

Request for Proposal

**ENGAGEMENT OF CONSULTANTS TO ASSIST THE
AIRPORTS ECONOMIC REGULATORY AUTHORITY OF INDIA (AERA)**

**IN DETERMINATION OF TARIFFS FOR
AERONAUTICAL SERVICES AT MAJOR AAI AIRPORTS OF RAIPUR AND TRICHY**

AIRPORTS ECONOMIC REGULATORY AUTHORITY OF INDIA

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RFP No.	03/2019-20
RFP issue date	Thursday, the 13th December, 2019
Deadline for Submission	1100 hrs (IST) Friday, the 24th January, 2020

Disclaimer

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

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

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

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

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

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

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

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

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INVITATION FOR PROPOSALS

GLOSSARY

Act	As defined in Clause 1.1.1
AERA	As defined in Clause 1.1.1
AO	Airport Operator(s)
Applicant	The interested parties who, in response to this RFP, apply for the bid.
Associate	As defined in Clause 2.9.3
Authorised Representatives	As defined in Appendix I, Form-4
Aviation expert	As defined in Clause 2.5.1
Conflict of Interest	As defined in Clause 2.9
Consultant	As defined in Clause 1.2
Consultancy	As defined in Clause 1.2
Deliverables	As defined in Clause 4 of Schedule 1
Documents	As defined in Clause 2.11
Airport details	As defined in Clause 1.1.7
Key Personnel	As defined in Clause 2.5.2
LOA	Letter of Award
Major Airport	As defined in Clause 1.1.3
Prohibited Practices	As defined in Clause 6.1
Proposal Due Date	As defined in Clause 2.16
Proposals	As defined in Clause 1.2
RFP	As defined in the disclaimer
Shortlisted Applicants	All Applicants who are selected after Technical Bid evaluation.
Selected Applicant	Applicant selected for the bid
Selection Process	As defined in Clause 1.5
Subject person	As defined in Clause 2.9.3
Technical Bid	As defined in Clause 2.13.1
TOR	Terms of Reference

1. INTRODUCTION

1.1 BACKGROUND

- 1.1.1 The Parliament of India enacted an Act called “The Airports Economic Regulatory Authority of India Act, 2008” (hereinafter to be referred as the “Act”). The said Act envisages the establishment of a statutory authority called the Airports Economic Regulatory Authority (hereinafter referred to as the “AERA”) to regulate tariff for the aeronautical services, determine other airport charges for services rendered at major airports and to monitor the performance standards of such airports. The provisions of the said Act came into force w.e.f. 01.09.2009.
- 1.1.2 AERA, was established by the Government of India vide notification No. GSR 317(E) dated 12th May 2009. The functions of AERA, in respect of major airports, are specified in section 13 of the Act, which are as below:-
- I. to determine the tariff for aeronautical services taking into consideration –
 - a) the capital expenditure incurred and timely investment in the improvement of airport facilities;
 - b) the service provided, its quality and other relevant factors;
 - c) the cost for improving efficiency;
 - d) economic and viable operation of major airports;
 - e) the concession offered by the Central Government in any agreement or memorandum of understanding or otherwise; and
 - f) any other factor which may be relevant for the purpose of the Act.
 - II. determine the amount of the development fees;
 - III. determine the amount of the passengers’ service fee levied under Rule 88 of the Aircraft Rules, 1937 made under the Aircraft Act, 1934;
 - IV. monitor the set performance standards relating to quality, continuity and reliability of service as may be specified by the Central Government or any authority authorized by it in this behalf;
 - V. call for any such information as may be necessary to determine the tariff for aeronautical services; and
 - VI. perform such other functions relating to tariff, as may be entrusted to it by the Central Government or as may be necessary to carry out the provisions of the Act.
- 1.1.2 The terms ‘aeronautical services’ and ‘major airports’ are defined in Sections 2(a) and 2 (i) of the Act, respectively and the same shall be read herein.
- 1.1.4 While discharging its functions, AERA is required to ensure transparency by, inter alia, holding due consultations with stake-holders, which includes a licensee of an airport, airlines operating there at and/or a person who provides aeronautical services and any association of individuals, which in the opinion of AERA, represents the passengers or cargo facility users, by permitting such stake-holders to make submissions in writing and by documenting all its decisions and explanations thereof.
- 1.1.5 After its establishment, AERA has categorized the aeronautical services, in respect of which it is required to determine Tariff, as under:
- a) Aeronautical services provided by the airport operators;
 - b) Cargo, Ground Handling and Fuel Supply Services; and
 - c) Air Navigation Services.

1.1.6 AERA has, after extensive stakeholder consultation, finalized its approach to the economic regulation of services categorized in (a) and (b) above. Detailed Guidelines laying down information requirements, periodicity and procedure for Tariff determination have also been issued. The details of Orders and Guidelines issued in this behalf are as under:

- a) Order No. 13 dated 12.01.2011 and Direction No. 5 dated 28.02.2011; and
- b) Order No. 05 dated 02.08.2010; Order No. 12 dated 10.01.2011 and Direction No. 4 dated 10.01.2011;
- c) Order No. 14/2016-17 dated 23.01.2017;
- d) Order No. 35/2017-18 dated 12.01.2018 and Amendment No. 01 to Order No. 35/2017-18 dated 09.04.2018;
- e) Order no. 07/2016-17 dated 13.06.2016;
- f) Order no. 20/2016-17 dated 31.03.2017;

These can be downloaded from <http://aera.gov.in>.

1.1.7 In pursuance of AERA's Orders and Guidelines as brought out in Clause 1.1.6 above, the regulated entities are in the process of filing their tariff proposals for the first Control Period of 05 (five) years, commencing w.e.f. **01.04.2020**. The proposals in respect of the regulated entities viz. Airport Operator(s) (AO) for the purpose of this RFP, in accordance with the Terms of Reference specified at Schedule-1 hereto (the "TOR"), are as listed below:

Name of the Airport Operator
Airports Authority of India for Raipur, Airport
Airports Authority of India for Trichy Airport

1.2 REQUEST FOR PROPOSALS

AERA invites proposals (the "Proposals") for selection of a Consultant for performing the Scope of Services, deliverables and other requirements, as specified in this RFP. The applicant applying in response to this invitation can be a Sole Proprietorship Firm or Partnership Firm or LLP or a Company. This RFP is for the selection of a Consultant ("Consultant") as mentioned in Clause 1.1.7 hereinabove, to, *inter alia*, advise AERA, and, render services in the following core areas, as detailed in the TOR (collectively the "Consultancy"):

- (a) Assist AERA in scrutinizing the tariff proposals submitted by the Airport Operators;
- (b) Undertake "detailed and critical review in respect of various assumptions/projections /forecasts made in each proposal;
- (c) Analyze different scenarios, ("What if" analyses);
- (d) Assist in formulation of tariff to be determined;
- (e) At Consultation Paper stage analyse the comments of stakeholders on Consultation Paper and include the same in the Tariff Order;
- (f) The Consultant shall assist AERA in all the matters relating to 'Appeal' and 'Legal cases' filed up to **31.03.2024** (end of control period) against AERA with respect to this assignment.

AERA intends to select the Consultant through an open competitive bidding process in accordance with the procedure set out herein.

1.3 DETAILED AND CRITICAL REVIEW BY APPLICANTS

Applicants are encouraged to inform themselves fully about the assignment before submitting their Proposal by paying a visit to AERA, sending written queries to AERA, and attending a Pre-Bid Conference on the date and time specified in Clause 1.7.

1.4 VALIDITY OF THE PROPOSAL

The Proposal shall be valid for a period of 90 (ninety) days from the Proposal Due Date. AERA may at its sole discretion extend the validity of the Proposal. In case of such extension, the Applicant shall not be allowed to modify the Proposal and will be required to extend the EMD so submitted for such extended period.

1.5 SELECTION PROCESS

AERA would adopt a two stage selection process i.e. Technical and Financial (collectively the “**Selection Process**”) in evaluating the Proposals. Accordingly, the Applicant would submit its bid in a sealed envelope containing two separate envelopes i.e. one for technical bid and the other for financial bid. In the first stage, a technical evaluation shall be carried out as specified in Clause 3.1. In the second stage, based on the technical evaluation, a list of short-listed applicants shall be prepared whose financials bids shall be opened for final selection of the Applicant. For selection of an Applicant criterion stipulated under Clause 3.3 shall be considered.

AERA would endeavor to adhere to the following schedule:

S. No.	Event Description	Date
a.	Last date for receiving pre-bid queries/ clarifications	27.12.2019
b.	Pre-Bid Conference	06.01.2020
c.	AERA’s response to queries	16.01.2020
d.	Proposal Due Date (Submission date)	24.01.2020
e.	Personal Interview by TEC & Presentation by Applicants	Tentatively on January 30, 2020 and/or January 31, 2020
f.	Opening of Financial Proposals	Tentatively by February 7 th , 2020
g.	Letter of Award (LOA)	Tentatively by February 17 th , 2020
h.	Signing of Agreement	Within 30 days from issue of LOA
i.	Validity of Proposal	90 days from Proposal Due Date

1.6 DELIVERY SCHEDULE

The Selected Consultant shall be given a period of 04(Four) months to **accomplish the assignment from the date of allocation of the assignment/proposal of the respective Airport Operator**. The allocation of assignment shall be subsequent to the issue of Letter of Award and signing of Agreement. AERA may, however, in its discretion, extend the delivery period on case to case basis. In case an applicant is successful for more than one Airport, the firm has to plan and deploy manpower so that the work assignment for all the Airports is completed within the 04 months period. Timeline for achieving the targets will be as follows:

- a) Work assigned to be started within 10 working days from issue of award letter.
- b) Within next 15 working days to collect information / records from Airport Operator and submit preliminary study report of the airports. The initial data shall be collected and provided by AERA. Any further information required, is to be collected from the Airport Operator by the selected Consultant. Authority shall provide necessary assistance in collection of data.
- c) Within next 15 working days draft a Consultation Paper to be submitted along with presentation to the Authority.
- d) To submit analysis of the comments raised by stakeholders on the Consultation Paper within 01 (one) week of last date of submission of written comments or Stakeholder Consultation meeting, whichever is later.
- e) Submit draft Tariff Order within 15 days after submission of ‘d’ above.

1.7 PRE BID CONFERENCE

- 1.7.1 A Pre-Bid conference shall be convened in Conference Hall, 1st Floor, AERA Building, Administrative Complex, Safdarjung Airport, New Delhi- 110003, on **06.01.2020 at 11.00 Hrs.** A maximum of two representatives for each Applicant shall be allowed to participate in the Pre-Bid Conference. The Applicants shall send their queries, if any, to the designated office by fax/email along with the details of the representatives who shall attend the Pre Bid conference, at least three clear days before the day on which the Pre-Bid Conference is scheduled i.e. 06.01.2020.

The queries shall be sent in the format below.

Query No.	RFP Clause			Bidders Query
	No.	Name	Text requiring clarification	

- 1.7.2 The queries must reach the designated office of AERA by the scheduled time. AERA may decide not to have the Pre-Bid conference if it is able to resolve the queries otherwise. In such a case the clarifications shall be sent to the Applicants electronically or posted on the AERA website <http://aera.gov.in> under the link “Tenders”. During the course of the Pre-Bid conference, the Applicants will be free to seek clarifications and make suggestions. AERA shall endeavor to provide clarifications and such further information as it may, in its sole discretion, consider appropriate for facilitating a fair, transparent and, a competitive bidding process.

1.8 COMMUNICATIONS

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

Deputy Chief,
Airports Economic Regulatory Authority of India,
AERA Building, New Administrative Block,
Safdarjung Airport
New Delhi-110003.

- 1.8.2 The Official Website of AERA is: www.aera.gov.in

Note: All future communications related to the RFP document can be accessed through the link provided on the homepage

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

RFP Notice No. 03/2019-20 dated 13.12.2019 “For Engagement of Consultants(as stated in Clause 1.1.7 of the RFP) to assist Airports Economic Regulatory Authority of India (AERA) in Determination of Tariffs for Aeronautical Services at 02 Major AAI Airports of India.”

2. INSTRUCTIONS TO APPLICANTS

A. GENERAL

2.1 SCOPE OF WORK

Detailed description of the objectives, scope of services, deliverables and other requirements to be undertaken by the Selected Applicant are given herein after, however, the same is merely illustrative and not exhaustive. The Selected Applicant shall thus have to consider the required output and include all further incidental activities that may be necessary for efficient and successful implementation and for achieving the ultimate purpose of the assignment awarded pursuant to this RFP. The Selected Applicant shall assist AERA in:

- i. Examine the MYTP of the Airport Operator and verify the data with reference to the Balance Sheet, P&L account and auditor certificates relating to Aeronautical services;
- ii. Examine Traffic Forecasts for their correctness and adequacy;
- iii. Examine & Analyse CHQ Expenditure and look into the correctness of its apportionment to the particular airport for which tariff is being determined;
- iv. Ensure that the financial model employed is in line with the methodology prescribed by the Authority;
- v. **Examine each building block in tariff determination and ensure that the treatment given to it is in line with the Authority's methodology, approach, Studies ;**
- vi. Prepare a Consultation Paper working out the **Aggregate Revenue Requirement (ARR)** of the Operator and incorporate the proposed tariff plan that the Operator has submitted to achieve the ARR;
- vii. **Assist the Authority to implement the Tribunal Orders, whenever required;**
- viii. Assist the Authority in holding consultations with the stakeholders and analyze the various suggestions made by the stakeholders;
- ix. Draw up the final version of the Tariff Order for the approval of the Authority;
- x. Assist the Authority in 'Appeals' and 'Legal Cases' against the Orders of the Authority.

It is clarified that each of the tariff proposals need to be considered separately, based on the submissions made therein as well as other factors that AERA is mandated to consider while determining the aeronautical tariffs or as AERA may instruct from time to time.

2.2 EARNEST MONEY DEPOSIT (EMD)

2.2.1 The Applicants shall submit, along with their Proposal, a **EMD of Rs.1,50,000/- (Rupees One Lakh Fifty Thousand only)** for each Airport, separately, in the following form:

- a) The EMD shall be in the form of a Demand Draft / Bank Guarantee issued by a Nationalized/Scheduled Bank in India in favour of the **"Airports Economic Regulatory Authority of India"** payable at New Delhi;
- b) EMD in any other form shall not be entertained;
- c) The EMD shall be returnable as per Clause 2.2.5 herein below, except under the circumstances stipulated under Clause 2.2.4;
- d) Exemption will be considered as per Govt. Notification in respect of MSME registered entities, if requisite documentary evidence is provided in advance.

2.2.2 Any proposal not accompanied by EMD shall be considered as non-responsive and will be summarily rejected.

2.2.3 AERA shall not be liable to pay any interest on the EMD and the same shall be interest free.

2.2.4 FORFEITURE OF EARNEST MONEY DEPOSIT (EMD)

The Applicant, by submitting its proposal pursuant to this RFP, shall be deemed to have acknowledged that without prejudice to AERA's other rights or remedy hereunder or in law or otherwise, the EMD shall be forfeited and appropriated by AERA as the mutually agreed pre-estimated compensation and damage payable to AERA for, *inter alia*, the time, cost and effort of AERA in regard to the RFP, including the consideration and evaluation of the Proposal, without any notice and proof of damages, under the following conditions:

- (a) If an Applicant submits a non-responsive Proposal as specified in clause 2.20.3;
- (b) If an Applicant withdraws its Proposal during the period of validity of RFP, including extension thereof, if any, by AERA from time to time;
- (c) In the case of a Selected Applicant, if the Applicant fails to sign the Agreement or commence the assignment as specified in Clause 3.6;
- (d) If the Selected Applicant is found to have a 'Conflict of Interest' as specified in Clause 2.9; and
- (e) If the Selected Applicant, fails to furnish the required **Performance Guarantee** within the time limit as specified in Clause 3.4.

2.2.5 RELEASE OF EARNEST MONEY DEPOSIT (EMD)

Without prejudice to Clause 2.2.4 above, the EMD shall be released in the following manner:

- (a) The EMD of all the unsuccessful Applicants shall be returned within 07 working days of opening of financial bid.
- (b) The EMD of the Successful Applicant, to whom the contract is awarded, will be returned after receipt of **Performance Guarantee (refer Clause 3.4 & Clause 5)**.
- (c) The **Performance Guarantee** shall be refunded to the party after completion of 01 (one) year from the issue of Tariff Order after obtaining a written Undertaking (to be furnished on Rs.100/- Non-Judicial stamp paper) from the Consultant that they shall assist AERA in any litigation arising on the Tariff Order.

