

NATIONAL HIGHWAYS AUTHORITY OF INDIA
(MINISTRY OF ROAD TRANSPORT & HIGHWAYS)
GOVT. OF INDIA

NAME OF PROJECT: COLLECTION OF USER FEE THROUGH FEE COLLECTING AGENCY ON THE BASIS OF COMPETITIVE BIDDING THROUGH ON E-TENDER BASIS ONLY AT TUNDLA TOLL PLAZA AT KM 225.000 IN THE SECTION FROM KM. 219.000 TO KM. 250.500 ON THE NATIONAL HIGHWAY NO. 2 (TUNDLA-MAKHANPUR SECTION) IN THE STATE OF UTTAR PRADESH.

REQUEST FOR PROPOSAL (RFP)
[BID/ FINANCIAL BID & DRAFT CONTRACT AGREEMENT]

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Disclaimer

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

This RFP is not an agreement and is neither an offer nor invitation by the Authority to the prospective Bidders or any other person. The purpose of this RFP is to provide interested bidders with information that may be useful to them in making their financial offers (Bids) pursuant to this RFP. This RFP includes statements, which reflect various assumptions and assessments arrived at by the Authority in relation to the Project. Such assumptions, assessments and statements do not purport to contain all the information that each Bidder may require. This RFP may not be appropriate for all persons, and it is not possible for the Authority, its employees or advisors to consider the investment objectives, financial situation and particular needs of each party who reads or uses this RFP. The assumptions, assessments, statements and information contained in the Bidding Documents, may not be complete, accurate, adequate or correct. Each Bidder should, therefore, conduct its own investigations and analysis and should check the accuracy, adequacy, correctness, reliability and completeness of the assumptions, assessments, statements and information contained in this RFP and obtain independent advice from appropriate sources.

Information provided in this RFP to the Bidder(s) is 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. The Authority accepts no responsibility for the accuracy or otherwise for any interpretation or opinion on law expressed herein.

The Authority, its employees and advisors make no representation or warranty and shall have no liability to any person, including any Applicant or Bidder 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, completeness or reliability 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 for participation in this Bid Stage.

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

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

The issue of this RFP does not imply that the Authority is bound to select a Bidder or to appoint the Selected Bidder or Contractor, as the case may be, for the Project and the Authority reserves the right to reject all or any of the Bidders or Bids without assigning any reason whatsoever.

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

1. INTRODUCTION

1.1 Background

1.1.1 The National Highways Authority of India (the “**Authority**”) is engaged in development, maintenance and management of National Highways and as part of this endeavor, the Authority has decided to collect the User Fee through an agency (the “**Contractor**”) in respect of the section from km 219.000 to km 250.500 on the National Highway No. 2 (Tundla-Makhanpur Section) in the State of Uttar Pradesh and has decided to invite the Financial Bids from the pre-qualified bidders on e-tender basis for selection of the agency to whom the work of User Fee Collection (the “**Project**”) may be awarded. Brief particulars of the Project are as follows:

S. No	Description of the Project	Annual Potential Collection	Period of Collection
(1)	(2)	(3)	(5)
	Tundla toll plaza at Km. 225.000 for the section from km 219.000 to km 250.500 (Tundla-Makhanpur Section) on NH – 2 in the state of Uttar Pradesh.	Rs.47.75/- Crore (Rupees Forty Seven Crore Seventy Five Lakh only)	Contract shall be for a period of 1 (One) year or until the toll plaza is handed over to other user fee collection agency (OMT Concessionaire/ BOT Concessionaire, etc.) as per directions issued by NHAI, whichever is earlier.

1.1.2 Collection of User Fee shall be at the location mentioned above only. The Bidders are advised to note this condition before bidding.

1.1.3 Annual Potential Collection (the “**APC**”) has been indicated in Clause 1.1.1 above. The assessment of actual quantum of user fee collection, however, will have to be made by the Bidders.

Category of vehicle	Proportion in %
1. Car/Jeep/Van/Light Motor vehicle	29
2. Light commercial vehicle /Light Good vehicle or Mini Bus	1
3. Bus /Truck (Two Axles)	19
4. Three Axle Commercial vehicles	24
5. Heavy Construction Machinery (HCM) /Earth Moving equipment (EME) or Multi Axle vehicles (MAV) (Four to six Axles)	27
6. Oversized vehicles (seven or More Axles)	0
Total	100

1.1.4 Conditions for submitting the Financial Bid :

(a) The bidders who are in the list of the prequalified bidders hosted on the website of NHAI, as per RFQ dated 21.10.2013 of NHAI, 7 days prior to the bid due date only are eligible for submitting this financial bid in electronic form, subject to fulfillment of other conditions. **The bids received from the bidders not appearing in the list of the prequalified bidders hosted on website of NHAI, 7 days prior to the bid due date, shall be summarily rejected.** As the pre-qualification process is open throughout (no last date), the bidder(s) may get themselves pre-qualified and added in the list by submitting their applications. The Authority will endeavor to examine the applications, announce the result and update the list within 14 days from the date of receipt of the application.

(b) The person/ authorized signatory signing the Financial Bid in electronic form on behalf of the bidder shall be same as the one appearing in the list mentioned at Clause (a) above. In case a different person submits the bid, the bid shall be considered as non-responsive.

(c) The financial bid shall be submitted only on e-portal (e-bid) and no document is required to be submitted in physical form. To participate in the e-bid submission, it is mandatory for the bidders to have user identification number & password (collectively referred to as the “**ID and Password**”) which has to be obtained in the bidder’s own name by submitting an annual registration charges (non refundable) of Rs.2247/- payable to e-tender service provider of NHAI, M/s C-1 India Pvt. Ltd. The registration obtained, as mentioned above, shall be valid for one year from the date of its issuance and shall subsequently be got renewed. The bidders, who have already obtained such valid user ID and Password for any other project, need not obtain fresh user ID and Password for the purpose of participation in the bidding under this RFP. The Registration shall be valid at least upto Bid Due Date. Further, the bidder shall pay the tender processing fee for each financial bid of Rs.1295/- (non refundable) payable to e-tender service provider of NHAI, M/s C-1 India Pvt. Ltd. The Bidders are required to pay registration charges and tender processing fee through e-payment gateway of Canara Bank using Credit Card/ Debit Card/Master Card/Visa Card and Net Banking. The same has been enabled on e-tender portal <https://nhai.eproc.in>. Cash/ Demand Draft will not be accepted for payment of annual registration charges and/ or tender processing fee.

