

N – 14070/01/2016-PPPAU

GOVERNMENT OF INDIA

NITI Aayog

New Delhi

13th February 2019

REQUEST FOR PROPOSAL

Competitive Bidding

For

Empanelment of Law Firms

1. Public Private Partnership Vertical (the “**Division**”) at NITI Aayog, Government of India, *inter alia*, undertakes formulation of model concession documents for Public Private Partnership (PPP) projects for various sectors, and conducts appraisal of PPP and public funded projects as a part of approval process of the Central Government. With the increasing quantum of work, the Division has decided to expand its existing Panel of Law Firms by empaneling more Law Firms for provision of legal services detailed hereafter. Empanelment will be done following a selection process.
2. Adviser (PPP Division), for and on behalf of the President of India, hereby invites sealed applications from interested law firms in a single envelope in accordance with the Request for Proposal document. The empaneled law firm(s) would assist NITI Aayog in drafting of model concession documents - agreements, RFQs (Requests for Qualification), RFPs (Requests for Proposal); review of concession documents received from Ministries / Government Departments and providing comments thereon, and other related legal services as may be required by NITI Aayog.
3. RFP document will be available for download on NITI Aayog website <http://niti.gov.in> and Central Public Procurement Portal <http://eprocure.gov.in> from 13th February 2019.
4. The bids on prescribed format should be submitted as described in the RFP documents on or before 1100 hours on 20th March 2019.

5. All communications regarding Proposal should be addressed to Mr. R. K. Bhatheja, e-mail ID: rk.bhatheja@gov.in

(S. K. Saha)

Adviser

(PPP, PAMD and HSR Division)

Disclaimer

The information contained in this Request for Proposals document (the “**RFP**”) or subsequently provided to applicants, whether verbally or in documentary or any other form by or on behalf of NITI Aayog or any of its divisions or its employees or advisers (hereinafter collectively “**NITI Aayog**”), is provided to applicants on the terms and conditions set out in this RFP and such other terms and conditions subject to which such information is provided.

This RFP is not an agreement or an offer by NITI Aayog 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 NITI Aayog in relation to the empanelment. 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 NITI Aayog 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 may be on a wide range of matters, some of which may depend upon interpretation of law. The information given is not intended to be an exhaustive account of statutory requirements and should not be regarded as a complete or authoritative statement of law. NITI Aayog accepts no responsibility for the accuracy or otherwise for any interpretation or opinion on the law expressed herein.

NITI Aayog makes 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.

NITI Aayog also accepts no liability of any nature whether resulting from negligence or

otherwise, howsoever caused, arising from reliance of any applicant upon the statements contained in this RFP.

NITI Aayog 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 NITI Aayog is bound to select an applicant or to appoint the selected applicant(s), as the case may be, for empanelment and NITI Aayog reserves the right to reject all or any of the proposals without assigning any reasons whatsoever.

The applicant shall bear all its costs associated with or relating to the preparation and submission of its proposal including but not limited to preparation, copying, postage, delivery fees, expenses associated with any demonstrations or presentations which may be required by NITI Aayog or any other costs incurred in connection with or relating to its proposal. All such costs and expenses will remain with the applicant and NITI Aayog 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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N – 14070/01/2016-PPPAU

Government of India

NITI Aayog
(PPP Vertical)

NITI Aayog, Sansad Marg
New Delhi-110001
Dated: 13th February 2019

REQUEST FOR PROPOSAL

Subject: - Empanelment of Law Firms

Background

1. Public Private Partnership Vertical (the “**Division**”) at NITI Aayog undertakes formulation of model concession documents for Public Private Partnership (PPP) projects for various sectors; reviews and appraises projects taken up under PPP mode/public funding by Ministries and Government Departments before they are approved. In this regard, it is proposed to empanel Law Firms for drafting of model concession documents - agreements, RFQs (Requests for Qualification), RFPs (Requests for Proposal); review of concession documents received from Ministries / Government Departments and providing comments thereon, and other related legal services as may be required by NITI Aayog (the “**Scope of Work**”).

Request for Proposal

2. Adviser (PPP Division), for and on behalf of the President of India, hereby invites proposals from law firms which have experience in the Scope of Work. The selection for empanelment would be through open competitive bidding process in accordance with the procedure set out in this RFP.

Validity of the Proposal

3. The proposal shall be valid for a period not less than 90 (ninety) days from the Proposal Due Date (provided under Clause 23).

Job Requirement

4. As per detailed Terms of Reference at Schedule – I.

Applicant

5. The applicant is to be a reputed law firm and shall apply individually as a single entity/sole firm (the “**Applicant**”). No consortiums shall be allowed to apply under this RFP.
6. Law Firms already empaneled with NITI Aayog are not required to apply under this RFP.

Conditions of Eligibility

7. To be considered for empanelment, the Applicant must fulfill the following conditions of eligibility:

- (A) **Technical Capacity:** The Technical Capacity requirement for an Applicant for empanelment: the Applicant shall have, over the past 3 (three) years preceding the Proposal Due Date, undertaken a minimum of 15 (fifteen) Eligible Assignments as described below, of which at least 10 (ten) should be PPP projects:

Eligible Assignments

For the purposes of satisfying the Conditions of Eligibility and for evaluating the Proposals under this RFP, advisory/ consultancy assignments granted by the government, regulatory commission, tribunal, multilateral agencies, statutory authority or public sector entity in respect of review and/or preparation of concession agreements and other similar documents, and/or in relation to the bidding process or other transactions, as the case may be, for the following projects shall be deemed as eligible assignments (the “**Eligible Assignments**”):

- (i) An infrastructure project undertaken through PPP or other forms of private participation and having an estimated capital cost (excluding land) of at least Rs. 100 (one hundred) Crores in case of a project in India, and US \$ 50 (fifty) Million for infrastructure projects undertaken elsewhere through PPP or other forms of private participation (the “**PPP Projects**”);
- (ii) privatization or disinvestment of government owned companies in India involving transfer of management control to a private sector entity where the financial transaction involves a payment of at least Rs. 50 (fifty) Crores such transfer (the “**Disinvestment Projects**”);
- (iii) an infrastructure project having an estimated capital cost (excluding land) of at

least Rs. 100 (one hundred) Crores in case of a project in India, and US \$ 50 (fifty) Million for projects elsewhere, provided that the payment of professional fee to the Applicant was at least Rs. 5 (five) Lakhs in case of a project in India, and US \$ 25,000 (twenty five thousand) for any infrastructure project elsewhere (the “**Other Projects**”); or

(iv) an assignment relating to rules, regulations, orders, appraisal, approval or any other matter pertaining to infrastructure, but only if the payment of professional fee to the Applicant was at least Rs. 1 (one) Lakh (the “**Regulatory Projects**”):

Provided that all Eligible Assignments relating to projects based on the same Model Concession Agreement and awarded by the same public entity shall be counted as one Eligible Assignment.

(v) Other relevant assignments: Assignments undertaken by the Applicant for private sector entities shall be considered for evaluation only if: (a) the advisory/consultancy services relate to an infrastructure project or PPP project; (b) the estimated capital cost of the project exceeds Rs. 100 (one hundred) Crores in case of a project in India, and US \$ 50 (fifty) Million for projects elsewhere; and (c) the professional fee for the assignment was at least Rs. 5 (five) Lakhs in case of a project in India, and US \$ 25,000 (twenty five thousand) for projects elsewhere.