2.3 NUMBER OF PROPOSALS

Each Applicant may apply for one or more Airports (refer Clause 1.1.7) in response to this RFP. Any applicant who submits more than one proposal for the same Airport(s) shall be disqualified. Conditional bids shall also be disqualified. **The participating applicants can submit one technical bid and separate financial bids if they wish to apply for more than one Airport.**

2.4 TRANSFER OF PROPOSAL DOCUMENTS

Transfer of Proposal documents by one prospective Applicant to another is not permissible.

2.5 COMPOSITION OF THE TEAM

An Applicant shall propose and submit a team for this RFP consisting of following experts (minimum three persons in case one expert has a technical expertise of another expert having requisite skills in finance/data analysis and experience in aviation sector). The team shall have the following composition:

- (a) Team Leader
- (b) Aviation Expert
- (c) Financial Expert
- (d) Data Analysis Expert

The detailed Educational requirements/ Technical experience etc. are given at para 2.6.1 (g & h).

The teams may consist of more than 03 (three) Members as per the discretion of the agency.

2.6 ELIGIBILITY CRITERIA

2.6.1 Conditions of Eligibility

- (a) JVs. / Consortiums are not permitted.
- (b) In order to be eligible to submit the RFP, an Applicant should have assisted at least 1(One) Regulatory Authority or Government Authority in any infrastructure/essential services sector such as aviation, power, gas, telecommunication, shipping, etc., or assisted any regulated entity viz. airport, port, power distribution company, etc. in preparation and evaluation of multiyear tariff proposals and submissions and determination of tariffs/user charges, thereof details of which are to be provided in Appendix-I Form-8.
- (c) The fact that the Applicant has participated as a Consultant in any of the above projects or assignments specifically relating to the airport infrastructure and for other aeronautical services shall be provided appropriate weightage as per the scheme of technical evaluation (refer to Clause 3.1).
- (d) The Applicant should have minimum 10 (ten) professionals. – on their pay roll, out of which there should be 06 Chartered Accountants and rest can be Cost Accountants (ICWA) or MBA (Finance) from a Premier Institute.
- (e) The Applicant should have a **minimum turnover of Rs.3,00,00,000/- (Rupees Three Crores)** per annum under the head of ‘professional fees’ during each of the last three accounting years. For avoidance of doubt, professional fees here under refers to fees earned by the Applicant for providing ‘advisory’ or ‘consultancy’ services to its clients.
- (f) **Availability of Key Personnel:** The proposed Team Leader and other Experts except Aviation Expert & Data Analysis Expert must be employees/ partner of the Applicant firm at least for the last one year. The Applicant shall offer the services of only those Key Personnel who fulfill the eligibility requirements specified at (h) below.
- (g) An individual, who has expertise in the Aviation Sector preferably with at least 7 years experience in Airports (“Aviation Expert”). He should have worked at an Airport in a ‘Managerial’ position or attached with an Organization operating at the Airport. The Aviation Expert may be on the pay rolls of the Applicant or act as a Consultant to the Applicant, provided his/her appointment as a Consultant to the Project shall survive for the entire duration of the Assignment. The Applicant shall submit the terms of the engagement of appointment, including period of engagement, of the Aviation Expert (except the financial terms) along with the Technical Bid.

The Aviation Expert can also be a Team Leader. However, if the Aviation Expert is the Team Leader, then relaxation of 'age above 70 years' shall not be allowed and further he shall have to be employed with the Consultant/ Applicant for more than one year.

Further, the Applicants may also note that the Financial Expert or the Data Analysis Expert cannot be a Team Leader.

- (h) **Eligibility criteria for Key Personnel:** Each of the Key Personnel must fulfill the eligibility criteria specified here in below:

Key Personnel	Educational Qualifications	Length of Professional Experience	Experience in Eligible Assignments
Team Leader	. Graduate/ Post Graduate / MBA in any discipline	7 years	The Team Leader should have led a team involving the process of assisting or advising the regulatory authorities or assisted any regulatory entity in preparation and evaluation of multiyear tariff proposals and submissions and determination of tariffs/user charges as given in para 2.6.1(b)
Sector Experts			
Financial Expert	ICWA/CA/MBA (Finance)	5 years	The financial expert should have experience in the cost and financial analysis of public, private and PPP Projects in the airport infrastructure or other aeronautical services or across other infrastructure/ essential services/ including cost analysis and determination of tariff or user charges specially in the field of tariff determination of an Airport.
Data Analysis Expert	Graduate/ Post Graduate in Statistics/ Economics/ Transport Economics	5 years	Analysis would require experience in software based analytical tools, sensitivity analysis, econometric modeling including experience in MS Word / Excel.
Aviation Expert	Graduate /Post Graduate in any discipline	7 years	The aviation expert shall have relevant experience in the Airport sector. He should have experience of working at an Airport in a 'Managerial' position or attached with an Organization operating at any Airport. (Audit will not be counted as experience)

- (i) The Aviation Expert should continue to be associated with the applicant during the entire tenure of the project and should fulfill the eligibility criterion as specified in the table at para 2.6.1 (h).
- (j) The Applicant shall enclose with the Technical proposal, a Certificate issued by its Statutory Auditors stating its year wise income against professional fees from

Consultancy Services during the last three years in the format prescribed in Form 5, Appendix I.

- (k) A person/entity barred from participating in any project/assignment by the Central Government or any State Government or by any other authority under the direct or indirect control of the Central Government or any State Government, shall not be eligible to submit a proposal provided such bar is still subsisting.
- (l) An Applicant, in the last three years, must not have failed to perform on any agreement and/or contract by way of an imposition of penalty/damages by an arbitral award or any other judicial pronouncement. The Applicant must not have either been expelled from any project or faced any termination of the agreement/contract for being held responsible for its breach by the awarding authority.
- (m) The Aviation Expert shall normally be associated in all the meetings of AERA with the Consultant.

2.7 COST OF PROPOSAL

The Applicants shall be responsible for all of the costs associated with the preparation of their Proposals and their participation in the Selection Process including subsequent negotiation, visits to AERA, Project site etc. AERA will not be responsible or in any way liable for such costs, regardless of the conduct or outcome of the Selection Process.

2.8. ACKNOWLEDGEMENT BY APPLICANT

- 2.8.1 It shall be deemed that by submitting the Proposal, the Applicant has:
 - (a) made a complete and careful examination of the RFP;
 - (b) received all relevant information requested from the AERA;
 - (c) accepted the risk of inadequacy, error or mistake in the information provided in the RFP or furnished by or on behalf of AERA or relating to any of the matters referred to in Clause 2.6 above;
 - (d) satisfied itself about all matters, things and information in this RFP, including matters referred to in Clause 2.6 herein above, necessary and required for submitting an informed Application and performance of all of its obligations thereunder;
 - (e) acknowledged that it does not have a Conflict of Interest; and
 - (f) agreed to be bound by the undertaking provided by it under and in terms hereof.
- 2.8.2 AERA shall not be liable for any omission, mistake or error in respect of any of the above or on account of any matter or thing arising out of or concerning or relating to RFP or the Selection Process, including any error or mistake therein or in any information or data given by AERA.

2.9 CONFLICT OF INTEREST

Consulting Companies of Govt. of India and Public Sector Banks are exempt from this clause.

- 2.9.1 An Applicant shall not have a conflict of interest that may affect the Selection Process or the Consultancy (“**Conflict of Interest**”). AERA requires the Consultant to provide professional, objective and impartial advice and at all times hold AERA’s interests paramount and avoid Conflict of Interest with any other assignment. Without limitation on the generality of the foregoing, the Consultant or any of its Associates shall not take up any assignment that by its nature will result in conflict with the present assignment i.e., during the period of this assignment and for a period of 1 (one) year thereafter. It is further clarified that during the aforementioned period of consultancy, the selected Consultant shall not accept any assignment of similar nature from any other service provider operating at the airports under the categories as defined in Clause 1.1.7 for which the work has been assigned to the Consultant. Whereas, a similar engagement for

any other regulator (viz. Central government in the case of airports other than major airports) may not be so construed.

In case the bidder is dealing with the statutory audit / advisory services on tariff matter of the specific airport for which he is bidding, it shall be treated as direct conflict of interest.

- 2.9.2 Any Applicant found to have a Conflict of Interest shall be disqualified. In the event of disqualification, AERA shall forfeit and appropriate the EMD as the mutually agreed, genuine, pre-estimated compensation and damage payable to the AERA for, *inter alia*, the time, cost and effort of AERA including consideration of such Applicant's Proposal, without prejudice to any other right or remedy that may be available to the AERA hereunder or otherwise.
- 2.9.3 Some guiding principles for identifying and addressing 'Conflicts of Interest' have been illustrated in the Guidance Note at **Schedule-II**. Without limiting the generality of the above, an Applicant shall be deemed to have a Conflict of Interest affecting the Selection Process, if:
- (a) the Applicant or any of its Associates (or any constituent thereof) and any other Applicant or any of its Associate, have common controlling shareholders or other ownership interest; provided that, this disqualification shall not apply in cases where the direct or indirect shareholding or ownership interest of an Applicant, or Associate (or any shareholder thereof having a shareholding of more than 5 per cent of the paid up and subscribed share capital of such Applicant or Associate, as the case may be) in the other Applicant or its Associate is less than 5% (five per cent) of the subscribed and paid up equity share capital thereof. For the purposes of this Clause 2.9.3, indirect shareholding held through one or more intermediate persons shall be computed as follows:
 - (i) where any intermediary is controlled by a person through management control or otherwise, the entire shareholding held by such controlled intermediary in any other person ("Subject Person") shall be taken into account for computing the shareholding of such controlling person in the Subject Person; and
 - (ii) subject always to Sub-clause (aa) above, where a person does not exercise control over an intermediary, which has shareholding in the Subject Person, the computation of indirect shareholding of such person in the Subject Person shall be undertaken on a proportionate basis; provided, however, that no such shareholding shall be reckoned under this Sub Clause (ii) if the shareholding of such person in the intermediary is less than 26% (twenty six per cent) of the subscribed and paid up equity shareholding of such intermediary; or
 - (b) a constituent of such Applicant is also a constituent of another Applicant; or
 - (c) such Applicant or its Associate receives or has received any direct or indirect subsidy or grant from any other Applicant or its Associate; or
 - (d) such Applicant has the same legal representative for purposes of this Application as any other Applicant; or
 - (e) such Applicant has a relationship with another Applicant, directly or through common third parties, that puts them in a position to have access to each other's information about, or to influence the Application of either or each of the other Applicant; or
 - (f) a firm which has been engaged by AERA to provide goods or works or services for a project, and its Associates, will be disqualified from providing consulting services for the same project; conversely, a firm hired to provide consulting services for the preparation or implementation of a project, and its Associates, will be disqualified from subsequently providing goods or works or services related to the same project; or
 - (g) such Applicants (including their experts and other personnel) that have a close business or family relationship with a professional staff of AERA who are directly or indirectly involved in any part of i) the preparation of the TOR for the assignment, ii) the selection process for the contract, or iii) the supervision of such contract, may not be awarded the Consultancy, unless the conflict stemming from this relationship has been resolved in a

- manner acceptable to AERA throughout the selection process and the execution of the contract; or
- (h) Fairness and transparency in the selection process require that Applicants or their affiliates competing for a specific assignment do not derive a competitive advantage from having provided consulting services related to the assignment in question. To that end, AERA shall make available to all the Shortlisted Applicants, together with the request for proposals, all information that would in that respect give an Applicant a competitive advantage.
 - (i) Govt. Shareholding shall be exempted from ‘Conflict of Interest’

For purposes of this RFP, Associate means, in relation to the Applicant, a person who controls, is controlled by, or is under the common control with such Applicant, or is deemed or published as an “Associate Office”; or has a formal arrangement such as tie up for client referral or technology sharing, joint venture with the Applicant (the “**Associate**”); provided, however, that if the Applicant has any formal arrangement such as consortium membership in a consortium of advisers/ consultants for a particular assignment/ project, not being this project, with any other person, then such other person shall not be treated to be an Associate of the Applicant solely due to the reason of forming such consortium. As used in this definition, the expression “control” means, with respect to a person which is a company or corporation, the ownership, directly or indirectly, of more than 50% (fifty per cent) of the voting shares of such person, and with respect to a person which is not a company or corporation, the power to direct the management and policies of such person by operation of law or by contract.

B. DOCUMENTS

2.10 AMENDMENT OF RFP

- 2.10.1 At any time prior to the deadline for submission of the Proposal, AERA may, for any reason, whether at its own initiative or in response to clarifications requested by an Applicant, modify this RFP document by the issuance of Addendum/ Amendment and posting it on its Official Website.
- 2.10.2 All such amendments posted on the Official Website along with the revised RFP containing the amendments, will be binding on all Applicants.
- 2.10.3 In order to afford the Applicants a reasonable time for taking an amendment into account, or for any other reason, AERA may, at its sole discretion, extend the Proposal Due Date as indicated under Clause 2.16.

C. PREPARATION AND SUBMISSION OF THE PROPOSAL

The Applicant shall submit the proposal in the manner stated below. The proposal shall comprise of Technical Proposal and Financial Proposal.

2.11 LANGUAGE

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

2.12 FORMAT AND SIGNING OF PROPOSAL

- 2.12.1 The Applicant shall provide all the information sought under this RFP. AERA would evaluate only those Proposals that are received in the specified forms and complete in all respects.
- 2.12.2 The Applicant shall prepare one original set of the Technical Proposal (together with originals/ copies of Documents required to be submitted therewith pursuant to this RFP) clearly marked “ORIGINAL”. In addition, the Applicant shall submit 2 (two) copies of the Technical Proposal, along with documents, marked “COPY”. In the event of any discrepancy between the Original and its copies, the Original shall prevail. It is clarified that the Technical Proposal marked “ORIGINAL” only shall be considered for the purpose of scrutiny and evaluation.
- 2.12.3 The Proposal marked “ORIGINAL” shall be typed or written in indelible ink and signed by the Authorized Signatory of the Applicant who shall initial each page, in blue ink. In case of printed and published Documents, only the cover shall be initialed. All the alterations, omissions, additions, or any other amendments made to the Proposal shall be initialed in blue ink by the person(s) signing the Proposal. The Proposals must be properly signed in blue ink by the authorized representative (the “Authorized Representative”) as detailed below:
- (a) by the proprietor, in case of a proprietary firm; or
 - (b) by a partner who is duly authorized vide Power of Attorney, in case of a partnership firm and/or a limited liability partnership; or
 - (c) by a duly authorized person holding the Power of Attorney, in case of a Limited Company or a Corporation.
- 2.12.4 A copy of the Power of Attorney certified under the hands of a partner or director of the Applicant and notarized by a notary public in the form specified in Appendix – I (Form-4) shall accompany the Proposal.
- 2.12.5 Applicants should note the Proposal Due Date, as specified in Clause 2.16 for submission of Proposals. Except as specifically provided in this RFP, no supplementary material will be entertained by AERA, and evaluation will be carried out only on the basis of Documents received by the closing time of Proposal Due Date as specified in this RFP.
- 2.12.6 Applicants will ordinarily not be asked to provide additional material information or documents subsequent to the date of submission, and unsolicited material if submitted will be summarily rejected. For avoidance of doubts, AERA reserves the right to seek clarifications and seek additional material under and in accordance with the provisions of Clause 2.19.

