the Members of Joint Venture have neither failed to perform on any contract, as evidenced by imposition of a penalty or a judicial pronouncement or arbitration award, nor been expelled from any project or contract nor have had any contract terminated for breach on our part.

5. I/We agree and undertake to abide by all the terms and conditions of the RFP document.

In witness thereof, I/We submit this application under and in accordance with the terms of the RFP document.

Yours faithfully,

Date:

Place:

(Signature of the Authorized Representative)

(Name and designation)

Name and seal of the Firm

Details of Firm

(to be furnished by individual firm or each of the constituent firms in case of JVs)

1. Month/ Year of incorporation of firm/ organization.

Name of firm/ organization	Month/ Year of incorporation	Country	Type of Organization			
			Individual	Partnership	Corporation	Others (pl. describe)

Note: A copy of Certificate of Incorporation is to be furnished.

2. Office/Business Address/Telephone nos.
3. Total experience in consultancy :Years
4. Consultancy Experience in Road & Bridge Projects :Years
5. Annual turnover in last five years:

Financial Year	Annual Turnover from consulting business	
	Amount in various currencies	Equivalent amount in Indian Rupees
2007-08		
2008-09		
2009-10		
2010-11		
2012-13		
Average Annual Turnover in last five years		

- Note: i) The amounts shall be stated in Indian Rupees.
- ii) The currency conversion rates for the respective years shall be mentioned for various international currencies used.
- iii) Copies of audited balance sheets or certificates from statutory auditor/Chartered Accountant for the last five years (FY 2007-2008 to FY 2012-2013) are to be furnished.

APPROACH & METHODOLOGY PROPOSED FOR THE ASSIGNMENT

The firm/ organization based on its experience and after reviewing Schedule 'L' of MCA shall:

1. list out the major tasks for safety audits during development (design audit) or construction stages (development/ construction/) or maintenance stages separately for Road & Bridge Projects.
2. propose sequencing of the tasks so as to complete the assignment within the timelines given in Schedule 'L' /Schedule "H" of Concession Agreement.
3. list out the documents required for auditing;
4. propose checklist of items/ issues under each task; and
5. list out the staff inputs, equipment and system required for conducting the safety audit as per above tasks/ checklists. Please mention the systems available or any systems exclusively developed by your firm to conduct such audits.

COMMENTS/ SUGGESTIONS OF THE FIRM (not more than one page)

On the Terms of Reference :

- 1.
- 2.
- 3.
- 4.
- 5.
- ..
- ..

On data/ documents, services and facilities to be provided by NHAI indicated in ToR :

- 1.
- 2.
- 3.
- 4.
- 5.
- ..
- ..

WORK PLAN

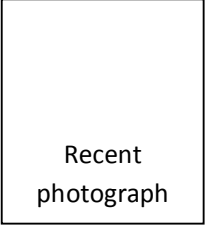
Work Plan (in the Form of Bar Chart)

(1st, 2nd, etc. are weeks from the date of commencement of assignment)

Sl. No.	Description of task	Persons in the team responsible for the task	Weeks							
			1 st	2 nd	3 rd	4 th				
(A)	Development Stage									
	(i)									
	(ii)									
	(iii)									
(B)	Construction Stage/maintenance Stage									
	(i)									
	(ii)									
	(iii)									

CURRICULUM VITAE (CV) OF KEY PERSONNEL

1. Proposed Position: _____
2. Name of Firm: _____
3. Name of Staff: _____
4. Profession: _____
5. Date of Birth: _____ (pl. enclose proof)
6. Nationality: _____
7. Years with Firm/Entity: _____
8. Membership of Professional Societies: _____
- Publication: (List of details of major technical reports/papers published in recognized national and international journals)
9. Detailed Task Assigned: _____
10. Educational Qualification:
(Summarize college/university and other specialized education of staff member, giving names of schools, dates attended and degrees obtained). (Please enclose proof of qualification)
11. Employment Record:
(Starting with present position, list in reverse order, every employment held. List all positions held by staff member since graduation, giving dates, names of employing organization, title of positions held and location of assignments. For experience period of specific assignment must be clearly mentioned, also give NHAI references, where appropriate).
12. Summary of the CV
(Furnish a summary of the above CV. The information in the summary shall be precise and accurate. The information in the summary will have bearing on the evaluation of the CV).
- A) Education:
Field of Graduation and year
Field of post-graduation and year
Any other specific qualification
- B) Experience
Total Experience in the field relevant to the assignment: _____ Yrs
Break-up of Total Experience, field – wise:



Recent
photograph

Responsibilities held	No. of Years
(i)	
(ii)	
(iii)	

Relevant Specific Experience: _____ Yrs.

C) Permanent Employment with the Firm (Yes/No):

If yes, how many years :

If no, what is the employment :

Arrangement with the firm ? :

13. Details of the current assignment and the time duration for which services are required for the current assignment.

Certification by the Candidate

I, the undersigned, (Name and Address) undertake that this CV correctly describes myself, my qualification and my experience and NHAI would be at liberty to debar me if any information given in the CV, in particular the Summary of Qualification & Experience vis-à-vis the requirements as per TOR is found incorrect. I further undertake that I have neither been debarred by NHAI nor left any assignment with the consultants engaged by NHAI / contracting firm for any continuing work of NHAI without completing my assignment. I will be available to undertake the safety audit assignments for a minimum period of 12 months. If I leave this assignment in the middle of the work, NHAI would be at liberty to debar me from taking any assignment in any of the NHAI works for an appropriate period of time to be decided by NHAI. I have no objection if my services are extended by NHAI for this work in future.

I further undertake that if due to my inability to work on this project due to unavoidable circumstances, due to which consultant's firm is forced to seek replacement. In such unavoidable circumstances, I shall not undertake any employment in NHAI projects during the period of assignment of this project and NHAI shall consider my CV invalid till such time.

For key personnel having intermittent inputs, add the following:

"I further certify that I am associated with the following assignments as on date (as on 7 days prior to due date of submission of proposal) including those for which LOA has been received by the firm and the inputs in these assignments.

Signature of the Candidate _____

Place _____

Date _____

Certification by the firm

The undersigned on behalf of ----- (name of consulting firm) certify that the details of qualification and experience of Shri ----- (name of the proposed personnel and address) as described in the CV has been checked and found to be correct. It is also certified that Shri----- (name of proposed personnel) to the best of our knowledge has neither been debarred by NHAI nor left his assignment with any other consulting firm engaged by NHAI/Contracting firm (firm to be supervised now) for the ongoing projects. We understand that if the information about leaving the past assignment is known to NHAI, it would be at liberty to remove the personnel from the present assignment and debar him for an appropriate period to be decided by NHAI.

Signature of the Authorized Representative of the firm _____

Place _____

Date _____

- Note: i) Personnel is to affix his recent photograph on 1st page of CV.
- ii) Complete Address and Phone Number of the Personnel is to be provided.
- iii) Document for proof of age is to be enclosed.
- iv) Documents for proof of qualifications are to be enclosed.
- v) Experience Certificates from employers to be attached.
- vi) Age of personnel shall not be more than as specified.
- vii) Each page of the CV shall be signed in ink by both the staff member and the Authorized Representative of the firm before scanning and uploading on the e-tender portal.
- viii) The NHAI may verify the details mentioned in CV by writing to the Employer indicated in the CV. The individual and the consultancy firm shall be liable for any incorrect information.

Formats of Financial Proposal and Payment Terms:

FORWARDING LETTER OF FINANCIAL PROPOSAL

FROM:

TO:

Sir:

Subject: Appointment of Safety Consultants for **“Four-laning of Indore to MP/Gujarat Border Section of NH-59 from Km. 9.500 to Km. 171.00 in the State of MP”**

- Financial/ Price Proposal.

We _____ firm/organization herewith enclose the *Financial/ Price Proposal for selection of our firm/organization as Safety Consultant for Project **Four-laning of Indore to MP/Gujarat Border Section of NH-59 from Km. 9.500 to Km. 171.00 in the State of MP**. We confirm that this offer is valid for 90 days from due date for submission of this proposal.

We undertake that, in competing for and, if the award is made to us, in executing the above contract, we will strictly observe the laws against fraud and corruption in force in India namely “Prevention of Corruption Act 1988”.

Yours faithfully,

Signature_____

Full Name_____

Designation_____

Address_____

(Authorized Representative)

Note:-

1. The Financial/ Price Proposal shall be filled strictly in the prescribed formats. The proposals not in the prescribed formats and not containing full details shall be rejected.

Format of Financial Proposal: – FOR DEVELOPMENT PERIOD/ CONSTRUCTION PERIOD/ MAINTENANCE PERIOD

Name of Project: Four-laning of Indore to MP/Gujarat Border Section of NH-59 from Km. 9.500 to Km. 171.00 in the State of MP.

Total length of the Project: 155.15 Km. Project No. 01

(Separate sheet for each Project no.)

S. No.	Description of services	Amount Quoted	
		Figure	Words
A	Conducting Safety Audit including Remuneration of Experts / Key Personnel & support staff, boarding & lodging, Transportation, Reports & Documents, Deliverables, Cost of Office Space, Equipment, Computer Hardware/ Software, etc. required for the assignment inclusive of all Other Costs inclusive of all taxes and insurance etc. for Development Phase.		
B	Conducting Safety Audit including Remuneration of Experts / Key Personnel & support staff, boarding & lodging, Transportation, Reports & Documents, Deliverables, Cost of Office Space, Equipment, Computer Hardware/ Software, etc. required for the assignment inclusive of all Other Costs inclusive of all taxes and insurance etc. for Construction Phase/ Maintenance phase.		
	Total Fee of Assignment (A+B)		

NOTE:

- (i) Rate quoted shall include all expenditure required for the assignment.

- (ii) The Financial Proposal shall take into account all types of tax liabilities including service tax and cost of insurance.
- (iii) The firms/ organizations shall take full responsibility for accuracy in assessment of above amounts.
- (iv) The Consultation Service Tax will be reimbursed on demand
- (v) The payment shall be made as per payment schedule given below.
- (vii) Break up of cost of Assignment is to be given in Appendix IIC.
- (viii) In case, bidder does not submit break down of cost of the Assignment, then his bid will be considered as non-responsive.
- (ix) The payment to the consultant will be made as per deliverable made by them and it will be guided as per time line of deliverable mentioned in RFP
- (x) For OMT Projects format of financial proposal will remain the same as per BOT projects on DBFOT basis.

SUMMARY OF COST

S.No	Project / Package No	Total Amount for Development & Construction/Maintenance Phase (A + B)		Order of preference in descending order for quoted projects by the firm.
		Amount in Figure (Rs.) A	Amount in Words (Rs.) B	
1.				
2.				
3.				
4.				
5				
6				
7				
8				
9				
10				
11				
12				
13				
14				
15				
16				
17				
18				
19				
20				

Note : For OMT Projects this sheet will be same.

