



Request for Proposal (RFP)

Appointment of a Transaction Advisor from the Empanelment by D.E.A. who can assist JTDC in carrying out feasibility study, project structure and assist in carrying out the entire bid process including preparation of transaction documents till on boarding of concessionaire.

Ref. no.:- 1029/2023

Ranchi/Dated:- 12/09/2023



Jharkhand Tourism Development Corporation Limited

5, Mahatma Gandhi Marg, Ranchi, Jharkhand – 834001.

Phone No: +(91)-651-2331828 & 2331643 Fax: +(91)-651-2331828

E-MAIL: jtdcltd@gmail.com

Visit us on <https://tourism.jharkhand.gov.in>

1. General

Introduction

- 1.1 Jharkhand Tourism Development Corporation Limited also referred to as the “JTDCL” or “Authority”, is a nodal agency under Department of Tourism, Government of Jharkhand (“DoT”) with a mandate to develop tourism infrastructure in the State of Jharkhand. JTDCL is operating various tourist facilities, hotels and tourist complexes in the State of Jharkhand and providing residential accommodation to the tourists at various tourist destinations in Jharkhand.
- 1.2 JTDCL has tourist facilities at Patratu Dam Site that comprises Lake Resort, Play Zone, Promenade etc. at Patratu (Ramgarh). Deoghar in Jharkhand is a religious destination and famous for it’s Baba Baidyanathdham Temple. Netarhat is the most visited hill station of Jharkhand.
- 1.3 JTDCL intends to appoint a suitable Private Sector Player for leasing out of the entire property of Lake Resort Patratu and for the redevelopment of the parcel of land at Hotel Baidyanath Vihar, Deoghar and Hotel Prabhat Vihar, Netarhat .
- 1.4 Towards the same, JTDCL intends to appoint a Transaction Advisor who can assist JTDCL in carrying out feasibility study, project structure and assist the JTDCL in the bidding process in accordance with the Terms of Reference specified at Schedule-1 (the “TOR”) for selection of suitable Private Sector Player for Operation, Maintenance and Management of the said facilities (Project).
- 1.5 JTDCL intends to select the Transaction Advisor, through an open, transparent and competitive bidding process from the TA’s empanelled by the Department of Economic Affairs , Ministry of Finance, Government of India, to undertake the Project.
- 1.6 Ensuring adequate and quality infrastructure is a pre-requisite for rapid and sustained economic growth. Public Private Partnerships (PPP) are critical for meeting the infrastructure investment targets as they not only harness private capital in creation and maintenance of infrastructure but also introduce greater efficiencies in construction, operation, and maintenance and enhance the standards of delivery of infrastructure services.
- 1.7 PPP is an ever-evolving process where relationship between the public and private sectors alters from time to time. The recent years have witnessed new PPP models of project implementation which help governments in meeting the ever-growing needs of quality infrastructure. However there are a number of legal, social, economic, political and administrative issues that have a bearing on the success of a PPP. The prime responsibility to address these issues lies with the governments to create an enabling eco-system involving support through proactive planning, policy formulation and regulatory measures.
- 1.8 Jharkhand Tourism Development Corporation (JTDCL) wishes to on-board a transaction advisor who will carry out the entire bid process including preparation of transaction documents till on boarding of concessionaire.
- 1.9 JTDCL, for the above purposes seeks services of a Transaction Advisor to achieve the aforementioned objectives.

2. General Terms of Reference

- (a) 2.1 The General Terms of Reference (the ‘General TOR’) and the scope of Transaction Advisory for Appointment of Transaction Advisor for selection of suitable Private Sector Player for Operation, Maintenance and Management of JTDCL facilities at Patratu Jharkhand and Redevelopment on parcel of land at Hotel Baidyanath Vihar, Deoghar and Hotel Prabhat Vihar, Netarhat on PPP mode are specified in the below mentioned **Schedule 1**:

| SN | Particulars | Details | | |
|--|----------------------------------|---|---------------|---|
| 1 | Eligible Bidders | Only DEA empanelled Transaction Advisors (Transaction Advisors/Management Consultants as per DEA letter no F. No. 2/3/2021-PPP dtd 01.07.2022 (Annexure:10)) are eligible to participate in the RFP | | |
| 2 | Selection Process | Quality cum Cost Based Selection Process with 80% weight age to Technical Bid and 20% weight age to financial bid. | | |
| 3 | Evaluation of Technical Proposal | Particulars | Maximum Marks | Criteria |
| | | Eligible Assignment(similar nature of work carried out) | 50 | 5 marks for each eligible assignment subject to maximum of 50 marks |
| | | Relevant Experience of Key Personnel | 20 | |
| | | Team leader cum PPP Expert | 10 | <ul style="list-style-type: none"> 20% of maximum marks if the key person has desired qualification (No marks if not having desired qualification) 30% of maximum marks if the key person has desired no. of years of experience (No marks if not having desired no. of years experience) 40% of marks if the key person has desired no. of eligible assignments (No marks if not having desired no. of eligible assignments) 10% of marks if the key person has experience of working in Jharkhand (no marks if not having desired experience of working in Jammu & Kashmir) |
| | | Financial Expert | 3 | |
| | | Tourism Expert | 3 | |
| | | Infrastructure Expert | 2 | |
| | | Legal Expert | 2 | |
| | | | | |
| | | | | |
| Technical presentation on Approach & Methodology | 30 | Evaluation based on quality and adequacy of presentation made to the evaluation committee on the understanding of the Project and approach & methodology of the work | | |
| Total Marks | 100 | | | |
| 4 | Evaluation of Financial Proposal | Total Marks = 100. To be calculated as follows: The lowest Financial Proposal (FM) will be given a financial score (SF) of 100 points. | | |