2.13 TECHNICAL PROPOSAL

- 2.13.1 Applicants shall submit the technical proposal in the formats at Appendix-I (Form No. 1 to Form No. 10) (the “**Technical Bid**”).
- 2.13.2 While submitting the Technical Proposal, the Applicant shall, in particular, ensure that:
- (a) All forms are submitted in the prescribed formats and are signed by the prescribed signatories;
 - (b) The EMD is provided as per Clause 2.2;
 - (c) Power of Attorney as specified in Form-4, Appendix - I, is executed as per Applicable Laws and submitted;
 - (d) CVs of all Key Personnel & Aviation Experts have been included;
 - (e) Key Personnel have been proposed only if they meet the Conditions of Eligibility laid down at Clause 2.6.1 of this RFP;

- (f) No alternative proposal for any Key Personnel is being made and only one CV for each position has been furnished;
- (g) **The CVs have been signed and dated in blue ink by the respective Key Personnel and countersigned by the Applicant. Photocopy or un-signed/non-countersigned CVs shall be rejected;**
- (h) **The CVs shall contain an undertaking from the respective Key Personnel about his/her availability for the duration specified in the RFP and counter signed by the applicant;**
- (i) **Key Personnel proposed have good working knowledge of English language;**
- (j) **Key Personnel would be available for the entire period indicated in the TOR (Schedule –I).**
- (k) No Key personnel should have attained the age of 70 years at the time of submitting the proposal except the Aviation Expert. However, if the Aviation Expert is the Team Leader, then relaxation of ‘age above 70 years’ shall not be allowed.
- (l) The proposal is responsive in terms of Clause 2.20.3.

2.13.3 Failure to comply with the requirements spelt out in Clause 2.13.2 shall make the Proposal liable to be rejected.

2.13.4 If an individual Key Personnel makes a false averment regarding his qualification, experience or other particulars, or, his commitment regarding availability for the Project is not fulfilled at any stage after signing of the Agreement, he shall be liable to be debarred for any further assignment of AERA for a period of 05 (five) years. The award of this Consultancy to the Applicant may also be liable to cancellation in such an event **along with the forfeiture of EMD/ Performance Guarantee as available with Authority.**

2.13.5 The Technical Proposal shall not include any financial information relating to the Financial Proposal.

2.13.6 AERA reserves the right to verify all statements, information and documents, submitted by the Applicant in response to the RFP. Any such verification, or in case of non-verification by applicant shall not be relieved of its obligations or liabilities hereunder nor will it affect any rights of the AERA there under.

2.13.7 In case it is found during the evaluation or at any time before signing of the Agreement or after its execution and during the period of subsistence thereof, that one or more of the eligibility conditions have not been met by the Applicant or if the Applicant has made material misrepresentation or has given any materially incorrect or false information, the Applicant shall be disqualified forthwith, if he has not yet been appointed as the Consultant either by issue of the Letter of Award (LOA) or by entering into the Agreement. If the Selected Applicant has already been issued the LOA or has entered into the Agreement, as the case may be, the same shall, notwithstanding anything to the contrary contained therein, or, in this RFP, be liable to be terminated, by a communication in writing by AERA along with forfeiture of EMD/Performance Guarantee without AERA being liable in any manner whatsoever to the Applicant, or, Consultant, as the case may be.

2.13.8 In such an event, AERA shall forfeit and appropriate the entire EMD/Performance Guarantee as the case may be as mutually agreed pre-estimated compensation and damages payable to the AERA for, *interalia*, time, cost and effort of AERA, without prejudice to any other right or remedy that may be available to AERA.

2.14 FINANCIAL PROPOSAL

2.14.1 The Applicants shall submit the Financial Proposal in the formats at Appendix-II, Form-1, clearly indicating the cost of the Consultancy assignment, for the respective airport(s) in both figures and words, in Indian Rupees, and, signed by the Applicant's Authorized Signatory. In the event of a difference between the amounts indicated in figures and words, the **lower** of the two shall be considered and taken into account. While submitting the Financial Bid, the Applicant shall ensure the following:

- a) The professional fee quoted in the Financial Bid shall be inclusive of all costs associated with the assignment and shall cover remuneration for all the Personnel, accommodation, air fare, equipment, printing of documents, surveys etc. No additional costs on any of the aforementioned expenditure heads, over and above the financial quote, shall be reimbursed by AERA. The Financial Bid shall be unconditional, unqualified, and, shall be final and binding. It is clarified that the selected Applicant (at least one of the team member) may be required by AERA to be present in meetings to assist it during the same as and when organized by AERA. Such meetings are generally held in Delhi. However, in case AERA organizes such a meeting outside Delhi, the actual fare paid (including the fare paid for rail and road travel) or Economy Class return airfare, whichever is lower for the shorter route from Delhi to the station where such meeting is held (whichever is less) will be reimbursed by the Authority in respect of maximum of two representatives of the selected applicant firm. Failure to attend any meeting arranged by AERA will lead to a Penalty of Rs. 25000/- per instance. The agency will be informed a week in advance of such meetings.
- b) The professional fee quoted in the financial Bid shall be exclusive of all statutory tax liabilities which should be indicated separately. The statutory Tax liability shall be paid by AERA as per actuals.

2.14.2 Financial bids of the firms who do not qualify shall be returned, unopened.

2.15 SUBMISSION OF PROPOSAL

2.15.1 The Applicants shall submit the Proposal in **hard bound** form with all pages numbered serially and by giving an index of submissions. Each page of the submission shall be initialed by the Authorized Representative of the Applicant as per the terms of Clause 2.12 of the RFP and condition therein.

2.15.2 In case the proposal is submitted on the document downloaded from AERA's Website, the Applicant shall be responsible for its accuracy and correctness as per the version uploaded by AERA and shall ensure that there are no changes caused in the content of the downloaded document. In case of any discrepancy between the downloaded or photocopied version of the RFP and the original RFP issued by AERA, the latter shall prevail. Further, in case of any modification/substitution/withdrawal of proposals by the Applicant, Clause 2.18 may be referred to.

2.15.3 The Proposal shall be sealed in an outer envelope which should bear the address of the AERA, RFP Number, Consultancy Name, Name and address of the Applicant. If the envelope is not sealed and marked as instructed herein, AERA assumes no responsibility for the misplacement or premature opening of the contents of the Proposal submitted and consequent losses, if any, suffered by the Applicant.

2.15.4 The aforesaid outer envelope should contain **two separate sealed envelopes**, one clearly marked '**Technical Proposal**' and the other clearly marked '**Financial Proposal**'.

- a) The envelope marked "Technical Proposal" shall contain:

- (i) Application in the prescribed format (Form-1of Appendix-I) along with all Forms no.2 to no.10 of Appendix- I, and, supporting documents; and
 - (ii) EMD as specified in Clause 2.2.
 - b) The Technical Proposal and Financial Proposal shall be typed or written in indelible ink and signed by the Authorized Representative of the Applicant. All pages of the Technical Proposal (marked 'ORIGINAL') and Financial Proposal must be numbered and initialed by the person or persons signing the Proposal.
- 2.15.5 The complete Proposal must be delivered on or before the specified time on Proposal Due Date at designated office address given at Clause 1.8 of the RFP. Proposals submitted by fax, telex, telegram or e-mail shall not be entertained. The Proposal shall be made in the Forms specified in this RFP. Any attachment to such Forms must be provided on separate sheets of paper and only information that is directly relevant should be provided. This may include photocopies of the relevant pages of printed documents. No separate documents like printed annual statements, company brochures, copy of contracts etc. will be entertained.

2.16 PROPOSAL DUE DATE

The Proposal should be submitted on or before 24.01.2020 at 1100 Hrs. at the designated address in the manner and form as detailed in Clause 2.15.5 of this RFP. AERA may, at its sole discretion, extend the Proposal Due Date by issuing an Addendum to the RFP.

2.17 LATE PROPOSALS

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

2.18 MODIFICATION/ SUBSTITUTION/ WITHDRAWAL OF PROPOSALS

- 2.18.1 The Applicant may modify, substitute, or withdraw its Proposal after submission, provided that written notice of the modification, substitution, or withdrawal, is received by AERA prior to Proposal Due Date. No Proposal shall be modified, substituted, or withdrawn by the Applicant on or after the Proposal Due Date.
- 2.18.2 The modification, substitution, or withdrawal notice shall be prepared, sealed, marked, and delivered in accordance with Clause 2.15, with the envelopes being additionally marked "MODIFICATION", "SUBSTITUTION" or "WITHDRAWAL", as appropriate.
- 2.18.3 Any alteration/modification in the Proposal or additional information or material supplied subsequent to the Proposal Due Date, unless the same has been expressly sought for by AERA, shall be disregarded.

2.19 CLARIFICATIONS

- 2.19.1 To facilitate evaluation of Proposals, AERA may, at its sole discretion, seek clarifications from any Applicant regarding its Proposal. Such clarification(s) or additional material as sought shall be provided within the time specified by AERA for this purpose. Any request for clarification(s) or additional information document, and, all clarification(s) in response thereto, shall be in writing.
- 2.19.2 If an Applicant does not provide clarifications as sought under Clause 2.19.1 above within the specified time, its Proposal shall be liable to be rejected. In case the Proposal is not rejected, AERA may proceed to evaluate the Proposal by construing the particulars requiring clarification to the best of its understanding, and the Applicant shall be barred from subsequently questioning such interpretation(s) of the AERA.

D. EVALUATION PROCESS

2.20 EVALUATION OF PROPOSALS

- 2.20.1 The Proposals shall be opened on **24.01.2020 at 12.00 Hrs** in Conference Hall, 1stFloor, AERA Building, Administrative Complex, Safdarjung Airport, New Delhi - 110003, in the presence of the Applicants who choose to attend. The envelopes marked “**Technical Proposal**” shall be opened first. The envelopes marked “**Financial Proposal**” shall be kept sealed for opening at a later date which shall be subsequently communicated to the applicant firms.
- 2.20.2 Proposals for which a ‘notice of withdrawal’ has been submitted in accordance with Clause 2.18 shall not be opened.
- 2.20.3 Prior to evaluation of Proposals, AERA shall determine whether each Proposal is responsive to the requirements of the RFP. AERA may, reject any Proposal that is not responsive hereunder. A Proposal shall be considered responsive only if:
- a) the Technical Proposal is received in the forms (Form No. 1 to Form No. 10) specified at Appendix-I, with three Copies, one marked “ORIGINAL” and two marked as “COPY”);
 - b) it is received by the Proposal Due Date including any extension thereof pursuant to Clause 2.16;
 - c) it is accompanied by the EMD as specified in Clause 2.2;
 - d) it is signed, sealed, bound together in hard cover and marked as stipulated in Clauses 2.12 & 2.15;
 - e) it is accompanied by the Power of Attorney as specified in Form-4, Appendix-I;
 - f) it contains all the information (complete in all respects) as requested in the RFP;
 - g) it does not contain any condition or qualification; and
 - h) it is **not** non-responsive in terms hereof.
- 2.20.4 AERA reserves the right to reject any Proposal which is non-responsive and no request for alteration, modification, substitution or withdrawal shall be entertained by AERA in respect of such Proposals.

2.20.5 PRESENTATION

AERA shall subsequently examine and evaluate each of the Proposals. The technical evaluation of the Proposals shall be done after the presentation to be made by the Applicant(s) on the Approach and Methodology. The presentation shall be held in the Conference Hall, 1stFloor, AERA Building, Administrative Complex, Safdarjung Airport, New Delhi- 110003 on the date intimated by AERA to the applicant firms. The Applicants shall ensure that the presentation is held on the date intimated by AERA.

2.20.6 TEAM COMPOSITION AND EXPERIENCE OF KEY PROFESSIONALS/EXPERTS

- (a) The Applicant shall provide details of the experts proposed to be deployed for the proposed assignment. The Applicants, who offer to provide more than one expert for one or more sectors, shall clearly specify the sector expert who should be evaluated for the purpose of Technical Evaluation. Such Applicant, if successful, shall be bound to provide the services of the additional sector expert(s) to AERA as necessitated for successful completion of the consultancy assignment at no additional cost or liability whatsoever. However, in no case, more than one person should be proposed as the Team Leader;

- (b) The team of experts proposed to be deployed shall be available to AERA in continuity until **successful completion of the consultancy assignment**. The Curriculum Vitae (CV) of each expert proposed to be deployed for the assignment shall be given along with the proposal;
- (c) AERA would evaluate each member proposed to be deployed based on their qualifications, experience etc., and assign score for every applicant based on its evaluation as detailed in Clause 3.1 herein; and
- (d) The Presentation shall be made by the Authorized Signatory and/or the Team leader, when all the Sector Experts (Financial Expert/ Aviation Expert & Data Analysis Expert) would be required to be available. The Presentation should clearly bring out the understanding of the Applicant with regard to the requirements of AERA and concisely present the approach and methodology intended to be followed for the successful completion of the assignment. The Presentation should, normally, not exceed a time limit of twenty minutes. The Team Leader and Sector Experts shall appear for a personal interview, at the time of Presentation, as communicated by AERA (at least one week before presentation date).

2.21 CONFIDENTIALITY

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

3. CRITERIA FOR EVALUATION

3.1 TECHNICAL PROPOSAL EVALUATION

3.1.1 The Technical Proposals submitted by Bidders shall be evaluated on the basis of their responsiveness to the RFP, Applicant's experience, their understanding of TOR by proposed methodology and work plan, and the experience of Key Personnel by applying the evaluation criteria as specified below and also interview with the team leader and experts:

Table 1					
Technical Evaluation -Total marks out of 100					
	Criteria	No. of years			Max. Marks
A	i. Firm's Experience for the Consultancy Assignment	1-5 yrs	05		15
		5-10 yrs	10		
		10 or more	15		
	ii. Firm's Relevant Experience in Airport tariff determination; iii. Firm relevant experience in tariff determination in other Regulatory field;	Each Assignment	3 Marks		10
Each Assignment	2 Marks				
B	Approaches and Methodology and Presentation				15
	<p>The presentation shall be made by the Team Leader. The presentation should clearly bring out the understanding of the Applicant with regard to the requirements of AERA and concisely present the approach and methodology proposed to be followed for the successful completion of the assignment. The presentation should, normally, not exceed a time limit of 20 (twenty) minutes.</p>				
C	Qualification and experience of the key staff/ Personal Interaction.				60
		<u>Qualification</u>	<u>Experience</u>		<u>Personal Interaction</u>
			No. of studies undertaken	Total Marks out of 05	
	Team Leader	5	01 study	03	5
			02 studies or more	05	
	Financial Expert-	6	No. of work executed relating to tariff determination	Total Marks out of 09	
			01 work	05	5
			More than 01 work	09	20
	Aviation Expert	6	5		5
	Data Analyst	3	3		3
	Total Marks (A+B+C)				100

- 3.1.2 In case any of the above Key Personnel is not present at the time of “Presentation,” then no marks will be awarded for personal interaction in this case.
- 3.1.3 Applicants may note that if the ‘Data Analysis Expert’ is a Graduate/ Post Graduate in ‘Transport Economics,’ then the Applicant is entitled to an additional score of 02(two) marks in the Technical Evaluation.
- 3.1.4 In case all other parameters are same, preference shall be given to bidders who have worked on tariff determination on airports/other projects run on PPP mode.
- 3.1.5 The total technical score would be an arithmetic sum of scores obtained by the Applicant for each of the parameters indicated above viz. relevant experience of the Applicant, approach and methodology and presentation, qualification and relevant experience of the team leader and financial analyst, financial strength, etc. The maximum achievable total technical score for any applicant would be 100 marks.
- 3.1.6 **A minimum of 70 marks is necessary for qualifying in the Technical Bid. The Applicants would be ranked based on the technical score obtained.**
- 3.1.7 **Financial bids of firms who do not qualify the Technical Bid shall be returned unopened.**
- 3.1.8 The financial bids of all Applicants who secure the minimum score of 70 in technical bid shall be opened. In case no Applicant secures the minimum qualifying score of 70 marks, AERA may, at its sole discretion, pre-qualify the first three ranked Applicant(s), even though their technical score is less than 70 marks.
- 3.1.9 After the technical evaluation, AERA shall prepare a list of the Shortlisted Applicants for opening of their Financial Bid; a date, time and venue will be notified to the Shortlisted Applicants for announcing the result of evaluation and opening of financial proposals. Before opening of the financial proposals, the technical score of the Shortlisted Applicants shall be read out. The opening of financial bids/proposals shall be done in the presence of representatives of the qualified Shortlisted Applicants who choose to be present on the date of opening of financial bid. AERA will not entertain any query or clarification from Applicants who fail to qualify at any stage of the Selection Process.