(B) **Financial Capacity:** The Applicant should have minimum annual average turnover of Rs. 25 (twenty five) Crores during the last three financial years preceding the Proposal Due Date. For the avoidance of doubt, professional fees hereunder refers to fees received by the Applicant for providing legal advisory or consultancy services to its clients and shall not include any amounts received by way of reimbursement or fee for payment to external counsels, senior advocates or external professional retained by the Applicant for its clients.

(C) **Availability of Key Personnel:** The Applicant shall offer and make available all key personnel meeting the requirements specified in Sub-clause (D) below (the “**Key Personnel**”). The said Key Personnel will continue to be available during the period of empanelment. In the event of any such Key Personnel leaving the Applicant selected under this RFP during the empanelment period, he/she shall be replaced by a person with equivalent qualification and experience.

(D) **Conditions of Eligibility for Key Personnel:** Each of the Key Personnel must fulfill the Conditions of Eligibility specified below:

Key Personnel	Educational Qualification	Length of Professional Experience	Experience on Eligible Assignments
Partner	Bachelor in law or equivalent	15 years	He/She should have 12 (twelve) years' experience in commercial contracts. He/She should have led the legal teams for not less than 3 (three) Eligible Assignments.
One/two Associate Lawyer(s)	Bachelor in law or equivalent	3 years	He/She should have worked as an Associate Lawyer on not less than 2 (two) Eligible Assignments.

(E) **Agreement to approved fee:** For assignments during empanelment, the approved fee is annexed herewith at Schedule - II (the “**Approved Fee**”). For consideration under this RFP, the Applicant shall be in agreement with the Approved Fee.

Duration

8. Applicant(s) selected under this RFP (the “**Selected Applicant**”) will be empaneled on contract basis for an initial period of 3 (three) years. This term can be extended for a further period of 2 (two) years in the sole discretion of NITI Aayog, depending on the quality of the services provided / requirements of NITI Aayog.

Brief Description of the selection process

9. Applicant in agreement with the Approved Fee may submit its proposal in accordance with this RFP (the ‘**Proposal**’).
10. Applicants may seek clarifications on the RFP document by sending queries addressed to Mr. R. K. Bhatheja, e-mail ID: rk.bhatheja@gov.in. Last date for receipt of queries/clarifications by NITI Aayog will be 28th February 2019. Last date for the responses, if any, by NITI Aayog shall be 11th March 2019. The dates captured in this RFP

have been tabulated under the schedule of selection process provided in clause 54.

11. A single-stage selection process will be adopted in evaluating the Proposals received including an evaluation of the Applicant in accordance with the terms set out in this RFP.

Criteria for Evaluation of Conditions of Eligibility

12. The Proposal will be *inter alia* evaluated basis the experience of the Applicant. The scoring criteria to be used for the evaluation shall be as follows:

Criteria	Marks	Details
Experience and Financial Capacity of the Applicant	100	60% of the maximum marks shall be awarded for the number of Eligible Assignments undertaken by the Applicant. The remaining 40% shall be awarded for: (i) the comparative size and quality of Eligible Assignments (15%); (ii) annual turnover, experience and capacity of the Applicant (15%); and (iii) other similar work in the infrastructure sectors (10%).

13. Only the Applicants whose Proposals score 70 marks or more out of 100 shall qualify for empanelment subject to them meeting the other required terms and conditions.

Submission of Proposals

14. The Proposal shall be signed by the Managing Partner of the Applicant. There shall be no alterations, omissions, additions, or any other amendments made to the Proposal once submitted, except to the extent provided in clauses 44 and 45.
15. While submitting the Proposal, the Applicant shall ensure that it meets all the Conditions of Eligibility.
16. If an Applicant makes an averment regarding his qualification, experience or other particulars and it turns out to be false, or his commitment regarding availability for the Project is not fulfilled at any stage after submission of the Proposal, he shall be debarred

for any future assignment of NITI Aayog for a period of 5 (five) years.

17. In case it is found during the evaluation or at any time before issue of the letter of empanelment pursuant to this RFP (the “**Letter of Empanelment**” or the “**LOE**”) that one or more of the eligibility conditions have not been met by the Applicant or the Applicant has made material misrepresentation or has given any materially incorrect or false information, the Applicant shall be disqualified forthwith if not yet appointed. If the Applicant has already been issued the LOE, 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 NITI Aayog without NITI Aayog being liable in any manner whatsoever to the Applicant.
18. The NITI Aayog reserves the right to verify all statements, information and documents, submitted by the Applicant in response to the RFP. Failure of NITI Aayog to undertake such verification shall not relieve the Applicant of its obligations or liabilities hereunder nor will it affect any rights of NITI Aayog thereunder.
19. In case the Proposal is submitted on the document downloaded from NITI Aayog’s official website, the Applicant shall be responsible for its accuracy and correctness as per the version uploaded by NITI Aayog on its website or on Central Public Procurement Portal and shall ensure that there are no changes caused in the content of the downloaded document. In case of any discrepancy between the downloaded version of the RFP and the original RFP issued by NITI Aayog, the latter shall prevail.
20. The completed Proposal must be uploaded on or before the specified time on the Proposal Due Date as per clause 23. Proposals submitted by any other means including by post, fax, telex, telegram or e-mail shall not be entertained.
21. Applicants shall submit the Proposal along with all the required annexures in the formats at Appendix - I. All annexures to the Proposal must be provided on separate sheets of paper and only information that is directly relevant should be provided.
22. The Approved Fee provided herein shall not be revised throughout the period of empanelment.

Proposal Due Date & Submission of Proposal

23. Applicants may upload their proposals in the enclosed formats provided under Appendix - I

herein on Central Public Procurement Portal – ‘eprocure.gov.in/eprocure/app’ on or before 1100 hours on 20th March 2019, through ‘online bidder enrollment’ on the said portal, and submission against the RFP titled ‘RFP for Empanelment of Law Firms, NITI Aayog’

Late Proposals

24. Proposals received by NITI Aayog after the specified time on the Proposal Due Date shall not be eligible for consideration and shall be summarily rejected.
25. 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 NITI Aayog, shall be disregarded.

Evaluation Process

26. The NITI Aayog shall open the Proposals received at 1130 hours on 20th March 2019, at the place specified hereunder, in the presence of the Applicants who choose to attend:

Room No. 228, NITI Aayog, Sansad Marg, New Delhi - 110001

27. Prior to evaluation of Proposals, NITI Aayog will determine whether each Proposal is responsive to the requirements of the RFP. A Proposal shall be considered responsive only if:
 - (a) it is received in the specified format;
 - (b) it is received by the Proposal Due Date including any extension thereof;
 - (c) it contains all the information (complete in all respects) as requested in the RFP;
 - (d) it does not contain any condition or qualification; and
 - (e) it is not non-responsive in terms hereof.
28. The NITI Aayog reserves the right to reject any Proposal which is non-responsive and no request for alteration, modification, substitution or withdrawal shall be entertained by NITI Aayog in respect of such Proposals.
29. The NITI Aayog would subsequently examine and evaluate the Proposals in accordance with the terms of this RFP.
30. The NITI Aayog will not entertain any query or clarification from Applicants who fail to qualify at any stage of selection process.