| | | |
|---|-------------------------------|---|
| | | The financial scores of other proposals will be computed as follows: $SF = 100 \times FM/F$ (F = amount of Financial Proposal of other bidder) |
| 5 | Combined and final evaluation | Proposals will finally be ranked according to their combined technical (ST) and financial (SF) scores as follows: $S = ST \times Tw + SF \times Fw$ Where, Tw and Fw are weights assigned to Technical Proposal and Financial Proposal, which shall be 0.80 and 0.20 respectively. |
| 6 | Terms of Reference | <ol style="list-style-type: none"> 1. Undertaking detailed assessment of physical, commercial, legal and regulatory aspects of Identified Assets including but not limited to: <ol style="list-style-type: none"> a) Current status of Identified Assets viz. information on different types of existing facilities and capacity, built-up area, date of commissioning/start of operations, original cost of construction funding of project cost, location, type of structures, current usage and other relevant information, b) Site assessment viz. total available land, ownership of land and assets, current allowed usage of land, nature and structures on adjoining area and other relevant information c) Location assessment viz. tourism traffic potential, forecasted growth, connectivity status via roads, railways, airports etc, availability of water and power, manpower etc; d) Market assessment at location viz., existing and upcoming hospitality facilities, occupancy, rates, service-mix, demand-supply gap etc; e) Operational performance of Identified Assets over last 5 years viz. monthly traffic and occupancy, service-mix, customer segments, rentals etc.; f) Financial performance of Identified Assets including revenue generated, head-wise operating expenditure incurred, book value, outstanding asset and liabilities etc; g) Contracts entered into with respect to the Identified Assets, including for purpose of ongoing construction, operations, maintenance, usage etc; h) Applicable building regulations and any other laws, regulations & standards as applicable to the sector/ Identified Assets; 2. Conduct site visits for assessment of identified Assets as above including adequacy for infrastructure, utilities etc.; 3. Assessing augmentation requirement proposed by Asset Authority in terms of adequacy, overall commercial potential, cost-benefit etc; Recommending the optimal augmentation requirement and costs thereof inter-alia: <ol style="list-style-type: none"> a) Facilities to be added including capacity specifications etc; b) Need for modernization, refurbishing, major maintenance etc. in existing assets; c) Timelines and phasing of augmentation wherever necessary; d) Prepare a preliminary cost estimate for the proposed works. While preparing the cost estimates, information from Asset Authority and as per generally accepted norms for undertaking such augmentation viz. estimated quantities and applicable rates for the various kinds of works etc. will be considered so that the reasonableness of the cost estimate could be ascertained; 4. Assessing the underlying revenue model and evaluate alternative revenue |

| | | |
|--|--|---|
| | | <p>models and pros and cons of these models. Recommend the model most suitable for ensuring efficient delivery of services to public/users, attractiveness of Asset to investors and maximization of value received</p> <ol style="list-style-type: none"> 5. Prepare broad estimates of expected traffic, occupancy, revenue from various sources, recurrent expenditure and the maintenance and utility usage for Identified Assets; Potential for service mix and recommendations on same including pre-requisites viz. clearances, approvals required etc; 6. Prepare the detailed financial model including among others the revenue and expenditure projections, mandatory augmentation costs, accounting and tax implications etc. over the concession period. Analyse financial viability based on key financial indicators (project IRR, equity IRR, DSCR, NPV of cash flows to Asset Authority etc) and sensitivity and scenario analysis; The financial model should include all necessary assumptions, calculations, statements, ratios etc. required for evaluating various aspects of the transaction; 7. Identify possible brown field PPP structuring options and design the most optimal PPP structure explaining the rationale and criteria. Elaborate the detailed contours including recommended terms, viz. concession period, pricing mechanism, bidding parameter, scope of work, milestones for operationalization, performance indicators etc for each Identified Assets; 8. Identify various risks in the transaction and recommend allocation/mitigation of same as necessary; 9. Provide detailed advice on taxation (direct and indirect), duties, regulatory legal aspects of the recommended structure; 10. Articulate a detailed strategy and action plan for implementation of monetization through proposed model including prioritized activities, outcomes, dependencies etc. with buy-in on the roadmap: <ol style="list-style-type: none"> a) Identification of various activities leading to end-to-end implementation of proposed monetization; b) Identification of appropriate agencies and/or departments (as applicable) for implementation; c) Schedule of timelines for implementation; d) Key milestones and leading indicators of success; e) Resource requirements; f) Identification of applicable approvals including all statutory, regulatory clearances etc. ; g) Support required from other Government departments including both State and Central Government, urban local bodies etc.; h) Legal, regulatory implications and actions points if any; <p>Preparation of transaction documents and undertaking bidding / investment process (Phase II)</p> <ol style="list-style-type: none"> 11. Preparation and finalization of various bidding documents such as request for qualification (RFQ) and/or request for proposal (RFP), draft concession agreement and any other documents required as per the |
|--|--|---|

| | | |
|---|--|---|
| | | <p>transaction model terms;</p> <ol style="list-style-type: none"> 12. Assist in preparation of notes/ memos etc for internal approvals or for approvals from competent authority. Provide all necessary support for ensuring timely submission and approval of such proposals including participation in meetings as necessary; 13. Render all necessary support in obtaining requisite clearances/ approvals from regulatory bodies, nodal authorities, agencies etc; 14. Assist in undertaking domestic and/or international road shows, marketing and stakeholder consultations; Responding to all queries satisfactorily and within the specified time; 15. Render advisory services for conducting the bid process including but not limited to attending investor interactions, meetings, pre-bid conferences etc; 16. Assist in evaluation of bids and selection of the concessionaire for the project; 17. Render advisory services up to the signing of the concession agreement and any pre/post closure activities incidental to such transaction; and 18. Undertake all the other activities incidental to aforementioned scope, including but not limited to, modifications and finalization based on inputs from Asset Authority, hand-holding Asset Authority its representatives during the end to end process as need be. <p>The scope of work specified above is not exhaustive and the Consultant shall undertake such other task as may be necessary for successful completion of bid process for the project.</p> <p>Time for completion of the work will be 4 (four) months</p> |
| 3 | Transaction advisor service fee | <p>Transaction Advisor will be hired for the below mentioned projects:</p> <ol style="list-style-type: none"> (b) Lake Resort Patratu (for the leasing out of the entire property) (c) Hotel Baidyanath Vihar, Deoghar (for the leasing out parcel of land and redevelopment of the land) (d) Hotel Prabhat Vihar, Netarhat (for the leasing out parcel of land and redevelopment of the land) <p>(The bidder must quote for per unit cost for Transaction Advisor service fee and total consolidated service fee. The L1 shall be decided on the consolidated fee.)</p> |

3. Objective

3.1 The objective of this Consultancy is to undertake transactions advisory services for Operation, Maintenance and Management of JTDCL facilities at Patratu Jharkhand on PPP mode and Redevelopment of the parcel of land at Hotel Baidyanath Vihar at Deoghar and Hotel Prabhat Vihar, Netarhat on PPP mode in a manner which ensures:

- a) Participation by the best available firms in the bidding process.

