

DRAFT AGREEMENT

THIS AGREEMENT is made on this the ----- day of -----, 2015 at Patna in the State of Bihar.

BETWEEN

The Infrastructure Development Authority (in short referred as 'IDA'), an Authority constituted by and under the Bihar State Infrastructure Enabling Act, 2006 having its Head Office at 1st Floor, Udyog Bhawan, East Gandhi Maidan, Patna-800001 – through its Managing Director (hereinafter referred to as the 'Authority') which expression shall unless repugnant to the context hereof means and includes its Directors, Managers, Officers, transferees, assignees and nominees of the First Part;

AND

M/s-----, a body corporate/firm having its Registered Office / Head Office at ----- through its authorized Directors / Representative / partner / proprietor -----(hereinafter referred to as the Transaction Advisor of the Second Part which expression shall unless repugnant to the context hereof means and includes their Directors, partners, proprietors, officers, managers, assignees, nominees and transferees of the Second Part;

WHEREAS the IDA has been constituted by the Government of Bihar in exercise of its power conferred upon it under the Bihar State Infrastructure Enabling Act, 2006. The aim and objective of constitution of the IDA is to ensure rapid development of physical and social infrastructure and to attract private sector participation in various sectors – such as Tourism, Transport, Urban Development, Health, Housing, Education and the designing, financing, construction, operation and maintenance of infrastructure projects in the State;

AND WHEREAS the IDA has got mandate from the Government of Bihar to undertake Public, Private, Partnership Projects (hereinafter referred to as the PPP 'Projects') in all sectors - such as roads, health, land reclamation, canals, dams, water supply, waste management, sewerage works, sports and recreation infrastructure, real estate, etc;

AND WHEREAS to carry out the various projects the IDA which is the authority of the First Part requires services in connection with those projects and, therefore, there is a need to engage a firm body corporate having a team of financial and technical advisors who can collectively be named as 'Transaction Advisor' ;

AND WHEREAS a Transaction Advisor in relation to the PPP Projects has to provide a number of services from time to time for which a suitable remuneration by way of monthly retainership fee is paid by the authority of the First Part to the Transaction Advisor, besides the Transaction Advisor may also charge success fee as defined hereafter;

AND WHEREAS in order to select a professionally qualified Transaction Advisor the authority of the First Part invited application from the interested persons to offer their services as Transaction Advisor provided they agree to abide by the terms and conditions briefly incorporated in a document called ‘Request for Proposal (RFP) and Request for Qualification (RFQ);

AND WHEREAS the said RFP & RFQ contained inter alia the brief description of the selection process, scope of proposal, duration of agreement, scope of work and payment mechanism, etc.

AND WHEREAS in terms of the requirement as contained in RFP & RFQ the Transaction Advisor of the Second Part submitted its application and the same was considered amongst others and found most suitable to be engaged as Transaction Advisor;

AND WHEREAS the Transaction Advisor of the Second Part has agreed to all the terms and conditions mentioned in the RFP & RFQ and as agreed to abide by those terms without any protest or demur;

AND WHEREAS the authority of the First Part has decided to engage the Transaction Advisor of the Second Part on the terms and conditions mentioned in the RFP & RFQ as also mentioned hereinafter in this agreement.

THIS AGREEMENT WITNESSETH THE FOLLOWING TERMS AND CONDITIONS:

1. **Duration of the Agreement :**

This Agreement shall remain valid for a period of two years effective from ----- to ----- unless specifically extended by the authority of the First Part in writing.

2. **Remuneration :**

(a) That the authority of the First Part shall pay to the Transaction Advisor of the Second Part a monthly retainership fee of **Rs -----** -----payable for the services required to be rendered by the Transaction Advisor under this Agreement.

(b) That the authority of the First part shall allow the Transaction Advisor of the Second Part to charge prescribed fee as success fee from the private parties after signing of the concession agreement in which the services of the Transaction Advisor is taken. The prescribed fee will be fixed by the authority in consultation with the private parties and the same will be binding upon the Transaction Advisor. The authority shall be within its right to share the success fee with the Transaction Advisor keeping in view the guidelines of the Government of Bihar, if any, issued from time to time.