3.2 FINANCIAL PROPOSAL EVALUATION AND OFFER OF CONTRACT

- 3.2.1 In the second stage, the financial evaluation will be carried out as per the provisions of this Clause. AERA will determine whether the Financial Proposals are complete, unqualified and unconditional. The cost indicated in the Financial Proposal shall be deemed as final and reflecting the total cost of services. Omissions, if any, in costing any item shall not entitle the Consultant to be compensated and the liability to fulfill its obligations as per the TOR (see schedule- I) within the total quoted price shall be that of the Consultant.
- 3.2.2 The lowest Financial Proposal (L-1) for each Airport separately shall be considered for award of assignment/ letter of award. In the event of more than one Applicant becoming L1 for any one or more airports, then, the Applicant with the higher technical score shall be considered as lowest bidder and considered for award of Assignment/ Letter of Award for that particular airport(s).
- 3.2.3 Applicants are apprised that selection of the successful Applicant will be entirely at the discretion of the AERA based on their technical score and financial bid. Applicants will be deemed to have understood and agreed that no explanation or justification on any aspect of the Selection Process or Selection will be given. Any information contained in the Proposal shall not in any way be construed as binding on AERA, its agents, successors or assigns, but shall be binding on the Applicant if the Consultancy is subsequently awarded to it.

3.3 Substitution of Key Personnel

AERA will not normally consider any request of the Selected Applicant Firm for substitution of Key Personnel as the ranking of the Applicant is based on the evaluation of Key Personnel and any change therein may upset the ranking. Substitution will, however, be permitted if the Key Personnel is not available for reasons of any incapacity or due to ill health or death, subject to equally or better qualified and experienced personnel being provided to the satisfaction of AERA. Such substitution shall be limited to only two Key Personnel. AERA expects all the Key Personnel to be available during implementation of the Agreement.

Substitution of the Team Leader will normally not be considered, except in case of death or incapacitation due to accident, illness etc. and may lead to disqualification of the Applicant or termination of the Agreement.

3.4 AWARD OF CONSULTANCY/ SUBMISSION OF PERFORMANCE GUARANTEE

After selection, a Letter of Award (the “LOA”) shall be issued, in duplicate, by the AERA to the Selected Applicant and the Selected Applicant shall, within 07 (seven) working days of receipt of the LOA, sign and return the duplicate copy of the LOA in acknowledgement thereof and submit **Performance Guarantee** equivalent to 10% of the value of the award for Consultancy, in the form of a Bank Guarantee issued by a Nationalized/Scheduled Bank in India in favour of the “Airports Economic Regulatory Authority of India”. In the event, the duplicate copy of the LOA duly signed by the Selected Applicant, and, Performance Guarantee, is not received by the stipulated date, AERA may, unless it consents to extension of time for submission thereof, forfeit the EMD of such Applicant on account of failure of the Selected Applicant to acknowledge the LOA.

3.5 EXECUTION OF AGREEMENT

After acknowledgement of the LOA as aforesaid, the Selected Applicant shall sign the Agreement within 30 (thirty) days from the issue of the LOA. The Selected applicant shall not be entitled to seek any deviation in the terms and conditions of the Agreement. A draft copy of the agreement is attached along with this RFP.

3.6 COMMENCEMENT OF ASSIGNMENT

The Selected Applicant shall commence the Consultancy services within 07 (seven) days of the date of signing of the Agreement or such other date (handing over of MYTP proposal) as may be mutually agreed. If the Selected Applicant fails to either sign the Agreement as specified in Clause 3.5 or fails to commence the assignment as specified herein, the Performance Guarantee of the Selected Applicant shall be invoked and appropriated in accordance with the provisions of Clause 5.2.

3.7 PROPRIETARY DATA

Subject to the provisions of Clause 2.2, all documents/information provided by the AERA or submitted by an Applicant are to be treated as strictly confidential information. AERA will not return any Proposal or any information related thereto except as stated in Clause 3.1.6 herein. All information collected, analyzed, processed or in whatever manner provided by the Applicants/Selected Applicant to AERA in relation to the Consultancy, shall be the property of AERA and shall not be used without the prior written approval of the Authority.

4. PAYMENT SCHEDULE

4.1 Payment Schedule

The Selected consultant shall be paid professional fees for the services rendered as per following schedule.:

SNO.	Milestones	Time Frame for completion of Assignment for each Airport	Payment Schedule.
1.	Submission of initial analysis which includes identification of information gaps	<u>04 Months</u>	10%
2.	Finalisation of Consultation Paper		35%
3.	Assisting AERA in Stakeholder consultation and evaluating Stakeholders' response		25%
4.	Assisting AERA in determination of Aeronautical Tariffs and issuance of Tariff Orders post stakeholders' consultation and on successful completion of the assignment.		30%

Note -1 If due to any reason, work / assignment is not completed within the stipulated time, AERA may at its discretion extend the last date of completion of work without any financial implication to AERA.

5. LIQUIDATED DAMAGES AND PENALTIES

5.1 PERFORMANCE GUARANTEE

The Selected Applicant shall furnish a **Performance Guarantee (see para 3.4)** in the form of Bank Guarantee equal to 10% of the value of the Agreement.

5.2 APPROPRIATION OF PERFORMANCE GUARANTEE

- (a) AERA shall levy penalty for breach of terms and conditions of the contract or on account of delay in completing the task or towards any other default, any amounts as may be payable by the Consultant to AERA as stated in para 5.3 and 5.4 hereunder. The penalties so levied will be paid by the firm/ adjusted against bills payable failing which it will be appropriated against Performance Guarantee. Further, the Performance Guarantee shall be retained by AERA for a period of one year from the date of completion of consultancy assignment and will be released after submission of an affidavit (on non-judicial stamp paper of Rs.100/-) that they will assist AERA in 'Appeals' and 'Legal Cases' against the Orders of the Authority and to implement the Tribunal (Appellate Tribunal- TDSAT at present) Orders. The balance remaining out of the Performance Guarantee, if any, or the entire Performance Guarantee after adjustment of Penalty, as the case may be, shall be returned to the Consultant within a period of 30 (thirty) days after the period of one year from the **completion of the consultancy assignment** and issuance completion certificate by AERA to the Consultant. 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 over and above the Performance Guarantee, AERA, without prejudice to its rights and remedies as may be available under applicable laws, may make deductions from any subsequent payments due and payable to the Consultant hereunder, either in this agreement or any other live agreement with AERA as if it is appropriating the Performance Guarantee in accordance with the provisions of this Agreement.

5.3 LIQUIDATED DAMAGES FOR ERROR / VARIATION

In case any error or variation is detected in the reports submitted by the Consultant and such error or variation is the result of negligence or lack of due diligence on the part of the Consultant, the consequential damages thereof shall be quantified by AERA in a reasonable manner and recovered from the Consultant by way of liquidated damages. This is without prejudice to the other remedies as may be available as per applicable law. Overall LD, whether on account of delay and error / variation, shall be limited to 10% (Ten percent) of the Agreement/ Award Value.

5.4 LIQUIDATED DAMAGES FOR DELAY / COMPENSATION FOR DELAY.

In case of delay in completion of the work as specified in the delivery schedule, the Consultant shall be liable to pay Liquidated Damages/ Compensation for Delay not exceeding an amount equal to 1% (one percent) of the total value of the Agreement, per week, subject to a maximum of 10% (ten percent) of the total value of the Agreement. AERA will take into consideration the reasons for delay, if any, while imposing Liquidated Damages on the selected Applicant. However, in the event of delay caused due to reasons beyond the control of the Consultant, AERA may, in its sole discretion, consider granting of appropriate extension of time, without imposition of Liquidity Damages/Compensation for Delay.

5.5 PENALTY FOR DEFICIENCY IN SERVICES

In addition to the Liquidated Damages listed hereinabove, as specified in Clauses 5.3 and 5.4 above, the Consultant may be censured and/ or debarred for deficiencies on its part in completion of the consultancy assignment.

6. FRAUD AND CORRUPT PRACTICES

- 6.1 The Applicants and their respective officers, employees, agents and advisers shall observe the highest standard of ethics during the Selection Process. Notwithstanding anything to the contrary contained in this RFP, AERA shall reject a Proposal without being liable in any manner whatsoever to the Applicant, if it determines that the Applicant has, directly or indirectly or through an agent, engaged in corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice (collectively the “**Prohibited Practices**”) in the Selection Process. In such an event, AERA shall, without prejudice to its other rights or remedies, forfeit and appropriate the EMD, as genuine, pre-estimated compensation and damages payable to AERA for, *inter alia*, time, cost and effort of AERA, in regard to the RFP, including consideration and evaluation of such Applicant’s Proposal.
- 6.2 Without prejudice to the rights of AERA under Clause 7.3 hereinafter and the rights and remedies which AERA may have under the LOA or the Agreement, if an Applicant or Consultant, as the case may be, is found by AERA to have directly or indirectly or through an agent, engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice during the Selection Process, or after the issue of the LOA or the execution of the Agreement, such Applicant or Consultant shall not be eligible to participate in any tender or RFP issued by AERA during a period of 2 (two) years from the date such Applicant or Consultant, as the case may be.. Further, in such an event, AERA shall, without prejudice to its other rights or remedies, forfeit and appropriate the Performance Guarantee, as genuine, pre-estimated compensation and damages payable to AERA for, *inter alia*, time, cost and effort of AERA, in regard to the RFP, including consideration and evaluation of such Applicant’s Proposal.
- 6.3 For the purposes of this Clause 6.3, the following terms shall have the meaning hereinafter respectively assigned to them:
- (a) “**corrupt practice**” means (i) the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence the action of any person connected with the Selection Process (for avoidance of doubt, offering of employment to or employing or engaging in any manner whatsoever, directly or indirectly, any official of AERA who is or has been associated in any manner, directly or indirectly with the Selection Process or the LOA or has dealt with matters concerning the Agreement or arising therefrom, 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 AERA, shall be deemed to constitute influencing the actions of a person connected with the Selection Process); or (ii) save as provided herein, engaging in any manner whatsoever, whether during the Selection Process or after the issue of the LOA or after the execution of the Agreement, as the case may be, any person in respect of any matter relating to the Project or the LOA or the Agreement, who at any time has been or is a legal, financial or technical consultant/ adviser of AERA in relation to any matter concerning the Project;
 - (b) “**fraudulent practice**” means a misrepresentation or omission of facts or disclosure of incomplete facts, in order to influence the Selection Process;
 - (c) “**coercive practice**” means impairing or harming or threatening to impair or harm, directly or indirectly, any persons or property to influence any person’s participation or action in the Selection Process;
 - (d) “**undesirable practice**” means (i) establishing contact with any person connected with or employed or engaged by AERA 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.

7. MISCELLANEOUS

7.1 RIGHT TO REJECT ANY OR ALL DOCUMENTS

- 7.1.1 Notwithstanding anything contained in this RFP, AERA reserves the right to accept or reject any Proposal and to annul the Selection Process and reject all Proposals, at any time without any liability or any obligation for such acceptance, rejection or annulment, and without assigning any reasons thereof. In an event of non-responsive bid or under any circumstance as AERA may consider appropriate, AERA reserves the right to float another RFP.
- 7.1.2 Without prejudice to any other provision hereto, AERA reserves the right to reject any Proposal if:
- (a) at any time, a material misrepresentation is made or discovered, or
 - (b) the Applicant does not provide, within the time specified by AERA, the supplemental information sought by AERA for evaluation of the Proposal.

Misrepresentation/ improper response by the Applicant may lead to the disqualification of the Applicant. If such disqualification / rejection occurs after the Proposals have been **opened and the highest ranking Applicant gets disqualified / rejected, then AERA reserves the right to consider the next best Applicant, or take any other measure as may** be deemed fit at the sole discretion of AERA, including annulment of the Selection Process.

- 7.2 The Selection Process shall be governed by, and construed in accordance with, the laws of India and the Courts in the State in which AERA has its headquarters shall have exclusive jurisdiction over all disputes arising under, pursuant to and/or in connection with the Selection Process.
- 7.3 AERA, in its sole discretion and without incurring any obligation or liability, reserves the right, at any time, to:
- (a) suspend and/or cancel the Selection Process and/or amend and/or supplement the Selection Process or modify the dates or other terms and conditions relating thereto;
 - (b) consult with any Applicant in order to receive clarification or further information;
 - (c) retain any information and/or evidence submitted to AERA by, on behalf of and/or in relation to any Applicant; and/or
 - (d) independently verify, disqualify, reject and/or accept any and all submissions or other information and/or evidence submitted by or on behalf of any Applicant.

8. SCHEDULE-1

9. TERMS OF REFERENCE (TOR)

FOR

ENGAGEMENT OF CONSULTANTS TO ASSIST AIRPORTS ECONOMIC REGULATORY AUTHORITY OF INDIA (AERA) IN DETERMINATION OF TARIFFS FOR AERONAUTICAL SERVICES AT MAJOR AIRPORTS.

TERMS OF REFERENCE (TOR)

1. General

- 1.1 The Parliament of India, enacted an Act called “The Airports Economic Regulatory Authority of India Act, 2008” (hereinafter to be referred as the ‘Act’). The said Act envisages the establishment of a statutory authority called the Airports Economic Regulatory Authority (hereinafter referred to as the ‘AERA’) to regulate tariff for the aeronautical services, determine other airport charges for services rendered at major airports and to monitor the performance standards of such airports. The provisions of the said Act came in to force w.e.f. 1st September 2009.
- 1.2 AERA, was established by the Government of India vide notification No. GSR 317(E) dated 12th May 2009. The functions of AERA, in respect of major airports, are specified in Section 13 of the Act.
- 1.3 The terms ‘aeronautical services’ and ‘major airports’ are defined in Sections 2(a) and 2(i) of the Act, respectively.
- 1.4 While discharging its functions, AERA is required to ensure transparency by, *inter alia*, holding due consultations with stake-holders, which includes a licensee of an airport, airlines operating there at and/or a person who provides aeronautical services and any association of individuals, which in the opinion of AERA, represents the passengers or cargo facility users, by permitting such stake-holders to make submissions in writing and by documenting all its decisions and explanations thereof.
- 1.5 After its establishment, AERA has categorized the aeronautical services, in respect of which it is required to determine Tariff, as under:
 - i. Aeronautical services provided by the Airport Operators;
 - ii. Cargo, Ground Handling and Fuel Supply Services;
 - iii. Air Navigation Services.
- 1.6 AERA has, after extensive stakeholder consultation, finalized its approach to the economic regulation of services categorized in (i) & (ii) above. Detailed Guidelines laying down information requirements, periodicity and procedure for Tariff determination have also been issued. The details of Orders and Guidelines issued in this behalf are as under:
 - (i) Order No. 13 dated 12.01.2011 and Direction No. 5 dated 28.02.2011; and
 - (ii) Order No. 05 dated 02.08.2010; Order No. 12 dated 10.01.2011 and Direction No. 4 dated 10.01.2011;
 - (iii) Order No. 14/2016-17 dated 23.01.2017;
 - (iv) Order No. 35/2017-18 dated 12.01.2018 and Amendment No. 01 to Order No. 35/2017-18 dated 09.04.2018;
 - (v) Order no. 07/2016-17 dated 13.06.2016;
 - (vi) Order no. 20/2016-17 dated 31.03.2017;

These can be downloaded from <http://aera.gov.in>.

- 1.6.1 In pursuance of AERA's Orders and Guidelines as brought out in para 1.6 above, the regulated entities are in the process of filing their tariff proposals for the first Control Period of 05 years, which commences w.e.f. 01.04.2020.

The proposal in respect of the regulated entities viz Airport Operator for the purpose of this RPF is listed below:

Name of the Airport Operator
Airports Authority of India for Raipur Airport
Airports Authority of India for Trichy Airport

2. Objective

The Objective is engagement of Consultants to assist Airports Economic Regulatory Authority of India (AERA) in Determination of Tariffs for Aeronautical Services at above AAI operated Major Airports.

3. Scope of Work

The Selected Applicant shall perform the following services:

- i. Examine the MYTP of the Airport Operator and verify the data with reference to the Balance Sheet, P&L account and auditor certificates relating to Aeronautical services;
- ii. Examine Traffic Forecasts for their correctness and adequacy;
- iii. Examine & Analyze CHQ Expenditure and look into the correctness of its apportionment to the particular airport for which tariff is being determined;
- iv. Ensure that the financial model employed is in line with the methodology prescribed by the Authority;
- v. Examine each building block in tariff determination and ensure that the treatment given to it is in line with the Authority's methodology, approach, Studies ;
- vi. Prepare a Consultation Paper working out the Aggregate Revenue Requirement (ARR) of the Operator and incorporate the proposed tariff plan that the Operator has submitted to achieve the ARR;
- vii. Assist the Authority to implement the Tribunal Orders;
- viii. Assist the Authority in holding consultations with the stakeholders and analyze the various suggestions made by the stakeholders;
- ix. Draw up the final version of the Tariff Order for the approval of the Authority;
- x. Assist the Authority in 'Appeals' and 'Legal Cases' against the Orders of the Authority.