Appendix II C

Break up of Cost of Assignment

1 (A) Remuneration of Key Personnel / Experts and Support Staff

Sl. No.	Position	Name	Whether the Name of Key Personnel was included in document for empanelment or not	Sl. No. of Key Personnel in the List of documents for empanelment	Rate	Input of Staff Man months*			Amount(In Rs.)
						at office	at site	Total	
	<u>Experts / Key Personnel</u>								
1.	Road Safety Auditor / Team Leader								
2.	Dy Road Safety Auditor/ Dy. Team Leader								
3.	Traffic Planner								
4.	Work Zone Safety Auditor								
5.									
6.									
7.									
	Sub-Total								
	<u>Support Staff</u>	Need not be named							
1.									
2.									
3.									
	Sub-Total								
	TOTAL								

Indicative man months for BOT projects on DBFOT basis for each Key Personnel are as under :

Sl. No.	Key Personnel	Development (Home +Site)	Construction (Home + Site)
1.	Team Leader	2 months	3 months
2.	Deputy Team Leader	2.5 months	4 months
3.	Work Zone Safety Auditor	3.5 months	12 months
4.	Traffic Planner / Engineer	3.5 months	12 months

Indicative man months for OMT projects for each Key Personnel are as under:

Sl. No.	Key Personnel	Development (Home +Site)	Maintenance (Home + Site)
1.	Team Leader	1 months	3 months
2.	Deputy Team Leader	1.25 months	4 months
3.	Work Zone Safety Auditor	1.5 months	12 months
4.	Traffic Planner / Engineer	1.5 months	12 months

1 (B) **Boarding & Lodging and Per Diem for Site Visits**

-	Experts/ Key Personnel	
	___ person-days @	_____
-	Support Staff	
	___ person-days @	_____
	Total	_____ (In Rs.)

2 (A) **Transportation at Site and Head Office**

Vehicles	Vehicle-month @ Rs.	per vehicle-month = Rs. _____
	Total	_____

2 (B) **Duty Travel to Site**

-	Experts/ Key Personnel	
	___ round-trips @	_____
-	Support Staff	
	___ round-trips @	_____
	Total	_____ (In Rs.)

2(B) **Duty travel to Site(Repetition)**

-	Experts/ Key Personnel	
	___ Round-trips @	_____
-	Support Staff	
	___round-trips @	_____
	Total	_____

3. **Reports and Document Costs**

Sl No.	Description	No. of copies	Rate (Rs.)	Amount (Rs.)

4. Cost of office space, equipment, computer hardware/software etc. required for the assignment. (In Rs.)
5. Other Cost (Pl. describe)

DRAFT CONTRACT AGREEMENT

For Safety Consultant for Package No. ----- *(Development and Construction) period of the ----- from km. ---- to km.----- in State of -----

***in case of OMT Projects, it will be read as “Development and Maintenance.**

AGREEMENT No. _____

This AGREEMENT (hereinafter called the “Agreement”) is made on the _____ day of the month of _____ 2***, between, NHAI on the one hand, (hereinafter called the “Authority” which expression shall include their respective successors and permitted assigns, unless the context otherwise requires) and, on the other hand, _____ (hereinafter called the “Consultant” which expression shall include their respective successors and permitted assigns).

WHEREAS

- (A) The Authority vide its letter_____ dated _____ has invited Request for Proposal for Appointment of Safety Consultant (hereinafter called the “Consultancy”) for [2/4/6-laning or OMT of ***** highway] (hereinafter called the “Project”);
- (B) the Consultant has submitted its proposals for the aforesaid work, whereby the Consultant represented to the Authority that it had the required professional skills, and in the said proposals the Consultant also agreed to provide the Services to the Authority on the terms and conditions as set forth in the RFP and this Agreement; and
- (C) the Authority, on acceptance of the aforesaid proposals of the Consultant, awarded the Consultancy to the Consultant vide its Letter of Award dated _____ (the “LOA”); and
- (D) in pursuance of the LOA, the parties have agreed to enter into this Agreement.

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

1. GENERAL

1.1 Definitions and Interpretation

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

- (a) “Additional Costs” shall have the meaning set forth in Clause 6.1.2;
- (b) “Agreement” means this Agreement, together with all the Annexes;
- (c) “Agreement Value” shall have the meaning set forth in Clause 6.1.2;
- (d) “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;
- (e) “Confidential Information” shall have the meaning set forth in Clause 3.3;
- (f) “Conflict of Interest” shall have the meaning set forth in Clause 3.2 read with the provisions of RFP;
- (g) “Dispute” shall have the meaning set forth in Clause 9.2.1;
- (h) “Effective Date” means the date on which this Agreement comes into force and effect pursuant to Clause 2.1;
- (i) “Expatriate Personnel” means such persons who at the time of being so hired had their domicile outside India;
- (j) “Government” means the [Government of *****];
- (k) “INR, Re. or Rs.” means Indian Rupees;
- (l) “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;
- (m) “Party” means the Authority or the Consultant, as the case may be, and Parties means both of them;
- (n) “Personnel” means persons hired by the Consultant or by any Sub-Consultant as employees and assigned to the performance of the Services or any part thereof;
- (o) “Resident Personnel” means such persons who at the time of being so hired had their domicile inside India;
- (p) “RFP” means the Request for Proposal document in response to which the Consultant’s proposal for providing Services was accepted;
- (q) “Services” means the work to be performed by the Consultant pursuant to this Agreement, as described in the Terms of Reference hereto;
- (r) “Sub-Consultant” means any entity to which the Consultant subcontracts any part of the Services in accordance with the provisions of Clause 4.7; and
- (s) “Third Party” means any person or entity other than the Government, the Authority, the Consultant or a Sub-Consultant. 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 parts of this Agreement and in case of any contradiction between or among them the priority in which a document would prevail over another would be as laid down below beginning from the highest priority to the lowest priority:

- (a) Agreement;
- (b) Annexes of Agreement;
- (c) RFP; and
- (d) Letter of Award.

1.2 Relation between the Parties

Nothing contained herein shall be construed as establishing a relation of master and servant or of agent and principal as between the Authority and the 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 **Bhopal** 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 or e-mail 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***** may, if they are subsequently confirmed by sending a copy thereof by registered acknowledgement due, air mail or by courier, be sent by facsimile or e-mail to the number as the Consultant may from time to time specify by notice to the Authority;
- (b) in the case of the Authority, be given by facsimile or e-mail and by letter delivered by hand and be addressed to the Authority with a copy delivered to the Authority Representative set out below in Clause 1.10 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 [New Delhi] it may send such notice by facsimile or e-mail and by registered acknowledgement due, air mail or by courier; and

- (c) any notice or communication by a Party to the other Party, given in accordance herewith, shall be deemed to have been delivered when in the normal course of post it ought to have been delivered and in all other cases, it shall be deemed to have been delivered on the actual date and time of delivery; provided that in the case of facsimile or e-mail, it shall be deemed to have been delivered on the working days following the date of its delivery.

1.8 Location

The Services shall be performed at the 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 Authority of Member-in-charge

In case the Consultant consists of a consortium of more than one entity, the Parties agree that the Lead Member shall act on behalf of the Members in exercising all the Consultant’s rights and obligations towards the Authority under this Agreement, including without limitation the receiving of instructions and payments from the Authority.

1.10 Authorized Representatives

Project Administration:

Coordinator: - NHAI

The NHAI designates PD, NHAI, of particular Project as the NHAI’s Coordinator. The Coordinator shall be responsible for the coordination of activities under the Contract from NHAI side, for receiving and approving invoices for payment, making payment of the consultancy, and for acceptance of the deliverables by the NHAI.

Coordinator – Firm

The firm designated Mr....., Director as their coordinator who shall be responsible for coordination of activities under the Contract, interactions with GM (RSC), PD, RO, GM (Tech), NHAI HQ, New Delhi and signing all letters/ reports on behalf of the firm.

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:

Tel: ***** Fax: ***** E-mail: *****

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

Tel: _____

Mobile: _____

Fax: _____

Email: _____

1.11 Taxes and duties

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

2. COMMENCEMENT, COMPLETION AND TERMINATION OF AGREEMENT

2.1 Effectiveness of Agreement

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

2.2 Commencement of Services

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

2.3 Termination of Agreement for failure to commence Services

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

2.4 Expiration of Agreement

Unless terminated earlier pursuant to Clauses 2.3 or 2.9 hereof, this Agreement shall, unless extended by the Parties by mutual consent, expire upon the earlier of (i) expiry of a period of 90 (ninety) days after the delivery of the final deliverable to the Authority.

2.5 Entire Agreement

2.5.1 This Agreement and the Annexes together constitute a complete and exclusive statement of the terms of the agreement between the Parties on the subject hereof, and no amendment or modification hereto shall be valid and effective unless such modification or amendment is agreed to in writing by the Parties and duly executed by persons especially empowered in this behalf by the respective Parties. All prior written or oral understandings, offers or other communications of every kind pertaining to this Agreement are abrogated and withdrawn; provided, however, that the obligations of the Consultant arising out of the provisions of the RFP shall continue to subsist and shall be deemed to form part of this Agreement.

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

2.6 Modification of Agreement

Modification of the terms and conditions of this Agreement, including any modification of the scope of the Services, may only be made by written agreement between the Parties. Pursuant to Clauses 4.2.3 and 6.1.3 hereof, however, each Party shall give due consideration to any proposals for modification made by the other Party.

2.7 Force Majeure

2.7.1 Definition

(a) For the purposes of this 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 fulfil 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 fulfil 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 30 (thirty) 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 9 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) 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
- (g) the Authority, in its sole discretion and for any reason whatsoever, decides to terminate this Agreement.

2.9.2 Cessation of rights and obligations

Upon termination of this Agreement pursuant to Clauses 2.3 or 2.9 hereof, or upon expiration of this Agreement pursuant to Clause 2.4 hereof, all rights and obligations of the Parties hereunder shall cease, except

- (i) such rights and obligations as may have accrued on the date of termination or

- expiration, or which expressly survive such Termination;
- (ii) the obligation of confidentiality set forth in Clause 3.3 hereof;
- (iii) the Consultant's obligation to permit inspection, copying and auditing of such of its accounts and records set forth in Clause 3.6, as relate to the Consultant's Services provided under this Agreement; and
- (iv) any right or remedy which a Party may have under this Agreement or the Applicable Law.

2.9.3 Cessation of Services

Upon termination of this Agreement by notice of either Party to the other pursuant to Clauses 2.9.1, 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.

2.9.4 Payment upon Termination

Upon termination of this Agreement pursuant to Clauses 2.9.1, 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;
- (ii) reimbursable expenditures pursuant to Clause 6 hereof for expenditures actually incurred prior to the date of termination; and
- (iii) except in the case of termination pursuant to sub-clauses (a) through (e) 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 disputes arise due to an event specified in Clause 2.9.1, aggrieved party may, within 30 (thirty) days after receipt of notice 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 scope of services to be performed by the Consultant is specified in the Terms of Reference (the "TOR") at Annex 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.

3.2.2 Consultant and Affiliates not to be otherwise interested in the Project

The Consultant agrees that, during the term of this Agreement and after its termination, the Consultant or any Associate thereof and any entity affiliated with the Consultant, as well as any Sub-Consultant and any entity affiliated with such Sub-Consultant, shall be disqualified from providing goods, works, services, loans or equity for any project resulting from or closely related to the Services and any breach of this obligation shall amount to a Conflict of Interest; provided that the restriction herein shall not apply after a period of five years from the completion of this assignment or to consulting assignments granted by banks/ lenders at any time; provided further that this restriction shall not apply to consultancy/ advisory services provided to the Authority in continuation of this Consultancy or to any subsequent consultancy/ advisory services provided to the Authority in accordance with the rules of the Authority. For the avoidance of doubt, an entity affiliated with the Consultant shall include a partner in the Consultant's firm or a person who holds more than 5% (five per cent) of the subscribed and paid up share capital of the Consultant, as the case may be, and any Associate thereof.

3.2.3 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.
- (d) They should have no financial interest in any of the above mentioned entities or in the contracts of the Concessionaire and IE of above mentioned project.