(c) Apart from the aforesaid monthly retainership fee and the success fee no other fee, remuneration or charges shall be levied by and payable to the Transaction Advisor of the Second Part.

(d) The Transaction Officer of the Second Part shall not claim any expenses including traveling inside or outside the State of Bihar, fooding and lodging, administrative or any other kind of miscellaneous expenses. None of the Advisors attached to the Transaction Advisor and rendering services to the authority of the First Part by virtue of this Agreement shall claim any remuneration, charges or expenses from the party of the First Part.

3. **Scope of Work :**

The scope of work for the Transaction Advisor of the Second Part as enumerated under Schedule 1 and its various sub-clauses of the RFP & RFQ document shall be deemed to have been incorporated in the present Agreement and as and when required the said Schedule 1 of RFP & RFQ shall be guiding document.

4. **Obligations of Parties:**

- a. That the Second Part shall provide personnel at the office of the First Part as indicated in Annexure – A to this Agreement and shall

maintain professional staff and other requirements at its firm as per the descriptions in the RFP-cum-RFQ document.

- b. That the Authority shall provide only Administrative assistance like Office, Furniture, computer, telephone to office of TA for routine support. Additionally, the Authority shall also provide stationery and other office support to the consultants of the Transaction Advisor.
- c. That the Transaction Advisor shall perform the services according to good industry practices and shall devote the necessary time and attention to providing the deliverables, as set out in this Agreement.
- d. That the Transaction Advisor shall not change / replace their personnel/ consultants without previous consent of the Authority.
- e. That the Transaction Advisor shall maintain, at all times, the highest degree of good faith towards the Authority and to ensure that **no conflict of interest materializes**, and in the event of a conflict of interest arising, to immediately advise the Authority of same, upon which advice the Authority shall, in its sole and absolute discretion, decide whether to proceed with the agreement or to terminate it forthwith. Failure by the Transaction Advisor to inform to the Authority any conflict of interest shall amount to a material breach of the Agreement and shall entitle the institution to terminate the agreement forthwith.
- f. That the Transaction Advisor shall maintain independence from other individuals, organizations or government bodies and shall observe neutrality and objectivity in its views and opinions and shall adhere to all the decisions and directions of the Authority.
- g. That the Transaction Advisor shall take out, at its own cost, appropriate insurance coverage against loss arising out of negligence, malpractice or unprofessional conduct of the transaction advisors and shall maintain the professional personnel as promised and committed to the Authority under this Agreement.
- h. That the Transaction Advisor shall ensure that the PPP initiatives are undertaken as per the guidelines issued by the Govt. of India as well as those governing the Authority.

- i. That the Transaction Advisor agrees to continue to give such necessary assistance, guidance and support to the Authority as requested even after the completion of the projects.
 - j. That the Authority may require the Transaction Advisor to replace the said consultants on administrative reasons and *in that circumstances*, the Transaction Advisor shall have to replace these consultants within 15 days *of the order so passed by the Authority*.
 - k. That the Transaction Advisor agrees to deposit an unconditional and Irrevocable Bank Guarantee of Rs.10 lakhs from a Nationalized Bank to be valid for the entire duration of the transaction advisory services and upto one month beyond the date of the expiry of the agreement and to be renewed for the time period as may be mutually agreed upon.
5. Transaction Advisor shall ensure that PPP projects involving a total cost at least Rs. 1000 crores are identified, conceptualize and developed upto the stage of bidding.
 6. That the Transaction Advisor would not be construed to be an agency of the Authority in any manner. The Second Party is only an independent Consultant to the Authority
 7. That the Transaction Advisor **shall not make any commitments or assurance** to any person in pursuance of this Agreement on behalf of the Authority without information to and permission in writing from the Authority.
 8. **Reporting Requirements for better information: -**
 - (a) That the Transaction Advisor shall keep the Authority always better informed about its activities and the Projects under progress in PPP mode and give suggestions/advice and carry out the same for achieving best results.
 - (b) That the Transaction Advisor shall submit a fortnightly Progress Report to the Managing Director about its activities and the progress being made in the Projects to be taken up and those under implementation and shall provide adequate reasons for non conformance to the timelines as timelines of project would bear significance for this Agreement too and