Clarifications

31. To facilitate evaluation of Proposals, NITI Aayog may, at its sole discretion, seek clarifications from any Applicant regarding its Proposal. Such clarification(s) shall be provided within the time specified by NITI Aayog for this purpose. Any request for clarification(s) and all clarification(s) in response thereto shall be in writing. If an Applicant does not provide clarifications sought above within the specified time, its Proposal shall be liable to be rejected. In case the Proposal is not rejected, NITI Aayog may proceed to evaluate the Proposal by construing the particulars requiring clarification to the best of its understanding.

Right to reject any or all Proposals

32. Notwithstanding anything contained in this RFP, NITI Aayog reserves the right to accept or reject any Proposal or to annul the selection process and/or reject all Proposals, at any time without any liability or any obligation for such acceptance, rejection or annulment, and without assigning any reasons thereof.

33. The NITI Aayog reserves the right to reject any Proposal if:

(a) at any time, a material misrepresentation is made or uncovered, or

(b) the Applicant does not provide, within the time specified by NITI Aayog, the supplemental information sought for by NITI Aayog for evaluation of the Proposal.

Empanelment

34. After selection, a Letter of Empanelment shall be issued, in duplicate, by NITI Aayog to the Selected Applicant(s) along with 2 (two) sets of Agreement for Empanelment (format as provided under Appendix – II). The Selected Applicant(s) shall, within 7 (seven) days of the receipt of the LOE, sign and return the duplicate copy of the LOE along with both sets of Agreements for Empanelment to NITI Aayog in acknowledgement and acceptance thereof. One set of the executed Agreement for Empanelment will be sent to the Selected Applicant(s) for its records. The LOE together with the Agreement for Empanelment shall constitute the agreement between NITI Aayog and the Selected Applicant for the purpose of empanelment. The Selected Applicant(s) shall not be entitled to seek any deviation in the Agreement for Empanelment.

Payments

35. The NITI Aayog shall cause the payment due to the law firm empaneled hereunder (the “**Law Firm**”) to be made within 30 (thirty) days after the receipt by NITI Aayog of duly completed invoice with necessary/required particulars.
36. All payments under this Agreement shall be made to the bank account of the Law Firm as may be notified to NITI Aayog by the respective Law Firm.
37. No advance payment shall be admissible.

Proprietary data

38. All documents and other information provided by NITI Aayog or submitted by an Applicant to NITI Aayog shall remain or become the property of NITI Aayog. Applicants are to treat all information as strictly confidential. All information collected, analysed, processed or in whatever manner provided by the Law Firm to NITI Aayog in relation to the assignment shall be the property of NITI Aayog.

Liquidated damages for error/variation

39. In case any error or variation is detected in the work submitted by the Law Firm and such error/variation is the result of negligence or lack of due diligence on the part of the Law Firm, the consequential damages thereof shall be quantified by NITI Aayog in a reasonable manner and recovered from the Law Firm by way of deemed liquidated damages, subject to a maximum of the fees amount for the concerned assignment.

Liquidated damages for delay

40. In case of delay in completion of an assignment, liquidated damages not exceeding an amount equal to 5% (five per cent) of the fees for the concerned assignment per day for each day of delay, subject to a maximum of 20% (twenty per cent) of the fees amount for the concerned assignment, shall be recovered from the payment due to the Law Firm for that assignment. In case of such delay, NITI Aayog may, in its sole discretion, decide to cancel the work order for the particular assignment without any liability to the Law Firm. However, in case of delay due to reasons beyond the control of the Law Firm, suitable extension of time may be granted.

Amendment of RFP

44. At any time prior to the deadline for submission of Proposal, NITI Aayog may, for any reason, whether at its own initiative or in response to clarifications requested by an Applicant, modify the RFP document by the issuance of addendum/amendment and posting it on NITI Aayog's official website along with the revised RFP containing the amendments and will be binding on all Applicants.
45. In order to afford the Applicants a reasonable time for taking an amendment into account, or for any other reason, NITI Aayog may, in its sole discretion, extend the Proposal Due date.

Fraud and Corrupt Practices

46. 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, NITI Aayog 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, NITI Aayog shall, without prejudice to its any other rights or remedies, disqualify the Applicant from this selection process.
47. Without prejudice to the rights of NITI Aayog under clause 46 hereinabove, if an Applicant is found to have directly or indirectly or through an agent, engaged or indulged in any Prohibited Practices during the selection process, or after the issue of the LOE, such Applicant shall not be eligible to participate in any tender or RFP issued by NITI Aayog during a period of 2 (two) years from the date such Applicant is found to have directly or through an agent, engaged or indulged in any Prohibited Practices.
48. For the purpose of clarity, 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 NITI Aayog who is or has been associated in any manner, directly or indirectly with the selection

process or has dealt with matters concerning the LOE or arising therefrom, before or after the issue of LOE, 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 NITI Aayog, 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 LOE, any person in respect of any matter relating to the empanelment hereunder or the LOE, who at any time has been or is a legal, financial or technical consultant/ adviser of NITI Aayog in relation to any matter concerning the empanelment;

- (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 NITI Aayog 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.

Confidentiality

49. Information relating to the examination, clarification, evaluation and recommendation for the Applicants shall not be disclosed to any person, not officially concerned with the process. The NITI Aayog will treat all information submitted as part of a Proposal in confidence and will insist that all, who have access to such material, treat it in confidence. The NITI Aayog will not divulge any such information unless it is ordered to do so by any authority that has the power under law to require its disclosure or due to statutory compliances

Conflict of Interest

50. An Applicant shall not have a conflict of interest that may affect the selection process or

the empanelment and the services to be provided during the empanelment period (the “**Conflict of Interest**”). Any Applicant found to have a Conflict of Interest shall be disqualified and shall not be eligible to participate in any tender or RFP issued during a period of 2 (two) years from the date the Applicant is found by NITI Aayog to have directly or indirectly or through an agent, engaged or indulged in any Prohibited Practices.

51. NITI Aayog requires that the Law Firm would at all times provide professional, objective, and impartial advice, and at all times hold NITI Aayog’s interests paramount, avoid conflicts with other assignments from other clients, or its own interests, and act without any consideration for future work. The Law Firm shall not accept or engage in any assignment from NITI Aayog that would be in conflict with its prior or current obligations to other clients, or that may place it in a position of not being able to carry out the assignment in the best interests of NITI Aayog.
52. 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 Associates and any other Applicant, or Associate have common controlling shareholders or other ownership interest;; or
 - (b) such Applicant or its Associate receives or has received any direct or indirect subsidy or grant from any other Applicant or its Associate; or
 - (c) such Applicant has the same legal representative for purposes of this Application as any other Applicant; or
 - (d) 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
 - (e) there is a conflict among this and other assignments of the Applicant (including its personnel and other members, if any) and any subsidiaries or entities controlled by such Applicant or having common controlling shareholders. The duties of the Applicant will depend on the circumstances of each case. While providing services to NITI Aayog, the Law Firm shall not take up any assignment that by its nature will result in conflict with the services to be provided to NITI Aayog.