- b) Financing of the capital cost by the Concessionaire and other stake holders
- c) Optimizing the revenue potential of the project.
- d) Any other objective as specified by JTDCL.

4. Scope of services

4.1 The scope of services shall include:

1. Undertaking a feasibility study to ensure to ascertain the financial and technical viability of the project. If the project is found feasible proceed as mentioned below.
2. Evaluation of the strategic objectives of the JTDCL in relation to the Project and advising on the commercials with reference to Applicable Laws;
3. Collection, compilation and analysis of relevant financial data relating to all costs and revenues.
4. Review cost estimates contained in the Feasibility Report.
5. Prepare a reasonable estimation of the likely revenues.
6. Assisting the Authority in identification of project risks and in allocation of the same in an efficient and economic manner.
7. Identification and quantification of estimated financial impact of the Project on government resources.
8. Development of various possible alternatives for revenue maximization, and preparation of Revenue Model for the Project.
9. Advising on tax-related issues arising out of the Project structuring.
10. Preparation of a consolidated list of approvals/consents/clearances required from Government Authorities; and
11. Assist in preparation of Bid documents including the relevant Schedules of the Concession Agreement.
12. Undertake the entire bid process including collecting and replying to bid-related queries by potential Applicants and helping on-board the concessionaire.
13. Additionally, if required, undertake any related study, or constitute a PPP related Project Monitoring Unit.

In making its projections, recommendations and Reports, the Transaction Advisor shall identify the underlying assumptions and reach an agreement with the JTDCL in relation there to. The scope of services specified in this Paragraph 3 is only indicative.

The final scope of work is as per clause 2 for seeking financial and technical proposals from the empanelled transaction advisor.

5.1 Applicants will submit responses as per Annexure 4. This will enable JTDCL to filter the firms from the empanelled list for their specific project purpose.

5.2 Any entity which has been barred by the Central Government , any State Government , a statutory authority, or a public sector undertaking, as the case may be, from participating in any project, and the bar subsists as on the date of the Proposal, would not be eligible to submit a Proposal either by itself or through its Associate.

5.3 Any Applicant or it's Associate should have, during the last three years, neither failed to perform on any agreement, as evidenced by imposition of a penalty by an arbitral or judiciary pronouncement or arbitration award against the Applicant or its Associate , nor been expelled from any project or agreement nor have had any agreement terminated for breach by such Applicant or its Associate.

6. Key Personnel for the Project (The Team)

6.1 The empanelled Transaction Advisor shall undertake to make available for each Assignment the personnel (the 'Key Personnel') meeting the specified requirements by JTDCL throughout the tenure of such Assignment.

6.2 The team composition of a Transaction Advisory Team for any assignment proposed by JTDCL should be preferably as below. Particulars of the personnel should be reproduced in Annexure 2 and 3.

| Sl. No. | Key Personnel | Condition of Eligibility |
|---------|-----------------------|--|
| 1 | Team Leader | <ul style="list-style-type: none"> Master's degree or equivalent in Business Management/CA with more than 10 years of experience. Experience of leading at least 5 Transaction Advisory projects (<i>value more than 15 Crore each</i>). Experience of successfully closing PPP project in India. |
| 2 | Financial Expert | <ul style="list-style-type: none"> Master's degree or equivalent in Business Management/CA with more than 10 years of experience. Experience of leading at least 5 Transaction Advisory projects (<i>value more than 15 Crore each</i>). Experience of successfully closing PPP project in India. |
| 3 | Tourism Expert | <ul style="list-style-type: none"> Master's degree or equivalent in Business Management with more than 07 years of experience. Experience of development of at least 5 Tourism Infrastructure Projects (<i>value more than 10 Crore each</i>) on PPP mode. |
| 4 | Legal Expert | <ul style="list-style-type: none"> Expert should have a Bachelor's Degree in Law from a recognized University with Minimum 5 years of professional experience. Should have worked as Legal Expert in a minimum of 03 Transaction Advisory Services Projects |
| 5 | Infrastructure Expert | <ul style="list-style-type: none"> Graduate in civil engineering or similar qualification from a recognized University or Institution Minimum 7 years of professional experience Should have worked as a Infrastructure Expert in a minimum of 3 Eligible Assignments |

Evaluation of Financial & Technical Proposal

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

For the Applicants that qualify the Eligibility Criteria, the Technical Score (TS) will consist of marks allocated to following two parts:

- Technical Presentation-Consisting of Credentials, Approach, and Methodology
- Team Personnel/Key Personnel-Marks allocated to individual CVs as decided by PSA

7.2. For Financial & Technical evaluation, the all-inclusive cost of services, of all short-listed TAs will be opened. The cost of services will be in two parts as under:

- a) Pre-feasibility study cost(all inclusive)
- b) End to end transaction advisory services (all-inclusive excluding pre-feasibility)

The Pre-feasibility study cost should ideally not be more than 20%of end-to end transaction advisory fee quoted by the TA (clause b as defined above).

The empanelled TA will make a technical presentation on the parameters highlighted by JTDCL of the specific assignment. The presentation will be evaluated by a committee appointed by the JTDCL and provide a technical score (Tech PPT). The Financial score shall be the financial bid submitted by the empanelled TA (SF) will be calculated as per the following scoring matrix:

8 Payment Schedule

The indicative payment schedule for Appointment of Transaction Advisor for selection of suitable Private Sector Player for Operation, Maintenance and Management of JTDCL facilities at Patratu Jharkhand and Redevelopment on parcel of land at Deoghar and Netarhat on PPP mode is as follows:

| Key Deliverable No. | Milestone/Deliverable | Payment (As %age of Cost of Consultancy for PPP Pipeline Consultancy as quoted in the financial proposal) |
|---------------------|--|---|
| A1 | Inception Report containing Draft RFP, Market Intelligence and Detailed Work Plan(to be submitted within 4 months of receiving work order) | 20% |
| A2 | End to end Transaction Advisory cost | 80% |
| TOTAL | | 100% |

The above Payment Schedule is only indicative. Assignment specific payment schedule will be issued along with the work order for respective Assignment. The pre-feasibility cost will be paid upon submission of pre-feasibility report.