1.1.5 Address of E-tender Service Provider of NHAI:

M/s C1 India Pvt. Ltd. C-104 Sector 2 Noida-201301, (U.P) India
(E-Mail:nhaihelpdesk@c1india.com) Fax No: +91-120-4746810, Ph No: +91-120-4746800)

1.1.6 The financial bid and the draft contract are available for view and downloading from the e-tender portal of NHAI (<https://nhai.eproc.in>) by the Bidders without any cost. However, the cost of Financial Bid/ RFP @ Rs.10,000/- per Financial Bid submitted by the bidder, during the validity period of the prequalification (30.09.2014), shall be debited by the Authority to the non-refundable fee deposited by the bidders with the Authority at the time of submission of their application for prequalification, in accordance with the procedure defined in the RFQ.

1.1.7 The financial bid can be downloaded from e-tender portal of NHAI <https://nhai.eproc.in> from 31.12.2013 to 30.01.2014(11:00 Hrs), i.e., bid due date. The amendments/ clarifications to the financial bid/ RFP, if any, will be hosted on the NHAI website/e-portal only.

1.1.8 The bidders are advised to upload their bids well in time, to avoid last minute rush on the server or complications in uploading. In case of any problem in submission of the bid, the Bidder may have the assistance of help desk (E-Mail:nhaihelpdesk@c1india.com; Fax No: +91-120-4746810; Ph No: +91-120-4746800) or use the help manual available on the above website/ e-portal. However, NHAI shall not be responsible for any type of problem(s) encountered by any bidder including non-submission of the bid or failure to submit/ upload the bid and the bidding process shall not be altered, in any case, on this account. NHAI shall not entertain any complaint in this regard.

1.1.9 Online submission of the financial bid after the Bid Due Date and time shall not be permitted. The time being displayed on e-portal of NHAI (“Standard Time”) shall be final and binding on the bidder. Financial Bids are required to be submitted by the bidders, only as per the Standard Time and not the time as per their location/country.

1.2 Brief Description of Bidding Process:

1.2.1 The bidding process is as given at Clause 1.2 of RFQ dated 21.10.2013 of NHAI.

1.2.2 The financial bid is invited for fee collection on the basis of highest quote offered by the bidder for Annual Remittance. The Annual Remittance quoted shall constitute the sole criteria for

evaluation of bids. Subject to Clause 2.4, the work will be awarded to the Bidder quoting the highest Annual Remittance. In this RFP, the term “Highest Bidder” shall mean the Bidder who is offering the highest Annual Remittance.

1.2.3 Generally the Highest Bidder shall be the Selected Bidder. The remaining bidders shall be kept in reserve and may, in accordance with the process specified in Clause 3 of this RFP, be invited to match the Bid submitted by the Highest Bidder, in case such Highest Bidder withdraws or is not selected for any reason. In the event that none of the other Bidders match the Bid of the highest Bidder, the Authority may, in its discretion, either invite fresh bids from the remaining bidders or annul the Bidding Process.

1.3 Schedule of Bidding Process: The following is the schedule:

	Event Description	Date
1.	Bid due date	30.01.2014 at 11.00 Hrs.
2.	Opening of bids	30.01.2014 at 11.30 Hrs.
3.	Letter of Award (LOA)	Within 30 days of bid due date
4.	Submission of Performance Security by the successful bidder	Within 7 days from date of LOA
5.	Signing of Contract Agreement	Within 3 days from date of submission of Performance Security.
6.	Taking over of toll plaza and start of user fee collection by the Contractor	Within 2 days of signing of Contract Agreement

1.4 Address for Communication:

General Manager (CO)
National Highways Authority of India
G-5 & 6, Sector-10, Dwarka, New Delhi, 110075
Tel No. 25074100/200 Extn 1532
Fax No. 25074100/200 Extn 1109
E mail : kvsingh@nhai.org
Website: <http://www.nhai.org>

2. INSTRUCTIONS TO BIDDERS

2.1 General Terms of Bidding.

2.1.1 No Bidder shall submit more than one Bid for the project. A Bidder bidding individually or as a member of a Consortium shall not be entitled to submit another bid either individually or as a member of any other Consortium, as the case may be. In case of violation of this clause, the bid shall be declared non-responsive.

2.1.2 All provisions in RFQ dated 21.10.2013 of NHAH shall apply *mutatis mutandis* to this RFP. Notwithstanding anything to the contrary contained in this RFP, the detailed terms specified in the draft Contract Agreement shall have overriding effect, provided however, that any conditions or obligations imposed on the Bidder hereunder shall continue to have effect in addition to its obligations under the Contract Agreement.

2.1.3 The Bids shall be submitted online in the format prescribed at **Appendix-1**, clearly indicating the bid amount, in both figures and words, in Indian Rupees duly signed in electronic form by the bidder's authorized signatory [Ref. Clause 1.1.4(b)]. In the event of any difference between figures and words, the amount indicated in words shall be taken into account.

2.1.4 The Bid shall consist of Annual Remittance to be quoted by the Bidder payable to the Authority on weekly basis as per terms and conditions of this RFP and provisions of the Contract Agreement.

2.1.5 Any condition or qualification or any other stipulation contained in the bid shall render the bid non-responsive.

2.1.6 The Bid and all communications in relation to or concerning the Bidding Documents and the Bid shall be in English language.

2.1.7 The documents including RFQ dated 21.10.2013 of NHAI and this RFP and all attached documents, provided by the Authority are and shall remain or becomes the property of the Authority and are transmitted to the Bidders solely for the purpose of preparation and submission of the Bid in accordance with this RFP. Bidders are to treat all information as strictly confidential and shall not use it for any purpose other than for preparation and submission of their Bid. The provisions of this Clause shall also apply *mutatis mutandis* to Bids and all other documents submitted by the Bidders and the Authority will not return to the Bidders any Bid, document or any information provided along therewith.

2.1.8 This RFP is not transferable.

2.1.9 Any award of work/ contract pursuant to this RFP shall be subject to terms of Bidding Documents (RFQ, RFP & Draft Contract Agreement).

2.2 **Eligibility of Bidders:** The net worth of the bidder determined as per Clause-2.1.2 of RFQ dated 21.10.2013 of NHAI shall be more than the net worth of 20% of APC given at Clause-1.1.1 above at the close of the preceding Financial Year and the bidder shall have positive net cash accruals during any two Financial Years out of the last three Financial Years. The financial bids submitted by ineligible bidders shall be declared non-responsive.

2.3 Site Visit and Verification of Information:

2.3.1 Bidders are encouraged to submit their respective bids after visiting the section/ toll plaza/ booth and ascertaining for themselves the site conditions, traffic, locations, surroundings, climate, condition/ facilities/ infrastructure available at the toll plaza/ booth including availability of power, applicable laws and regulations and any other matter considered relevant by them.