(e) They should have had no previous employment by or financial ties to any of above mentioned entities except for the fee based consultancy services and it should be clarified as mentioned below.

S. No.	Name of Project	Fee received from M/s	Consultancy Fee Received Rs.)

(f) They should have no professional or personal relationship with the above mentioned entities.

(g) In case they are selected for the assignment, they shall not accept any direct/ indirect employment/ consultancy with the above mentioned entities during the period of assignment.

(h) During the period of assignment, they shall not engage in discussion or make any agreement with the above entities regarding employment/ consultancy after the assignment is over.

3.2.4 Consultant not to benefit from commissions, discounts, etc.

The remuneration of the Consultant pursuant to Clause 6 hereof shall constitute the Consultant's 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.

3.2.5 The Consultant and its Personnel shall observe the highest standards of ethics and shall not have engaged in and shall not hereafter engage in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice (collectively the "Prohibited Practices"). Notwithstanding anything to the contrary contained in this Agreement, the Authority shall be entitled to terminate this Agreement forthwith by a communication in writing to the 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, the time, cost and effort of the Authority, without prejudice to the Authority's any other rights or remedy hereunder or in law.

3.2.6 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.

3.2.7 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 Applicable Laws 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; and
- (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 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 Agreement Value set forth in Clause 6.1.2 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 3.5.2, whichever of (a) or (b) is higher.
- 3.4.4 This limitation of liability specified in Clause 3.4.3 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 subject, however, to a limit equal to 3 (three) times the Agreement Value.

3.5 Insurance to be taken out by the Consultant

- 3.5.1 (a) The Consultant shall, for the duration of this Agreement, 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 coverages, as specified in the Agreement and in accordance with good industry practice.

- (b) Within 15 (fifteen) days of receiving any insurance policy certificate in respect of insurances required to be obtained and maintained under this clause, the Consultant shall furnish to the Authority, copies of such policy certificates, copies of the insurance policies and evidence that the insurance premia have been paid in respect of such insurance. No insurance shall be cancelled, modified or allowed to expire or lapse during the term of this Agreement.
 - (c) If the Consultant fails to effect and keep in force the aforesaid insurances for which it is responsible pursuant hereto, the Authority shall, apart from having other recourse available under this Agreement, have the option, without prejudice to the obligations of the Consultant, to take out the aforesaid insurance, to keep in force any such insurances, and pay such premia and recover the costs thereof from the Consultant, and the Consultant shall be liable to pay such amounts on demand by the Authority.
 - (d) Except in case of Third Party liabilities, the insurance policies so procured shall mention the Authority as the beneficiary of the Consultant and the Consultant shall procure an undertaking from the insurance company to this effect; provided that in the event the Consultant has a general insurance policy that covers the risks specified in this Agreement and the amount of insurance cover is equivalent to 3 (three) times the cover required hereunder, such insurance policy may not mention the Authority as the sole beneficiary of the Consultant or require an undertaking to that effect.
- 3.5.2 The Parties agree that the risks and coverages shall include but not be limited to the following:
- (a) Third Party liability insurance as required under Applicable Laws, with a minimum coverage of [Rs. 1 (one) crore]²¹ ;
 - (b) Employer's liability and workers' compensation insurance in respect of the Personnel of the Consultant and of any Sub-Consultant, in accordance with Applicable Laws; and
 - (c) professional liability insurance for an amount no less than the Agreement Value. The indemnity limit in terms of "Any One Accident" (AOA) and "Aggregate limit on the policy period" (AOP) should not be less than the amount stated in Clause 6.1.2 of the Agreement. In case of consortium, the policy should be in the name of Lead Member and not in the name of individual Members of the consortium.

3.6 Accounting, inspection and auditing

The Consultant shall:

- (a) keep accurate and systematic accounts and records in respect of the Services provided under this Agreement, in accordance with internationally accepted accounting principles and in such form and detail as will clearly identify all relevant time charges and cost, and the basis thereof (including the basis of the Consultant's costs and charges); and
- (b) permit the Authority or its designated representative periodically, and up to one year from the expiration or termination of this Agreement, to inspect the same and make copies thereof as well as to have them audited by auditors appointed by the Authority.

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) appointing such members of the Key Personnel as are not listed herein.
- (b) any other action that is not 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 (collectively referred to as “Consultancy Documents”) prepared by the Consultant in performing the Services shall become and remain the property of the Authority, and all intellectual property rights in such Consultancy Documents shall vest with the Authority. Any Consultancy Document, of which the ownership or the intellectual property rights do not vest with the Authority under law, shall automatically stand assigned to the Authority as and when such Consultancy Document is created and the Consultant agrees to execute all papers and to perform such other acts as the Authority may deem necessary to secure its rights herein assigned by the Consultant.
- 3.9.2 The Consultant shall, not later than termination or expiration of this Agreement, deliver all Consultancy Documents to the Authority, together with a detailed inventory thereof. The Consultant may retain a copy of such Consultancy Documents. The Consultant, shall not use these Consultancy Documents for purposes unrelated to this Agreement without prior written approval of the Authority.
- 3.9.3 The Consultant shall hold the Authority harmless and indemnified for any losses, claims, damages, expenses (including all legal expenses), awards, penalties or injuries (collectively referred to as ‘claims’) which may arise from or due to any unauthorized use of such Consultancy Documents, or due to any breach or failure on part of the Consultant or its Sub-Consultants or a Third Party to perform any of its duties or obligations in relation to securing the aforementioned rights of the Authority.

3.11 Providing access to Project Office and Personnel

The Consultant shall ensure that the Authority, and officials of the Authority having authority from the Authority, are provided unrestricted access to the Project Office and to all Personnel during office hours. The Authority’s official, who has been authorized by the Authority in this behalf, shall have the right to inspect the Services in progress, interact with Personnel of the Consultant and verify the records relating to the Services for his satisfaction.

3.12. 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.

4.2 Deployment of Personnel

4.2.1 The designations, names and the estimated periods of engagement in carrying out the Services by each of the Consultant's Personnel are described in this Agreement. The estimate of Personnel costs and manday rates are specified in this Agreement.

4.2.2 Adjustments with respect to the estimated periods of engagement of Personnel set forth Authority, provided that: (i) such adjustments shall not alter the originally estimated period of engagement of any individual by more than 20% (twenty per cent) or one week, whichever is greater, and (ii) the aggregate of such adjustments shall not cause payments under the Agreement to exceed the Agreement Value set forth in Clause 6.1.2 of this Agreement. Any other adjustments shall only be made with the written approval of the Authority.

4.2.3 If additional work is required beyond the scope of the Services specified in the Terms of Reference, the estimated periods of engagement of Personnel, set forth in the Annexes of the Agreement may be increased by agreement in writing between the Authority and the Consultant, provided that any such increase shall not, except as otherwise agreed, cause payments under this Agreement to exceed the Agreement Value set forth in Clause 6.1.2.

4.3 Approval of Personnel

4.3.1 The Key Personnel listed in the Agreement are hereby approved by the Authority. No other Key Personnel shall be engaged without prior approval of the Authority.

4.3.2 If the Consultant hereafter proposes to engage any person as Key Personnel, it shall submit to the Authority its proposal along with a CV of such person in the form provided in 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.

4.4 Substitution of Key Personnel

The Authority expects all the Key Personnel specified in the Proposal to be available during implementation of the Agreement. The Authority will not consider any substitution of Key Personnel except under compelling circumstances beyond the control of the Consultant and the concerned Key Personnel. Such substitution shall be limited to not more than two Key Personnel subject to equally or better qualified and experienced personnel being provided to the satisfaction of the Authority. Without prejudice to the foregoing, substitution of one Key Personnel shall be permitted subject to reduction of remuneration as already specified in RFP.

5. OBLIGATIONS OF THE AUTHORITY

5.1 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.

5.2 Law Governing Contract and Languages:

The Contract shall be governed by the laws of Union of India and the language of the Contract shall be English.

The firm shall indemnify and hold harmless the NHAI against any and all claims, demands and / or judgments of any nature brought against the NHAI arising out of the services by the firm and its staff under this Contract. The obligation under this paragraph shall survive even after the termination of this Contract.

5.3 Taxes:

The firm shall pay the taxes, duties fee, levies and other impositions levied under the Applicable law and the NHAI shall perform such duties in this regard to the deduction of such tax as may be lawfully imposed.

6. PAYMENT TO THE CONSULTANT

6.1 Cost estimates and Agreement Value

6.1.1 An abstract of the cost of the Services payable to the Consultant is set forth herein the Agreement.

6.1.2 Except as may be otherwise agreed under Clause 2.6 and subject to Clause 6.1.3, the payments under this Agreement shall not exceed the agreement value specified herein (the "Agreement Value"). The Parties agree that the Agreement Value is Rs. (Rupees), which does not include the Additional Costs specified in this agreement (the "Additional Costs").

6.2 Currency of payment

All payments shall be made in Indian Rupees.

6.3 Mode of billing and payment

(a) The Consultant shall be paid for its services as per the Payment Schedule of this Agreement, subject to the Consultant fulfilling the following conditions:

- (i) No payment shall be due for the next stage till the Consultant completes, to the satisfaction of the Authority, the work pertaining to the preceding stage.
- (ii) The Authority shall pay to the Consultant, only the undisputed amount.

(b) The Authority shall cause the payment due to the Consultant to be made within 30 (thirty) days after the receipt by the Authority of duly completed bills with necessary particulars (the "Due Date only after the final report and a final statement, identified as such, shall have been submitted by the

Consultant and approved as satisfactory by the Authority. The Services shall be deemed completed and finally accepted by the Authority and the final deliverable shall be deemed approved by the Authority as satisfactory upon expiry of 90 (ninety) days after receipt of the final deliverable by the Authority unless the Authority, within such 90 (ninety) day period, gives written notice to the Consultant specifying in detail, the deficiencies in the Services. The Consultant shall thereupon promptly make any necessary corrections and/or additions, and upon completion of such corrections or additions, the foregoing process shall be repeated. The Authority shall make the final payment upon acceptance or deemed acceptance of the final deliverable by the Authority.

- (c) Any amount which the Authority has paid or caused to be paid in excess of the amounts actually payable in accordance with the provisions of this Agreement shall be reimbursed by the Consultant to the Authority within 30 (thirty) days after receipt by the Consultant of notice thereof. Any such claim by the Authority for reimbursement must be made within 1 (one) year after receipt by the Authority of a final report in accordance with Clause 6.3 (d). Any delay by the Consultant in reimbursement by the due date shall attract simple interest @ 10% (ten percent) per annum.
- (d) In the event the Concession Agreement does not get executed within one year of the Effective Date the Final Payment shall not become due to the Consultant, save and except the costs incurred for meeting its reimbursable expenses during the period after expiry of 18 (eighteen) weeks from the Effective Date, including travel costs and personnel costs, at the agreed rates.
- (e) All payments under this Agreement shall be made to the account of the Consultant as may be notified to the Authority by the Consultant.

7. 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 per cent) 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 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.**

7.1.2 The Consultant may, in lieu of retention of the amounts as referred to in Clause 7.1.1 above, furnish a Bank Guarantee substantially in the form specified in this Agreement.

7.2 Liquidated Damages

7.2.1 Liquidated Damages for error/variation:

In case any error or variation is detected in the reports submitted by the Consultant and such error or variation is the result of negligence or lack of due diligence on the part of the Consultant, the consequential damages thereof shall be quantified by the Authority in a reasonable manner and recovered from the Consultant by way of deemed liquidated damages, subject to a maximum of 50% (fifty per cent) of the Agreement Value.