9 Pre- Proposal Conference and Communication

Applicants to send their pre-bid queries to jtdcltd@gmail.com. JTDCL will upload the pre-bid meeting link on its web site www:tourism.jharkhand.gov.in at least 24 hours before the day of pre-bid meeting.

9.1 The official website of the PSA is: www:tourism.jharkhand.gov. Applicants are advised to visit the Authority's website mentioned above to keep them updated, for any changes/modifications related to this RFP. All communications pertaining to the RFP should contain the following information, to be marked at the top in bold letters:

RFP No. /2023

<Name of RFP>

10. Proposal Data Sheet

| | |
|--------------------------------------|--|
| Name of the Project | Appointment of a Transaction Advisor from the Empanelment by D.E.A. who can assist JTDCL in carrying out feasibility study, project structure and assist in carrying out the entire bid process including preparation of transaction documents till on boarding of concessionaire. |
| Name of Client | Jharkhand Tourism Development Corporation Limited |
| Email for correspondence with client | jtdcltd@gmail.com |
| On line Pre-Bid Meeting | 18 /09/2023 at 4 pm. |
| Proposal Due Date | 03/10/2023 at 11 am. |
| Opening of Proposals | 03/10/2023 at 11.30 am. |

11. Other Terms

11.1 The Transaction Advisors will work closely with the Asset Owner and its other Advisors. A designated representative of the Asset Owner and the JTDCL will be responsible for the overall coordination. There preventative will play a coordinating role in arranging required information, dissemination of the Transaction Advisor's outputs, facilitating discussions, and ensuring required reactions and responses to the Transaction Advisor.

11.2 Available data as may be required by the TA will be provided by the JTDCL/Asset Owner on request. The designated representative shall facilitate handing over of such information to the Transaction Advisor.

11.3 The Transaction Advisor will make presentations of its Deliverables to the JTDCL and Asset Owner for discussions as and when required.

12. Completion of Services

12.1 All the deliverables shall be compiled, classified and submitted by the TA to the JTDCL in soft form. The documents comprising the deliverables shall remain the property of the JTDCL and shall not be used by the TA for any purpose other than that intended under these Terms of Reference without the permission of the JTDCL. The Assignment shall stand completed on acceptance by the JTDCL of all the Deliverables, as mandated under the work-order for the Assignment. Unless completed earlier, the Assignment shall be deemed completed and finally accepted by the JTDCL and the final deliverable shall be deemed approved by the JTDCL as satisfactory upon expiry of 60 (sixty) days after receipt of the final deliverable unless the JTDCL, with in such 60(sixty) day period, gives written notice to the TA specifying in detail, the deficiencies in the services. The TA shall thereupon promptly make any necessary corrections and/or additions, and upon completion of such corrections or additions, the foregoing process shall be repeated.

SCHEDULE 2: DRAFT CONTRACT AGREEMENT

AGREEMENT Provision of Transaction Advisory Services for.....Project

This AGREEMENT (hereinafter called the “Agreement”) is made on theday of the month of2023,

between,

on the one hand, the Jharkhand Tourism Development Corporation Limited (JTDCL) acting through (hereinafter called the “Authority” which expression shall include their respective successors and permitted assigns, unless the context otherwise requires)

and,

on the other hand, (herein after called the “Transaction Advisor” which expression shall include their respective successors and permitted assigns).

WHEREAS

- A.** The Authority vide its Request for Proposal for appointment of Transaction Advisor for selection of (herein after called the “Consultancy”) for (hereinafter called the “Project”);
- B.** the Transaction Advisor submitted its proposals for the aforesaid work, whereby the Transaction Advisor represented to the Authority that it had the required professional skills, and in the said proposals the Transaction Advisor 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 Transaction Advisor, awarded the Consultancy to the Transaction Advisor 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 Clause6.1.2;
 - b. “Agreement” means this Agreement, together with all the Annexes;
 - c. “Agreement Value” shall have the meaning set forth in Clause6.1.2;

- 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 Clause3.3;
- 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 Clause9.2.1
- h. “Effective Date” means the date on which this Agreement comes into force and effect pursuant to Clause2.1;
- 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 Jharkhand;
- k. “INR, Re. or Rs.” means Indian Rupees;
- l. “Member”, in case the Transaction Advisor consists of a 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 Transaction Advisor, as the case may be, and Parties means both of them;
- n. “Personnel” means persons hired by the Transaction Advisor as employees assigned to the performance of the Services or any part thereof;
- o. “RFP” means the Request for Proposal document in response to which the Transaction Advisor’s proposal for providing Services was accepted;
- p. “Services” means the work to be performed by the Transaction Advisor pursuant to this Agreement, as described in the Terms of Reference hereto;
- q. “Sub-Transaction Advisor” means any entity to which the Transaction Advisor sub-contracts any part of the Services in accordance with the provisions of Clause 4.7;and
- r. “Third Party” means any person or entity other than the Government, the Authority, the Transaction Advisor or a Sub-Transaction Advisor. All terms and words not defined herein shall, unless the context otherwise requires, have the meaning assigned to them in the RFP.

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

- 1.12 The following documents along with all addenda issued thereto shall be deemed to form and be read and construed as integral part of this Agreement and in case of any contradiction between or among them the priority in which a document would prevail over 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

- 12 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 Transaction Advisor. The Transaction Advisor 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.

13 Rights and obligations

The mutual rights and obligations of the Authority and the Transaction Advisor shall be as set forth in the Agreement, in particular:

- a. the Transaction Advisor shall carry out the Services in accordance with the provisions of the Agreement; and
- b. the Authority shall make payments to the Transaction Advisor in accordance with the provisions of the Agreement.