It is clarified that each of the tariff proposals need to be considered separately, based on the submissions made therein, as well as other factors that AERA is mandated to consider while determining the aeronautical tariffs, or, as AERA may instruct from time to time.

4. Deliverables and Payment milestone:

In pursuance of this TOR, the Consultant shall undertake/deliver the following deliverables (the “Deliverables”) during the course of this Consultancy.

SNO.	Deliverables	Time Frame for completion of Assignment	Payment Schedule
1.	Submission of initial analysis which includes identification of information gaps	04 Months	10%
2.	Finalisation and issue of Consultation Paper		35%
3.	Assisting AERA in Stakeholder consultation and evaluating Stakeholders’ response		25%
4.	Assisting AERA in determination of Aeronautical Tariffs and issuance of Tariff Orders post stakeholders’ consultation and successful completion of the assignment.		30%

Note -1 : If due to any reason, work / assignment is not completed within the stipulated time, AERA may at its discretion extend the last date of completion of work without any financial implication to AERA. Delay in submission of assignment attributable to the selected consultant firm will make them liable for action(s) given in Para 5 “Liquidated Damages and Penalties.” Decision of AERA in this regard shall be final and binding on the Consultant Firm.

5. Completion of Services

- 5.1 All the deliverables shall be compiled, classified and submitted by the Consultant to the Authority in soft form, to the extent possible. In addition to the soft form, the Consultant is required to submit two hard copies of the reports of each Deliverables.
- 5.2 The documents comprising the Deliverables shall remain the property of AERA and shall not be used by the Consultant for any purpose other than that intended under these Terms of Reference without the permission of AERA.
- 5.3 Each deliverable of the Consultancy shall stand completed on acceptance communicated to the Consultant in writing by AERA. Consultant is not entitled to any payment of the milestones of Deliverables unless the Deliverable is accepted by AERA in writing. Further, AERA may seek clarifications/queries with respect to the Deliverables, which shall be addressed by Consultant within the timelines stipulated by AERA
- 5.4 The period of consultancy services shall be **04 (Four) months** from the date of issue of LOA and shall be completed within the stipulated period.
- 5.5 AERA reserves the right to extend the period of Consultancy beyond the period of 04 (Four) months at its own discretion.

10. SCHEDULE-II

(See Clause 2.9)

Guidance Note on Conflict of Interest

1. This Note further explains and illustrates the provisions of Clause 2.9 of the RFP and shall be read together therewith in dealing with specific cases.
2. Consultants should be deemed to be in a 'conflict of interest' situation if it can be reasonably concluded that their position in a business or their personal interest could improperly influence their judgment in the exercise of their duties. The process for selection of consultants should avoid both actual and perceived conflict of interest.
3. 'Conflict of Interest' may arise between AERA and a Consultant or between Consultants and present or future Concessionaries/ Contractors. Some of the situations that would involve 'conflict of interest' are identified below:
 - (a) Consultants and Concessionaires/Contractors:
 - (i) No Consultant should have an ownership interest or a continuing business interest or an on-going relationship with a potential Concessionaire/ Contractor save and except relationships restricted to project-specific and short-term assignments;
 - (ii) No Consultant should be involved in owning or operating entities resulting from the project; and
 - (iii) No Consultant should bid for works arising from the Project.

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

4. The normal way to identify 'conflict of interest' is through self-declaration by Consultants. Where a conflict exists, which has not been declared, competing companies are likely to bring this to the notice of AERA. All conflicts must be declared as and when the Consultants become aware of them.
5. Another approach towards avoiding a 'conflict of interest' is through the use of "Chinese Walls" to avoid the flow of commercially sensitive information from one part of the Consultant's Company to another. This could help overcome the problem of availability of limited numbers of experts for the Project. However, in reality, effective operation of "Chinese Walls" may be a difficult proposition. As a general rule, larger companies will be more capable of adopting 'Chinese Walls' approach than smaller companies. Although, "Chinese walls" have been relatively common for many years, they are an increasingly discredited means of avoiding 'conflicts of interest' and should be considered with caution. As a rule, "Chinese Walls" should be considered as unacceptable and may be accepted only in exceptional cases upon full disclosure by a Consultant coupled with provision of safeguards to the satisfaction of AERA.
6. Another way to avoid 'conflict of interest' is through the appropriate grouping of tasks. For example, conflicts may arise if Consultants drawing up the terms of reference or the proposed documentation are also eligible for the consequent assignment or project.
7. Another form of 'conflict of interest' called "scope-creep" arises when Consultants advocate either an unnecessary broadening of the terms of reference or make recommendations which are not in the best interests of AERA but which will generate further work for the Consultants. Some

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

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

11. APPENDICES

APPENDIX – I

TECHNICAL BID

Form - 1

(On Applicant's letter head)
(Date and Reference)

To,

Sub: Engagement of Consultants to assist Airports Economic Regulatory Authority of India (AERA) in Determination of Tariffs for Aeronautical Services for Major Airports.

Dear Sir,

With reference to your RFP document dated.....,I/we, having examined all relevant documents and understood their contents, hereby submit our proposal for selection as Consultant for Assistance to Airports Economic Regulatory Authority of India (AERA) for Appraisal of Tariff Proposals and Determination of Tariffs for Aeronautical Services and declare as follows:

1. I, [Name], [Designation], of [Name of the Company], a company incorporated under the Companies Act, 1956/2013, having its CIN [●] and registered office at [●], am a duly authorized representative/signatory of [Name of the Company], authorized vide Board Resolution dated [●] to submit the Proposal in the subject matter for and on behalf of the [Name of the Company].

or

I, [Name], [Designation] of [Name of the Partnership Firm], a Partnership firm, registered under the Indian Partnership Act, 1932 carrying on its business under the name and style as hereinbefore mentioned and having its principal office at [●] and having Registration No.[●]dated[●], am a duly authorized representative/signatory of [Name of the Partnership Firm] to submit the Proposal in the subject matter for and on behalf of the [Name of the Partnership Firm].

or

I, [Name], [Designation] of [Name of the Partnership Firm], a Partnership firm, registered under the Limited Liability Partnership Act, 2008 carrying on its business under the name and style as hereinbefore mentioned and having its principal office at [●]and having Registration No. [●]dated[●], am a duly authorized representative/signatory of [Name of the LLP] to submit the Proposal in the subject matter for and on behalf of the [Name of the LLP].

or

I, [Name], am acting as the sole proprietor of the proprietary firm carrying on its business under the name and style as hereinbefore mentioned and having its principal office at [●].

2. Assistance in Appraisal of Tariff Proposals and Determination of Tariffs for Aeronautical Services at Major Airports. The proposal is unconditional and unqualified.
3. I/We acknowledge that the AERA will be relying on the information provided in the Proposal and the documents accompanying the Proposal for selection of the Consultant, and we certify that all information provided in the proposal and in the Appendices is true and correct, nothing has been omitted which renders such information misleading and all

documents accompanying such proposal are true copies of their respective Originals.

4. This statement is made for the express purpose of appointment as the Consultant for the aforesaid assignment.
5. I/We shall make available to the AERA any additional information it may deem necessary or require for supplementing or authenticating the Proposal.
6. I/We acknowledge the right of the AERA to reject our proposal without assigning any reason or otherwise and hereby waive our right to challenge the same on any account whatsoever.
7. I/We certify that in the last three years, we have neither failed to perform on any contract, as evidenced by imposition of a penalty by an arbitral or judicial authority or a judicial pronouncement or arbitration award against the Applicant, nor been expelled from any assignment or contract nor have had any contract terminated for breach on our part.
8. I/We declare that:
 - I/We have examined and have no reservations against the RFP Documents, including any Addendum issued by the AERA;
 - I/We do not have any 'conflict of interest' in accordance with Clause 2.9 of the RFP Document;
 - I/We have not directly or indirectly or through an agent engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice, in respect of any tender or request for proposal issued by or any agreement entered into with the AERA or any other public sector enterprise or any government, Central or State; and,
 - I/We hereby certify that we have taken steps to ensure that no person acting for us or on our behalf will engage in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice.
9. I/We understand that you may cancel the selection process at any time and that you are neither bound to accept any Proposal that you may receive nor to select the Consultant, without incurring any liability to the Applicants in accordance with Clause 7.1 of the RFP document.
10. I/We certify that in regard to matters other than security and integrity of the country, we have not been convicted by a Court of Law or indicted or adverse orders passed by a regulatory authority which would cast a doubt on our ability to undertake the Consultancy for the Project or which relates to a grave offence that outrages the moral sense of the community.
11. I/We further certify that in regard to matters relating to security and integrity of the country, we have not been charge-sheeted by any agency of the Government or convicted by a Court of Law for any offence committed by us or by any of our Associates.
12. I/We further certify that no investigation by a regulatory authority is pending either against us or Associates or against our CEO/Applicant/Partner/Directors.
13. I/We hereby irrevocably waive any right or remedy which we may have at any stage at law or howsoever otherwise arising to challenge or question any decision taken by AERA in connection with the selection of Consultant or in connection with the selection process itself in respect of the above mentioned assignment.

14. The **EMD of Rs.1,50,000/- (Rupees One Lakh Fifty Thousand only)** in the form of a Demand Draft, one each, separately, for the 02(two) AAI Airports from a Nationalized/Scheduled Bank in India, is attached, in accordance with the RFP document.
15. I/We agree and understand that the proposal is subject to the provisions of the RFP document. In no case, shall I/we have any claim or right of whatsoever nature if the Consultancy for the assignment is not awarded to me/us or our proposal is not opened or rejected.
16. I/We agree to keep this offer valid for 90 (ninety) days from the Proposal Due Date as per Clause 1.4 of the RFP.
17. A Power of Attorney in favor of the Authorized Signatory to sign and submit this proposal and documents is attached herewith in Form 4.
18. In the event of my firm/ company/ corporation being selected as the Consultant, I/we agree to enter into an Agreement with AERA for carrying out the assignment as set out in the RFP.
19. The Financial Bid is being submitted in a separate cover(s). This Technical Bid read with the Financial Bid(s) shall constitute the Application which shall be binding on us.
20. I/We have studied RFP carefully and understand that except to the extent as expressly set forth in the RFP we shall have no claim, right or title arising out of any documents or information provided to us by AERA or in respect of any matter arising out of or concerning or relating to the selection process including the award of Consultancy.
21. I/We agree and undertake to abide by all the terms and conditions of the RFP Document. In witness thereof, I/we submit this Bid under and in accordance with the terms of the RFP Document.

Yours faithfully,

(Signature, name and designation of the Authorized Signatory)
(Name and seal of the Applicant)

*In case the Applicant is unable to provide the certification specified in point 10, it may precede the paragraph by the words viz. "Except as specified in Schedulehereto". The exceptions to the certification or any disclosures relating thereto may be clearly stated in a Schedule to be attached to the Application. AERA will consider the contents of such Schedule and determine whether or not the exceptions/disclosures are material to the suitability of the Applicant for pre-qualification hereunder.

Particulars of the Applicant

1.1	Title of Consultancy: Engagement of Consultants to assist Airports Economic Regulatory Authority of India (AERA) in Determination of Tariffs for Aeronautical Services for AAI Airports of Raipur and Trichy (Major Airports).
1.2	State whether applying as a Sole Proprietorship Firm or Partnership Firm or LLP or Company and provide details of the relevant authorization
1.3	<p>State the following:- Name of the Sole Proprietorship Firm or Partnership Firm or LLP or Company Country of incorporation: Registered address: Year of Incorporation: Year of commencement of business: Principal place of business:</p> <p>Brief description of the Company including details of its main lines of business:- Name, designation, address and phone number of Authorized Signatory of the Applicant: Name: Designation: Company: Address: Phone No.: Fax No.: E-mail address:</p>
1.4	<p>For the Applicant, state the following information: (i) In case of non-Indian Firm, does the Firm have business presence in India? Yes/No If yes, provide the office address(es) in India.</p> <p>(ii) Has the Applicant been penalized by any organization for poor quality of work or breach of contract in the last five years? Yes/No</p> <p>(iii) Has the Applicant ever failed to complete any work awarded to it by any public authority/ entity in last five years? Yes/No</p> <p>(iv) Has the Applicant or any of its Associates been blacklisted by any Government department/Public Sector Undertaking in the last five years? Yes/No</p> <p>(v) Has the Applicant or any of its Associates suffered bankruptcy/insolvency in the last five years? Yes/No</p> <p>Note: If the answer to any of the questions at (ii) to (v) is yes, the Applicant is not eligible for this consultancy assignment.</p>
1.5	<p style="text-align: right;">[Signature, name and designation of the Authorised Signatory] For and on behalf of</p>

Statement of Legal Capacity
(To be forwarded on the letter head of the Applicant)

Ref. Date:
To,

Dear Sir,

Sub: Engagement of Consultants to assist Airports Economic Regulatory Authority of India (AERA) in Determination of Tariffs for Aeronautical Services for AAI Airports of Raipur and Trichy (Major Airports)..

I/We hereby confirm that we, the Applicant, satisfy the terms and conditions laid down in the RFP document.

I/We have agreed that(insert individual's name) will act as our Authorized Representative/will act as the Authorized Representatives of the sole firm/Company on our behalf and has been duly authorized to submit our Proposal.

Further, the authorized signatory is vested with requisite powers to furnish such proposal and all other documents, information or communication and authenticate the same.

Yours faithfully,

(Signature, name and designation of the Authorized Signatory)
For and on behalf of

Power of Attorney

Know all men by these presents, we,(name of firm and address of the registered office) do hereby constitute, nominate, appoint and authorize Mr/Ms.....son/daughter/wife and presently residing at, who is presently employed with us and holding the position of as our true and lawful attorney (hereinafter referred to as the “**Authorized Representatives**”) to do in our name and our behalf, all such acts, deeds and things as are necessary or required in connection with or incidental to the submission of our Proposal for selection as the Consultant for **Engagement of Consultants to assist Airports Economic Regulatory Authority of India (AERA) in Determination of Tariffs for Aeronautical Services for AAI Airports of Raipur and Trichy (Major Airports).**, including but not limited to signing and submission of all applications, proposals and other documents and writings, participating in pre-bid and other conferences and providing information/responses to the AERA, representing us in all matters before the AERA, signing and execution of all contracts and undertakings/declarations consequent to acceptance of our proposal and generally dealing with the AERA in all matters in connection with or relating to or arising out of our Proposal for the said Project and/or upon award thereof to us till the execution of appropriate Agreement/s with the AERA.

AND, we do hereby agree to ratify and confirm all acts, deeds and things lawfully done or caused to be done by our said Authorized Representatives pursuant to and in exercise of the powers conferred by the instant deed of Power of Attorney and that all acts, deeds and things done by our said Authorized Representative in exercise of the powers hereby conferred shall always be deemed to have been done by us.

IN WITNESS WHEREOF WE,THE ABOVE NAMED PRINCIPAL HAVE EXECUTED THIS POWER OF ATTORNEY ON THIS DAY OF, 20**

For
(Signature, name, designation and address)

Witnesses :

- 1.
- 2.

Notarised

Accepted

.....
(Signature, name, designation and address of the Attorney)

Notes:

The mode of execution of the Powers of Attorney should be in accordance with the procedure, if any, laid down by the applicable law and the charter documents of the executants (s) and when it is so required the same should be under common seal affixed in accordance with the required procedure. The Power of Attorney should be executed on a non-judicial stamp paper of Rs. 50 and duly notarized by a notary public.

Wherever required, the Applicant should submit for verification the extract of the charter documents and other documents such as a resolution/power of attorney in favour of the person executing this Power of Attorney for the delegation of power hereunder on behalf of the Applicant.

For a Power of Attorney executed and issued overseas, the document will also have to be legalized by the Indian Embassy and notarized in the jurisdiction where the Power of Attorney is being issued. However, Applicants from countries that have signed the Hague Legislation Convention, 1961 need not get their Power of Attorney legalized by the Indian Embassy if it carries a conforming Apostille certificate.