7.2.2 Liquidated Damages for delay:

In case of delay in completion of Services, liquidated damages not exceeding an amount equal to 0.2% (zero point two per cent) of the Agreement Value per day, subject to a maximum of 10% (ten per cent) of the Agreement Value will be imposed and shall be recovered 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 shall be granted.

7.2.3 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, 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 including debarment for a specified period may also be initiated as per policy of the Authority.

8. FAIRNESS AND GOOD FAITH

8.1 Good Faith

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

8.2 Operation of the Agreement

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

9. SETTLEMENT OF DISPUTES

9.1 Amicable settlement

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

9.2 Dispute resolution

9.2.1 Any dispute, difference or controversy of whatever nature howsoever arising under or out of or in relation to this Agreement (including its interpretation) between the Parties,

and so notified in writing by either Party to the other Party (the “Dispute”) shall, in the first instance, be attempted to be resolved amicably in accordance with the conciliation procedure set forth in Clause 9.3.

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

9.3 Conciliation

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

9.4 Arbitration

- 9.4.1 Any Dispute which is not resolved amicably by conciliation, as provided in Clause 9.3, shall be finally decided by reference to arbitration by an Arbitral Tribunal appointed in accordance with Clause 9.4.2. Such arbitration shall be held in accordance with the Rules of Arbitration of the International Centre for Alternative Dispute Resolution, New Delhi (the “Rules”), or such other rules as may be mutually agreed by the Parties, and shall be subject to the provisions of the Arbitration and Conciliation Act, 1996. The venue of such arbitration shall be ***** and the language of arbitration proceedings shall be English.
- 9.4.2 There shall be {an Arbitral Tribunal 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} {a sole arbitrator\$ whose appointment} shall be made in accordance with the Rules.
- 9.4.3 The arbitrators shall make a reasoned award (the “Award”). Any Award made in any arbitration held pursuant to this Clause 9 shall be final and binding on the Parties as from the date it is made, and the Consultant and the Authority agree and undertake to carry out such Award without delay.
- 9.4.4 The Consultant and the Authority agree that an Award may be enforced against the Consultant and/or the Authority, as the case may be, and their respective assets wherever situated.
- 9.4.5 This Agreement and the rights and obligations of the Parties shall remain in full force and effect, pending the Award in any arbitration proceedings hereunder.

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

SIGNED, SEALED AND DELIVERED

SIGNED, SEALED AND DELIVERED

For and on behalf of

For and on behalf of
[Authority]

Consultant:

(Signature)

(Signature)

(Name)

(Name)

(Designation)

(Designation)

(Address)

(Address)

(Fax No.)

(Fax No.)

In the presence of:

1.

2.

Terms of Reference

1. General

- 1.1 National Highways Authority of India (NHAI) is engaged in development of National Highways entrusted to it by Ministry of Road Transport & Highways. As part of this endeavor, the Authority has taken up development of some of the highways through Public Private Partnership (PPP) on Design, Build, Finance and Operate (DBFO) basis.
- 1.2 It is stipulated in the Model Concession Agreements (MCA) of the PPP Projects that the Concessionaire shall develop, implement and administer a surveillance and safety programme for providing a safe environment on or about the Project Highways and/or shall comply with the safety requirements set forth in Schedule ‘L’ (Please refer to the Annexure-VI) of the Concession Agreement in Development, Construction and Operation & Maintenance Phase of the Project.
- 1.3 It is also stipulated in the Model Concession Agreement that NHAI shall appoint an experienced and qualified firm or organization as a “Safety Consultant” for carrying out safety audit of the Project Highway in accordance with the safety requirements set forth in Schedule-L for the aforesaid Phases of Project.
- 1.4 NHAI intends to invite applications from the interested consultants for empanelment as safety consultant for carrying out safety audit of the project highway in accordance with the safety requirement set forth in Schedule – L of the Model Concession Agreement (MCA) of the PPP projects on Design, Build, Finance, Operate and Transfer (DBFOT) basis and Schedule – H of the Model Concession Agreement (MCA) of the operation and maintenance (OMT) projects.
- 1.5 **Duties and Responsibilities of Safety Consultant:** The broad requirements are as indicated in the **Schedule ‘L’ and Schedule ‘H’** of Model Concession Agreement (copy enclosed). In addition, the scope of services shall include but not be limited to the following:

2. Methodology to be adopted for Safety Auditor

Safety Consultant will conduct the safety audits during development and construction/maintenance periods as per the approved methodology, check lists and procedures by NHAI. For this purpose, each bidder as part of bid will briefly submit work plan, Approach and Methodology for the proposed assignment, based on established International Procedure for road safety audit. Later on, the Successful bidders will submit the inception report including detailed methodology, check lists and procedure within 20 days after signing of agreement. Scope of check list and procedures on which the safety consultant has to follow are IRC Manual on Road Safety Audit and other International Safety Manual. This information will be submitted to Road Safety Cell, NHAI and simultaneously to the concerned Project Director. Methodology, Check Lists and Procedures to be adopted are to be Project specific and approved by Road Safety Cell of NHAI. Consultants are free to suggest methodology, check list, procedure and good International practices as adopted in the countries like Australia, Sweden, USA, UK etc in addition to these prescribed by IRC.

3. During Development Period:

- 3.1 Collect data of all accidents in the project highway for preceding two years from Police Stations (Primary Source) and other secondary sources.
 - 3.1.1 Do analysis of Fatal and grievously injured accidents “to identify the black spots” and relate to Accidents records with Traffic Volume to show trend as per Traffic Volume Count.

- 3.2 Carry out a design stage Road Safety audit as per the applicable manual, guidelines, standards and good industry practices; and prepare a draft Safety Report. This audit shall also take into consideration the changes being proposed to the cross section (geometrics) due to 4 or 6-laning of existing roads and its likelihood effect on fatal and serious accidents based on the accident data collected in 3.1 and suggest countermeasures to mitigate the accident potential.
- 3.3 Review comments from Concessionaire, Independent Engineer and NHAI on the draft Safety Report and furnish the Final Safety Report which inter-alia shall include costing of all safety recommendations.

4. During Construction Period :

- 4.1 Study the Safety Report of the development period and provide a gap report vis-à-vis what was given in Final Safety Report and Safety Report which was finally implemented.
- 4.2 Inspect the Project Highway Keeping into consideration the construction planning for the project as prepared by the Concessionaire. He would then identified the safety implications of the construction planning.
- 4.3 Carry out the Safety Audit once in a Calendar Quarter, till COD, to assess the adequacy of safety measures adopted and provided in construction zone(s).
- 4.4 Collect accident data (monthly) from the Concessionaire/PD office/other secondary source and examine causes of fatal accidents including suggesting countermeasures.
- 4.5 Submit a Quarterly Safety Report on additional Road Safety measures, if any And Summary of audit carried out in every quarter.
- 4.6 Receive comments from Concessionaire, Independent Engineer and NHAI and furnish revised recommendations of safety measures duly examining the above comments and submit Safety Reports.
- 4.7 Provide Monthly Reports on all activities which were planned, actually executed and planned next month. It is essential and part of financial quote of bidder.
- 4.8 The scope of Road Safety Audit during the construction shall also include conducting a Work Zone Safety Audit as per the attachment A.
- 4.9 In addition to the Construction Stage Safety Report, consultants shall also prepare Quarterly Safety Reports after each inspection (once in a calendar quarter as per the Schedule L). The scope of each of this inspection shall include but not be limited to identifying any gaps in provision of safety features as per the development stage and construction stage safety audit including work zone safety audit.

During Maintenance Period

Once in every Accounting Years, a safety audit shall be carried out by the Safety Consultant. It shall review and analyze the annual report and accident data of the preceding year and undertake an inspection of the Project Highways. The Safety Consultant shall complete the safety audit within a period of 1 (one) month and submit a Safety Report recommending specific improvements, if any, required to be made to the road, bridges, culverts, markings, signs, road furniture and Project Facilities, including cattle crossings and pedestrian crossings.

The accident data and the design details shall be compiled, analyzed and used by the Safety Consultant for evolving a package of recommendations consisting of safety related measures of the Project Highway. The safety audit shall be completed in a period of three months and a report thereof (the "Safety Report") shall be submitted to the Authority , in five copies.

One copy each of the Safety Report shall be forwarded by the Authority to the Concessionaire and the Independent Engineer forthwith.

5. Project Team

5.1 The services will be required for a length of 600 \pm 50 Km for Category – A assignment and 1200 \pm 50 for Category – B assignment, firm shall deploy the following key personnel .:

- (i) The Consultant must have atleast all the four key personnel required for performing the safety consultants job as mentioned below for category – A assignment (600 \pm 50 km.)
- (ii) Consultant must have at least one Team Leader and two each of the rest four key personnel excluding Team Leader required for performing the safety consultants job as mentioned below for category – B assignment (1200 \pm 50 km.)

5.2 The qualification and experience requirements of Key professionals which will be evaluated are given below:

S. No	Position	Nos.	
		Category – A	Category – B
1	Road Safety Auditor-cum-Team Leader	1	1
2	Dy. Road Safety Auditor cum Highway Engineer	1	2
3	Work Zone Safety Auditor	1	2
4	Traffic Planner/Engineer	1	2
	Total	4	7

(I) Sr. Road Safety Auditor-cum-Team Leader:

Essential Qualifications:

- a. Graduate in Civil Engineering from Recognized University.
- b. Minimum 15 years of experience in highway sector in senior position associated with preparation of DPR/ Supervision/ Construction/Safety Audit/Work Zone Safety / Traffic Planning etc. of 2/4/6-lanes highway projects and worked as Team Leader of NH / SH projects for at least 5 years or retired not below the rank of Superintending Engineer of Central/State Govt./PSU or equivalent.

Preferential Qualifications:

- a. Post Graduation in Traffic/Transportation/Safety /Highway Engineering.
- b. Knowledge and exposure of National/International code of practice on road safety audit through his/her CV.
- c. Experience of road safety / work zone safety audit assignments or traffic/transport planning.

(ii) Road Safety Auditor/ Highway Engineer -cum- Dy. Team Leader :

Essential Qualifications:

- a. Graduate in Civil Engineering from Recognized University.
- b. Minimum 10 years of experience in highway sector in senior position associated with preparation of DPR/ Supervision/ Construction/Safety Audit/Work Zone Safety/Traffic Planning etc. of 2/4/6 lanes highway projects and worked as Dy. Team Leader/Resident Engineer of NH/SH projects for at least 3 years or retired not below the rank of Executive Engineer of Central/State Govt./PSU or equivalent.

Preferential Qualifications:

- a. Post Graduation in Traffic/Transportation/Safety /Highway Engineering.
- b. Knowledge and exposure of National/International code of practice on road safety audit through his/her CV.
Experience of road safety / work zone safety audit assignments or traffic/transport planning

(iii) Work Zone Safety Auditor:**Essential Qualifications:**

- a. Graduate in Civil Engineering from Recognized University.
- b. Minimum 7 years of experience in highway sector associated with preparation of DPR/ Supervision/ Construction/ Safety audit/ Work zone safety/ Traffic Planning etc. of 2/4/6 lanes highway projects and worked as Dy. Team Leader/Resident Engineer of NH/SH projects for at least 2 years or retired not below the rank of Executive Engineer of Central/State Govt./PSU or equivalent.

Preferential Qualifications :

- a. Post Graduate in Traffic/ Transportation/ Safety Engineering.
- b. Knowledge and exposure of National/International code of practice on road safety audit through his/her CV.
- c. Experience of road safety/ work zone safety audit assignments or traffic/transport planning.