14 Governing law and jurisdiction

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

15 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.

16 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.

17 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 Transaction Advisor, be given by e-mail and by letter delivered by hand to the address given and marked for attention of the Transaction Advisor's Representative set out below in Clause 1.10 or to such other person as the Transaction Advisor may from time to time designate by notice to the Authority; provided that notices or other communicationstobegiventoanaddressoutsidethecityspecifiedinSubclause (b) below may, if they are subsequently confirmed by sending a copy thereof by registered acknowledgement due, air mail or by courier, be sent by e-mail to the number/address as the Transaction Advisor may from time to time specify by notice to the Authority;
- b. in the case of the Authority, be given by 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 Transaction Advisor; provided that if the

Transaction Advisor does not have an office in the same city as the Authority's office, it may send such notice by 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 email, it shall be deemed to have been delivered on the working days following the date of its delivery.

18 Location

- 18.1 The Services shall be performed at the offices of the Authority in accordance with the provisions of RFP and at such locations as are incidental thereto, including the offices of the Transaction Advisor.

19 Authority of Member-in-charge

In case the Transaction Advisor 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 Transaction Advisor's rights and obligations towards the Authority under this Agreement, including without limitation the receiving of instructions and payments from the Authority.

1.10 Authorised Representatives

- 1.10.1 Any action required or permitted to be taken, and any document required or permitted to be executed, under this Agreement by the Authority or the Transaction Advisor, as the case may be, may be taken or executed by the officials specified in this Clause 1.10.

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

.....

Tel:

Mobile:.....

E-mail:.....

- 1.11 Taxes and duties Unless otherwise specified in the Agreement, the Transaction Advisor 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").

22 Commencement of Services

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

23 Termination of Agreement for failure to commence Services

If the Transaction Advisor does not commence the Services within the period specified in Clause 2.2 above, the Authority may, by not less than 1 (one) weeks' notice to the Transaction Advisor, declare this Agreement to be null and void, and in the event of such a declaration, this Agreement shall stand terminated and the Transaction Advisor shall be deemed to have accepted such termination. In light of non-commencement of services within the period specified, the Authority is deemed to forfeit the EMD money / Performance Security paid by the TA and the TA will be barred from taking part in any activity within Department of Tourism, Art & Culture, Government of Jharkhand for the next 1 year.

24 Expiry 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 60 (sixty) days after the delivery of the final Deliverable to the Authority; and
- (ii) the expiry of 1 (one) year from the Effective Date. Upon Termination, the Authority shall make payments of all amounts due to the Transaction Advisor hereunder.

25 Entire Agreement

25.1 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 Transaction Advisor arising out of the provisions of the RFP shall continue to subsist and shall be deemed to form part of this Agreement.

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

26 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. However, each Party shall give due consideration to any proposals for modification made by the other Party.

27 Force Majeure

27.1 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, as deemed by authority, 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 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.

272 No breach of Agreement

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

273 Measures to betaken

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

274 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.

275 Payments

During the period of its inability to perform the Services as a result of an event of Force Majeure, the Transaction Advisor shall be entitled for reimbursement of costs reasonably and necessarily incurred by it while carrying out its contractual obligations, prior to the date of effectiveness of Force Majeure clause.

276 Consultation

Not later than 30 (thirty) days after the Transaction Advisor 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.

28 Suspension of Agreement

The Authority may, by written notice of suspension to the Transaction Advisor, suspend all payments to the Transaction Advisor hereunder if the Transaction Advisor 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 Transaction Advisor to remedy such breach or failure within a period not exceeding 15 (fifteen) days after receipt by the Transaction Advisor of such notice of suspension.

29 Termination of Agreement

29.1 By the Authority

The Authority may, by not less than 15 (fifteen) days' written notice of termination to the Transaction Advisor, 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 Transaction Advisor 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 15 (fifteen) days of receipt of such notice of suspension or within such further period as the Authority may have subsequently granted in writing;
- b. the Transaction Advisor 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 Transaction Advisor fails to comply with any final decision reached as a result of arbitration proceedings pursuant to Clause 9 hereof;
- d. the Transaction Advisor submits to the Authority a statement which has a material effect on the rights, obligations or interests of the Authority and which the Transaction Advisor knows to be false;
- e. any document, information, data or statement submitted by the Transaction Advisor in its Proposals, based on which the Transaction Advisor was considered eligible or successful, is found to be false, incorrect or misleading;
- f. as the result of Force Majeure, the Transaction Advisor 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.

29.2 By the Transaction Advisor

The Transaction Advisor may, by not less than 30 (thirty) days' written notice to the Authority, such notice to be given after the occurrence of any of the events specified in this Clause 2.9.2, terminate this Agreement if:

- a. the Authority fails to pay any money due to the Transaction Advisor pursuant to this Agreement and not subject to dispute pursuant to Clause 9 hereof within 6 months after receiving written notice from the Transaction Advisor that such payment is overdue;
- b. the Authority is in material breach of its obligations pursuant to this Agreement and has not remedied the same within 90 (ninety) days (or such longer period as the Transaction Advisor may have subsequently granted in writing) following the receipt by the Authority of the Transaction Advisor's notice specifying such breach;
- c. as the result of Force Majeure, the Transaction Advisor is unable to perform a material portion of the Services for a period of not less than 60 (sixty) days ;or
- d. the Authority fails to comply with any final decision reached as a result of arbitration pursuant to Clause 9 hereof.

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

294 Cessation of Services

Upon termination of this Agreement by notice of either Party to the other pursuant to Clauses 2.9.1 or 2.9.2 hereof, the Transaction Advisor 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 not be liable for any expenditures for this purpose. With respect to documents prepared by the Transaction Advisor and materials furnished by the Authority, the Transaction Advisor shall proceed as provided respectively by Clauses 3.8 or 3.9 hereof.