Miscellaneous

53. The selection process shall be governed by, and construed in accordance with, the laws of India and the Courts at New Delhi shall have exclusive jurisdiction over all disputes arising under, pursuant to and/or in connection with this RFP.

Schedule of Selection Process

54. NITI Aayog would endeavor to adhere to the following schedule:

	Event Description	Date
1.	Last date for receiving queries/clarifications	28 th February 2019
2.	Pre-Proposal Conference	4 th March 2019
3.	NITI Aayog response to queries	11 th March 2019
4.	Proposal Due Date or PDD	20 th March 2019
5.	Opening of Proposals	20 th March 2019
6.	Letter of Empanelment (LOE)	Within 15 days of PDD
.7	Signing of Agreement	Within 7 days of LOE
8.	Validity of Applications	90 days of PDD

Schedule - I
Terms of Reference

1. The Law Firm would undertake drafting of concession agreements, either based or not, on an existing model concession agreement or in a new sector on a new model in accordance with applicable laws and guidelines.
2. The Law Firm would undertake a detailed desk review of the concession agreements, received from various ministries, states and statutory entities in accordance with the applicable laws and guidelines.
3. The Law Firm would suggest amendments to specific articles/clauses for safeguarding the interest of the Government/ statutory entity and the users, as the case may be, and conforming to the applicable laws and guidelines.
4. The Law Firm would suggest alternative formulations, wherever necessary, for specific articles/clauses with the purpose of establishing that concession agreements/ other agreements are in accordance with best practices and applicable laws.
5. The Law Firm should ensure that the concession agreements/ other agreements allocate legal, financial and other risks in such a fashion that the Government or statutory entity granting the concession or awarding the project does not at a future date become liable to pay compensation or damages for any unintended/unidentified risk. In the unlikely event that such a liability arises, the Law Firm shall suggest provisions that safeguard public interest including the interests of users of the infrastructure under the concession agreement.
6. The Law Firm would suggest provisions that would ensure that the agreements are in line with the global best practices, and that such agreements when operationalised shall attract the required amount and quality of investment at reasonable cost and risk levels.
7. The Law Firm will advise on specific issues referred to them by NITI Aayog.
8. The Law Firm shall be deemed to have given an undertaking to NITI Aayog declaring that it shall have no conflict of interests in advising on each assignment.
9. The Law Firm will be required to submit the assignment given to them by NITI Aayog in the manner (including holding conferences at NITI Aayog office) and within the timeline

specified by NITI Aayog.

10. The Law Firm shall make suitable arrangements for the safe custody of materials provided for the work assigned and shall hand them over to the PPP Division at NITI Aayog after completion of the work.

Schedule – II

Approved Fee

Category of Assignment	Assignment work	Fee* (in Rs.)
Category A	For draft Concession Agreement based on a Model Concession Agreement(s)	2.00 Lakhs
Category B	For repeat proposal of Category A	1.00 Lakhs
Category C	For draft Concession Agreement not based on any sector-specific Model Concession Agreement	4.00 Lakhs
Category D	For draft Concession Agreement in a new sector or on a new model	8.0 Lakhs

*Subject to applicable tax deduction.

APPENDIX I

Form-1

Covering Letter

(On Applicant's letter head)

(Date and Reference)

To,

R. K. Bhatheja,
Room No. 334, NITI Aayog,
Sansad Marg, New Delhi-110001
Telephone No.: 011 – 2304 2603

Dear Sir,

Sub: Empanelment of the Law Firm with NITI Aayog

I, _____ (Applicant's name) herewith enclose the Proposal for above.

I 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 Applicant)

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

APPENDIX - I

Form-2

Financial Capacity of the Applicant

S. No.	Financial Year	Annual Revenue (Rs./USD)
1.		
2.		
3.		
Certificate from the Statutory Auditor[§] This is to certify that..... (name of the Applicant) has received the payments shown above against the respective years on account of professional fees. (Signature, name and designation of the authorised signatory) Date: _____ Name and seal of the audit firm		

[§] In 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.

Note:

1. Please do not attach any Annual Financial Statement.

APPENDIX - I

Form-3

Abstract of Eligible Assignments of the Applicant and Areas of Experience[#]

S.No.	Name of Project	Name of Client	Estimated capital cost of Project (in Rs. Crore/ US\$ Million)	Professional Fee^{##} received by the Applicant (in Rs. Lakhs/Crores)[£]
(1) ^{££}	(2)	(3)	(4)	(5)
1				
2				
3				
4				
	Areas of Experience:			

The Applicant should provide details of only those assignments that have been undertaken by it under its own name.

Exchange rate should be taken as Rs. 60 per US \$ for converting to Rupees.

£ In the event that the Applicant does not wish to disclose the actual fee received for any particular assignment, it may state that it has received more than the amount specified for eligibility under this RFP. For example, it may state: “Above Rs. 5 (five) Lakhs” in respect of an empanelment.

££ The names and chronology of the projects included here should conform to the p0roject-wise details submitted in Form 6 of Appendix – I.

Certificate from the Statutory Auditor[§]

This is to certify that the information contained in Column 5 above is correct as per the accounts of the Applicant and/ or the clients.

(Signature, name and designation of the authorised signatory)

Date:

Name and seal of the audit firm

[§] 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.

APPENDIX - I

Form-4

Eligible Assignments of Applicant^{\$}

Name of Applicant:	
Name of the Project:	
Nature of Assignment (PPP/ Regulatory / Public Funded Project)	
Description of services performed by the Applicant:	
Name and address of the client:	
Name, telephone no. and email address of client's representative:	
Estimated capital cost of Project (in Rs. Lakh or US\$ Million):	
Payment received by the Applicant as professional fees (in Rs. Lakh) [£] :	
Start date and finish date of the services (month/ year):	
Brief description of the Project:	

Notes:

1. Use separate sheet for each Eligible Assignment.
2. Exchange rate should be taken as Rs. 60 per US \$ for converting to Rupees.

^{\$} See clause 7 of the RFP

[£] In the event that the Applicant does not wish to disclose the actual fee received for any particular assignment, it may state that it has received more than the amount specified for eligibility under this RFP. For example, it may state: "Above Rs. 5 (five) Lakhs" in respect of other Projects.

APPENDIX-I

Form-5

Abstract of other relevant experience of the Applicant^{\$}

S.No	Name of Project	Name of Client	Estimated capital cost of Project (in Rs. Crore/ US\$ Million)	Professional fee received by the Applicant (in Rs. Lakhs/Crore) [£]
(1) ^{££}	(2)	(3)	(4)	(5)
1				
2				
3				
4				
5				

^{\$} The Applicant should provide details of only those assignments that have been undertaken by it under its own name.

^{\$\$} Exchange rate should be taken as Rs. 60 per US \$ for converting to Rupees.

[£] In the event that the Applicant does not wish to disclose the actual fee received for any particular assignment, it may state that it has received more than the amount specified for eligibility under this RFP. For example, it may state: "Above Rs. 5 (five) Lakhs" in respect of a particular project.

^{££} The names and chronology of the projects included here should conform to the project-wise details submitted in Form 6 of Appendix – I.

Certificate from the Statutory Auditor^{\$}

This is to certify that the information contained in Column 5 above is correct as per the accounts of the Applicant and/ or the clients.

Date: (Signature, name and designation of the authorised signatory)
Seal of the audit firm

^{\$} 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.