2.3.2 It shall be deemed that by submitting a Bid, the Bidder has:

- (a) Made a complete and careful examination of the Bidding Documents;
- (b) received all relevant information requested from the Authority;
- (c) Accepted the risk of inadequacy, error or mistake in the information provided in the Bidding Documents or furnished by or on behalf of the Authority relating to any of the matters referred to in Clause 2.3.1 above;
- (d) satisfied itself about all matters, things and information including matters referred to in Clause 2.3.1 above necessary and required for submitting an informed Bid, carrying out of the user fee collection and performance of all its obligations in accordance with the Bidding Documents;
- (e) acknowledged and agreed that inadequacy, lack of completeness or incorrectness of information provided in the Bidding Documents or ignorance of any of the matters referred to in Clause 2.3.1 hereinabove shall not be a basis for any claim for compensation, damages, for

performance of its obligation, loss of profits etc from the Authority, or a ground for termination of the Contract Agreement by the Contractor; and

(f) agreed to be bound by the undertakings provided by it under and in terms hereof.

2.3.3 The Authority shall not be liable for any omission, mistake or error in respect of any of the above or on account of any matter or things arising out of or concerning or relating to RFP, the Bidding Documents or the Bidding process, including an error or mistake therein or in any information or data given by the Authority.

2.4 Rejection of Bids:

2.4.1 Notwithstanding anything contained in this RFP, the Authority reserves the right to reject any or all Bids and to annul the Bidding Process at any time without any liability or any obligation for such acceptance, rejection or annulment, and without assigning any reason therefor. In the event that the Authority rejects or annuls all the Bids, it may, in its discretion, invite all eligible Bidders to submit fresh Bids hereunder.

2.4.2 The Authority reserves the right not to proceed with the Bidding Process at any time, without notice or liability or assigning any reason and to reject any or all bids.

2.5 Clarifications and Amendments:

2.5.1 At least 14 days before the bid due date, the Bidders may seek clarifications and make suggestions for consideration of the Authority (late clarifications/ suggestions shall not be entertained by the Authority). Any queries or suggestions concerning the RFP shall be submitted in writing by fax or e-mail to the officer designated in Clause 1.4 above. The communication shall clearly bear the following identification/title:

“RFP for Tundla Toll Plaza (Bid Due Date 30.01.2014) - Queries/Suggestions”

The Authority shall endeavour to host on the website/ e-portal of NHAI, the clarifications and such further information as it may, in its sole discretion, consider appropriate for facilitating a fair, transparent and competitive Bidding Process

2.5.2 At any time prior to the Bid Due Date, the Authority may for any reason, whether at its own initiative or in response to clarifications requested by a Bidder, modify the RFP by the issuance of an Addendum (Addenda) and the same shall be hosted on e-portal.

2.5.3 Any Addendum issued hereunder shall be binding on the bidders.

2.5.4 In order to afford the Bidders a reasonable time for taking an Addendum into account, or for any other reason, the Authority may, in its sole discretion, extend the Bid Due Date.

2.6 Bid Due Date :

2.6.1 Bids shall be submitted before 1100 hours (Standard Time) on the Bid Due Date at the address provided in Clause 1.4, in the manner and in the form as detailed in this RFP.

2.6.2 The Authority may, in its sole discretion, extend the Bid Due Date by issuing an Addendum in accordance with Clause 2.5.

2.7 **Bid Validity:** Bid shall remain valid for a period of 120 (One hundred and twenty) days from and including the last date of submission of the Bid or for such extended period as is mutually agreed upon.

2.8 **Late Bids:** Bids received by the Authority after the specified time on the Bid Due Date shall not be eligible for consideration and shall be summarily rejected.

2.9 **Bid Security:** The Bid Security shall be an amount equivalent to 1% of APC given in Clause 1.1.1 above or Rs.10,00,000/- whichever is higher and the provisions of Clause 2.4 of RFQ dated 21.10.2013 of the Authority shall be applicable *mutatis mutandis* to this RFP/ Bid.

2.10 Performance Security

2.10.1 Within 7 (Seven) days from the date of issue of the LOA, the successful Bidder shall furnish to the Authority the Performance Security consisting of

(a) a crossed account payee demand draft/pay order, amounting to Rs. _____/- (an amount equal to one (1) month's agreed remittance) issued by a Scheduled Bank in India, drawn in favour of the Authority and payable at New Delhi; and

(b) a Bank Guarantee as per the format prescribed by the Authority from any Nationalized Indian Bank/State Bank of India or its subsidiaries/IDBI/ ICICI/Export Import Bank/Foreign Bank with counter guarantee from any Nationalized Indian Bank or State Bank of India or its subsidiaries/any RBI approved Scheduled Commercial Bank having net worth of more than Rs. 500 Crore (Rupees Five Hundred Crores) from its Indian Operations for Rs. _____/- (an amount equal to one **(1) month's agreed remittance), valid for a period of 14 (Fourteen) months from the Date of LOA** for due observance of the terms and conditions contained herein and the performance of its obligations as per the Contract to be entered into for 1 (one) year. The Bidder is at liberty to submit a crossed account payee demand draft/pay order issued by a Scheduled Bank in India in lieu of the Bank Guarantee.

2.10.2 The Performance Security shall be forfeited and appropriated by the Authority as mutually agreed genuine pre-estimated compensation and as damages payable to the Authority for inter-alia, time, cost and effort of the Authority, without prejudice to any other right or remedy that may be available to the Authority hereunder, or otherwise, under the following circumstances :

- (a) if the successful Bidder fails to sign the Contract;
- (b) in case the Selected Bidder having signed the Contract Agreement commits any breach thereof.

2.11 Assessment of User Fee Revenue and Restriction on Place of Collection of User Fee:

(i) The Bidder is advised to visit the User Fee Collection section, plaza(s) and/or booth(s), make an assessment of the User Fee Revenue based on its own estimation at its own responsibility and expense and may obtain any other information from its own sources that may be required by the Bidder for preparing the Bid and entering into the Contract for collection of User Fee. The Authority does not guarantee extent of User Fee Revenue during the contract period.

(ii) The Bidder recognizes the fact that there are number of lateral entries to the section of the National Highway for which User Fee is to be collected. The Successful Bidder shall not be entitled to (a) close and/or (b) demand closure by any authority whatsoever, of any such entry. Thus, the Bidder recognizes that all tollable traffic may not pass through the User Fee Collection booth or plaza.

(iii) During the contract period, the successful Bidder shall not ask for collection from any other place, for whatever reason. Under all circumstances, User Fee Collection shall be only from the place specifically provided in the RFP.

2.12 Handing over of Toll Plaza/ Booth: The Authority will hand over the Toll Plaza/ Booth to the Contractor in the condition as existing on 7 days prior to Bid Due Date on 'as is where basis' is. The Contractor shall carry out upgradation/provide necessary facilities as required, to discharge his duties.