295 Payment upon Termination

Upon termination of this Agreement pursuant to Clauses 2.9.1 or 2.9.2 hereof, the Authority shall make the following payments to the Transaction Advisor (after offsetting against these payments any amount that may be due from the Transaction Advisor to the Authority): (i) remuneration pursuant to Clause 6 hereof for Services satisfactorily performed prior to the date of termination;

296 Disputes about Events of Termination

If either Party disputes whether an event specified in Clause 2.9.1 or in Clause 2.9.2 hereof has occurred, such Party may, within 30 (thirty) days after receipt of notice of termination from the other Party, refer the matter to arbitration pursuant to Clause 9 hereof, and this Agreement shall not be terminated on account of such event except in accordance with the terms of any resulting arbitral award. In event of non-termination due to disputes being referred to arbitration, Transaction Advisor will continue to provide its service as per Terms of Reference mentioned in Schedule 1 of the RFP.

3 OBLIGATIONS OF THE TRANSACTIONADVISOR

31 General

31.1 Standards of Performance

The Transaction Advisor 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 Transaction Advisor 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.

31.2 Terms of Reference

The scope of Services to be performed by the Transaction Advisor is specified in the Terms of Reference (the "TOR") at Annex-1 of this Agreement. The Transaction Advisor shall provide the Deliverable specified therein in conformity with the time schedule stated therein.

31.3 Applicable Laws

The Transaction Advisor shall perform the Services in accordance with the Applicable Laws and shall take all practicable steps to ensure that all Personnel of the Transaction Advisor should comply with the Applicable Laws.

32 Conflict of Interest

321 The Transaction Advisor shall not have a Conflict of Interest and any breach hereof shall constitute a breach of the Agreement.

322 Transaction Advisor and Affiliates not to be otherwise interested in the Project The Transaction Advisor agrees that, during the term of this Agreement and after its termination, the Transaction Advisor or any Associate thereof, 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 one 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 Transaction Advisor shall include a person who holds more than 5% (five per cent) of the subscribed and paid up share capital of the Transaction Advisor, as the case may be, and any Associate thereof.

323 Prohibition of conflicting activities

Neither the Transaction Advisor nor the Personnel shall engage, either directly or indirectly, in any of the following activities:

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

324 Transaction Advisor not to benefit from commissions discounts, etc. The remuneration of the Transaction Advisor pursuant to Clause 6 hereof shall constitute the Transaction Advisor's sole remuneration in connection with this Agreement or the Services and the Transaction Advisor 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 Transaction Advisor as well as its Personnel shall not receive any such additional remuneration.

325 The Transaction Advisor and its Personnel shall observe the highest standards of ethics and 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 Transaction Advisor, without being liable in any manner whatsoever to the Transaction Advisor, if it determines that the Transaction Advisor has, directly or indirectly or through an agent, engaged in any Prohibited Practices in the Selection Process or before or after entering into of this Agreement. In such an event, the Authority shall forfeit and appropriate the Performance Security, if any, as mutually agreed genuine pre-estimated compensation and damages payable to the Authority towards, inter alia, time, cost and effort of the Authority, without prejudice to the Authority's any other rights or remedy hereunder or in law.

326 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 Transaction Advisor 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 Transaction Advisor shall not be eligible to participate in any tender or RFP issued during a period of 2 (two) years from the date the Transaction Advisor is found by the Authority to have directly or indirectly or through an agent, engaged or indulged in any Prohibited Practices.

327 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 then 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.

33 **Confidentiality**

The Transaction Advisor, its 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 Transaction Advisor and its Personnel; any information provided by or relating to the Authority, its technology, technical processes, business affairs or finances or any information relating to the Authority’s employees, officers or other professionals or suppliers, customers, or contractors of the Authority; and any other information which the Transaction Advisor 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 Transaction Advisor and its Personnel of either of them may disclose Confidential Information to the extent that such Confidential Information:

- i. was in the public domain prior to its delivery to the Transaction Advisor and its Personnel or becomes a part of the public knowledge from a source other than the Transaction Advisor and its Sub-Transaction Advisors and its Personnel
- 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 instrumentalists, provided that for any such disclosure, the Transaction Advisor and its Personnel 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 Transaction Advisor or its Personnel, as is reasonable under the circumstances; provided, however, that the Transaction Advisor and its Personnel, 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.

34 Liability of the Transaction Advisor

- 341 The Transaction Advisor's liability under this Agreement shall be determined by the Applicable Laws and the provisions hereof.
- 342 The Transaction Advisor shall, be liable to the Authority for any direct or indirect loss or damage accrued or likely to accrue due to deficiency in Services rendered by it.
- 343 The Parties hereto agree that in case of negligence or willful misconduct on the part of the Transaction Advisor or on the part of any person or firm acting on behalf of the Transaction Advisor in carrying out the Services, the Transaction Advisor, 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

35 Intentionally Left Blank

- 36 Transaction Advisor's actions requiring the Authority's prior approval

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

- a. Appointing such members of the professional personnel as are not listed in Annex-2, in addition to the professionals listed in Annex-2;
- b. any other action that is specified in this Agreement.

37 Reporting obligations

- 3.7.1 The Transaction Advisor 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.

- 38 Documents prepared by the Transaction Advisor to be property of the Authority

- 381 All reports and other documents (collectively referred to as "Consultancy

Documents”) prepared by the Transaction Advisor 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 Transaction Advisor 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 Transaction Advisor.

382 The Transaction Advisor shall, not later than termination or expiration of this Agreement, deliver all Consultancy Documents to the Authority, together with a detailed inventory thereof. The Transaction Advisor may retain a copy of such Consultancy Documents. The Transaction Advisor shall not use these Consultancy Documents for purposes unrelated to this Agreement without the prior written approval of the Authority.

383 The Transaction Advisor 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 Transaction Advisor to perform any of its duties or obligations in relation to securing the aforementioned rights of the Authority.

39 Materials furnished by the Authority

Materials made available to the Transaction Advisor by the Authority shall be the property of the Authority and shall be marked accordingly. Upon termination or expiration of this Agreement, the Transaction Advisor shall furnish forthwith to the Authority, an inventory of such materials and shall dispose of such materials in accordance with the instructions of the Authority.

3.10 Providing access to Office and Personnel

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

3.11 Accuracy of Documents

The Transaction Advisor shall be responsible for accuracy of the documents drafted and/or vetted and data collected by it directly or procured from other agencies/authorities, 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 Transaction Advisor or arises out of its failure to conform to good industry practice.