Financial Capacity of the Applicant
(Refer Clause 2.6.1(j))

S. No.	Financial Year	Professional Fees from Consultancy Services (Figures in INR)
1		
2		
3		

Certificate from the Statutory Auditor

This is to certify that (name of the Applicant) had a turnover, as shown above, against the respective years on account of professional fees for providing advisory or consultancy to its clients.

Name of the Authorized Signatory:

Designation:

Name of the Audit firm:

(Signature of the Authorized Signatory of the Statutory Auditor)
Seal of the Firm

Note:

- ❖ Please do not attach any printed Annual Financial Statement.
- ❖ In case the Applicant does not have a statutory auditor, it shall provide the certificate from its chartered accountant that ordinarily audits the annual accounts of the Applicant.

Particulars of Aviation Expert

S. No.	Whether Employee or Consultant.	Name	Educational Qualification	Length of Professional Experience			Experience in eligible assignments	Proposed Deployment of the Aviation Expert in the Current Assignment
					Name of the Organization of employment of Aviation Expert	Employed Since		
1								

Particulars of Key Personnel

S. No.	Designation of Key Personnel	Name	Educational Qualification	Length of Professional Experience			Experience in eligible assignments	Proposed Deployment of the Key Personnel in the Current Assignment
					Name of Firm	Employed Since		
1								
2								

Proposed Methodology and Work Plan

The proposed methodology and work plan shall be described as follows:

1. Understanding of Assignment / Project (not more than two pages)

The Applicant shall clearly state its understanding of the Assignment / Project and also highlight its important aspects. The Applicant may supplement various requirements of the assignment/project and also make precise suggestions if it considers this would bring more clarity and assist in achieving the Objectives laid down in the assignment/project.

2. Methodology and Work Plan (not more than three pages)

The Applicant will submit its methodology for carrying out this assignment, outlining its approach toward achieving the objectives of the assignment. The Applicant will submit a brief write up on its proposed team and organization of personnel explaining how different areas of expertise needed for this assignment have been fully covered by its proposal. The Applicant should specify the sequence and locations of important activities, and provide a quality assurance plan for carrying out the Consultancy Services.

Note: Marks will be deducted for writing lengthy and out of context responses.

Experience of the Applicant
(Refer Clause 2.6.1(b))

S.No.	Name/Details of the Assignments (providing the scope of work conducted)	Year of Assignment
1		

Experience of Key Personnel

[Refer to Clause 2.6]

Name and experience of the Key Personnel:

Designation:

S.No.	Name of the Project / Assignment	Name of firm for which the Key Personnel worked	Designation of the Key Personnel on the project	Date of Completion of project assignment	Man days spent
1					
2					
3					
4					
5					
6					
7					
8					

@ Use separate Form for the Team Leader and each of the Sector Experts.

Curriculum Vitae (CV) of Key Personnel (i.e. Team Leader and atleast 2 Sector Experts)

1. Proposed Position:
2. Name of Personnel:
3. Date of Birth:
4. Nationality:
5. Educational Qualifications:
6. Employment Record:
(Starting with present position, list in reverse order every employment held.)
7. List of projects on which the Personnel has worked
Project Name Description of assignment performed
8. Details of the current assignment and the time duration for which services are required for the current assignment.

Certification:

1. I am willing to work on the assignment/ project and I will be available for the entire duration of the Consultancy assignment as required.
2. I, the undersigned, certify that to the best of my knowledge and belief, this CV correctly describes myself, my qualifications and my experience.
3. I shall maintain full confidentiality with respect to the material, information, document, etc. as may be made available to me during the proposed assignment.

(Signature and name of the Professional)
Place.....

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

Note:

1. Use separate form for each Key Personnel.
2. Each page of the CV shall be signed in ink by the Personnel concerned and by the Authorized Representative of the Applicant firm along with the seal of the firm. Photocopies will not be considered for evaluation.

FINANCIAL BID
Covering Letter
(On Applicant's letter head)

(Date and Reference)

To,

Dear Sir,

Sub: RFP No. 03/2019-20 for Engagement of Consultant to assist Airports Economic Regulatory Authority of India (AERA) in Determination of Tariffs for Aeronautical Services for AAI Airports of Raipur and Trichy (Major Airports).

I/ We, _____ (Applicant's name) herewith enclose the Financial Bid for selection of my/our firm as Consultant for above subject.

I/We agree that this offer shall remain valid for a period of 90 (ninety) days from the proposal due date or such further period as may be mutually agreed upon.

Yours faithfully,

(Signature, name and designation of the Authorized Signatory)

Note: The Financial Bid is to be submitted strictly as per forms given in the RFP.

RFP No. 03/2019-20 for Engagement of Consultants to assist Airports Economic Regulatory Authority of India (AERA) in Determination of Tariffs for Aeronautical Services for AAI Airports of Raipur and Trichy (Major Airports).

FORMAT FOR FEE QUOTE

Name of the Airport Operator	Amount in Rs. (in figures) (<u>Excluding applicable taxes and levies</u>).	Amount in Rs. (in words) (<u>Excluding applicable taxes and levies</u>).
AAI Raipur Airport		
AAI Trichy Airport		

(To be signed by the authorized signatory)

NAME & DESIGNATION

AGREEMENT

Engagement of Consultants to assist Airports Economic Regulatory Authority of India (AERA) in Determination of Tariffs for Aeronautical Services for AAI Airports of Raipur and Trichy (Major Airports).

AGREEMENT No. _____

This agreement (hereinafter called the “**Agreement**”) is made on the _____ of the month of _____ 2020, between, on the one hand, the Secretary, Airports Economic Regulatory Authority of India (hereinafter called the “**Authority**” or “**AERA**”, which expression shall, include their respective successors and permitted assigns, unless the context otherwise requires) and, on the other hand, _____ (hereinafter called the “**Consultant**”, which expression shall, include their respective successors and permitted assigns).

WHEREAS

- (A) The Authority vide its Request for Proposal (RFP No.03/2019-20 dated 13.12.2019) (“**RFP**”) for Appointment of Consultant to assist AERA in determination of tariffs for aeronautical services at major airport’s (hereinafter called the “**Consultancy**”) invited proposals from applicants possessing the requisite experience and capabilities required for undertaking this consultancy;
- (B) The Consultant submitted its proposal for the aforesaid work, whereby the Consultant represented to the Authority that it had the required professional skills, and in the said proposal the Consultant also agreed to provide the Services to the Authority on the terms and conditions as set forth in the RFP read together with the clarifications issued by the Authority and this Agreement;
- (C) The Authority, on acceptance of the aforesaid proposal of the Consultant, awarded the Consultancy to the Consultant vide its Letter of Award dated _____ (the “**LOA**”); and
- (D) In pursuance of the LOA, the parties have agreed to enter into this Agreement. NOW, THEREFORE, the parties hereto hereby agree as follows:

1. GENERAL

1.1 Definitions and Interpretation

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

- (a) **“Agreement”** means this Agreement, together with all the Annexures;
- (b) **“Agreement Value”** shall have the meaning set forth in Clause 6.1;
- (c) **“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;
- (d) **“Confidential Information”** shall have the meaning set forth in Clause 3.3;
- (e) **“Conflict of Interest”** shall have the meaning set forth in Clause 3.2 read with the provisions of RFP;
- (f) **“Dispute”** shall have the meaning set forth in Clause 9.2.1;
- (g) **“Effective Date”** means the date on which this Agreement comes into force and effect pursuant to Clause 2.1;
- (h) **“Government”** means the Government of India.
- (i) **“INR, Re. or Rs.”** means Indian Rupees;
- (j) **“Party” or “Parties”** means the Authority or the Consultant, individual and collectively means Parties;
- (k) **“Key Personnel”** means the Team Leader and Sector Experts read with the provisions of Clause 2.6.1 of the RFP;
- (l) **“RFP”** means the Request for Proposal (RFP No.03/2019-20) dated 13.12.2019 document in response to which the Consultant’s proposal for providing Services was accepted;
- (m) **“Services”** means the work to be performed by the Consultant pursuant to this Agreement, as described in the Terms of Reference hereto;
- (n) **“Sector Experts”** means the personnel who will bring in experience, particularly in the field of Aviation, Financial Analysis, Econometric Modeling & Forecast & Data Base Management;
- (o) **“Team Leader”** means the personnel who will lead, co-ordinate and supervise the team for the Consultancy and shall be responsible for the timely, efficient and satisfactory delivery of services in relation to the Consultancy; and

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

1.1.2 The following documents along with clarifications 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) Annexures of Agreement;
- (c) RFP and clarifications issued by the Authority pursuant thereof; and
- (d) Letter of Award

1.2 Relation between the Parties

Nothing contained herein shall be construed as establishing a relation of master and servant or of agent and principal as between the Authority and the Consultant. The Consultant shall, subject to this Agreement, have complete charge of Key Personnel performing the Services and shall be fully responsible for the Services performed by them or on their behalf hereunder.

1.3 Rights and obligations

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

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

1.4 Governing law and jurisdiction

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

1.5 Language

All notices required to be given by one Party to the other Party and all other communications, documentation and proceedings which are in any way relevant to this Agreement shall be in writing and in English language.

1.6 Table of contents and headings

The table of contents, headings or sub-headings in this Agreement are for convenience of reference only and shall not be used in, and shall not affect, the construction or interpretation of this Agreement.

1.7 Notices

Any notice or other communication to be given by any Party to the other Party under or in connection with the matters contemplated by this Agreement shall be in writing and shall:

- (a) in the case of the Consultant, be given by email and by letter delivered by hand to the address given and marked for attention of the Consultant's Representative set out below in Clause 1.9 or to such other person as the Consultant may from time to time designate by notice to the Authority; provided that notices or other communications to be given to an address outside India specified in Sub clause (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 facsimile or email to the number/ address as the Consultant may from time to time specify by notice to the Authority;
- (b) in the case of the Authority, be given by email 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 1.9 or to such other person as the Authority may from time to time designate by notice to the Consultant; provided that if the Consultant does not have an office in the same city (Delhi) as the Authority's office, it may send such notice by facsimile or email 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. It shall be deemed to have been delivered on the actual date and time of the delivery; provided that in the case of facsimile or email, it shall be deemed to have been delivered on the working days following the date of its delivery.

1.8 Location

The Services shall be performed, delivered at the offices of the Authority or any other place of the Authority as required, in accordance with the provisions of RFP and at such locations as are incidental thereto, including the offices of the Consultant.

1.9 Authorized Representatives

1.9.1 Any action required or permitted to be taken, and any document required or permitted to be executed, under this Agreement by the Authority or the Consultant, as the case may be, may be taken or executed by the officials specified in this Clause 1.9.

1.9.2 The Authority may, from time to time, designate one of its officials as the Authority Representative. Unless otherwise notified, the Authority Representative shall be:

Deputy Chief
Airports Economic Regulatory Authority of India
AERA Building,
Administrative Complex,
Safdarjung Airport,
New Delhi- 110003
Tel: +91 11 24695040
Fax: +91 11 24695039

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

1.10 Taxes and duties

Unless otherwise specified in the Agreement, the Consultant shall pay statutory taxes as may be levied under the Applicable Laws and the Authority shall pay the same to the Consultant as per actuals.

2. COMMENCEMENT, COMPLETION AND TERMINATION OF AGREEMENT

2.1 Effectiveness of Agreement

This Agreement shall come into force and effect from the date of LOA or from the actual date of handing the assignment proposal received from Airport Operators/ ISPs by AERA to the Consultant, whichever is later (the “**Effective Date**”).

2.2 Commencement of Services

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

2.3 Termination of Agreement for failure to Commence Services

If the Consultant does not commence the Services within the period specified in Clause 2.2 above, the Authority may, by not less than 1 (one) weeks’ notice to the Consultant, declare this Agreement to be null and void, and in the event of such a declaration, this Agreement shall stand terminated and the Consultant shall be deemed to have accepted such termination.

2.4 Validity of Agreement

Unless terminated earlier pursuant to Clause 2.9 hereof, the agreement shall be valid for a period of 12 months from the date of LOA. However, AERA reserves the right to extend the period in its own discretion.

2.5 Entire Agreement

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

2.5.2 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.

2.6 Modification of Agreement

Modification of the terms and conditions of this Agreement, including any modification of the scope of the Services, may only be made by written agreement between the Parties.

2.7 Force Majeure

2.7.1 Definition

- (a) For the purposes of this Agreement, “Force Majeure” means an event which is beyond the reasonable control of a Party, and which makes a Party’s

performance of its obligations hereunder impossible or so impractical as reasonably to be considered impossible in the circumstances, and includes, but is not limited to, war, riots, civil disorder, earthquake, fire, explosion, storm, flood or other adverse weather conditions, strikes, lockouts or other industrial action (except where such strikes, lockouts or other industrial action are within the power of the Party invoking Force Majeure to prevent), confiscation or any other action by government agencies.

- (b) Without prejudice to the generality of clause (a) above, it is specifically clarified that Force Majeure shall not include (i) any event which is caused by the negligence or intentional action of a Party or agents or employees, nor (ii) any event which a diligent Party could reasonably have been expected to both (A) take into account at the time of the conclusion of this Agreement, and (B) avoid or overcome in the carrying out of its obligations hereunder.
- (c) Force Majeure shall not include insufficiency of funds or failure to make any payment required hereunder.

2.7.2 No breach of Agreement

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

2.7.3 Measures to be taken

- (a) A Party affected by an event of Force Majeure shall take all reasonable measures to remove such Party's inability to fulfil its obligations hereunder with a minimum of delay.
- (b) A Party affected by an event of Force Majeure shall notify the other Party of such event as soon as possible, and in any event not later than 7 (seven) days following the occurrence of such event, providing evidence of the nature and cause of such event, and shall similarly give notice of the restoration of normal conditions as soon as possible.
- (c) The Parties shall take all reasonable measures to minimize the consequences of any event of Force Majeure.

2.7.4 Extension of time/Termination of Services

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, to be decided at the sole discretion of the Authority.

Not later than fifteen (15) days after the Consultant has, as the result of an event of Force Majeure, become unable to perform a material portion of the Services, the Authority will be at liberty to terminate the Agreement and award the same to another party.

2.7.5 Payments

During the period of its inability to perform the Services as a result of an event of Force Majeure, the Consultant shall be entitled to be reimbursed for additional costs reasonably and necessarily incurred by it during such period for the purposes of the Services and in reactivating the Services after the end of such period.

2.7.6 Consultation

Not later than 30 (thirty) days after the Consultant has, as the result of an event of Force Majeure, become unable to perform a material portion of the Services, the Parties shall consult with each other with a view to agreeing on appropriate measures to be taken in the circumstances.

2.8 Suspension of Agreement

Notwithstanding any other clause in this Agreement, the Authority may, by written notice of suspension to the Consultant, suspend all payments to the Consultant hereunder if the Consultant shall be in breach of this Agreement or shall fail to perform any of its obligations under this Agreement, including the carrying out of the Services; provided that such notice of suspension (i) shall specify the nature of the breach or failure, and (ii) shall provide an opportunity to the Consultant to remedy such breach or failure within a period not exceeding 15 (fifteen) days after receipt by the Consultant of such notice of suspension.

2.9 Termination of Agreement

2.9.1 By the Authority

The Authority may, by not less than 15 (fifteen) days' written notice of termination to the Consultant, such notice to be given after the occurrence of any of the events specified in this Clause 2.9.1, terminate this Agreement if:

- (a) the Consultant fails to remedy any breach hereof or any failure in the performance of its obligations hereunder, as specified in a notice of suspension pursuant to Clause 2.8 hereinabove, within 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 Consultant becomes insolvent or bankrupt or enters into any agreement with its creditors for relief of debt or take advantage of any law for the benefit of debtors or goes into liquidation or receivership whether compulsory or voluntary;
- (c) the Consultant fails to comply with any final decision reached as a result of arbitration proceedings pursuant to Clause 9 hereof;
- (d) the Consultant submits to the Authority a statement which has a material effect on the rights, obligations or interests of the Authority and which the Consultant knows to be false;
- (e) any document, information, data or statement submitted by the Consultant in its Proposals, based on which the Consultant was considered eligible or successful, is found to be false, incorrect or misleading;

- (f) as the result of Force Majeure, the Consultant is unable to perform a material portion of the Services for a period of not less than 15 (fifteen) days;
- (g) a situation of conflict of interest as set out in Clause 2.9 of the RFP and Clause 3.2 of this Agreement;
- (h) the Authority, in its sole discretion and for any reason whatsoever, decides to terminate this Agreement.