2.13 User Fee Rates : User Fee Rates applicable and chargeable on different categories of vehicles are given in Schedule-I to the Contract.

2.14 Remittance of Agreed Amount: The User Fee shall be collected by the Successful Bidder and the agreed amount [refer Para H of preamble & clause 5 of the contract] shall be remitted to the Authority on weekly basis, latest by Tuesday of every week by way of demand draft/pay order/RTGS, drawn in favour of the National Highway Authority of India, payable **at AGRA PIU.**

2.15 Cost of Bidding: The Bidders shall be responsible for all of the costs associated with the preparation of their Bids and their participation in the Bidding Process. The Authority shall not be responsible or in any way liable for such costs, regardless of the conduct or outcome of the Bidding Process.

3. EVALUATION OF BIDS

3.1 Opening and Evaluation of Bids :

3.1.1 Opening and evaluation of Bids will be done through online process. The Authority shall open online received bids at 11:30 hrs. on the Bid Due Date, in the presence of Bidders who chose to attend. The Authority will examine and evaluate the Bids in accordance with the provisions set out in this Section-3.

3.1.2. To facilitate evaluation of bids, the Authority may, at its sole discretion, seek clarifications in writing from any Bidder regarding its Bid.

3.1.3 Correction of Errors:

Bids determined to be substantially responsive will be checked and corrected by the Authority for any discrepancy as follows:

“Where there is any discrepancy between the amounts in figures and in words, the amount in words shall prevail.”

The amount stated in the Bid shall be adjusted by the Authority in accordance with the above procedure for the correction of errors and shall be considered as binding upon the Bidder. If the Bidder does not accept the corrected amount, the Bid will be rejected and the Bid Security will be forfeited.

3.2 Tests of Responsiveness: Prior to opening of financial quotes in various bids, the Authority shall determine whether each Bid is responsive to the requirements of this RFP [Ref. Clause 1.1.4(a)&(b); 2.1.1; 2.1.5; and 2.2]. The financial quotes of the responsive bids shall only be opened by the Authority.

3.3 Selection of Bidder:

3.3.1 Subject to the provisions of Clause 2.4, the Bidder who offers the highest Annual Remittance offered to the Authority, shall be declared as the Selected Bidder (the “**Selected Bidder**”). In the event that the Authority rejects or annuls all the Bids, it may, in its discretion, invite all eligible Bidders to submit fresh Bids hereunder.

3.3.2 In the event that two or more Bidders quote the same amount of Annual Remittance, (the “**Tie Bidders**”), the Authority shall identify the Selected Bidder by draw of lots, which shall be

conducted, with prior notice, in the presence of the Tie Bidders who choose to attend.

3.3.3 In the event that the Highest Bidder withdraws or is not selected for any reason in the first instance (the **“first round of bidding”**), the Authority may invite all the remaining Bidders to revalidate or extend their respective Bid Security, as necessary, and match the Bid of the aforesaid Highest Bidder (the **“second round of bidding”**). If in the second round of bidding, only one Bidder matches the Highest Bidder, it shall be the Selected Bidder. If two or more Bidders match the said Highest Bidder in the second round of bidding, then the Bidder whose Bid was higher as compared to other Bidder(s) in the first round of bidding shall be the Selected Bidder. For example, if the third and fifth highest Bidders in the first round of bidding offer to match the said Highest Bidder in the second round of bidding, the said third highest Bidder shall be the Selected Bidder.

3.3.4 In the event that no Bidder offers to match the Highest Bidder in the second round of bidding as specified in Clause 3.3.3, the Authority may, in its discretion, invite fresh Bids (the **“third round of bidding”**) from all Bidders except the Highest Bidder of the first round of bidding, or annul the Bidding Process, as the case may be. In case the Bidders are invited in the third round of bidding to revalidate or extend their Bid Security, as necessary, and offer fresh Bids, they shall be eligible for submission of fresh Bids provided, however, that in such third round of bidding only such Bids shall be eligible for consideration which are higher than the Bid of the second highest Bidder in the first round of bidding.

3.3.5 After selection, a Letter of Award (the **“LOA”**) shall be issued, in duplicate, by the Authority to the Selected Bidder and the Selected Bidder shall, within 7 (seven) days of the receipt of the LOA, sign and return the duplicate copy of the LOA in acknowledgement thereof. In the event the duplicate copy of the LOA duly signed by the Selected Bidder is not received by the stipulated date, the Authority may, unless it consents to extension of time for submission thereof, appropriate the Bid Security of such Bidder as Damages on account of failure of the Selected Bidder to acknowledge the LOA.

3.3.6 After acknowledgement of the LOA as aforesaid and submission of Performance Security by the Selected Bidder, it shall cause the Contractor to execute the Contract Agreement within the period prescribed in Clause 1.3. The Selected Bidder shall not be entitled to seek any deviation, modification or amendment in the Contract Agreement.

3.4 Contacts during Bid Evaluation

Bids shall be deemed to be under consideration immediately after they are opened and until such time the Authority makes official intimation of award/ rejection to the Bidders. While the Bids are under consideration, Bidders and/ or their representatives or other interested parties are advised to refrain, save and except as required under the Bidding Documents, from contacting by any means, the Authority and/ or their employees/ representatives on the matters related to the Bids under consideration.

3.5 Period of Contract for User Fee Collection Rights:

3.5.1 The Contract for User Fee Collection rights will normally be for 1 (one) year. However, in case of certain stretches going for BOT/OMT Projects, the Authority reserves the right to reduce the period of Contract without any compensation and in such cases of early termination of contract, the total amount payable by the Contractor to the Authority will be proportionately modified depending upon the period.

3.5.2 The Authority reserves the right to increase the contract period **upto six more months**.

3.5.3 In case of BOT (Annuity) stretches the initial period of tolling contract shall be two years with same remittance (except the increase/ decrease in remittance due to revision in user fee rates by the Authority).

3.6 Signing of Contract; Taking over of Toll Plaza & Starting of user fee collection :

After submission of the Performance Security, the successful bidder shall be required to sign the contract in the form of contract prescribed herein (**Appendix-2**) within 3 (Three) days from the date of submission of the Performance Security and after signing the contract, the successful bidder shall be required to takeover the toll plaza and start the user fee collection within 2(Two) days of date of signing the Contract or within the date as may be prescribed by the Authority in LOA. Within 28 days of the date of signing of contract or within such period as provided in the applicable law, whichever is shorter, the successful Bidder shall, if required, have the same engrossed, have the correct Stamp Duty adjudicated by the Inspector General of Registrations, New Delhi and return the same duly signed and executed to the Authority, as per the terms of Contract, unless exempted by any law for the time in force. Successful Bidder's failure to sign the Contract, take over the toll plaza and start user fee collection within the period stipulated above shall result in forfeiture of the Performance Security.