APPENDIX-I

Form-6

Other relevant assignments of Applicant

1.	Name of Applicant:	
2.	Name of the Project:	
3.	Type of Project	
5.	Description of services performed by the Applicant law firm:	
6.	Name of client and address:	
7.	Name, telephone no. and email address of client's representative:	
8.	Estimated capital cost of Project (in Rs. Crore or US\$ Million):	
9.	Payment received by the Applicant as professional fees (in Rs. Crore):	
10.	Start date of the services (month/ year):	
11.	Finish date of the services (month/ year):	
12.	Brief description of the Project:	

Notes:

1. Use separate sheet for each assignment.
2. Exchange rate should be taken as Rs. 60 per US \$ for converting to Rupees

APPENDIX - I

Form - 7

Curriculum vitae of the Key Personnel

Note: Curriculum vitae of the Key Personnel to specify the years and details of work experience relating to Eligible Assignments, among other details.

APPENDIX - II

Letter of Empanelment

RFP No. ***
NITI Aayog
PPP Vertical

New Delhi – 110001
Dated: *** 2019

To

Subject: Empanelment of the Law Firm with NITI Aayog

Sir/Madam,

In reference to the RFP Notice No. ***, the Competent Authority of NITI Aayog has approved your empanelment with NITI Aayog (PPP Vertical), for a period of 3 (three) years w.e.f. ***. This period may be extended for a further period of 2 (two) years based on your performance and /or need of NITI Aayog.

The terms of empanelment will be governed by the Agreement for Empanelment (proforma of which is enclosed in the RFP). Two sets of the same are enclosed herewith, you are requested to kindly sign the same and return both sets to NITI Aayog in acknowledgment and acceptance of the empanelment within 7 (seven) days of receipt of this Letter of Empanelment. One set of the executed version of the Agreement of Empanelment will be sent to you for your records.

(R. K. Bhatheja)
Economic Officer
PPP Vertical

Enclosure: As above

AGREEMENT FOR EMPANELMENT

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AGREEMENT FOR EMPANELMENT

This AGREEMENT (hereinafter called the “**Agreement**”) is made on the day of the month of 2019, between, on the one hand, NITI Aayog and, on the other hand,

..... (hereinafter called the “**Law Firm**” which expression shall include their respective successors and permitted assigns).

WHEREAS

- (A) NITI Aayog had invited proposals from law firms for empanelment with NITI Aayog, vide its Request For Proposal dated *** 2019, for drafting of model concession documents - agreements, RFQs (Requests for Qualification), RFPs (Requests for Proposal); review of concession documents received from Ministries / Government Departments and providing comments thereon, and other related legal services as may be required by NITI Aayog (hereinafter called the “**Services**”, as defined in detail hereinafter”);
- (B) the Law Firm submitted its proposal for empanelment, whereby it represented to NITI Aayog that it meets the eligibility criteria, had the required professional skills, and is in agreement to be empaneled. In the said proposal, the Law Firm also agreed to provide the Services to NITI Aayog on the terms and conditions as set forth in the RFP and this Agreement;
- (C) NITI Aayog, on acceptance of the aforesaid proposal of the Law Firm, empaneled the Law Firm vide its Letter of Empanelment dated..... (the “**LOE**”); and
- (D) in pursuance of the LOE, 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 Annexes;
- (b) “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;
- (c) “Confidential Information” shall have the meaning set forth in clause 3.3;
- (d) “Conflict of Interest” shall have the meaning set forth in clause 3.2 read with the provisions of the RFP;
- (e) “Dispute” shall have the meaning set forth in clause 9.2.1;
- (f) “Effective Date” means the date on which this Agreement comes into force and effect pursuant to clause 2.1;
- (g) “INR, Re. or Rs.” means Indian Rupees;
- (h) “Party” means NITI Aayog or the Law Firm, as the case may be, and Parties means both of them;
- (i) “Personnel” means persons hired by the Law Firm as employees or retainers and assigned to the performance of the Services or any part thereof;
- (j) “Resident Personnel” means such persons who at the time of being so hired had their domicile inside India;
- (k) “RFP” means the Request for Proposal document in response to which the Law Firm’s proposal for providing Services was accepted;
- (l) “Services” means the work to be performed by the Law Firm pursuant to this Agreement, as described in the Terms of Reference hereto; and
- (m) “Terms of Reference” shall have the meaning set forth in clause 3.1.2.
- (n) “Third Party” means any person or entity other than NITI Aayog or the Law Firm.

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

1.1.2 The following documents along with all addenda issued thereto shall be deemed to form and be read and construed as integral part of this Agreement and in case of any contradiction between or among them the priority in which a document would prevail over another would be as laid down below beginning from the highest priority to the lowest priority:

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

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 NITI Aayog and the Law Firm. The Law Firm shall, subject to this Agreement, have complete charge of Personnel performing the Services and shall be fully responsible for the Services performed by them or on their behalf hereunder.

1.3 Rights and obligations

The mutual rights and obligations of NITI Aayog and the Law Firm shall be as set forth in the Agreement, in particular:

- (a) the Law Firm shall carry out the Services in accordance with the provisions of the Agreement; and
- (b) NITI Aayog shall make payments to the Law Firm 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 in 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 one Party to the other under or in connection with the matters contemplated by this Agreement shall be in writing and shall:

- (a) in the case of the Law Firm, be given by e-mail and by letter delivered by hand to the address given and marked for attention of the Law Firm's Representative set out below in clause 1.9.3 or to such other person as the Law Firm may from time to time designate by notice to NITI Aayog; provided that if the Law Firm does not have an office in Delhi, such notice may be sent by e-mail and by registered acknowledgement due, air mail or by courier to the address as the Law Firm may from time to time specify by notice to NITI Aayog;
- (b) in the case of NITI Aayog, be given by e-mail and by letter delivered by hand and be addressed to NITI Aayog with a copy delivered to NITI Aayog Representative set out below in clause 1.9.2 or to such other person as NITI Aayog may from time to time designate by notice to the Law Firm; provided that if the Law Firm does not have an office in Delhi, it may send such notice by e-mail and by registered acknowledgement due, air mail or by courier; and
- (c) any notice or communication by one Party to the other, given in accordance herewith, shall be deemed to have been delivered when in the normal course of post it ought to have been delivered and in all other cases, it shall be deemed to have been delivered on the actual date and time of delivery; provided that in the case of email, it shall be deemed to have been delivered on the working days

following the date of its delivery.

1.8 Location

1.8.1 The Services shall be performed at the office of the Law Firm or at such locations as are incidental thereto.

1.8.2 The Law Firm shall, as and when requested by NITI Aayog, make available its Personnel/Key Personnel, at no additional fees, for conferences and meetings in connection with the Services at the office of NITI Aayog or elsewhere.

1.9 Authorised 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 NITI Aayog or the Law Firm, as the case may be, may be taken or executed by the officials specified in this clause 1.9.

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

.....

.....

Tel:

Mobile:

Email:

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

.....

.....

Tel:

Mobile:

Email:

1.10. Taxes and duties

Unless otherwise specified in the Agreement, the Law Firm shall pay all such

taxes, duties, fees and other impositions as may be levied under the Applicable Laws and NITI Aayog shall perform such duties in regard to the deduction of such taxes as may be lawfully imposed on it.