2.9.2 By the Consultant

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

- (a) the Authority fails to pay any money due to the Consultant pursuant to this Agreement and not subject to dispute pursuant to Clause 9 hereof within 45 (forty five) days after receiving written notice from the Consultant that such payment is overdue;
- (b) the Authority is in material breach of its obligations pursuant to this Agreement and has not remedied the same within 45 (forty-five) days (or such longer period as the Consultant may have subsequently granted in writing) following the receipt by the Authority of the Consultant's notice specifying such breach in question, the manner in which such breach has affected the performance of the Services of the Consultant under this Agreement and the action required from the Authority with regard to such breach;
- (c) as the result of the Force Majeure, the Consultant is unable to perform a material portion of the Services for a period of not less than 60 (sixty) days; or
- (d) the Authority fails to comply with any final decision reached as a result of arbitration pursuant to Clause 9 hereof.

2.9.3 Cessation of rights and obligations

Upon termination of this Agreement pursuant to Clauses 2.3 or 2.9 hereof, or upon expiration of this Agreement pursuant to Clause 2.4 hereof, all rights and obligations of the Parties hereunder shall cease, except (i) such rights and obligations as may have accrued on the date of termination or expiration, or which expressly survives such Termination; (ii) the obligation of confidentiality set forth in Clause 3.3 hereof; (iii) any right or remedy which a Party may have under this Agreement or the Applicable Laws.

2.9.4 Cessation of Services

Upon termination of this Agreement by notice of either Party to the other pursuant to Clauses 2.9.1 or 2.9.2 hereof, the Consultant shall, immediately upon dispatch or receipt of such notice, take all necessary steps to bring the Services to a close in a prompt and orderly manner without causing any detrimental effect to the work/service in question and shall make every reasonable effort to keep expenditures for this purpose to a minimum. With respect to documents prepared by the Consultant and materials furnished by the Authority, the Consultant shall proceed as provided respectively by Clauses 3.8 or 3.9 hereof. Further, the Consultant agrees to render all assistance to the Authority in this regard.

2.9.5 Payment upon Termination

Upon termination of this Agreement pursuant to Clauses 2.9.1 or 2.9.2 hereof, the Authority shall make the necessary payments to the Consultant after offsetting against these payments any amount that may be due from the Consultant to the Authority having due regard to the completed milestones or deliverable by the Consultant.

2.9.6 Disputes about Events of Termination

If either Party disputes whether an event specified in Clause 2.9.1 or in Clause 2.9.2 hereof has occurred, such Party may, within 30 (thirty) days after receipt of notice of termination from the other Party, refer the matter to arbitration pursuant to Clause 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. However, the provisions of this Clause 2.9.6 will not affect the right of the Authority to initiate the process for fresh award of this Agreement or to award this Agreement to some other Consultant.

3. OBLIGATIONS OF THE CONSULTANT

3.1 General

3.1.1 Standards of Performance

The Consultant shall perform the Services and carry out its obligations hereunder with all due diligence, efficiency and economy, in accordance with generally accepted professional techniques and practices, and shall observe sound management practices, and employ appropriate advanced technology and safe and effective equipment, machinery, materials and methods. The Consultant shall always act, in respect of any matter relating to this Agreement or to the Services, as a faithful adviser to the Authority, and shall at all times support and safeguard the Authority's legitimate interests.

3.1.2 Terms of Reference

The scope of Services to be performed by the Consultant is specified in the Terms of Reference (the “TOR”) at Annexure-I of this Agreement. The Consultant shall provide the Deliverables specified therein in conformity with the time schedule stated therein.

3.1.3 Applicable Laws

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

3.2 Conflict of Interest

3.2.1 The Consultant shall not have a Conflict of Interest and any breach hereof shall constitute a breach of the Agreement making this Agreement liable to termination at the behest of the Authority.

3.2.2 Prohibition of conflicting activities

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

- (a) during the term of this Agreement and a period of thereafter, engage with the Airport Operator and Concessionaires/ ISPs for Raipur and Tirchy Airports in any audit/ consulting/ advisory services amounting to conflict with the activities assigned to them under this Agreement;
- (b) in case the bidder deals with statutory audit/ advisory services on tariff matter of Raipur and Tirchy Airports, it shall be treated as direct conflict of interest;
- (c) at any time, such other activities as have been specified in the RFP as Conflict of Interest.

Note: Decision of the Authority on defining any activity as breach of Agreement, and/ or conflict of interest shall be final and binding on the consultant.

3.2.3 **Consultant not to benefit from commissions, discounts, etc.**

The remuneration of the Consultant pursuant to Clause 6 hereof shall constitute the Consultant's sole remuneration in connection with this Agreement or the Services and the Consultant shall not accept for its own benefit any trade commission, discount or similar payment in connection with activities pursuant to this Agreement or to the Services or in the discharge of its obligations hereunder, and the Consultant shall use its best efforts to ensure that the Key Personnel, similarly shall not receive any such additional remuneration.

3.2.4 The Consultant and its Key Personnel, employees, officers, agents, and advisors 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 "**Prohibited Practices**"). Notwithstanding anything to the contrary contained in this Agreement, the Authority shall be entitled to terminate this Agreement forthwith by a communication in writing to the Consultant, without being liable in any manner whatsoever to the Consultant, if it determines that the Consultant has, directly or indirectly or through an agent, engaged in any Prohibited Practices in the Selection Process or before or after entering into of this Agreement. In such an event, the Authority shall forfeit and appropriate the Performance Guarantee, as genuine pre-estimated compensation and damages payable to the Authority towards, inter alia, time, cost and effort of the Authority, without prejudice to the Authority's any other rights or remedy hereunder or in law.

3.2.5 Without prejudice to the rights of the Authority under Clause 3.2.4 above and the other rights and remedies which the Authority may have under this Agreement, if the Consultant is found by the Authority to have directly or indirectly or through an agent, engaged or indulged in any Prohibited Practices, during the Selection Process or before or after the execution of this Agreement, the Consultant shall not be eligible to participate in any tender or RFP issued during a period of 2 (two) years from the date the Consultant is found by the Authority to have directly or indirectly or through an agent, engaged or indulged in any Prohibited Practices.

3.2.6 For the purposes of Clauses 3.2.4 and 3.2.5, the following terms shall have the meaning hereinafter respectively assigned to them:

- (a) "**corrupt practice**" means the offering, giving, receiving or soliciting, directly or indirectly, of anything of value to influence the actions of any person

connected with the Selection Process (for removal of doubt, offering of employment or employing or engaging in any manner whatsoever, directly or indirectly, any official of the Authority who is or has been associated in any manner, directly or indirectly with Selection Process or LOA or dealing with matters concerning the Agreement before or after the execution thereof, at any time prior to the expiry of one year from the date such official resigns or retires from or otherwise ceases to be in the service of the Authority, shall be deemed to constitute influencing the actions of a person connected with the Selection Process); or (ii) engaging in any manner whatsoever, whether during the Selection Process or after the issue of LOA or after the execution of the Agreement, as the case may be, any person in respect of any matter relating to the Project or the LOA or the Agreement, who at any time has been or is a legal, financial or technical adviser the Authority in relation to any matter concerning the Project

- (b) “**fraudulent practice**” means a misrepresentation or omission of facts or suppression of facts or disclosure of incomplete facts, in order to influence the Selection Process;
- (c) “**coercive practice**” means impairing or harming, or threatening to impair or harm, directly or indirectly, any person or property to influence any person’s participation or action in the Selection Process or the exercise of its rights or performance of its obligations by the Authority under this Agreement;
- (d) “**undesirable practice**” means (i) establishing contact with any person connected with or employed or engaged by the Authority with the objective of canvassing, lobbying or in any manner influencing or attempting to influence the Selection Process; or (ii) having a Conflict of Interest; and
- (e) “**restrictive practice**” means forming a cartel or arriving at any understanding or arrangement among Applicants with the objective of restricting or manipulating a full and fair competition in the Selection Process.

3.3 Confidentiality

The Consultant and its Key Personnel shall not, either during the term or within two years after the expiration or termination of this Agreement disclose any proprietary information, including information relating to reports, data, drawings, design software or other material, whether written or oral, in electronic or magnetic format, and the contents thereof; and any reports, digests or summaries created or derived from any of the foregoing that is provided by the Authority to the Consultant, its Key Personnel; any information provided by or relating to the Authority, its technology, technical processes, business affairs or finances or any information relating to the Authority’s employees, officers or other professionals or suppliers, customers, or contractors of the Authority; and any other information which the Consultant is under an obligation to keep confidential in relation to the Project, the Services or this Agreement (“**Confidential Information**”), without the prior written consent of the Authority.

Notwithstanding the aforesaid, the Consultant, its Key Personnel or either of them may disclose, with prior written approval of the Authority, Confidential Information to the extent that such Confidential Information :

- (a) was in the public domain prior to its delivery to the Consultant, its Key Personnel or becomes a part of the public knowledge from a source other than the Consultant, its Key Personnel;
- (b) was obtained from a third party with no known duty to maintain its confidentiality;

- (c) is required to be disclosed by Applicable Laws or judicial or administrative or arbitral process or by any governmental instrumentalities, provided that for any such disclosure, the Consultant, its Key Personnel shall give the Authority, prompt written notice, and use reasonable efforts to ensure that such disclosure is accorded confidential treatment; and
- (d) is provided to the professional advisers, agents, auditors or representatives of the Consultant or its Key Personnel, as is reasonable under the circumstances; provided, however, that the Consultant or Key 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.

Subject to the confidentiality obligations above, the Consultant shall be allowed to use this engagement as an experience citation with other clients.

3.4 Liability of the Consultant

- 3.4.1 The Consultant's liability under this Agreement shall be determined by the Applicable Laws and the provisions hereof.
- 3.4.2 The Consultant shall, subject to the limitation specified in Clause 3.4.3, be liable to the Authority for any direct loss or damage accrued or likely to accrue due to deficiency in Services rendered by it.
- 3.4.3 The Parties hereto agree that in case of delay, error, variation, negligence or willful misconduct on the part of the Consultant or Key Personnel or on the part of any person or firm acting on behalf of the Consultant in carrying out the Services, the Consultant, with respect to damage caused to the Authority's property, shall be liable to the Authority not exceeding an amount equal to 1% (one percent) of the total value of the Contract per week, subject to a maximum of 10% (ten percent) of the total value of the Contract. AERA will take into consideration the reasons for delay, error or variation, if any, while imposing liquidated damages on the selected applicant. However, in the event of delay caused due to reasons beyond the control of the Consultant, AERA may, in its sole discretion, consider granting of appropriate extension of time, without imposition of Liquidated Damages/ Compensation for Delay.
- 3.4.4 In addition to the above Clause 3.3.3, the Consultant may be censured and/ or debarred for deficiencies on its part in completion of the consultancy assignment.

3.5 Consultant's actions requiring the Authority's prior approval

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

- (a) Appointing such members of the professional Key Personnel as are not listed in Annexure-II; or
- (b) Any other action that is specified in this Agreement.

3.6 Reporting obligations

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

3.7 Documents prepared by the Consultant to be property of the Authority

- 3.7.1 All reports and other documents (collectively referred to as “**Consultancy Documents**”) prepared by the Consultant (or any Third Party) in performing the Services shall become and remain the property of the Authority, and all Intellectual Property Rights in such Consultancy Documents shall vest with the Authority. Any Consultancy Document, of which the ownership or the Intellectual Property Rights do not vest with the Authority under law, shall automatically stand assigned to the Authority as and when such Consultancy Document is created and the Consultant agrees to execute all papers and to perform such other acts as the Authority may deem necessary to secure its rights herein assigned by the Consultant.
- 3.7.2 The Consultant shall, not later than termination or expiration of this Agreement, deliver all Consultancy Documents to the Authority, together with a detailed inventory thereof. The Consultant may retain a copy of such Consultancy Documents. The Consultant, or a Third Party shall not use these Consultancy Documents for purposes not related to this Agreement without the prior written approval of the Authority.
- 3.7.3 The Consultant shall hold the Authority harmless and indemnified for any losses, claims, damages, expenses (including all legal expenses), awards, penalties or injuries (collectively referred to as “**Claims**”) which may arise from or due to any unauthorized use of such Consultancy Documents, or due to any breach or failure on part of the Consultant or a Third Party to perform any of its duties or obligations in relation to securing the aforementioned rights of the Authority.

3.8 Materials furnished by the Authority

Materials made available to the Consultant by the Authority shall be the property of the Authority and shall be marked accordingly. Upon termination or expiration of this Agreement, the Consultant 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. The Consultant would be allowed to retain a copy of its working papers to maintain a professional record of its involvement in the engagement and to comply with applicable legal and regulatory requirements. Also, it is appreciated that it may not be possible for the Consultant to permanently dispose-off all information so furnished (for instance in terms of information embodied in project related emails). In all cases, the Consultant shall be responsible for not using such information for purposes unrelated to this Agreement without the prior written approval of the Authority.

3.9 Accuracy of Documents

The Consultant 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 Consultancy, if such inaccuracy is the result of any negligence or inadequate due diligence on part of the Consultant or arises out of its failure to conform to good industry practice. The Consultant shall also be responsible for promptly correcting, at its own cost and risk, the documents including any re-survey / investigations.

3.10 Providing access to the Consultant Office and Key Personnel

The Consultant shall ensure that the Authority, and, officials of the Authority having authorization from the Authority, are provided unrestricted access to the Consultant's Office, and, to all Key Personnel during office hours. The Authority's any such official shall have the right to inspect the Services in progress, interact with relevant Key Personnel of the Consultant and verify the record of their satisfaction.

4. CONSULTANT'S KEY PERSONNEL

4.1 General

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

4.2 Deployment of Key Personnel

The designations, names, and, other particulars of each of the Consultant's Key Personnel required in carrying out the Services are described in Annexure-II of this Agreement.

4.3 Approval of Key Personnel

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

4.4 Substitution of Key Personnel

If the Consultant hereafter proposes to engage any person as professional Key Personnel, it shall submit to the Authority its proposal along with a CV of such person in the form provided at Appendix-I (Form 10) of the RFP. The Authority may approve or reject such proposal with 14 (fourteen) days of receipt thereof. In case the proposal is rejected, the Consultant may propose an alternative person for the Authority's consideration. In the event the Authority does not reject a proposal with 14 (fourteen) days of the date of receipt thereof under this Clause 4.4, it shall be deemed to have been approved by the Authority.

Notwithstanding the above, the Authority expects all the Key Personnel specified in the Proposal to be available during implementation of the Agreement. Since the qualifications and profile of the Key Personnel is the sole ground of consideration of this Agreement, it is agreed by the Parties that substitution of Key Personnel shall not be permitted. Substitution will, however, be permitted if the Key Personnel is not available for reasons of any incapacity or due to ill health, subject to equally or better qualified and experienced Key Personnel being provided to the satisfaction of AERA. Such substitution shall be limited to only one Key Personnel. AERA expects all the Key Personnel to be available during implementation of the Agreement.

Substitution of the Team Leader will normally not be considered, except in case of death or incapacitation due to accident, illness etc., and, may lead to disqualification of the Applicant or termination of the Agreement.

4.5 The Consultant shall be liable to the Authority for any costs or effect of or damage to the performance of services to the Authority or any other event of loss or damage incurred or likely to be incurred by the Authority, if any during such period of substitution of the Key Personnel, or as a result thereof.

4.6 Team Leader

The person designated as the Team Leader of the Consultant's Key Personnel shall be responsible for the coordinated, timely and efficient functioning of the Key Personnel. In addition, he shall be responsible for day to day performance of the services, as specified in Clause 2.6.1 of the RFP.

5. OBLIGATIONS OF THE AUTHORITY

5.1 Assistance in clearances etc.

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

- (a) provide the Consultant, its Key Personnel with work permits and such other documents as may be necessary to enable the Consultant, its Key Personnel to perform the Services; and
- (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.

The Authority shall assist in arranging meetings / interactions / consultations with stakeholders, setting out the context and expectations from stakeholder. In this regard, the Authority may issue such advisories to stakeholders, as may be necessary, for provision of required data, information or responses on consultations to the Consultant.