default on part of the Transaction Advisors shall be corrected at the earliest, else the Authority would be entitled to impose reasonable penalty not exceeding 10% of the retainer fee. The TA shall have to make good the amount of the Bank Guarantee so realized under penalty.

9. **Monitoring of Contract and Projects undertaken:** - That the Authority reserves the right to review the progress of *work being performed by Transaction Advisors, the Transaction Advisor under this contract* and shall have right to terminate the contract at one month's notice and may forfeit entire / part of the Bank Guarantee *if not found satisfactory in reference and requirement to the terms and conditions of this Agreement.*
10. **Confidentiality:** - That the Transaction Advisor shall have due regard to the confidentiality of any information to which the Transaction Advisor may have occasion to be familiar within course of execution of the contract and shall not disclose the same without the written permission of the Authority. *It shall keep in trust and confidence all such confidential information and use, reproduce the confidential information only to perform its obligation under this Agreement and where it is required under law of the land. .*
11. **Ownership of material and Intellectual Property:** - That any information provided by the Authority to the Transaction Advisor and any studies, reports and documentation produced by the Transaction Advisor in performance of the Services (materials) shall belong to and remain the property of the Authority and will not be used by the transaction advisor for any purpose other than in accordance with the Agreement, or by written permission of the Authority.
12. That on termination of completion of this Agreement for any reason whatsoever, Transaction Advisor must return to the Authority all materials in its possession which belong to the Authority including as specified in Clause 10 above to this Agreement, regardless of whether or not such materials were originally supplied by the Authority to the Transaction Advisor.
13. **Warranties and Indemnities:-**
 - (a) That the Transaction Advisor warrants that all corporate approvals and consents required for the incorporation of the Transaction Advisors and all resolutions of the Board of Directors of the Transaction Advisors authorizing the execution and performance of the agreement have been

obtained prior to the signature _____ date of the Agreement; and it will use good industry practice and skill in performing the services.

- (b) That the Transaction Advisor indemnifies and holds the Authority harmless against any claim by any third party arising in connection with any wrongful act or omission of the Transaction Advisor.
14. **Deduction for taxes:** -Wherever required by applicable law, Authority shall deduct taxes at source, from the amounts payable, and shall provide to the Transaction Advisor, the appropriate tax deduction certificate evidencing payment of such taxes and if any tax is not deducted at source, the Transaction Advisor shall be liable for payment of the same.
15. **Modification, Amendment or Supplement:**-That no extension, modification, amendment or supplement of the contract would be made unless agreed in writing and signed by both the parties.
16. **Termination:** -
- (a) That the Authority may terminate this Agreement upon breach of terms and conditions of this Agreement upon giving a notice and shall forfeit the bank guarantee so deposited by the Transaction Advisor.
- (c) The Transaction Advisor may also exit the contract by giving 1 (one) month's notice *on specifying the reasons therein* or finishing the projects in hand, whichever is later *after permission from the Authority*.
- (d) The authority of the first part may terminate this agreement by giving 30 days prior notice to the transaction advisor without giving any reason. Such termination will be treated as termination simplicitor. The authority shall in case of termination simplicitor discharge the transaction advisor from the liability of the Bank guarantee.
17. That the Authority shall have the right to lodge the Bank Guarantee for encashment on its own discretion and the Transaction Advisor shall not raise any protest or demur against encashment of the Bank Guarantee. The Authority shall have right to claims against all loss / penalties, proceedings, damages, costs, liabilities and expenses of payments whatsoever arising in any way as a consequence of cancellation of this contract upon breach of terms and conditions of the contract and the Transaction Advisor understood and undertakes to indemnify the same unconditionally. "However, under no circumstance the amount of indemnification mentioned under this clause (17) shall exceed the amount of Remuneration received by the Transaction Advisory from the Authority

under this Agreement. It is clarified that the amount to be indemnified will be 3 times the remuneration in case of Clause 13 (b)".