(iv) Traffic Planner/ Engineer:**Essential Qualifications:**

- a. Graduate in Civil Engineering or Architecture from Recognized University.
- b. Minimum professional experience of 7 years in highway projects associated with preparation of DPR/ Supervision/ Construction/Safety audit/Work zone safety/Traffic Planning etc. of 2/4/6 lanes highway projects and worked as Dy. Team Leader/Resident Engineer for at least 2 years or retired not below the rank of Executive Engineer of Central/State Govt./PSU or equivalent.

Preferential Qualifications:

- a. Master's Degree in Transport Planning/ Transport Engineering.
- b. Experience of traffic and/or transport planning.

6.1 **Coordinator:** - The firm shall designate its Senior Technical Director or Senior officer who has experience in Road/ Bridge construction as the coordinator for the assignment. The coordinator on date of commencement of services under this assignment shall visit the site and acquaint with the project/ assignment. Thereafter, the coordinator shall be responsible for coordination of activities under the contract, interaction with NHAI and signing all letters/ reports on behalf of the firm. The inputs including site visits/ visits to NHAI, New Delhi during the entire period of services/ contract of the Coordinator shall be incidental to this assignment and no separate payment shall be made in this regard.

6.2 The Consultant shall as a part of this assignment will impart training to, NHAI staff, IE staff and concessionaire in development and work zone safety Audit from National / International faculty and experts at local training institute of repute like IAHE or CRRRI or nearby IIT's or Engineering Collages of repute. The aforesaid academic institution shall be identified in consultation with NHAI. The Workshop and Training will be 4 days each with participation for NHAI officers, Independent Engineer and concessionaire. Before starting the assignment one workshop will be held at/by approved institute for the packages (all awarded Projects to each consultant) to finalize methodology and work plan of the audit and studies for development

and construction phase as detailed in the RFP. NHAI would invite independent safety expert at the cost of consultant.. The cost of such training program me for maximum 6 persons from each project and workshop with maximum 35 persons with maximum amount of Rs 5 lakhs be deemed to be included in the financial proposal of each project Which will also include boarding/lodging arrangement, codes and stationeries etc for participant and 2 days site specific training will be conducted by the consultant for each awarded project including local NGOS/Safety agencies etc with support staff of consultant, Independent Engineer and concessionaire.

7. Expected Inputs of Experts and Support Staff:

- 7.1 Schedule 'L' prescribes the timelines for the assignments of Safety Consultants for various stages of a project (development, construction and operation). In case of development period, Para 4.3 of Schedule 'L' envisages that safety audit shall be completed in a period of 3 months. However, the drawings containing the design details to be provided by the Concessionaire (Ref. Para 4.2 of Schedule 'L') and collection of any data required for various audits is an ongoing process during the entire construction period of the project. Hence, the Safety Consultant shall review the set of drawings/ designs as and when provided to him by NHAI during the construction period of the project from safety perspective. Input of key personnel can be intermittent as per the project requirement, However bidder will have to indicate the man month of personnel with breakup of cost for each personnel to be engaged in the work plan as part of their financial bid in their format number 1A of Appendix II of this bid.
- 7.2 Schedule 'H' describes the function of safety consultants for OMT projects as below :
- 7.2.1 Once in every Accounting year, a safety audit shall be carried out by the Safety Consultant. It shall review and analyze the annual report and accident data of the preceding year, and undertake an inspection of the Project Highway. The Safety Consultant shall complete the safety audit within a period of 1(one) month and submit a Safety Report recommending specific improvements, if any, required to be made to the road, bridges, culverts, markings, signs, road furniture and Project Facilities, including cattle crossings and pedestrian crossings.
- 7.2.2 The accident data and the design details shall be complied, analyzed and used by Safety Consultant for evolving a package of recommendations consisting of safety related measures for the Project Highway. The safety audit shall be completed in a period of three months and a report thereof (the "Safety Report") shall be submitted to the Authority, in five copies. One copy each of the safety report shall be forwarded by the Authority to the Concessionaire and the Independent Engineer forthwith.
- 7.3 The firms/ organizations shall make their own assessment of key and support personnel to undertake the assignment. Additional staff or personnel if required (e.g for fire, Mechanical safety etc) to complete the assignment in the prescribed time, must be provided, within the total quoted cost only. NHAI shall not be responsible for any wrong assessment by the firms/ organizations and shall not in any case bear any additional cost arising there from. The firms should assess the inputs at site and office for each expert and support staff for completing the assignment within the above timelines, which shall be indicated by the firm in the Financial Proposal. The firms should make its own arrangements for office space, equipment, computer hardware/ software, etc. A certificate be recorded by the Project Director, NHAI about the presence of experts and support staff at site for release of payment as per cost breakup given by the consultant..

8. Deliverables

(A) For BOT Projects on DBFOT Basis / OMT Projects.

S.No	Report	Timeline
Development Stage		
1	Inception Report	Within 20days of signing of contract agreement and organizing training/workshop
2	Report on Training and Workshop including finalization of Methodology and implementation plan	Within 7 days of workshop
3	Collection of Road accident data and analysis of fatal and grievously injured accident with black spot identification	Within two month from commencement of services.
4	Draft Safety Report –	Within 3 months of signing the contract
5	Final Safety Report	Within 15 days of receiving comments by NHAI/IE/Concessionaire

(B) For BOT Projects on DBFOT Basis.

Construction Stage		
1.	Collection of Road accident data and analysis of fatal and grievously injured accident with black spot identification	Monthly .
2.	Submission of GAP report	At the start of Construction stage
3	Reports on all activities which were planned, actually executed and planned for the next month.	Monthly.
4.	Road Safety Audit Report	First report on construction Zone(s) works within one months of commencement of construction works
5.	Submission of audit report of work zone safety	Each quarter for the period of construction of project till COD
6	Quarterly Safety Reports	Each quarter for the period of construction of project till COD
7.	One day workshop report.	Every Six month
8	Final Safety report	Within three month of COD

(C) For OMT Projects.

	Maintenance Stage	
1.	Collection of Road accident data and analysis of fatal and grievously injured accident with black spot identification	Monthly .
2.	Submission of GAP report	At the start of maintenance stage
3	Reports on all activities which were planned, actually executed and planned for the next month.	Monthly .
4.	Road Safety Audit Report	First report on construction Zone(s) works within one months of commencement of maintenance works
5.	Submission of audit report of work zone safety	Each quarter for the period of maintenance of project till the end of the projects.
6	Quarterly Safety Reports	Each quarter for the period of maintenance of project till the end of the projects.
7.	One day workshop report.	Every Six month.
8	Final Safety report	Within three month of end of the projects.

- 8.1 All reports including primary data shall be compiled, classified and submitted by the firm to NHAI in soft form apart from the reports in hard form. The reports shall remain the property of NHAI and shall not be used for any purpose other than that intended under these terms of reference. All the reports will be submitted electronically in addition to 5 hard copies.

Attachment AWORK ZONE SAFETY AUDIT**Task A:** Review Contractual Provisions and Establish Work zone Safety Audit Procedure

Review and understand various safety provisions as provided in the contract documents of the particular projects. This should include an appreciation and understanding of the safety provisions as given in various acts, rules and regulations of GoI/State Government where project is situated including MoRTH/Indian Roads Congress (IRC) specifications/codes; safety instructions issued by NHAI from time to time; and safety provisions under the EMP(s) for the project.

- (i) Review the existing systems being followed/adopted by the Concessionaire and IEs in planning, execution, documentations and reporting through collection and assessment of primary and secondary data/information.
- (ii) Identify the major hazards and risks associated with various roads construction activities and establish a work zone safety audit procedure, satisfactory to NHAI.

Task B: Conduct detailed Work Zone Safety Audit and Recommend Remedial Actions

- (iii) Carry out a detailed assessment of worksite* safety conditions through site visits in line with the identified risks and hazards associated with various road construction activities. This review and assessment must include, but may not be limited, to the following aspects pertaining to:

(a) Traffic Management Plan: The Consultant will review the relevance, adequacy and implementation of the Traffic Management Plan(s) prepared by the Contractors. The procedures followed by the Independent Engineer (IE) with regard to the approval and ensuring compliance on ground also need to be reviewed.

(b) Traffic Safety Measures: The review should assess the adequacy and quality of various safety measures such as signage, delineation, barricading and lighting in the construction zones in line with the provisions covered in the contract agreement and IRC guidelines (SP:55:2001) and other good International practices. The assessment should include various safety aspects/issues pertaining to night time safety measures and safety at/near excavations, structure construction sites, diversions and settlement areas apart from assessing maintenance of existing road surface and riding quality at diversions/detours.

** A worksite includes the highway and service roads (including structures), access/haul roads, main and ancillary campsites (including labor camps), all plant sites (including crusher operated by the project contractors), quarries operated by the project contractors, borrow areas, material stack yards and workshops. The assessment of access/haul roads is to be done on sample basis only. A worksite audit doesn't include safety aspects pertaining to design and construction stage engineering aspects (such as quality of works).*

(c) Worker's Safety: Based on contractual provisions and applicable legal provisions, the review should cover aspects pertaining to provisions and use of Personal Protective Equipment such as helmets, masks, safety harness/belts, boots, gloves, eye and hearing protection devices. The assessment should also include review of safety provisions during operations such as loading and unloading of materials; bar bending and cutting; gas cutting/welding, pile driving, excavation work; working near equipment/machinery; working at heights (including aspects pertaining to ladder, scaffolding, working platform, railing safety); safety during concrete works (including reinforcement erection, formwork and concrete pouring/pumping); drilling and blasting; safety during placement of traffic control devices; tree cutting etc. The compliance with regard to occupational health and

safety precautions in relation to hazards associated with dust, toxic fumes, noise, vibration and biological factors (snake and insect bites) should also be assessed.

(d) Safety during construction of structures including design and suitability of temporary structural arrangements, structures construction methodologies, etc. Adequacy of the process of review and approval of the Concessionaire proposals with respect to structures construction methodology (ies) including design of temporary structures and erection arrangements by the IE also to be reviewed.

(e) Fire Safety Practices: The assessment should include (a) the risks and hazards associated with storage, transportation, handling and use of various inflammable materials/explosives and (b) precautions and preparedness in case of the fire accident/s at camp/s, plant sites, construction sites and quarries.

(f) Electrical Safety Practices: This should include electrical safety review at plant sites, camp sites and work sites and near habitations.

(g) Mechanical Safety Practices: The review should include general safety precautions/practices during plant, machinery, equipment and vehicle operations and condition of such mechanical devices that are being used for the contract operations. This will include review of the fitness of various plant and machinery (static and mobile), practices with respect to periodic maintenance and licensing/certification of fitness of equipment, as well as suitability of machinery operators including practices with respect to adherence to licence /certification/ formal training of operators.

(h) Dust Control and Suppression Arrangements.

(i) Storage, transportation, handling and use of various toxic and hazardous materials (including spill management) used in road construction.

(j) Safety of road-side residents and passers-by.

(k) First aid: The review should include the provision of the first aid arrangements (including life saving equipment), availability of qualified staff and health checks-up of workers (such as those for drivers/operators), as specified under the regulatory framework.

(l) Emergency Response Arrangements: The review should include an assessment with regards to planning, procedures/processes, warning systems and record keeping.

(m) Accident records: The review should look at whether accident records are being maintained by the Concessionaires and shared with the NHAI on a regular basis.

(n) Housekeeping (including circulation pattern, storage of materials and disposal of hazardous wastes).