4. FRAUD AND CORRUPT PRACTICES

The provisions as per Clause 3 of RFQ dated 21.10.2013 of the Authority shall be applicable *mutatis mutandis* for this RFP/ Bid.

5. MISCELLANEOUS

The provisions as per Clause 4 of RFQ dated 21.10.2013 of the Authority shall be applicable *mutatis mutandis* for this RFP/ Bid.

6. INTEGRITY PACT

The provisions as per Clause 5 of RFQ dated 21.10.2013 of the Authority shall be applicable *mutatis mutandis* for this RFP/ Bid.

Appendix-1
Format of Financial Bid (Ref.Clause 2.1.3)

National Highways Authority of India
Ministry of Road Transport & Highways
Government of India

RFP No.: NHAI/13013/CO/13-14/ Competitive Bidding / **Tundla Toll Plaza/Dt. 30.12.2013**

Name of Project	COLLECTION OF USER FEE THROUGH FEE COLLECTING AGENCY ON THE BASIS OF COMPETITIVE BIDDING THROUGH ON E-TENDER BASIS ONLY AT TUNDLA TOLL PLAZA AT KM 225.000 IN THE SECTION FROM KM. 219.000 TO KM. 250.500 ON THE NATIONAL HIGHWAY NO. 2 (TUNDLA-MAKHANPUR SECTION) IN THE STATE OF UTTAR PRADESH		
FINANCIAL BID			
Having examined the bidding documents and understood its contents, I/We offer to pay the Authority, the following sums as and by way of our offer as your Contractor for collection of User Fee on the said Section of National Highway or the said bridge, as the case may be, during the said period. This offer/ bid is unconditional and unqualified.			
Name of the Firm			
S.No	Period	Total Amount payable by the Bidder to the Authority for the period mentioned in Column-B	
A	B	C	D
1	One Year	Rs...../-* Per Year	(Rs. in words)* Per Year
*The amount will change with the change in rates as per Clause-5 of the Contract. For calculating the weekly amount, the amount quoted for one year shall be divided by the number of days in a year (365 or 366 as the case may be) and multiplied by 7. The week shall be counted from Monday to Sunday. In case the number of days in first and last week happens to be less than 7, then the bidder will deposit the amount proportionately. For calculating the monthly amount, the amount quoted for one year shall be divided by 12. The amount quoted above shall be exclusive of the TCS. Any tax and service charges, as applicable, shall be borne by the bidder over and above the quoted amount.			

Note: The person/ authorized signatory signing the above Financial Bid in electronic form on behalf of the bidder shall be same as the one appearing in the list of prequalified bidders hosted on website of NHAI. In case a different person signs the bid, the bid shall be declared non-responsive.

Form of Contract

Preamble:--

- (A) This Contract is made at....., on this the _____ day of _____ 2011 by and between the National Highways Authority of India, a Statutory body, established under the National Highways Authority of India Act, 1988, having its Corporate Office at G-5&6, Sector-10, Dwarka, New Delhi-110 045 hereinafter referred to as **“the Authority”** (which expression shall, unless excluded by or repugnant to the context thereof, be deemed to mean and include its successors in office and administrators) of the **ONE PART**, represented by its(to be authorized) General Manager (CO) / Project Implementation Unit/Corridor Management Unit having its office at.....

AND

- (a)* M/s _____, a Company incorporated under the Indian Companies Act, 1956 having its Registered Office at _____ (**mention full address**) and Incorporation Certificate No._____dt.

Or

- (b)* M/s _____, 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 _____ (**mention full address**) and having Registration No._____ dt. _____.

Or

- (c)* M/s _____, 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 _____ (**mention full address**) and having Registration No._____ dt. _____.

Or

- (d)* M/s _____, a Co-operative Society registered under Co-operative Society Registration Act (of any State in India)/Multi State Cooperative Societies Act, 2002 (39 of 2002) / Ex-servicemen Society/ Mutually Aided Cooperative Society registered under Cooperative Societies Act (of any state in India) under, _____ (**mention the name of the State**) Cooperative Society Act having its Registered Office at _____(**mention full address**) and having registration No._____ dt. _____.

Or

- (e) M/s -----, a proprietary firm carrying on its business under the name and style as hereinbefore mentioned and having its principal office at _____ (**mention full address**) and having Registration No._____ dt. _____.

Or

- (f) -----(individual) having its **permanent** address ----- (mention full address) and place of business ----- (mention full address)

Hereinafter referred to as **“the Contractor”** (which expression shall, unless excluded by or repugnant to the context hereof, be deemed to mean and include its successors, administrators and permitted assigns) of the **SECOND PART**.

*() * Strike out, whichever is not applicable*

- (B) **WHEREAS** the Contractor is Authorised by its ****Memorandum of Association/ **Partnership Deed/ **Bye-laws** to carry on the business of providing various services on contract basis through its employees employed regularly or otherwise.

**** Strike out, whichever is not applicable.**

- (C) # AND WHEREAS the Contractor has its own separate and independent establishment which:

- (a) has been registered under the provisions of the Shops & Establishments Act, 1954 of the _____ (mention the name of concerned State);
- (b) is licensed under the provisions of the Contract Labour (Regulations & Abolition) Act, 1970 and has obtained license No. ____ dated. ____;

Or

- # AND WHEREAS the Contractor undertakes to get itself licensed and/or registered with the appropriate Authority under the relevant laws mentioned above, and shall furnish necessary proof in this regard within 7 days of signing of this contract.

()# Strike out, Whichever is not applicable.

- (D) AND WHEREAS the Contractor undertakes to:

- (a) Comply with all the provisions of the Employees Provident Fund and Miscellaneous Provisions Act, 1952;
- (b) Pay to all its personnel deployed as per the Minimum Wages Act, 1948; and
- (c) Comply with all the provisions, duties and obligations imposed upon it by any law for the time being in force as may be applicable.

- (E) **AND WHEREAS** the Authority is authorised under the National Highways Authority of India Act, 1988 (hereinafter referred to as **“the 1988 Act”**) to collect User Fees on behalf of Central Government for services or benefits rendered under Section 7 of the National Highways Act, 1956 (hereinafter referred to as **“the 1956 Act”**).

- (F) **AND WHEREAS** the Authority is an Executing Agency under the provisions of the National Highways Fee (Determination of Rates and Collection) Rules, 2008, **the National Highways (Fees for the use of National Highways Section and permanent bridge – Public Funded Projects) Rules, 1997**, (hereinafter referred to as **“the User Fee Rules, 2008/ User Fee Rules, 1997”**).