5.2 Access to Major Airports in connection with the Services

The Authority shall make best efforts to ensure that the Consultant have unimpeded access to the Major Airports in respect of which access is required for the performance of Services.

5.3 Payment

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

5.4 Change in Applicable Law

TDS on consultancy fees shall be deducted and statutory taxes shall be payable by the Authority as per the applicable laws.

6. PAYMENT TO THE CONSULTANT

6.1 Agreement Value

An abstract of the cost of the Services payable to the Consultant is set forth in Annexure-III of the Agreement. The payments under this Agreement shall not exceed the agreement value specified herein (the “**Agreement Value**”). The Parties agree that the Agreement Value is Rs. _____ (Rupees _____ only).

6.2 Currency of payment

All payments shall be made in Indian Rupees.

6.3 Mode of billing and payment

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

- (a) The Consultant shall be paid for its services as per the Payment Schedule at Annexure-IV of this Agreement, subject to the Consultant fulfilling the following conditions:
 - (i) No payment shall be due for the next stage till the Consultant completes to the satisfaction of the Authority the work pertaining to the preceding stage.
 - (ii) The Authority shall pay to the Consultant, only the undisputed amount.
- (b) The Authority shall cause the payment due to the Consultant to be made within 21 (twenty one) 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 (“**Deliverables**”) shall have been submitted by the Consultant and approved as satisfactory by the Authority. The Services shall be deemed completed and finally accepted by the Authority and the Deliverables shall be deemed approved by the Authority as satisfactory upon expiry of 90 (ninety) days after receipt of the Deliverables by the Authority unless the Authority, within such 90 (ninety) day period, gives written notice to the Consultant specifying in detail, the deficiencies in the Services or the Deliverables. The Consultant shall thereupon promptly make any necessary corrections and/or additions, and upon completion of such corrections, the foregoing process shall be repeated. All the Deliverables shall be compiled, classified and submitted by the Consultant to the AERA in soft form, to the extent possible. In addition to the soft form, the Consultant is required to submit two hard copies of the reports of each Deliverables.
- (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 Consultant to the Authority within 30 (thirty) days after receipt by the Consultant of notice thereof. Any such claim by the Authority for reimbursement must be made within 1 (one) year after receipt by the Authority of the Deliverables in accordance with Clause 6.3(c). Any delay by the Consultant in reimbursement by the due date shall attract simple interest @ 10% (ten percent) per annum.
- (e) Any such claim by the Authority for reimbursement must be made within 1 (one) year after receipt by the Authority of the Deliverables in accordance with Clause 6.3 (c).
- (f) All payments under this Agreement shall be made to the account of the Consultant as may be notified to the Authority by the Consultant.

7. PERFORMANCE GUARANTEE

7.1 Performance Guarantee

7.1.1 For the purposes of this Agreement, Performance Guarantee shall be deemed to be an amount equal to 10% (ten per cent) of the Agreement Value (the “Performance Guarantee”). The Consultant shall be required to provide a Performance Guarantee in the form of a Bank Guarantee issued by a nationalized bank or a scheduled bank in India (Bank as defined under section 2(e) of the Reserve Bank of India Act, 1934).

7.1.2 Notwithstanding anything to the contrary contained in Clause 7.1.1, AERA shall invoke the Performance Guarantee, to be appropriated against breach of terms and conditions of the contract in completing the task or towards any amounts as may be payable by the Consultant to AERA. Further, the Performance Guarantee shall be retained by AERA for a period of one year from the date of completion of consultancy assignment and will be released after submission of an affidavit (on non-judicial stamp paper of Rs.100/-) that they will assist AERA in ‘Appeals’ and ‘Legal Cases’ against the Orders of the Authority and to implement the Tribunal (Appellate Tribunal- TDSAT at present) Orders. The balance remaining out of the Performance Guarantee, if any, or the entire Performance Guarantee after adjustment of Penalty, as the case may be, shall be returned to the Consultant within a period of 30 (thirty) days after the period of one year from the completion of the consultancy assignment and issuance of completion certificate by AERA to the Consultant.

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 over and above the Performance Guarantee, AERA, without prejudice to its rights and remedies as may be available under applicable laws, may make deductions from any subsequent payments due and payable to the Consultant, hereunder, either in this agreement or any other live agreement with AERA as if it is appropriating the Performance Guarantee in accordance with the provisions of this Agreement.

7.1.3 The Consultant may, in lieu of retention of the amounts as referred above, furnish a Bank Guarantee. This will be in addition to the Performance Guarantee as referred to in Clause 7.1.1 above.

7.1.4 The Authority shall have the right to invoke and appropriate the proceeds of the Performance Guarantee without notice to the Consultant in the event of breach of this Agreement specified in this Clause 7.1.

8. LIQUIDATED DAMAGES / COMPENSATION FOR DELAY

Without prejudice to the generality of Clause 3.4, the Parties agree to the following:

8.1 LIQUIDATED DAMAGES FOR ERROR/VARIATION

In case any error or variation is detected in the reports submitted by the Consultant and such error or variation is the result of negligence or lack of due diligence on the part of the Consultant, the consequential damages thereof shall be quantified by AERA in a reasonable manner and recovered from the Consultant by way of liquidated damages. This is without prejudice to the other remedies as may be available as per applicable law. Overall LD, whether on account of delay and error / variation, shall be limited to 10% (Ten percent) of the Agreement/ Award Value.

8.2 LIQUIDATED DAMAGES FOR DELAY/ COMPENSATION FOR DELAY.

In case of delay in completion of the work as specified in the delivery schedule, the Consultant shall be liable to pay Liquidated Damages/ Compensation for Delay not exceeding an amount equal to 1% (one percent) of the total value of the Agreement, per week, subject to a maximum of 10% (ten percent) of the total value of the Agreement. AERA will take into consideration the reasons for delay, if any, while imposing Liquidated Damages on the selected Applicant. However, in the event of delay caused due to reasons beyond the control of the Consultant, AERA may, in its sole discretion, consider granting of appropriate extension of time, without imposition of Liquidity Damages/Compensation for Delay.

8.3 PENALTY FOR DEFICIENCY IN SERVICES

In addition to the Liquidated Damages listed hereinabove, as specified in Clause 8.1 and clause 8.2 above, the Consultant may be censured and/ or debarred for deficiencies on its part in completion of the consultancy assignment.

9. FAIRNESS AND GOOD FAITH

9.1 Good Faith

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

9.2 Operation of the Agreement

The Parties recognize that it is impractical in this Agreement to provide for every contingency which may arise during the life of the Agreement, and the Parties hereby agree that it is their intention that this Agreement shall operate fairly as between them, and without detriment to the interest of either of them, and that, if during the term of this Agreement either Party believes that this Agreement is operating unfairly, the Parties will use their best efforts to agree on such action as may be necessary to remove the cause or causes of such unfairness, but failure to agree on any action pursuant to this Clause 8.2 shall not give rise to a dispute subject to arbitration in accordance with Clause 9 hereof.

10. SETTLEMENT OF DISPUTES

10.1 Amicable settlement

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

10.2 Dispute resolution

10.2.1 Any dispute, difference or controversy of whatever nature howsoever arising under or out of or in relation to this Agreement (including its interpretation) between the Parties, and so notified in writing by either Party to the other Party (the "**Dispute**") shall, in the first instance, be attempted to be resolved amicably in accordance with the conciliation procedure set forth in Clause 9.3.

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

10.3 Conciliation

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

10.4 Arbitration

10.4.1 Any Dispute which is not resolved amicably by conciliation, as provided in Clause 9.3, shall be finally decided by reference to arbitration by an Arbitral Tribunal appointed in accordance with Clause 9.4.2. Such arbitration shall be held in accordance with the Rules of Arbitration of the International Centre for Alternative Dispute Resolution, New Delhi (the “**Rules**”), or such other rules as may be mutually agreed by the Parties, and shall be subject to the provisions of the Arbitration and Conciliation Act, 1996 read along with its Amendment in 2015. The place of such arbitration shall be the New Delhi where the Authority has its headquarters and the language of arbitration proceedings shall be English.

10.4.2 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**”.

10.4.3 The Arbitral Tribunal shall make a reasoned award (the “**Award**”). Any Award made in any arbitration held pursuant to this Clause 9 shall be final and binding on the Parties as from the date it is made, and the Consultant and the Authority agree and undertake to carry out such Award without delay.

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

10.4.5 This Agreement and the rights and obligations of the Parties shall remain in full force and effect, pending the Award in any arbitration proceedings hereunder.

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

SIGNED AND DELIVERED

For and on behalf of Consultant

SIGNED AND DELIVERED

For and on behalf of Airport Economic Regulatory Authority of India

In the presence of:

1.

2.

Terms of Reference

1. General

- 1.1 The Parliament of India, enacted an Act called “The Airports Economic Regulatory Authority of India Act, 2008” (hereinafter to be referred as the ‘Act’). The said Act envisages the establishment of a statutory authority called the Airports Economic Regulatory Authority (hereinafter referred to as the ‘AERA’) to regulate tariff for the aeronautical services, determine other airport charges for services rendered at major airports and to monitor the performance standards of such airports. The provisions of the said Act came in to force w.e.f. 1st September 2009.
- 1.2 AERA, was established by the Government of India vide notification No. GSR 317(E) dated 12th May 2009. The functions of AERA, in respect of major airports, are specified in Section 13 of the Act.
- 1.3 The terms ‘aeronautical services’ and ‘major airports’ are defined in Sections 2(a) and 2(i) of the Act, respectively.
- 1.4 While discharging its functions, AERA is required to ensure transparency by, *inter alia*, holding due consultations with stake-holders, which includes a licensee of an airport, airlines operating there at and/or a person who provides aeronautical services and any association of individuals, which in the opinion of AERA, represents the passengers or cargo facility users, by permitting such stake-holders to make submissions in writing and by documenting all its decisions and explanations thereof.
- 1.5 After its establishment, AERA has categorized the aeronautical services, in respect of which it is required to determine Tariff, as under:
- i. Aeronautical services provided by the airport operators;
 - ii. Cargo, Ground Handling and Fuel Supply Services;
 - iii. Air Navigation Services.
- 1.6 AERA has, after extensive stakeholder consultation, finalized its approach to the economic regulation of services categorized in (i) & (ii) above. Detailed Guidelines laying down information requirements, periodicity and procedure for Tariff determination have also been issued. The details of Orders and Guidelines issued in this behalf are as under:
- (i) Order No. 13 dated 12.01.2011 and Direction No. 5 dated 28.02.2011; and
 - (ii) Order No. 05 dated 02.08.2010; Order No. 12 dated 10.01.2011 and Direction No. 4 dated 10.01.2011;
 - (iii) Order No. 14/2016-17 dated 23.01.2017;
 - (iv) Order No. 35/2017-18 dated 12.01.2018 and Amendment No. 01 to Order No. 35/2017-18 dated 09.04.2018;
 - (v) Order no. 07/2016-17 dated 13.06.2016;
 - (vi) Order no. 20/2016-17 dated 31.03.2017;

These can be downloaded from <http://aera.gov.in>.

- 1.6.1 In pursuance of AERA’s Orders and Guidelines as brought out in para 1.6 above, the regulated entities are in the process of filing their tariff proposals for the first Control Period of 05 years, which commences **w.e.f. 01.04.2020**.

The proposal in respect of the regulated entities viz Airport Operator for the purpose of this RPF is listed below:

Name of the Airport Operator
Airports Authority of India for Raipur Airport
Airports Authority of India for Trichy Airport

2. Objectives

The Objective is engagement of Consultant to assist Airports Economic Regulatory Authority of India (AERA) in Determination of Tariffs for Aeronautical Services at above AAI Operator Major Airports.

3. Scope of Work

The Selected Applicant shall perform the following services:

- i. Examine the MYTP of the Airport Operator and verify the data with reference to the Balance Sheet, P&L account and auditor certificates relating to Aeronautical services;
- ii. Examine Traffic Forecasts for their correctness and adequacy;
- iii. Examine & Analyze CHQ Expenditure and look into the correctness of its apportionment to the particular airport for which tariff is being determined;
- iv. Ensure that the financial model employed is in line with the methodology prescribed by the Authority;
- v. Examine each building block in tariff determination and ensure that the treatment given to it is in line with the Authority's methodology, approach, Studies ;
- vi. Prepare a Consultation Paper working out the Aggregate Revenue Requirement (ARR) of the Operator and incorporate the proposed tariff plan that the Operator has submitted to achieve the ARR;
- vii. Assist the Authority to implement the Tribunal Orders;
- viii. Assist the Authority in holding consultations with the stakeholders and analyze the various suggestions made by the stakeholders;
- ix. Draw up the final version of the Tariff Order for the approval of the Authority;
- x. Assist the Authority in 'Appeals' and 'Legal Cases' against the Orders of the Authority.

It is clarified that each of the tariff proposals need to be considered separately, based on the submissions made therein as well as other factors that AERA is mandated to consider while determining the aeronautical tariffs or as AERA may instruct from time to time.

4. Deliverables and Payment milestone:

In pursuance of this TOR, the Consultant shall undertake/deliver the following deliverables (the “Deliverables”) during the course of this Consultancy.

SNO.	Milestones	Time Frame for completion of Assignment for each Airport	Payment Schedule.
1.	Submission of initial analysis which includes identification of information gaps	04 Months	10%
2.	Finalisation of Consultation Paper		35%
3.	Assisting AERA in Stakeholder consultation and evaluating Stakeholders’ response		25%
4.	Assisting AERA in determination of Aeronautical Tariffs and issuance of Tariff Orders post stakeholders’ consultation and on successful completion of the assignment.		30%

Note -1 : If due to any reason, work / assignment is not completed within the stipulated time, AERA may at its discretion extend the last date of completion of work without any financial implication to AERA. Delay in submission of assignment attributable to the selected consultant firm will make them liable for action(s) given in Para 5 “Liquidated Damages and Penalties.” Decision of AERA in this regard shall be final and binding on the Consultant Firm.

5. Completion of Services

- 5.1 All the deliverables shall be compiled, classified and submitted by the Consultant to the Authority in soft form, to the extent possible. In addition to the soft form, the Consultant is required to submit two hard copies of the reports of each Deliverables.
- 5.2 The documents comprising the Deliverables shall remain the property of AERA and shall not be used by the Consultant for any purpose other than that intended under these Terms of Reference without the permission of AERA.
- 5.3 Each deliverable of the Consultancy shall stand completed on acceptance communicated to the Consultant in writing by AERA. Consultant is not entitled to any payment of the milestones of Deliverables unless the Deliverable is accepted by AERA in writing. Further, AERA may seek clarifications/queries with respect to the Deliverables, which shall be addressed by Consultant within the timelines stipulated by AERA
- 5.4 The period of consultancy services shall be **04 (Four) months** from the date of issue of LOA and shall be completed within the stipulated period.
- 5.5 AERA reserves the right to extend the period of Consultancy beyond the period of 04 (Four) months at its own discretion.

Fees payable for services rendered

(Refer Clause 6.1)

Engagement of Consultants to assist Airports Economic Regulatory Authority of India (AERA) in Determination of Tariffs for Aeronautical Services for AAI Airports of Raipur and Trichy (Major Airports).

Category/ Group No.	Name of the Airport Operator in the Category	Amount in Rs. (in figures) (Excluding applicable taxes and levies).	Amount in Rs. (in words) (Excluding applicable taxes and levies).

Payment Schedule

The Consultant shall be paid professional fee for the services which shall be linked to milestone achievements as indicated below:

SNO.	Milestones	Time Frame for completion of Assignment for each Airport	Payment Schedule.
1.	Submission of initial analysis which includes identification of information gaps	04 Months	10%
2.	Finalisation of Consultation Paper		35%
3.	Assisting AERA in Stakeholder consultation and evaluating Stakeholders' response		25%
4.	Assisting AERA in determination of Aeronautical Tariffs and issuance of Tariff Orders post stakeholders' consultation and on successful completion of the assignment.		30%

Note -1 : If due to any reason, work / assignment is not completed within the stipulated time, AERA may at its discretion extend the last date of completion of work without any financial implication to AERA. Delay in submission of assignment attributable to the selected consultant firm will make them liable for action(s) given in Para 5 "Liquidated Damages and Penalties." Decision of AERA in this regard shall be final and binding on the Consultant Firm.