18. **Dispute Settlement:** - That in all cases of dispute or disagreement between the parties hereto as to any matter arising out of or relating to engagement under this Agreement shall be referred to an arbitrator appointed by both the parties of this agreement in accordance with Arbitration and Conciliation Act, 1996, whose decision shall be final, conclusive and binding upon the parties. Notwithstanding expiry / termination of the Agreement the Dispute Settlement Clause shall survive till 5 years from the date of such expiry / termination.
19. **Jurisdiction:** All disputes shall be subject to jurisdiction of Patna Court only.
20. **Interpretation:** - That reference to the provisions of any law in this Agreement shall include such provisions as amended, re- enacted or consolidated from time to time in so far as such amendment, re- enactment or consolidation applies or is capable of applying to any transaction entered into under the Agreement.
21. That headings of clauses, sub- clauses, annexure etc. are included for convenience only and shall not affect the interpretation of the Agreement.
22. That reference to Agreement shall include the Agreement, its annexure and schedule if any, as amended, varied, novated, or substituted in writing from time to time in writing by consent of the parties.
23. That with effect from the commencement date, the Authority hereby appoints the transaction advisor to provide the services and the transaction advisor agrees to provide the services to the Authority on terms and conditions of this Agreement and the proposal for financial bid.
24. **No Assignment:** - That the Transaction Advisor is strictly prohibited to assign any of the rights or obligations hereunder.
25. **Severability:** - This Agreement shall be governed by the prevailing laws of the land as amended, modified from time to time. The invalidity or unenforceability of any provision of the Agreement shall not affect the validity or enforceability of any other provision and the invalid or unenforceable clause/provision shall be severed with the whole of the contract.

26. Irrespective of the signing of this agreement, IDA shall be free to enter into similar arrangements with other TA or Consultants in respect of projects which are not a subject which are not a subject matter of this agreement. In the event of termination of this agreement, IDA may engage some other TA or Consultants to carry forward the work for the development and implementation of the Project(s), which might have left incomplete by the TA engage in pursuance of this agreement.

27. **Force Majeure Clause:**

Neither party to this Agreement shall be responsible for any failure to observe any of the provisions of this Agreement to the extent to which non-fulfillment is due to any circumstances beyond the control of any of the party. Such circumstances will include acts of God, Government actions, war, strikes, riots, terrorism and any act and omission of the like nature and notice thereof shall be given by the party invoking this clause immediately after occurrence of any such circumstances.

28. **Appointment of the Terms and Conditions of 'RFP-cum-RFQ':**

The parties hereto agree to treat the 'RFP-cum-RFQ' annexed as *Annexure-B* hereof as part and parcel of this Agreement. The terms and conditions mentioned in 'RFP-cum- RFQ' shall be referred to and be acted upon for all purposes to give effect to this Agreement.

29. That all the terms and conditions enumerated in this agreement is accepted by the Transaction Advisor with free will and consent without threat or coercion or undue pressure in this regard.

In witness whereof the parties hereto put their respective hands on the day and date first above mentioned

Witness No. 1

Signature of the Transaction Advisor

Witness No.2

Signature of the Authority

Annexure-A**Personnel to be posted by the Developer in the Patna office**

S. No	Description	Qualifications	Experience
1.	Two Professionally qualified persons	Preferably having qualification from an institute of national repute and specialization in two separate functional areas like engineering and finance or which are relevant for the particular project development work	At least 5 years of relevant work for the team leader and 5 years of relevant work experience for the others.
2.	Appropriate support staff to the satisfaction of IDA		

Every document prepared by the transaction advisor should be properly vetted by their legal experts. Transaction Advisor has to provide the certificate of such vetting.