- (G) **AND WHEREAS** the Authority is empowered under the provisions of the 1988 Act to enter into contracts with any person for the purpose of collection of USER Fee under the said User Fee Rules, 2008/ **the National Highways (Fees for the use of National Highways section and permanent bridge – Public Funded Projects) Rules, 1997.** The Authority is desirous of engaging the Contractor to collect User Fees only at ----- **toll plaza (near -----) located at km. ---- on km. ----- to km. -----.** (----- - -----) **section of National Highway - -- in the State of -----.**
- (H) **AND WHEREAS** the Authority invited bids from interested entrepreneurs for collection of USER Fee for the use of the said Section of National Highway/ the said bridge for a period of **one year** User Fee. The Contractor is one of those bidders who submitted bid and quoted in its offer that, in lieu of transferring Central Government's User Fee collection rights for the said Section of the National Highway or the said bridge for aforementioned period, the Contractor shall remit the following amount to the Authority so as to be received by the Authority latest by -----**TUESDAY** of every week and if Tuesday happens to be a BANK Holiday, then by NEXT bank working day as indicated below by way of a demand draft/pay order/ RTGS transfer for the said section of National Highway **Or** the said bridge. The remittance shall be as follows:

S. No.	Period	Total Amount Payable by the Bidder to the Authority (----- PIU/ CMU) for the period mentioned in column B	Amount to be paid per week
A.	B.	C.	D.
a)	(From DD/MM/YYYY 8.00 hrs to DD/MM/YYYY 8.00 hrs) (One year)	Rs. _____/- (_____ in words)* - -	Rs. _____/- (_____ in words)* - -

- For calculating the weekly amount, the amount quoted for one year shall be divided by the number of days in a year (365 or 366 as the case may be) and multiplied by 7.
- *the week shall be counted from Monday to Sunday. In case the number of days in first and last week happens to be less than 7 days, then the bidder will deposit the amount proportionately.*
- *The amount quoted above shall be exclusive of the TCS. Any tax and service charges, as applicable shall be borne by the bidder over and above the quoted amount.*

- i) **AND WHEREAS** the Authority HAS AUTHORISED General Manager (Commercial Operation)/ Project Director to enter into this Contract with the Contractor,
- ii) And Whereas, the Authority has authorized the Project Director, Project Implementation Unit/Corridor Management Unit_____ (hereinafter

referred to as “the said (to be authorized)”) to supervise and discharge of various functions to be performed by the Contractor under this Contract.

- (I) **AND WHEREAS** the Contractor has authorised Sh. / Smt. _____, S/o or D/o _____, who is _____(/Partner/Director/Member) of the Contractor to enter into this Contract with the Authority. *(Enclose the proof of authorization clearly stating relation of the person authorized, with the Contractor)*
- (J) **AND WHEREAS** the parties are desirous of recording the terms and conditions on which the Contractor shall carry out the job of User Fees collection on behalf of the Authority.

Now therefore this contract witnesses in clauses as follows:

1. ENGAGEMENT OF CONTRACTOR:

In consideration of the premises, the Authority hereby engages the party of the Second Part as the Contractor and the Contractor do hereby agrees to act as the Contractor of the Authority for collection of USER Fee for the use of the said Section of National Highway/the said bridge.

2. PERIOD OF CONTRACT:

- (i) “The Contract shall be for a period of **One year** beginning on [insert date] from _____ (8.00 hrs.) to _____(8.00 hrs.), (hereinafter referred to as “**One year**”)

OR

till the plaza is handed over to the other collection agency (OMT Concessionaire/BOT Concessionaire etc.) as per directions issued by NHAI, whichever is earlier.” However, in case of certain stretches going for BOT/OMT, the Authority reserves the right to reduce the period of contract without any compensation and in such cases of early termination of contract, the total amount payable by the bidder to the Authority will be proportionately modified depending upon the period.

Note: The start date of contract shall be within 2 days from the date of signing of the contract agreement or the date indicated by the authority in LOA.

- (ii) The period of contract shall be **One year**. However, in case of urgency, the Authority reserves the right to increase the contract period upto **6 (Six) months**.

III. In case of BOT (Annuity) stretches the initial period of tolling contract shall be **One year** with same remittance (except the increase in remittance due to change in fee rates due to change in WPI).*

(This will be applicable for Annuity Project only)

3. RATE OF USER FEE:

- (a) The Contractor shall collect User Fees at such rates only and from such vehicles only as have been notified by the Central Government vide Notification No. _____ Dated._____ for the use of the said Section of the National Highway/the said bridge and in strict compliance with the provisions of the notification. A copy of the said Notification (including a draft notification to be replaced by a notification published in the Official gazette in due course) is appended as **Schedule I**. In case, there is a

material difference (i.e. impacting the collection of the Contractor by more than 2 (two) % in a year), in the draft notification and the officially published notification, at the sole discretion of the Authority, entire Contract can be renegotiated as per mutual agreement, prior to commencement of collection of USER Fee and in the event of failure to arrive at an agreement on this issue, either party to this Contract will be at liberty to terminate this Contract by giving notice in writing as required under clause 35 of this Contract.

- (b) The Contractor specifically undertakes not to claim during continuity of the Contract any change including addition, deletion and change in the classification mentioned or the rate of User Fee specified in the Notification referred above and appended to this Contract as Schedule I for any reason whatsoever, under any circumstance.
- (c) The Contractor shall not be allowed to make its own interpretation about a particular type of vehicle attracting a particular rate so as to charge a higher rate from a particular type of vehicles. Decision of the Authority on such matter shall be final and binding.
- (d) In case collection of user fee at a particular fee plaza is going on as per the provisions of the National Highways (Fees for the use of National Highways section and permanent bridge – Public Funded Projects) Rules, 1997, the category Truck/ Bus will include all type of trucks and buses irrespective of the axles and size.

4. COLLECTION ONLY AT PRESCRIBED RATE:

The Contractor shall ensure that under no circumstances, USER Fee in excess of the prescribed rate or without issuance of receipt in the format including condition of such receipts being bilingual or trilingual, prescribed by the Authority is charged by the Contractor from the road users. Printing of receipts shall be arranged by the Contractor at its own cost.

5. CHANGE IN THE RATE OF USER FEE:

- (a) The right of the Central Government to modify, change or vary the rate of USER Fee to be levied or conditions for collection of USER Fee, or both is hereby reserved.
- (b) Revised remittance on annual increase of user fee rate due to change in WPI, will be linked to percentage increase in the category of vehicles, yielding highest remittance. ***(Percentage change in fee rate of Truck/ Bus (Two Axles) category shall be considered for revision of remittance due to revision of user fee rates).**
- (c) In case, any variation in the prescribed USER Fee rate for all or a particular category of the vehicles is effected, sought or permitted by the Central Government, the amount payable by the Contractor to the Authority for the period from which such variation comes into force, shall be adjusted proportionately on the basis of USER Fee rates specified in Schedule I and vis-a-vis the new USER Fee rates as detailed hereunder.