4 TRANSACTION ADVISOR’S PERSONNEL AND SUB-TRANSACTIONADVISORS

4.1 General

The Transaction Advisor shall employ and provide such qualified and experienced Personnel as may be required to carry out the Services.

- 42 Team Leader and Project Manager The person designated as the Team Leader of the Transaction Advisor's Personnel shall be responsible for the coordinated, timely and efficient functioning of the Personnel.

5 OBLIGATIONS OF THE AUTHORITY

51 Assistance in clearances etc.

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

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

52 Access to land and property

The Authority warrants that the Transaction Advisor shall have, free of charge, unimpeded access to the site of the Project in respect of which access is required for the performance of Services; provided that if such access shall not be made available to the Transaction Advisor as and when so required and requested in writing, the Parties shall agree on (i) the time extension, as may be appropriate, for the performance of Services, and (ii) the additional payments, if any, to be made to the Transaction Advisor as a result thereof.

53 Change in Applicable Law

If, after the date of this Agreement, there is any change in the Applicable Laws with respect to taxes and duties which increases or decreases the cost incurred by the Transaction Advisor in performing the Services, by an amount exceeding 2% (two per cent) of the Agreement Value specified in Clause 6.1.2, then the remuneration otherwise payable to the Transaction Advisor under this Agreement shall be increased or decreased accordingly by agreement between the Parties hereto, and corresponding adjustments shall be made to the aforesaid Agreement Value. All taxes and duties Unless otherwise specified in the Agreement, the Transaction Advisor 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.

54 Payment

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

6 PAYMENT TO THE TRANSACTION ADVISOR

61 Cost estimates and Agreement Value

- 61.1 The cost of the Services payable to the Transaction Advisor is set forth in Annex-3 of the Agreement.
- 61.2 Except as may be otherwise agreed under Clause 2.6, the payments under this Agreement shall not exceed the agreement value specified herein (the “Agreement Value”). The Parties agree that the Agreement Value is Rs..... (Rs.).

62 Currency of payment

All payments shall be made in Indian Rupees. The Transaction Advisor shall be free to convert Rupees into any foreign currency as per Applicable Laws.

63 Mode of billing and payment

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

- (a) The Transaction Advisor shall be paid for its services as per the Payment Schedule at Annex-4 of this Agreement, and 1.3 of the TOR, and the cost specified in Annex-3 of this Agreement, subject to the Transaction Advisor fulfilling the following conditions:
- i. No payment shall be due for the next stage till the Transaction Advisor completes to the satisfaction of the Authority the work pertaining to the preceding stage; and
 - ii. The Authority shall pay to the Transaction Advisor, only the undisputed amount.
- (b) The Authority shall cause the payment due to the Transaction Advisor to be made within 30 (thirty) days after the receipt by the Authority of duly completed bills with necessary particulars (the “Due Date”).
- (c) The final payment under this Clause 6.3 shall be made only after the final Deliverable shall have been submitted by the Transaction Advisor and approved as satisfactory by the Authority.
- (d) 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 Transaction Advisor to the Authority within 30 (thirty) days after receipt by the Transaction Advisor of notice thereof.
- (e) All payments under this Agreement shall be made to the account of the Transaction Advisor as may be notified to the Authority by the Transaction Advisor.

7 LIQUIDATED DAMAGES AND PENALTIES

7.1 Performance Security

- 7.1.1 For the purposes of this Agreement, performance security shall be deemed to be an amount equal to 5% (five per cent) of the Agreement Value (the “Performance Security”);
- 7.1.2 Notwithstanding anything to the contrary contained in Clause 7.1.1, the Authority shall retain by way of Performance Security, to be appropriated against breach of

this Agreement or for recovery of liquidated damages as specified in Clause 7.2. The balance remaining out of the Performance Security shall be returned to the Transaction Advisor at the end of three months after the expiry of this Agreement pursuant to Clause 2.4 hereof. For the avoidance of doubt, the parties hereto expressly agree that in addition to appropriation of the amounts withheld hereunder, in the event of any default requiring the appropriation of further amounts comprising the Performance Security, the Authority may make deductions from any subsequent payments due and payable to the Transaction Advisor hereunder, as if it is appropriating the Performance Security in accordance with the provisions of this Agreement.

- 7.13 The Transaction Advisor may, in lieu of retention of the amounts as referred to in Clause 7.1.2 above, furnish a Bank Guarantee substantially in the form specified at Annex-5 of this Agreement as per details provided hereunder:
- a. The BG issuing bank shall send cover for BG issued through Structured Financial Messaging System (SFMS) platform to Managing Director, JTDCL
 - b. The bidder shall submit the copy of SFMS message as sent by the issuing bank branch along with the original Bank Guarantee.
 - c. BG submitted without these details shall not accepted.

72 Liquidated Damages

721 Liquidated Damages for error/variation

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

722 Liquidated Damages for delay

In case of delay in completion of Services, liquidated damages not exceeding an amount equal to 0.1% (zero point one per cent) of the Agreement Value per day, subject to a maximum of 10% (ten per cent) of the Agreement Value shall 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 Transaction Advisor, suitable extension of time shall be granted.

- 723 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 Transaction Advisor in the event of breach of this Agreement or for recovery of liquidated damages specified in this Clause 7.2.

73 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 Transaction Advisor 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 debarring for a specified period may also be initiated as per policy of the Authority.

8 FAIRNESS AND GOODFAITH

81 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.

82 Operation of the Agreement

The Parties recognise 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 8.2 shall not give rise to a dispute subject to arbitration in accordance with Clause 9 hereof.

SETTLEMENT OF DISPUTES

83 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.

84 Dispute resolution

921 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.

922 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.

85 Conciliation In the event of any Dispute between the Parties, either Party may call upon, Managing Director of the Corporation or an individual authorized by MD and the Managing Partner/ Chairman of the Board of Directors of the Transaction Advisor 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.