2. COMMENCEMENT, COMPLETION AND TERMINATION OF AGREEMENT

2.1 Effectiveness of Agreement

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

2.2 Provision of Services

The Law Firm shall provide Services under this Agreement as and when it receives a work order from NITI Aayog, or as is otherwise required by NITI Aayog.

2.3 Expiry of Agreement

Unless terminated earlier pursuant to clause 2.8 hereof, this Agreement shall, or unless extended by the Parties by mutual consent, expire upon the expiry of 3 (three) years from the Effective Date.

2.4 Entire Agreement

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

2.4.2 Without prejudice to the generality of the provisions of clause 2.4.1 above, on

matters not covered by this Agreement, the provisions of RFP shall apply.

2.5 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.

2.6 Force Majeure

2.6.1 Definition

- (a) For the purposes of this Agreement, “Force Majeure” means an event which is beyond the reasonable control of a Party, and which makes a Party’s performance of its obligations hereunder impossible or so impractical as reasonably to be considered impossible in the circumstances, and includes, but is not limited to, war, riots, civil disorder, earthquake, fire, explosion, storm, flood or other adverse weather conditions, strikes, lockouts or other industrial action (except where such strikes, lockouts or other industrial action are within the power of the Party invoking Force Majeure to prevent), confiscation or any other action by government agencies.
- (b) Force Majeure shall not include (i) any event which is caused by the negligence or intentional action of a Party or 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.

2.6.2 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.

2.6.3 Measures to be taken

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

2.6.4 Extension of time

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

2.6.5 Payments

During the period of its inability to perform the Services as a result of an event of Force Majeure, the Law Firm 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.

2.6.6 Consultation

Not later than 30 (thirty) days after the Law Firm 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.

2.7 Suspension of Agreement

NITI Aayog may, by written notice of suspension to the Law Firm, suspend all payments to the Law Firm hereunder if the Law Firm 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 Law Firm to remedy such breach or failure within a period not exceeding 30 (thirty) days after receipt by the Law Firm of such notice of suspension.

2.8 Termination of Agreement

2.8.1 By NITI Aayog

NITI Aayog may, by not less than 15 (fifteen) days' written notice of termination to the Law Firm, such notice to be given after the occurrence of any of the events specified in this clause 2.8.1, terminate this Agreement if:

- (a) the Law Firm 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 NITI Aayog may have subsequently granted in writing;
- (b) the Law Firm 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 Law Firm fails to comply with any final decision reached as a result of arbitration proceedings pursuant to clause 9 hereof;
- (d) the Law Firm submits to NITI Aayog a statement which has a material effect on the rights, obligations or interests of NITI Aayog and which the Law Firm knows to be false;
- (e) any document, information, data or statement submitted by the Law Firm in its Proposals, based on which the Law Firm was considered eligible or successful, is found to be false, incorrect or misleading;
- (f) as the result of Force Majeure, the Law Firm is unable to perform a material portion of the Services for a period of not less than 60 (sixty) days; or

- (g) NITI Aayog, in its sole discretion and for any reason whatsoever, decides to terminate this Agreement.

2.8.2 *By the Law Firm*

The Law Firm may, by not less than 30 (thirty) days' written notice to NITI Aayog, such notice to be given after the occurrence of any of the events specified in this clause 2.8.2, terminate this Agreement if:

- (a) NITI Aayog fails to pay any money due to the Law Firm 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 Law Firm that such payment is overdue;
- (b) NITI Aayog 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 Law Firm may have subsequently granted in writing) following the receipt by NITI Aayog of the Law Firm's notice specifying such breach;
- (c) as the result of Force Majeure, the Law Firm is unable to perform a material portion of the Services for a period of not less than 60 (sixty) days; or
- (d) NITI Aayog fails to comply with any final decision reached as a result of arbitration pursuant to clause 9 hereof.

2.8.3 *Cessation of rights and obligations*

Upon termination of this Agreement pursuant to Claus 2.8 hereof, or upon expiration of this Agreement pursuant to clause 2.3 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 expiration or termination; (ii) the obligation of confidentiality set forth in clause 3.3 hereof; (iii) the Law Firm's obligation to permit inspection, copying and auditing of such of its accounts and records set forth in clause 3.5, as relate to the Law Firm's Services provided under this Agreement; and (iv) any right or remedy which a Party may have under this Agreement or the Applicable Laws.

2.8.4 Cessation of Services

Upon termination of this Agreement by notice of either Party to the other pursuant to clauses 2.8.1 or 2.8.2 hereof, the Law Firm shall, immediately upon dispatch or receipt of such notice, take all necessary steps to bring the Services to a close in a prompt and orderly manner and shall make every reasonable effort to keep expenditures for this purpose to a minimum. With respect to documents prepared by the Law Firm and materials furnished by NITI Aayog, the Law Firm shall proceed as provided respectively by clauses 3.6 or 3.7 hereof.

2.8.5 Payment upon Termination

Upon expiry or termination of this Agreement, NITI Aayog shall, after offsetting any amount that may be due from the Law Firm to NITI Aayog, pay to the Law Firm its fees pursuant to clause 6 hereof for Services satisfactorily performed prior to the date of termination.

2.8.6 Disputes about Events of Termination

If either Party disputes whether an event specified in clause 2.8.1 or in clause 2.8.2 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.

3. OBLIGATIONS OF THE LAW FIRM

3.1 General

3.1.1 Standards of Performance

The Law Firm 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 Law Firm shall

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

3.1.2 Terms of Reference

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

3.1.3 Applicable Laws

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

3.2 Conflict of Interest

3.2.1 The Law Firm shall not have a Conflict of Interest, and any breach hereof shall constitute a breach of the Agreement.

3.2.2 Law Firm not to be otherwise interested in the projects/work included under the Services. The Law Firm agrees that, during the term of this Agreement and after its termination, the Law Firm and any entity affiliated with the Law Firm, shall be disqualified from providing Services, loans or equity for any project included or closely related to the Services and any breach of this obligation shall amount to a Conflict of Interest; provided that the restriction herein shall not apply after a period of 5 (five) years from the completion of the concerned assignment under the Services; provided further that this restriction shall not apply to consultancy/ advisory Services provided to NITI Aayog in continuation of this empanelment or to any subsequent consultancy/ advisory Services provided to NITI Aayog in accordance with the rules of NITI Aayog. For the avoidance of doubt, an entity affiliated with the Law Firm shall include a partner in the firm of the Law Firm who holds more than 5% (five per cent) of the subscribed and paid up share capital of the Law Firm.

3.2.3 Prohibition of conflicting activities

Neither the Law Firm nor its Personnel shall engage, either directly or indirectly, in any of the following activities:

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

3.2.4 Law Firm not to benefit from commissions, discounts, etc.

The fee payable to the Law Firm pursuant to clause 6 hereof shall constitute the Law Firm's sole remuneration in connection with this Agreement or the Services and the Law Firm 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.

3.2.5 The Law Firm and its Personnel shall observe the highest standards of ethics and not have engaged in and shall not hereafter engage in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice (collectively the "**Prohibited Practices**"). Notwithstanding anything to the contrary contained in this Agreement, NITI Aayog shall be entitled to terminate this Agreement forthwith by a communication in writing to the Law Firm, without being liable in any manner whatsoever to the Law Firm, if it determines that the Law Firm 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, NITI Aayog shall terminate this Agreement in accordance with the clause 2.8.1.