The amount to be increased /reduced shall be worked out based on:

- i) Total collection worked out considering the traffic during 6 calendar months immediately preceding the month from which the variation is effected or the actual period of collection, which ever is less, on the basis of existing rates.
- ii) Total collection worked out considering the same volume of traffic on the basis of the revised fee rates

* The Authority will inform the category of vehicle which is yielding highest remittance on the basis of the traffic considered for calculation of the APC.

- iii) Percentage change between (i) and (ii) would be applied to remittance immediately prior to such revision in fee rates to working out revised amount payable to the Authority.

Provided in case of introducing a new category of vehicles not subjected to levy of USER Fee earlier, an estimate of the traffic will be made on the basis of actual collection of current month for immediate purposes. At later stage the effect would be re-calculated on the basis of actual collection for six month or of the remaining tenure of the Contractor which ever is earlier. For this purpose the Contractor would submit a monthly collection statement to Authority for the effected period in the format suggested by Authority. For this purpose Authority would have full liberty to check by any means or method whether the collection given is actual one.

Provided that, any modification, change or variation in the conditions for collection of USER Fee (including towards concession/rebate to the frequent short distance travellers by any scheme or for any specific purpose) shall, as far as possible, be effected by mutual discussions between the Contractor and the Authority with regard to the consequential adjustment in the amount payable by the Contractor to the Authority giving due regard to the procedure set out in Clause 5(c) above and in the event of failure to arrive at an agreement on this issue, either party to this Contract will be at liberty to terminate this Contract by giving notice in writing as required under clause 35 of this Contract.

6. COMMENCEMENT AND TERMINATION OF USER FEE COLLECTION:

- (a) Subject to Clause 2 of the Contract, the USER Fee collection shall commence from the date as communicated by the Authority in writing which may be even at variance from the dates mentioned elsewhere and terminate on expiry of **One year**.

Provided that the Contractor shall not commence collection if (i) a published copy of the USER Fee notification in the Official gazette is not made available by the Authority; and (ii) The Authority does not inform about the completion of the said section of the Highway or the said bridge for which the USER Fee is to be collected. The Authority can also change any date communicated earlier for commencement of collection of USER Fee for other reason/s, as considered necessary.

Provided that if the Contractor is not able to commence the collection of USER Fee from a particular date, not attributable to the reasons beyond his control, the period of the USER Fee collection for **One year** shall be deemed to have begun from such date and the Contractor shall be liable to remit the agreed amount even for such period for which the collection has not been made.

- (b) The right to collect USER Fee shall come to an end on the expiry of a period of **One year** (Refer to Clause 2) reckoned from date as communicated by the Authority for collection of USER FEE.

- (c) In no case, the Contractor shall have a right to demand continuance or extension of the contract period beyond the period of **One year**

7. EXEMPTION OF VEHICLES AND CONCESSION:

- (a) Type(s) of vehicles exempted as stated in the Schedule I appended to this Contract could be varied at any time either by the Authority or by the Central Government of India. Such variance, unless impact on his collection is considered more than half a percent in a year requiring renegotiation of terms of the Contract, shall not alter the liability of the Contractor to remit the specified monthly amount and shall also not affect any other terms and conditions of this Contract.
- (b) All exemptions available to users under the Indian Toll (Army and Air Force) Act, 1901 and rules there under, further extended to officials of Indian Navy, shall be honored by the Contractor.
- (c) The Contractor shall ensure to provide monthly and daily pass for multiple journey in accordance with the provision in the Notification appended in Schedule--I **and , in case of Fee notification as per the provisions of the National Highways (Fees for the use of National Highways section and permanent bridge – Public Funded Projects) Rules, 1997, shall also provide concession to all eligible users as per provision of NHAI /COMMERCIAL OPERATION/56 dated 29.03.2005 & NHAI/COMMERCIAL OPERATION/61 dated 5.07.2005 , copy appended at Schedule- II.** In case of any dispute about eligibility of any user about a particular concession or about the operating procedure, the decision of the Authority concerned or his authorized representative shall be final and binding.
- (d) If the Authority is satisfied that exemption or concession available to an otherwise eligible user for whatsoever reason, has been denied, the Contractor shall be liable to pay 100 (Hundred) times of the value of USER Fee charged from such eligible user as penalty within 7 days of the issue of a notice by the PD in this regard.

8. PLACE OF COLLECTION:

- (a) The Contractor shall collect User Fees only at ----toll plaza (near -----) located at km. ----- for the section from km. ----- to km. -----, (---- - -----) of National Highway - -- in the State of ----- where, permanent USER Fee Collection Booth(s) are put up by the Authority. Such booth(s)/plaza/plaza area cannot be used or allowed by the Contractor to be used by others for any other purpose; including for sale of any commodity or advertisement.

Any advertisement in plaza area is strictly prohibited. Any deviation will be treated as non-compliance and action shall be taken either under Clause 17 (c) or under Clause 35(4).

- (b) The Contractor undertakes not to demand any additional place for collection of USER Fee or for installation of check barriers under any circumstances and for any reason whatsoever. The Contractor also undertakes not to collect USER Fee from any other place. The decision of the Authority in this regard shall be final and binding.
- (c) The Authority reserves the right to change the location of collection point including the right of addition, removal and merger of the number of USER Fee collection points as notified through fee notification from time to time. In case of a plaza being

closed by any of such notification, the contract shall be come to an end and the performance guarantee of the contractor shall be refunded in compliance to other provision of the contract in this regard.

9. DIVERSIONS:

- (a) The Contractor has surveyed the said Section of the National Highway or the said Bridge and surrounding area including any access or diversion(s) and the Contractor has submitted its bid taking into consideration all such access or diversion(s) or any diversion of traffic due to deterioration in road conditions or closure of road for maintenance work, whether existing or likely to come in the future which any road user may opt , inter-alia, to avoid payment of the USER Fee by bypassing the USER Fee collection booths.
- (b) The Contractor undertakes that, he shall not make any claim for any decrease in traffic on the ground of diversion of the traffic as per clause 9(a) above, even if such diversion did not exist at the time of submission of the bid by the Contractor.
- (c) The Contractor will not be entitled to (a) close; and (b) demand closure by any authority whatsoever, of any lateral entry to the said section of the Highway for which USER Fee is to be collected. The Contractor recognizes that all tollable traffic on the said section may not pass through the USER Fee collection booth or USER Fee plaza.