(o) Any other

(iv) Assess the knowledge and awareness of safety requirements at various levels of the Concessionaires and IE's staff, and make recommendations for improving the same if and where required.

(v) Assess the role of IEs and NHAI Project Implementation Units (PIUs) and Headquarter, and performance and response of the IEs (including approval system, issuing of instructions and record keeping) in ensuring/enforcing worksite safety, and make recommendations thereto as required.

(vi) Identify and make comprehensive list of items/aspects and areas/sections of safety deficiency in individual contracts of the project.

- (vii) Recommend specific actions that are required to overcome safety deficiencies and to strengthen/improve safety conditions in the project's contracts.
- (viii) Identify and suggest a comprehensive list of items/aspects to be covered in the monthly reviews and reports. Also, identify and prepare a comprehensive checklist of items to be monitored on monthly basis at site for rating the contractors' performance on work sites safety management.
- (ix) Reassess whether the recommendations made in the Audit Reports (contract specific) have been implemented or not (including reasons) in the project sites.
- (x) **Task C: Strengthening Work zone Safety Implementation by NHAI**
- (xi) Assist NHAI in reviewing and revising/issuing instructions for the Concessionaire and IE and NHAI Project Directors (specifying the roles and responsibilities of each) and in establishing a system for conducting performance review of Concessionaire and IE.
- (xii) Propose recommendations that cover technical, contractual and institutional dimensions with respect to safety during road construction works keeping in mind the issues identified in safety audit. These should also cover the aspects related to implementation / enforcement mechanism with regard to safety management during the construction stage.

Task D: Prepare every quarter Work Zone Safety Report .

Task E: Organize and conduct a One day Workshop on half yearly basis on findings of Safety Audits and follow up action, which will be attended by the representatives from NHAI, Concessionaire, IE and local NGOs etc. (Cost for holding such Workshops: 15-20 persons to be included in the financial proposal)

Payment:

- 3.1 For the services rendered pursuant to Annexure-‘A’, the NHAI shall pay the Firm an amount not to exceed the ceiling of Rs.....as per the details and the payment terms contained in Annexure-‘A’, ‘B’ ‘C’ & ‘D’. This amount has been established based on the understanding that it includes all of the firm’s costs, overheads and profits as well as any tax obligations that may be imposed on the Firm.

Deliverable, Periodicity, Payment Schedule for Construction / Maintenance period					
S.No	Scope of Work	Periodicity	Clause	Payment Schedule	
	Activity / Submit of Report			Milestone	Fee - Payable
1.	After collection of road accidents data and on submission of the report containing the analysis of such data	Every Month	Refer clause (4.4) of TOR	Road Accident Data Collection and Collation and identification of black spot and relate to accident records	10 %
2.	a) On submission of GAP report as per review of safety report for Development period, conducting Safety Audit and submission of the report containing the recommendations.	Every Calendar Quarter	Refer clause 4.0of TOR	On submission of safety report for development period and safety audit.	25 %
	b) On providing clarifications on various comments on report and on submission of modified report containing final recommendations.		Refer clause 4.0of TOR	On approval of safety report for construction / maintenance period and safety audit.	
	c) Submission of audit report of work zone safety)		Refer clause 4.0of TOR	On approval of work zone safety audit report .	
3.	d) One day workshop and submission of findings	Every Six Month	Refer Attachment A of TOR Task E	Conducting workshop and submission of report	15%
4.	On Submission of final comprehensive audit report & on completion of construction period.				10%

3.2 Payment Schedule

Deliverable, Periodicity, Payment Schedule for Development Period					
S.No	Scope of Work	Periodicity	Clause	Payment Schedule	
	Activity / Submit of Report			Milestone	Fee – Payable
1	Submission of Inception Report which includes methodology and implementation plan which will essentially contain methodology for conducting audit, check list, and detailed procedure to be adopted during the development and entire construction period.	20 days from Commencement of service	Refer clause 2. of TOR	On approval of Inception Report by Road Safety Cell of NHAI training of Safety Audit Team and conducting of workshop	5 %
	Methodology and Implementation Plan finalization and four days training of Safety Audit Team and Workshop	30 days from Commencement of service	Refer Para 6.4 of TOR,		5%
2	Road Accident Data Collection , do analysis of Fatal and grievously injured accidents “to identify the black spots” and relate to Accidents records with Traffic Volume to show trend..	One Time	Refer Clause 3.1. of TOR	After collection and submission of the report	5%
2.	Review of design & drawing for conducting Safety Audit and submission of the report containing the recommendations and on providing clarifications to various comments on the above reports and on submission of modified report containing final recommendations	During development period	Refer clause 3.2 of TOR	On submission of Safety Audit Report On approval of Safety Audit Report	25 % of total fee payable on propionate basis 40 % of total fee payable on propionate basis
3.	On completion of development period and on submission of final comprehensive report of implementation of safety recommendation.	One time		On approval of final comprehensive report of implementation of safety recommendation	20 %

Note :(i) The firms/ organizations shall pay the consultancy service tax and produce proof of payment to the NHAI for getting reimbursement of the same.

- 3.3 Payments shall be made in Indian Rupees, no later than 30 days following submission by the firm of invoices in duplicate to the Coordinator designated in paragraph 4.1 as per terms & conditions contained in RFP.

Bank Guarantee for Performance Security

(Refer Clause 7.1.2 and extant circular of NHAI in this regard)

NOTES:

- (i) The Bank Guarantee should contain the name, designation and code number of the officer(s) signing the Guarantee.
- (ii) The address, telephone no. and other details of the Head Office of the Bank as well as of issuing Branch should be mentioned on the covering letter of issuing Branch.

Guarantee No.....

Format for BANK GUARANTEE FOR PERFORMANCE SECURITY

To,

National Highways Authority of India

In consideration of “National Highways Authority of India (NHAI)” (hereinafter referred as the “Client”, which expression shall, unless repugnant to the context or meaning thereof include its successors, administrators, assigns) having awarded to M/s. ----- having its office at ----- (Here in referred to as the “Consultant” which expression shall repugnant to the context or meaning thereof, include its successors, administrators, executors and assigns), a contract by issue of Client’s Letter of Acceptance No. ----- dated ----- and the same having been unequivocally accepted by the Consultant, resulting in a Contract valued at Rs. ----- (Rupees----- Only) excluding Service Tax for “Consultancy Services for Safety audit of Project of 4-laning of ----- - to be executed as BOT (Toll) Project on DBFO Pattern under NHDP Phase -- (Total Length – KM)on NH---in the States of ----- under NHDP Phase ---- (Hereinafter called the “Contract”), and the Consultant having agreed to furnish a Bank Guarantee to the Client as “Performance Security as stipulated by the Client in the said contract for performance of the above Contract amounting to Rs. ----- (Rupees -----only).

We --- Bank, -----, New Delhi having registered office at ----- a body registered/constituted under the Companies Act 1956. (hereinafter referred to as the Bank), which expression shall, unless repugnant to the context or meaning thereof, include its successors, administrators, executors and assign) do hereby guarantee and undertake to pay the Client

immediately on demand, without any deductions, set-off or counterclaim whatsoever, any or, all money payable by the Consultant to the extent of Rs. ----- (Rupees----- Only) as aforesaid at any time up to -----, without any demur, reservation, contest, recourse, cavil, arguments or protest and/or without any reference to or enquiry from the Consultant and without your needing to prove or show grounds or reasons for your demand for the sum specified therein. Any such demand made by the client on the bank shall be conclusive and binding notwithstanding any difference between the Client and the Consultant or any dispute pending before any Court, Tribunal, Arbitrator or any other authority. We agree that the Guarantee herein contained shall be irrevocable and shall continue to be enforceable till the Client discharges this guarantee.

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

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

The Client shall be entitled to make unlimited number of demands under this Bank Guarantee. Any demand shall be deemed to be served, if delivered by hand, when left at the property address for service; and if given or made by pre-paid registered post or facsimile transmission, on receipt.

Any waivers, extension of time or other forbearance given or variations required under the Contract or any invalidity, unenforceability or illegality of the whole or any part of the Contract or rights or any Party thereto or amendment or other modifications of the Contract, or any other fact, circumstances, provision of statute of law which might entitle the bank to be released in whole or in part from its undertaking, whether in the knowledge of the Bank or not or whether notified to the Bank or not, shall not in any way release the Bank from its obligations under this Bank Guarantee.

Upon occurrence of a consultant Default or failure to meet any Condition Precedent, the Authority, shall ,without prejudice to its other rights and remedies hereunder or in law, be entitled to encash and appropriate the relevant amounts from the Performance Security as Damages for such Consultant Default. Upon such encashment and appropriation from the Performance Security, the Consultant shall, within 30 (thirty) days thereof, replenish, in case of partial appropriation, to its original level the Performance Security and in case of appropriation of the entire Performance Security a fresh Performance Security, as the case may be, and the Consultant shall, within the time so granted, replenish or furnish fresh Performance Security as aforesaid failing which the Authority shall be entitled to terminate this Agreement. Upon replenishment or furnishing of a fresh Performance Security, as the case may be, as aforesaid, the Consultant shall be entitled to an additional cure period of 90 (Ninety) days for remedying the Consultant Default, and in the event of the Consultant not curing its default within such cure period, the Authority shall be entitled to encash and appropriate such Performance Security as Damages and to terminate this Agreement.

Notwithstanding anything contained herein,

- a) Our liability under this Bank Guarantee is limited to Rs. ----- (Rupees-----only) and it shall remain in force up to and including -----and shall be extended from time to time for such period as may be desired by M/s. -----on whose behalf on whose behalf this guarantee has been given.
- b) This Bank guarantee shall be valid up to -----.
- c) We are liable to pay the guarantee amount or any part thereof under this Bank guarantee only and only. If you serve upon us a written claim or demand on or before ----- (date of expiry of Guarantee).
- d) The Guarantee shall automatically stand cancelled notwithstanding that the original guarantee document may not be returned to us by you.
- e) This guarantee is valid only if accompanied by our forwarding/covering letter bearing No. -- ----- dated ----- signed by two officials of the bank/branch.
- f) That the beneficiary under the bank guarantee should in their own interest verify the genuineness of the bank guarantee with the issuing branch.

(Signature of the Authorized Official)

(Name & Designation with Bank Stamp)

SCHEDULE-3: GUIDANCE NOTE ON CONFLICT OF INTEREST

SCHEDULE-3

(See Clause 2.3.3)

Guidance Note on Conflict of Interest

1. This Note further explains and illustrates the provisions of Clause 2.3 of the RFP 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; or
- (ii) potential consultant should not have defined the project when earlier working for the Authority; or
- (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 an on-going relationship with a potential concessionaire/contractor save and except relationships restricted to project-specific and short-term assignments; or
- (ii) no consultant should be involved in owning or operating entities resulting from the project; or
- (iii) no consultant should bid 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 towards 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 only

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.

INDICATIVE CONSOLIDATED LIST OF PROJECTS – State wise
(for which safety consultants are to appointed)

State : Madhya Pradesh

Number of Projects- 01

Total lengths- 155.15 Km.

S. No.	Package No.	Name of Project	Length (km)
1.	01	Four-laning of Indore to MP/Gujarat Border Section of NH-59 from Km. 9.500 to Km. 171.00 in the State of MP	155.15
2.			
3.			
4.			
5.			
6.			
7.			

DETAILS OF PPP/OMT PROJECTS
FOR WHICH SAFETY CONSULTANTS ARE TO BE APPOINTED

List of Projects

States : Madhya Pradesh

Total Length: 155.15 Km.