3.2.6 Without prejudice to the rights of NITI Aayog under clause 3.2.5 above and the other rights and remedies which NITI Aayog may have under this Agreement, if the Law Firm is found by NITI Aayog 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 Law Firm shall not be eligible to participate in any tender or RFP issued during a period of 2 (two) years from the date the Law Firm is found by NITI Aayog to have directly or indirectly or through an agent, engaged or indulged in any Prohibited Practices.

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

- (a) **“corrupt practice”** means (i) 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 NITI Aayog who is or has been associated in any manner, directly or indirectly with selection process or LOE 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 NITI Aayog, 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 LOE or after the execution of the Agreement, as the case may be, any person in respect of any matter relating to the Scope of Work or the LOE or the Agreement, who at any time has been or is a legal, financial or technical adviser NITI Aayog in relation to any matter concerning the Scope of Work;
- (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 NITI Aayog under this Agreement;
- (d) **“undesirable practice”** means (i) establishing contact with any person connected with or employed or engaged by NITI Aayog 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

3.3.1. The Law Firm and the Personnel or any other person working with the Law Firm in any capacity shall not, either during the term or within 5 (five) 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 NITI Aayog to the Law Firm and the Personnel; any information provided by or relating to NITI Aayog, its technology, technical processes, business affairs or finances or any information relating to NITI Aayog’s employees, officers or other professionals or suppliers, customers, or contractors of NITI Aayog; and any other information which the Law Firm is under an obligation to keep confidential in relation to the , the Services or this Agreement (“**Confidential Information**”), without the prior written consent of NITI Aayog.

3.3.2. Notwithstanding the aforesaid, the Law Firm and all its Personnel may disclose Confidential Information to the extent that such Confidential Information:

- (a) was in the public domain prior to its delivery to the Law Firm and the Personnel or becomes a part of the public knowledge from a source other than the Law Firm and the Personnel or either of them;
- (b) was obtained from a third party with no known duty to maintain its confidentiality;
- (c) is required to be disclosed by Applicable Laws or judicial or administrative or arbitral process or by any governmental instrumentalities, provided that for any such disclosure, the Law Firm and the Personnel shall give NITI Aayog, 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 Law Firm or Personnel, as is reasonable under the circumstances; provided, however, that the Law Firm or Personnel, shall require their professional advisers, agents, auditors or its representatives, to undertake in writing to keep such Confidential Information, confidential and shall use its best efforts to ensure compliance with such undertaking.

3.3.3. Without prejudice to the generality of the above clauses 3.3.1 and 3.3.2, the Law Firm shall not, except with the prior sanction of NITI Aayog, or in the bonafide discharge of their duties, participate in a radio/T.V. broadcast/telecast or contribute an article or write a letter to a newspaper pseudonymously or in the name of any other person, if such book, article, broadcast/telecast or letter relates directly to the work pursuant to this Agreement, not only during the period of empanelment, but also thereafter.

3.3.4. Data contained in the assigned documents shall not be used by the Law Firm, Personnel or any other person working with the Law Firm in any capacity for any published materials including doctoral thesis or for any degree/diploma, *etc.*

3.4 Liability of the Law Firm

341 The Law Firm's liability under this Agreement shall be determined by the Applicable Laws and the provisions hereof.

342 The Law Firm shall, subject to the limitation specified in clause 3.4.3, be liable to NITI Aayog for any direct loss or damage accrued or likely to accrue due to deficiency in Services rendered by it.

343 The Parties hereto agree that in case of negligence or wilful misconduct on the part of the Law Firm or on the part of any person or firm acting on behalf of the Law Firm in carrying out the Services, the Law Firm, with respect to damage caused to NITI Aayog's property, shall not be liable to NITI Aayog:

- (a) for any indirect or consequential loss or damage; and
- (b) for any direct loss or damage that exceeds the proceeds the Law Firm may be entitled to receive from any insurance maintained by the Law Firm to cover

such a liability.

344 The limitation of liability specified in clause 3.4.3 shall not affect the Law Firm's liability, if any, for damage to Third Parties caused by the Law Firm or any person or firm acting on behalf of the Law Firm in carrying out the Services.

3.5 Accounting, inspection and auditing

The Law Firm shall:

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

3.6 Documents prepared by the Law Firm to be property of NITI Aayog

3.61 All plans, specifications, agreements, reports and other documents (collectively referred to as "**Consultancy Documents**") prepared by the Law Firm in performing the Services shall become and remain the property of NITI Aayog, and all intellectual property rights in such Consultancy Documents shall vest with NITI Aayog. Any Consultancy Document, of which the ownership or the intellectual property rights do not vest with NITI Aayog under law, shall automatically stand assigned to NITI Aayog as and when such Consultancy Document is created and the Law Firm agrees to execute all papers and to perform such other acts as NITI Aayog may deem necessary to secure its rights herein assigned by the Law Firm.

3.62 The Law Firm shall, not later than termination or expiration of this Agreement, deliver all Consultancy Documents to NITI Aayog, together with a detailed inventory thereof. The Law Firm may retain a copy of such Consultancy

Documents. The Law Firm shall not use these Consultancy Documents for purposes unrelated to this Agreement without the prior written approval of NITI Aayog.

- 3.63 The Law Firm shall hold NITI Aayog 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 unauthorised use of such Consultancy Documents, or due to any breach or failure on part of the Law Firm to perform any of its duties or obligations in relation to securing the aforementioned rights of NITI Aayog.

3.7 Materials furnished by NITI Aayog

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

3.8 Providing access to Office and Personnel

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

3.9 Accuracy of Documents

The Law Firm shall be responsible for accuracy of the documents drafted and/ or vetted by it. Subject to the provisions of clause 3.4, it shall indemnify NITI Aayog against any inaccuracy in its work if such inaccuracy is the result of any negligence or inadequate due diligence on part of the Law Firm or arises out of its failure to conform to good industry practice. The Law Firm shall also be responsible for promptly correcting, at its own cost and risk, the documents.

4. LAW FIRM'S PERSONNEL

4.1 General

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

4.2 Deployment of Personnel

The designations, names and other particulars of the Law Firm's Personnel are described in **Annex-2** of this Agreement.

4.3 Approval for Personnel

4.3.1 The Personnel listed in Annex-2 of the Agreement are hereby approved by NITI Aayog. No other professional personnel shall be engaged without prior written approval of NITI Aayog.

4.3.2 If a Personnel is to be replaced or if the Law Firm hereafter proposes to engage any person as Personnel, it shall submit to NITI Aayog its proposal along with a CV of such person in accordance with Appendix-I (Form-7) of the RFP. NITI Aayog may approve or reject such proposal within 14 (fourteen) days of receipt thereof. In case the proposal is rejected, the Law Firm will propose an alternative person for NITI Aayog's consideration. In the event NITI Aayog does not reject a proposal within 14 (fourteen) days of the date of receipt thereof under this clause 4.3, it shall be deemed to have been approved by NITI Aayog.