86 Arbitration

94.1 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

- 942 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 place of such arbitration shall be the capital of the State where the Authority has its headquarters 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 shall be made in accordance with the Rules.
- 943 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 Transaction Advisor and the Authority agree and undertake to carry out such Award without delay.
- 944 The Transaction Advisor and the Authority agree that an Award may be enforced against the Transaction Advisor and/or the Authority, as the case maybe.
- 945 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.

| | |
|--|--|
| <p>SIGNED, SEALED AND DELIVERED</p> <p>For and on behalf of Transaction Advisor</p> <p>Signature</p> <p>Name</p> <p>Designation</p> <p>Address</p> | <p>SIGNED, SEALED AND DELIVERED</p> <p>For and on behalf of the Authority</p> <p>Signature</p> <p>Name</p> <p>Designation</p> <p>Address</p> |
|--|--|

In the presence of

1.

2.

Annexure- I**Financial Capacity of the Applicant**

| S. No. | Financial Year | Turnover (INR) |
|---|-----------------------|---------------------------|
| 1. | | |
| 2. | | |
| 3. | | |
| Certificate from the Chartered Accountant (with UDIN) This is to certify that..... (Name of the Applicant) has received the payments shown above against the respective years on account of professional fees. (Signature, name and designation of the authorised signatory) Date: Name and seal of the audit firm: | | |

In the event that the Applicant does not wish to disclose its Annual Revenue, it may state that it has received more than the amount specified in the aforesaid certificate.

Annexure 2

Eligible Assignments of Applicant

(To be submitted on letter head of responding firm)

(Date and Reference)

To

The Managing Director,

JTDCL,

5, Mahatma Gandhi Marg,

Ranchi-834001

Jharkhand

(Name of Assignment)

| | | |
|-----------|---|--|
| 1 | Name of Applicant: | |
| 2 | Category for which Eligible Assignment submitted | |
| 3 | Name of the Project | |
| 4 | Type of Project | |
| 5 | Project Specifications | |
| 6 | Description of services performed by the Applicant firm: | |
| 7 | Name of the client and address: | |
| 8 | Name, telephone number of client's representative: | |
| 9 | Estimated capital cost of Project (in Rs. Crore): | |
| 10 | Payment received by the Applicant as professional fees (in Rs Crore): | |
| 11 | Start date of the services (month/year): | |
| 12 | Finish date of the services(month/year): | |
| 13 | Brief description of the Project: | |

Notes:

1 . Use separate sheet for each Eligible Assignment.

Annexure 3**Particulars of Key Personnel**

| Sl no | Designation of Key Personnel | Name | Educational Experience | Length of Professional Experience | Present Employment (Name of firm) | Present Employment (Employed since) | No. of eligible assignments |
|-------|------------------------------|------|------------------------|-----------------------------------|-----------------------------------|-------------------------------------|-----------------------------|
| 1 | Team Leader | | | | | | |
| 2 | Financial Expert | | | | | | |
| 3 | Tourism Expert | | | | | | |
| 4 | Legal Expert | | | | | | |
| 5 | Infrastructure Expert | | | | | | |

Refer Annexure 2 Eligible Assignment of Key Personnel

Annexure 4

Curriculum Vitae (CV) of Professional Personnel

1. Proposed Position:

2. Name of Personnel:

3. Date of Birth:

4. Nationality:

5. Educational Qualification:

6. Employment Record:

(Starting with present position, list in reverse order every employment held.)

7. List of projects on which the Personnel has worked:

Name of Project

Description of responsibilities

Certification:

12.1.1 I am willing to work on the Project and I will be available for entire duration of the Project assignment as required.

12.1.2 I, the undersigned, certify that to the best of my knowledge and belief, this CV correctly describes my qualification, my experience and me.

(Signature and Name of the Professional Personnel)

Place.....

(Signature and Name of the Authorised Signatory of the Applicant)

Notes:

- 1 . Use separate form for each Key Personnel and Professional Personnel.
2. In the case of Financial Expert, only those assignments shall be included where the Financial Expert worked as the Team Leader of the leader of the Financial Team in the relevant assignment.
3. Each page of the CV shall be signed in ink by both the Personnel concerned and by the Authorised Representative of the Applicant firm along with the seal of the firm. Photocopies will not be considered for evaluation.

Annexure 5

Financial Proposal Letter

Covering Letter(On Applicant Letter Head)

(Date and Reference)

To,

The Managing Director,

JTDCL,

5, Mahatma Gandhi Marg,

Ranchi-834001

Jharkhand

Dear Sir/ Ma'am,

Subject: Appointment of a Transaction Advisor from the Empanelment by D.E.A. who can assist JTDCL in carrying out feasibility study, project structure and assist in carrying out the entire bid process including preparation of transaction documents till on boarding of concessionaire.

I/We (Applicant's name) herewith enclose the Financial Proposal for selection of my/our firm as Consultant for Transaction Advisor services for above.

I/We agree that this offer shall remain valid for a period of 75(seventy five) days from the Proposal due date or such further period as may be mutually agreed upon.

Yours faithfully,

Signature, name and designation of the Authorised Signatory

Name of Firm

Address

Annexure-6
Financial Proposal

| Sl No | Description | Amount in words(INR) | Amount in Figures (INR) |
|-------|--------------------------------------|----------------------|-------------------------|
| 1 | Project wise different cost | | |
| 2 | End to End Transaction Advisory Cost | | |
| 3 | Total Financial Quote | | |
| | Total | | |

Note:

1. The financial evaluation shall be based on the Total Financial Bid (as at Sr. No.3 of the table above).
2. All payments shall be made in Indian Rupees and be subject to applicable Indian laws, withholding taxes if any.

Signature, name and designation of the Authorised Signatory

Name of Firm

Address

Annexure -7

Self Declaration

(Should not have been black listed)

(On the letterhead of the Bidder)

I / We agree that the decision of the Authority in relation to RFP for “Appointment of a Transaction Advisor from the Empanelment by D.E.A. who can assist JTDCL in carrying out feasibility study, project structure and assist in carrying out the entire bid process including preparation of transaction documents till on boarding of concessionaire”, addition or deletion will be final and binding to me/us. I/We confirm that we have not been blacklisted by Central or State Governments & PSUs.

Name of the Bidder

.....

Signature of the Authorised Person

.....

Name of the Authorized Person