Project No. 01

1.	Name of the Project:	Four-laning of Indore to MP/Gujarat Border Section of NH-59 from Km. 9.500 to Km. 171.00 in the State of MP
2.	Project No.	01
3.	Length (km)	155.15
4.	Date of Award	22.02.2010 (Date of Agreement)
5.	Date of signing of Concession Agreement	22.02.2010
6.	Name of Concessionaire	M/s IVRCL Indore-Gujarat Tollways Pvt. Ltd., M-22/3RT, Vijaya Nagar Colony, Hyderabad (AP).
7.	Concession period	25 Yrs
8.	Construction period	30 month
9.	Project Status	Work in progress
10.	Name of Independent Engineer	M/s Euro Studio SL Spain Associates with Feedback Ventures Pvt. Ltd., (JV) ,101, Royal Place, In front Kothari Management College, Pipliyahana, Indore (MP).
11.	Status of IE	Mobilized
12.	Appointed Date	20.08.2010
13.	Physical Progress achieved	84%
14.	Name of the concerned GM/DGM at HQ, Mobile No.	GM-Shri Anil Kumar
15.	Name of the Project Director	Shri Vijay Shrivastava
16.	Technical Schedule A,B,C, D	

Tentative List of Drawings

1. The Project Highway drawings, as defined in the Concession Agreement, shall consist:
2. A minimum list of the drawings of the various components/elements of the Project Highway and project facilities required to be submitted by the Concessionaire is given below:
 - a) Drawings of horizontal alignment, vertical profile and cross sections
 - b) Working Drawings of all the components/elements of the Project Highway as determined by Independent Engineer/NHAI,
 - c) Drawings of cross drainage works
 - d) Drawings of interchanges, major intersections, grade separators, underpasses and ROB's
 - e) Drawings of traffic diversion plans and traffic control measures
 - f) Drawings of road drainage measures
 - g) Drawings of typical details slope protection measures
 - h) Drawings of pedestrian crossings
 - i) Drawings of street lighting
 - j) Drawings of toll plaza layout, toll collection systems and roadway near toll plaza
 - k) Drawings of Control Centre
 - l) Drawings of bus-bay and bus shelters with furniture and drainage system
 - m) Drawing of a truck parking lay bye with furniture and drainage system
 - n) Drawings of road furniture items including traffic signage, markings, safety Barriers, etc.
 - f) Layout/Configuration of HTMS

General Conditions of Contract

1. GENERAL PROVISIONS

1.1 Definitions

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

- (a) “Applicable Law” means the laws and any other instruments having the force of law in the Government’s country, or in such other country as may be specified in the Special Conditions of Contract (SC), as they may be issued and in force from time to time.
- (b) “Consultant” means any private or public entity that will provide the Services to the Client under the Contract.
- (c) “Contract” means the Contract signed by the Parties and all the attached documents listed in its Clause 1, that is these General Conditions (GC), the Special Conditions (SC), and the Appendices.
- (d) “Contract Price” means the price to be paid for the performance of the Services, in accordance with Clause 6;
- (e) “Effective Date” means the date on which this Contract comes into force and effect pursuant to Clause GC 2.1.
- (f) “Foreign Currency” means any currency other than the currency of the India.
- (g) “GC” means these General Conditions of Contract.
- (h) “Government” means the Government of India.
- (i) “Local Currency” means the currency of India.
- (j) “Member” means any of the entities that make up the joint venture/consortium/association, and “Members” means all these entities.
- (k) “Party” means the Client or the Consultant, as the case may be, and “Parties” means both of them.
- (l) “Personnel” means persons hired by the Consultant or by any Sub-Consultants and assigned to the performance of the Services or any part thereof.
- (m) “SC” means the Special Conditions of Contract by which the GC may be amended or supplemented.
- (n) “Services” means the work to be performed by the Consultant pursuant to this Contract, as described in RFP Document.
- (o) “Sub-Consultants” means any person or entity to whom/which the Consultant subcontracts any part of the Services.
- (p) “In writing” means communicated in written form with proof of receipt.

1.2 Law Governing Contract

This Contract, its meaning and interpretation, and the relation between the Parties shall be governed by the Applicable Law.

- 1.3 Language** This Contract has been executed in the language specified in the SC, which shall be the binding and controlling language for all matters relating to the meaning or interpretation of this Contract.
- 1.4 Notices**
- 1.4.1** Any notice, request or consent required or permitted to be given or made pursuant to this Contract shall be in writing. Any such notice, request or consent shall be deemed to have been given or made when delivered in person to an authorized representative of the Party to whom the communication is addressed, or when sent to such Party at the address specified in the SC.
- 1.4.2** A Party may change its address for notice hereunder by giving the other Party notice in writing of such change to the address specified in the SC.
- 1.5 Location** The Services shall be performed at such locations as are specified in RFP Document and, where the location of a particular task is not so specified, at such locations, whether in the Government's country or elsewhere, as the Client may approve.
- 1.6 Authority of Member in Charge** In case the Consultant consists of a joint venture/ consortium/ association of more than one entity, the Members hereby authorize the entity specified in the SC to act on their behalf in exercising all the Consultant's rights and obligations towards the Client under this Contract, including without limitation the receiving of instructions and payments from the Client.
- 1.7 Authorized Representatives** Any action required or permitted to be taken, and any document required or permitted to be executed under this Contract by the Client or the Consultant may be taken or executed by the officials specified in the SC.

- 1.8 Taxes and Duties** The Consultant, Sub-Consultants, and their Personnel shall pay such indirect taxes, duties, fees, and other impositions levied under the Applicable Law as specified in the SC, the amount of which is deemed to have been included in the Contract Price.
- 1.9 Fraud and Corruption** If the Client determines that the Consultant and/or its Personnel, sub-contractors, sub-consultants, services providers and suppliers has engaged in corrupt, fraudulent, collusive, coercive, or obstructive practices, in competing for or in executing the Contract, then the Client may, after giving 14 days notice to the Consultant, terminate the Consultant's employment under the Contract, and the provisions of Clause 2 shall apply as if such expulsion had been made under Sub-Clause 2.6.1(c).
- Should any personnel of the Consultant be determined to have engaged in corrupt, fraudulent, collusive, coercive, or obstructive practice during the execution of the Contract, then that personnel shall be removed in accordance with Sub-Clause 4.2.
- 1.9 Definitions** For the purposes of this Sub-Clause, the terms set-forth below are defined as follows:
- (i) “corrupt practice” is the offering, giving, receiving or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another party¹;
 - (ii) “fraudulent practice” is any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation;
 - (iii) “collusive practice” is an arrangement between two or more parties designed to achieve an improper purpose, including to influence improperly the actions of another party²;
 - (iv) “coercive practice” is impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party³;
 - (v) “obstructive practice” is deliberately destroying, falsifying, altering or concealing of evidence material to the investigation.

¹ A “party to a public official, the terms “benefit” relate to the selection process or contract execution; and the “act or omission” is intended to influence the selection process or contract.

² “Parties” refers to participants in the selection process (including public officials) attempting to establish bid prices at artificial, non competitive levels.

³ A “party” refers to a participant in the selection process or contract execution.

2. Commencement, Completion, Modification and Termination of Contract

- 2.1 Effectiveness of Contract** This Contract shall come into effect on the date the Contract is signed by both Parties or such other later date as may be stated in the SC. The date the Contract comes into effect is defined as the Effective Date.
- 2.2 Commencement of Services** The Consultant shall begin carrying out the Services not later than the number of days after the Effective Date specified in the SC.
- 2.3 Expiration of Contract** Unless terminated earlier pursuant to Clause GC 2.6 hereof, this Contract shall expire at the end of such time period after the Effective Date as specified in the RFP.
- 2.4 Modifications or Variations** Any modification or variation of the terms and conditions of this Contract, including any modification or variation of the scope of the Services, may only be made by written agreement between the Parties. However, each Party shall give due consideration to any proposals for modification or variation made by the other Party.

2.5 Force Majeure

2.5.1 Definition For the purposes of this Contract, “Force Majeure” means an event which is beyond the reasonable control of a Party and which makes a Party’s performance of its obligations under the Contract impossible or so impractical as to be considered impossible under the circumstances.

2.5.2 No Breach of Contract The failure of a Party to fulfill any of its obligations under the contract shall not be considered to be a breach of, or default under, this Contract insofar as such inability arises from an event of Force Majeure, provided that the Party affected by such an event (a) has taken all reasonable precautions, due care and reasonable alternative measures in order to carry out the terms and conditions of this Contract, and (b) has informed the other Party as soon as possible about the occurrence of such an event.

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

2.6 Termination

2.6.1 By the Client The Client may terminate this Contract in case of the occurrence of any of the events specified in paragraphs (a) through (f) of this Clause GC 2.6.1. In such an occurrence the Client shall give a not less than thirty (30) days’ written notice of termination to the Consultant, and sixty (60) days’ in the case of the event referred to in (e).

(a) If the Consultant does not remedy a failure in the performance of their obligations under the Contract, within thirty (30) days after being notified or within any further period as the Client may have subsequently approved in writing.

(b) If the Consultant becomes insolvent or bankrupt.

(c) If the Consultant, in the judgment of the Client has engaged in corrupt or

fraudulent practices in competing for or in executing the Contract.

- (d) If, as the result of Force Majeure, the Consultant are unable to perform a material portion of the Services for a period of not less than sixty (60) days.
- (e) If the Client, in its sole discretion and for any reason whatsoever, decides to terminate this Contract.
- (f) If the Consultant fails to comply with any final decision reached as a result of arbitration proceedings pursuant to Clause GC 8 hereof.

2.6.2 By the Consultant

The Consultants may terminate this Contract, by not less than thirty (30) days' written notice to the Client, such notice to be given after the occurrence of any of the events specified in paragraphs (a) through (b) of this Clause GC 2.6.2:

- (a) If the Client fails to pay any money due to the Consultant pursuant to this Contract and not subject to dispute pursuant to Clause GC 7 hereof within forty-five (45) days after receiving written notice from the Consultant that such payment is overdue.
- (b) If the Client fails to comply with any final decision reached as a result of arbitration pursuant to Clause GC 8 hereof.

2.6.3 Payment upon Termination

Upon termination of this Contract pursuant to Clauses GC 2.6.1 or GC 2.6.2, the Client shall make the following payments to the Consultant:

- (a) payment pursuant to Clause GC 6 for Services satisfactorily performed prior to the effective date of termination;
- (b) except in the case of termination pursuant to paragraphs (a) through (c), and (f) of Clause GC 2.6.1, reimbursement of any reasonable cost incident to the prompt and orderly termination of the Contract.