4.4 Substitution of Key Personnel

4.4.1. NITI Aayog expects all the Key Personnel specified in the Proposal to be available during the currency of the Agreement. NITI Aayog will not consider any substitution of Key Personnel except under compelling circumstances beyond the control of the Law Firm.

4.4.2. The Key Personnel must commit the time required for and be available for performing the obligations of empanelment in accordance with the terms specified herein.

4.5 Personnel's Remuneration

The Law Firm shall be solely responsible for remuneration/fee of the Personnel without any liability whatsoever to NITI Aayog.

5. OBLIGATIONS OF NITI AAYOG

5.1 Payment

In consideration of the Services performed by the Law Firm under this Agreement, NITI Aayog shall make to the Law Firm such payments and in such manner as is provided in clause 6 of this Agreement.

6. PAYMENT TO THE LAW FIRM

6.1 Fees

The fees payable to the Law Firm for provision of Services hereunder is specified in **Annex-3** hereto (also included in the RFP at Schedule – II).

6.2 Currency of payment

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

6.3 Mode of billing and payment

6.3.1. The NITI Aayog shall cause the payment due to the Law Firm to be made within 30 (thirty) days after the receipt by NITI Aayog of duly completed invoice with necessary/required particulars.

6.3.2. All payments under this Agreement shall be made to the account of the Law Firm as may be notified to NITI Aayog by the respective Law Firm.

6.3.3. No advance payment shall be admissible. NITI Aayog shall pay to the Law Firm, only the undisputed amount.

6.3.4. Any amount which NITI Aayog 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 Law Firm to NITI Aayog within 30 (thirty) days after

receipt by the Law Firm of notice thereof. Any such claim by NITI Aayog for reimbursement must be made within 1 (one) year after receipt by NITI Aayog of the final deliverable of the Law Firm. Any delay by the Law Firm in reimbursement by the due date shall attract simple interest @ 10% (ten per cent) per annum.

7. LIQUIDATED DAMAGES AND PENALTIES

7.1 Liquidated Damages

7.1.1 Liquidated Damages for error

In case any error is detected in the work submitted by the Law Firm and such error is the result of negligence or lack of due diligence on the part of the Law Firm, the consequential damages thereof shall be quantified by NITI Aayog in a reasonable manner and recovered from the Law Firm by way of deemed liquidated damages, subject to a maximum of fees amount for the concerned assignment.

7.1.2 Liquidated Damages for delay

In case of delay in completion of an assignment under the Services, liquidated damages not exceeding an amount equal to 5% (five per cent) of the fees for the concerned assignment per day for each day of delay, subject to a maximum of 20% (twenty per cent) of the fees amount for the concerned assignment, shall be recovered from the payment due to the Law Firm for that assignment. In case of delay, NITI Aayog may, in its sole discretion, decide to cancel the work order for the particular assignment without any liability to the Law Firm. However, in case of delay due to reasons beyond the control of the Law Firm, suitable extension of time shall be granted.

7.2 Penalty for deficiency in Services

In addition to the liquidated damages not amounting to penalty, as specified in clause 7.1, warning may be issued to the Law Firm for minor deficiencies on its part. In the case of significant deficiencies in Services causing adverse effect on the assignments or on the reputation of NITI Aayog, other penal action including debarring for a specified period may also be initiated as per policy of NITI Aayog.

8. FAIRNESS AND GOOD FAITH

8.1 Good Faith

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

8.2 Operation of the Agreement

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

9. SETTLEMENT OF DISPUTES

9.1 Amicable settlement

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

9.2 Dispute resolution

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

9.2.2 The Parties agree to use their best efforts for resolving all Disputes arising under or in respect of this Agreement promptly, equitably and in good faith, and further agree to provide each other with reasonable access during normal business hours

to all non-privileged records, information and data pertaining to any Dispute.

9.3 Conciliation

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

9.4 Arbitration

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

9.4.2 There shall be a sole arbitrator whose appointment shall be made in accordance with the Rules.

9.4.3 The arbitrators shall make a reasoned award (the “**Award**”). Any Award made in any arbitration held pursuant to this clause 9 shall be final and binding on the Parties as from the date it is made, and the Law Firm and NITI Aayog agree and undertake to carry out such Award without delay.

9.4.4 The Law Firm and NITI Aayog agree that an Award may be enforced against the Law Firm and/or NITI Aayog, as the case may be, and their respective assets

wherever situated.

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

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

SIGNED, SEALED AND DELIVERED
DELIVERED

SIGNED, SEALED AND

For and on behalf of

Law Firm

(Signature)

(Name)

(Designation)

(Address)

In the presence of:

1.

For and on behalf of

NITI Aayog

(Signature)

(Name)

(Designation)

(Address)

2.

Annex-1

Terms of Reference

1. The Law Firm would undertake drafting of concession agreements, either based or not, on an existing model concession agreement or in a new sector on a new model in accordance with applicable laws and guidelines.
2. The Law Firm would undertake a detailed desk review of the concession agreements, received from various ministries, states and statutory entities in accordance with the applicable laws and guidelines.
3. The Law Firm would suggest amendments to specific articles/clauses for safeguarding the interest of the Government/ statutory entity and the users, as the case may be, and conforming to the applicable laws and guidelines.
4. The Law Firm would suggest alternative formulations, wherever necessary, for specific articles/clauses with the purpose of establishing that concession agreements/ other agreements are in accordance with best practices and applicable laws.
5. The Law Firm should ensure that the concession agreements/ other agreements allocate legal, financial and other risks in such a fashion that the Government or statutory entity granting the concession or awarding the project does not at a future date become liable to pay compensation or damages for any unintended/unidentified risk. In the unlikely event that such a liability arises, the Law Firm shall suggest provisions that safeguard public interest including the interests of users of the infrastructure under the concession agreement.
6. The Law Firm would suggest provisions that would ensure that the agreements are in line with the global best practices, and that such agreements when operationalised shall attract the required amount and quality of investment at reasonable cost and risk levels.
7. The Law Firm will advise on specific issues referred to them by NITI Aayog.
8. The Law Firm shall be deemed to have given an undertaking to NITI Aayog declaring that it shall have no conflict of interests in advising on each assignment.

9. The Law Firm will be required to submit the assignment given to them by NITI Aayog in the manner (including holding conferences at NITI Aayog office) and within the timeline specified by NITI Aayog.

10. The Law Firm shall make suitable arrangements for the safe custody of materials provided for the work assigned and shall hand them over to the PPP Division at NITI Aayog after completion of the work.

Annex-2

Deployment of Personnel

Particulars of Personnel

S. No.	Designation of Personnel	Name	Educational Qualification	Total Length of Professional Experience	Length of Employment with the Law Firm	No. of Eligible Assignments
(1)	(2)	(3)	(4)	(5)	(6)	(7)
1.	Partner					
2.	Associate Lawyer(s)					
3.	Other Personnel, if any					

Annex – 3

Fees

Category of Assignment	Assignment work	Fee* (in Rs.)
Category A	For draft Concession Agreement based on a Model Concession Agreement(s)	2.00 Lakhs
Category B	For repeat proposal of Category A	1.00 Lakhs
Category C	For draft Concession Agreement not based on any sector-specific Model Concession Agreement	4.00 Lakhs
Category D	For draft Concession Agreement in a new sector or on a new model	8.00 Lakhs

*Subject to deduction of applicable taxes.