3. OBLIGATIONS OF THE CONSULTANT

3.1 General

- 3.1.1 Standard of Performance** The Consultant shall perform the Services and carry out their obligations hereunder with all due diligence, efficiency and economy, in accordance with generally accepted professional standards and practices, and shall observe sound management practices, and employ appropriate technology and safe and effective equipment, machinery, materials and methods. The Consultant shall always act, in respect of any matter relating to this Contract or to the Services, as faithful advisers to the Client, and shall at all times support and safeguard the Client's legitimate interests in any dealings with Sub-Consultants or third Parties.
- 3.2 Conflict of Interests** The Consultant shall hold the Client's interests paramount, without any consideration for future work, and strictly avoid conflict with other assignments or their own corporate interests.
- 3.2.1 Consultants not to Benefit from Commissions, Discounts, etc.** The payment of the Consultant pursuant to Clause GC 6 shall constitute the Consultant's only payment in connection with this Contract or the Services, and the Consultant shall not accept for their own benefit any trade commission, discount, or similar payment in connection with activities pursuant to this Contract or to the Services or in the discharge of their obligations under the Contract, and the Consultant shall use their best efforts to ensure that the Personnel, any Sub-Consultants, and agents of either of them similarly shall not receive any such additional payment.
- 3.2.2 Consultant and Affiliates not to be Otherwise Interested in Project** The Consultant agrees that, during the term of this Contract and after its termination, the Consultant and any entity affiliated with the Consultant, as well as any Sub-Consultants and any entity affiliated with such Sub-Consultants, shall be disqualified from providing goods, works or services (other than consulting services) resulting from or directly related to the Consultant's Services for the preparation or implementation of the project.
- 3.2.3 Prohibition of Conflicting Activities** The Consultant shall not engage, and shall cause their Personnel as well as their Sub-Consultants and their Personnel not to engage, either directly or indirectly, in any business or professional activities which would conflict with the activities assigned to them under this Contract.
- 3.3 Confidentiality** Except with the prior written consent of the Client, the Consultant and the Personnel shall not at any time communicate to any person or entity any confidential information acquired in the course of the Services, nor shall the Consultant and the Personnel make public the recommendations formulated in the course of, or as a result of, the Services.
- 3.4 Insurance to be Taken Out by the** The Consultant (a) shall take out and maintain, and shall cause any Sub-Consultants to take out and maintain, at their (or the Sub-Consultants', as the case may be) own cost but on terms and conditions approved by the Client,

- Consultant** insurance against the risks, and for the coverage, as shall be specified in the SC; and (b) at the Client's request, shall provide evidence to the Client showing that such insurance has been taken out and maintained and that the current premiums have been paid.
- 3.5 Consultant's Actions Requiring Client's Prior Approval** The Consultant shall obtain the Client'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 Services,
 - (b) appointing such members of the Personnel not listed by name in Appendix C, and
 - (c) any other action that may be specified in the SC.
- 3.6 Reporting Obligations**
- (a) The Consultant shall submit to the Client the reports and documents specified in RFP, in the form, in the numbers and within the time periods set forth in the RFP.
 - (b) Final reports shall be delivered in CD ROM in addition to the hard copies specified in said Appendix.
- 3.7 Documents Prepared by the Consultant to be the Property of the Client**
- (a) All plans, drawings, specifications, designs, reports, other documents and software submitted by the Consultant under this Contract shall become and remain the property of the Client, and the Consultant shall, not later than upon termination or expiration of this Contract, deliver all such documents to the Client, together with a detailed inventory thereof.
 - (b) The Consultant may retain a copy of such documents and software. Restrictions about the future use of these documents, if any, shall be specified in the SC.
- 3.8 Accounting, Inspection and Auditing** The Consultant shall keep, and shall cause its Sub-consultants to keep, accurate and systematic accounts and records in respect of the Contract, in accordance with internationally accepted accounting principles and in such form and detail as will clearly identify relevant time changes and costs

4. CONSULTANT'S Personnel

The Consultant shall employ and provide such qualified and experienced Personnel and Sub-Consultants as are required to carry out the Services. The titles, agreed job descriptions, minimum qualifications, and estimated periods of engagement in the carrying out of the Services of the Consultant's Key Personnel are described in RFP. The Key Personnel and Sub-Consultants listed by title as well as by name in RFP are hereby approved by the Client.

4.2 Removal and/or Replacement of Personnel

- (a) Except as the Client may otherwise agree, no changes shall be made in the Key Personnel. If, for any reason beyond the reasonable control of the Consultant, such as retirement, death, medical incapacity, among others, it becomes necessary to replace any of the Key Personnel, the Consultant shall provide as a replacement a person of equivalent or better qualifications.
- (b) If the Client finds that any of the Personnel have (i) committed serious misconduct or have been charged with having committed a criminal action, or (ii) have reasonable cause to be dissatisfied with the performance of any of the Personnel, then the Consultant shall, at the Client's written request specifying the grounds thereof, provide as a replacement a person with qualifications and experience acceptable to the Client.
- (c) Reduction in remuneration in case of replacement will be made in accordance with RFP.

5. OBLIGATIONS OF THE CLIENT

Services and Facilities

The Client shall make available free of charge to the Consultant the Services and Facilities described in the RFP.

6. PAYMENTS TO THE CONSULTANT

6.1 Lump-Sum Payment

The total payment due to the Consultant shall not exceed the Contract Price which is inclusive of all fixed lump-sum covering all costs required to carry out the Services described in RFP.

6.2 Contract Price

- (a) The price is payable in INR.

7. GOOD FAITH

Good Faith

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

realization of the objectives of this Contract.

8. SETTLEMENT OF DISPUTES

8.1 Amicable Settlement

The Parties agree that the avoidance or early resolution of disputes is crucial for a smooth execution of the Contract and the success of the assignment. The Parties shall use their best efforts to settle amicably all disputes arising out of or in connection with this Contract or its interpretation.

8.2 Dispute Resolution

Any dispute between the Parties as to matters arising pursuant to this Contract that cannot be settled amicably within thirty (30) days after receipt by one Party of the other Party's request for such amicable settlement may be submitted by either Party for settlement in accordance with the provisions specified in the SC.

Special Conditions of Contract

(Clauses in brackets { } are optional; all notes should be deleted in final text)

Number of GC Clause	Amendments of, and Supplements to, Clauses in the General Conditions of Contract
1.1	The words “in the Government’s country” are amended to read “in <i>India</i> ”
1.2	The language is <i>English</i> .
1.3	<p>The addresses are:</p> <p>Client: National Highways Authority Of India</p> <p>Attention: _____</p> <p>Facsimile: _____</p> <p>E-mail:: _____</p> <p>Consultant: _____</p> <p>Attention: _____</p> <p>Facsimile: _____</p> <p>E-mail: _____</p>

1.4	<p>{The Member in Charge is <i>[insert name of member]</i>}</p> <p><i>Note: If the Consultant consists of a joint venture/ consortium/ association of more than one entity, the name of the entity whose address is specified in Clause SC 1.6 should be inserted here. If the Consultant consists only of one entity, this Clause SC 1.8 should be deleted from the SC.</i></p>
1.5	<p>The Authorized Representatives are:</p> <p>For the Client: Project Director, Indore, National Highways Authority of India</p> <p>For the Consultant: _____</p>
1.6 1.6.1	<p><u>For domestic consultants/sub-consultants / personnel and foreign consultants/personnel who are permanent residents in India</u></p> <p>The consultant, sub-consultant and the Personnel shall pay the taxes, taxes, duties, fees, levies and other impositions levied under the existing, amended or enacted laws during project period. Client shall perform such duties in this regard to the deduction of such taxes (tax deduction at source – TDS) as may be lawfully imposed.</p>
1.6.2	<p>(a) The client shall reimburse Services Tax payable in India as per Applicable Law. The consultant shall register itself for service tax with appropriate authority in India & shall provide the registration Number to the client.</p> <p>(b) Tax will be deducted at source as per the prevailing Income Tax Rules</p>
2.1	<p>The date for the commencement of Services is <i>[insert date]</i>.</p>
2.2	<p>The time period shall be : <i>till the completion of the main project (usually 36 months)</i>.</p>
3.1	<p>The risks and the coverage shall be as follows:</p> <p>(a) Third Party motor vehicle liability insurance in respect of motor vehicles operated in the Government's country by the Consultant or its Personnel or any Sub-Consultants or their Personnel, with a minimum coverage as per Motor Vehicles Act 1988;</p> <p>(b) Third Party liability insurance, with a minimum coverage of Rs.1.0 Million;</p> <p>(c) professional liability insurance, with a minimum coverage of value equal to contract amount in INR;</p> <p>(d) Client's liability and workers' compensation insurance in respect of the Personnel of the Consultant and of any Sub-Consultants, in accordance with the relevant provisions of the Applicable Law, as well as, with respect to such Personnel, any such life, health, accident, travel or other insurance as may be appropriate; and</p>

	(e) insurance against loss of or damage to (i) equipment purchased in whole or in part with funds provided under this Contract, (ii) the Consultant's property used in the performance of the Services, and (iii) any documents prepared by the Consultant in the performance of the Services.
3.2	The Consultant shall not use these documents and software for purposes unrelated to this Contract without the prior written approval of the Client.
5.0	Payment shall be made within <u>30</u> days of receipt of the invoice and the relevant documents specified in Clause 6.4, and within <u>60</u> days in the case of the final payment.
6.0	<p>Disputes shall be settled by arbitration in accordance with the following provisions:</p> <p>Dispute Settlement</p> <p>(i) Any dispute, controversy, or claim arising out of or relating to this contract, or the breach, termination or invalidity thereof shall be settled by arbitration in accordance with following provisions:</p> <p>(ii) Each dispute submitted by a Party to arbitration shall be heard by a sole arbitrator or an arbitration panel composed of three arbitrators, in accordance with the following provisions:</p> <p>(a) Where the Parties agree that the dispute concerns a technical matter, they may agree to appoint a sole arbitrator or, failing agreement on the identity of such sole arbitrator within thirty (30) days after receipt by the other Party of the proposal of a name for such an appointment by the Party who initiated the proceedings, either Party may apply to the President, Institution of Engineers, Delhi Chapter, for a list of not fewer than five nominees and, on receipt of such list, the Parties shall alternately strike names there from, and the last remaining nominee on the list shall be the sole arbitrator for the matter in dispute. If the last remaining nominee has not been determined in this manner within sixty (60) days of the date of the list, the President, Institution of Engineers, Delhi Chapter, shall appoint, upon the request of either Party and from such list or otherwise, a sole arbitrator for the matter in dispute.</p> <p>(b) Where the Parties do not agree that the dispute concerns a technical matter, the Client and the Consultants shall each appoint one arbitrator, and these two arbitrators shall jointly appoint a third arbitrator, who shall chair the arbitration panel. If the arbitrators named by the Parties do not succeed in appointing a third arbitrator within thirty (30) days after the latter of the two arbitrators named by the Parties has been appointed, the third arbitrator shall, at the request of either Party, be appointed by President, Institution of Engineers, Delhi Chapter</p> <p>(c) If, in a dispute, one Party fails to appoint its arbitrator within thirty (30) days after the other Party has appointed its arbitrator, the Party which has named an arbitrator may apply to the President, Institution of Engineers, Delhi Chapter, to appoint a sole arbitrator for the matter in dispute, and the arbitrator appointed</p>

	pursuant to such application shall be the sole arbitrator for that dispute.
7	<p><u>Miscellaneous.</u> In any arbitration proceeding hereunder:</p> <p>(a) proceedings shall, unless otherwise agreed by the Parties, be held in <i>New Delhi</i>;</p> <p>(b) the <i>English</i> language shall be the official language for all purposes; and</p> <p>(c) the decision of the sole arbitrator or of a majority of the arbitrators (or of the third arbitrator if there is no such majority) shall be final and binding and shall be enforceable in any court of competent jurisdiction, and the Parties hereby waive any objections to or claims of immunity in respect of such enforcement.</p>

COMPLETION OF SERVICES

All the study outputs including primary data shall be compiled, classified and submitted by the Consultant to the authority in soft form apart from the Deliverables indicated in RFP. The study outputs shall remain the property of the Authority and shall not be used for any purpose other than that intended under these Terms of Reference without the permission of the Authority. The Consultancy services shall stand completed on acceptance of all the required deliverables of the Consultant by the Authority and a communication by the Authority to this effect.