10. HANDING OVER THE USER FEE PLAZA(S):

- (a) The Authority shall endeavour to hand over the USER Fee Plaza collection booths at ----- toll plaza (near -----) located at km. ----- km. ----- to km. ----- (----- -) section of National Highway - in the State of ----- at 8.00 hrs on signing the contract to the Contractor for the purpose of USER Fee collection on the said Section of the National Highway/the said bridge.
- (b) The Authority has the right to entrust the USER Fee plaza(s) earlier than the date mentioned in Clause (a) above, subject to fulfillment of other conditions of the Contract. In such an event, the Contractor's obligation to remit the agreed amount will begin from the date of such handing over itself, without any extension in the period of the Contract.
- (c) In case, the Authority fails to handover the User Fee Plazas on the date and time mentioned in Clause (a) above and hands over the same anytime after the date and time mentioned in clause (a), the Contractor is entitled for same period of the Contract as provided under clause 2, without any reduction in the period of the Contract.
- (d) In such case as mentioned in (b) and (c) above, the contract period along with the obligation of total amount payable by the Contractor to the Authority as mentioned under column B (i.e. Period) & C (i.e. total amount payable by the contractor to the Authority) of the table mentioned earlier shall remain same and commence from the date and time of actual handing over the User Fee plaza.
- (e) The Contractor shall handover the User Fee Plaza(s) on 8.00 hrs of the following day on the completion of the period of Contract as per Clause 6 above.

- (f) In case, the Contractor fails to handover the User Fee Plaza on 8.00 hrs of the following day of the completion period of the Contract or in case of termination of the Contract on the last day and the time given in notice for termination to the Authority together with all the equipments, facilities and articles in good condition, the Contractor shall be liable to pay, to the authority a penalty equal to twice the average amount, arrived on the basis of quoted amount in the bid, for each day in addition to payment of proportionate User Fee at the Contract rate for the period of over stay. The Contractor shall also be liable to pay to the Authority such cost of infrastructural facilities, equipment and all other articles as are not in good condition or may be fixed by the Authority, PIU/CMU ----- of the Authority whose decision in the matter shall be final.

11. DISPLAY OF RATE OF USER FEE AND USER FEE NOTIFICATION:

- (a) The rates of User Fee, the categories of vehicles exempted from payment of User Fee and the name, address and telephone number of the Authority, to whom complaints, if any, should be addressed, shall be conspicuously and prominently displayed 500m ahead of the User Fee collection booths, 100m ahead of the User Fee collection booths and at the User Fee collection booths also. The height of the display boards and size of letters being such that it is easy for drivers to read. The display boards shall be provided by the Authority.
- (b) The Contractor shall also (i) display, a copy of Notification in **Schedule I**, appended to this Contract at a conspicuous place of the User Fee Plaza(s) for the information of the road users and the general public and (ii) provide a copy of same to road user on demand upon payment of copying charges on a 'no profit no loss' basis.

12. REQUIREMENT OF PERSONNEL FOR USER FEE COLLECTION:

For the purpose of discharging its obligations under this Contract, the Contractor shall deploy adequate number of personnel of prescribed qualification & experience and having undergone such training as may be relevant and considered necessary from time to time by the Authority to ensure efficient management of entire operations, including free flow of traffic, in or around the plaza including in the User Fee collection booths.

The number, qualification & experience of personnel to be deployed should be in accordance with the details given in schedule- III of this contract. However, the Authority reserves the right to serve directions for any interchange in the category of personnel (total deployment will remain according to Schedule- III) to be deployed by the Contractor, for the purpose of User Fee Collection for ensuring free flow of traffic.

13. DEPLOYMENT OF PERSONNEL:

- (a) The Contractor shall ensure that the personnel deployed by it for discharging its duties under this Contract are of good health, of highest integrity, punctual, well dressed, well-behaved. and of qualification & experience prescribed in schedule- III
- (b) The Contractor shall furnish to the Authority a list, in addition to the list of key personnel, of persons deployed for the purpose of discharging its obligations under the Contract, containing all the details like their educational qualifications, experience, training undergone, good health, good character, personal residential addresses and recent photographs. The required details for key personals shall be submitted to the concerned Regional Office and that of other staff to Project Director after signing of the contract in the format given in schedule- IV of this contract.

- (c) The uniform of the personnel deployed shall necessarily bear the name of the individual and the name of the Contractor. Navy blue Trouser and sky blue check shirt will be the uniform for collection staff for summer. In winter navy blue pullover, warm navy blue trouser and sky blue check shirt will be the uniform of collection staff. Shoes and socks should be Black. The shirt should bear the name of the agency and the employee displayed in embroidery in readable size.
- (d) The Authority reserves its right to object to the deployment of any personnel for any reason in which case, such person or persons being objected to by the Authority shall be removed by the Contractor forthwith and replaced within a day from such removal.
- (e) The personnel deployed by the Contractor shall not misconduct/misbehave with the members of public and shall observe strict discipline and decency in their behavior.
- (f) The Authority shall not be liable for any misconduct or misdeeds or any act or incident involving the Contractor or any of its personnel in any criminal or civil case the Contractor shall be responsible for consequences and if any such incident takes place, the Contractor shall forthwith intimate the said incident to the Authority.
- (g) The Contractor specifically agrees that the personnel deployed by it, will not in any way claim employment with the Authority. The Contractor shall be solely responsible for any dispute raised by the personnel deployed by him either during the term of the Contract or thereafter.
- (h) The frequent replacement of key personnel is not desirable unless they are found involved in malpractices or non compliances. However, if need be, the permission of replacement of key personnel/ other staff will be obtained from the PD concerned in advance. The PD, if satisfied with the reasons submitted to him, may allow such replacement after verifying the CVs strictly in accordance with the requirements prescribed in schedule- III.
- (i) The Authority is in process of introducing new electronic technologies for USER Fee collection system by installing electronic equipments already developed or being developed by various companies/agencies. The contractor shall extend full co-operation in installation, operation and maintenance of such system and will be bound by the advice of the authority in this regard.
- (j) **The engagement of at least 50% Ex-serviceman (ESM) is mandatory.**

14. INTER SE RELATIONS:

- (a) In all circumstances it is clearly understood by the parties that the personnel deployed by the Contractor shall have no connection whatsoever with the Authority and the relationship of master and servant or employer and employee shall be only between the Contractor and the personnel deployed by it.
- (b) However, if considered necessary, the Authority shall have every right to enquire and seek documentary evidence from the Contractor, whether all the statutory dues like ESI, EPF, Minimum Wages, Weekly offs, Bonus, Medical Leave, Workmen Compensation and any other entitlements for which the Contractor is liable to provide, are being paid or not or have been paid or not for a particular period.

- (c) In case of any breach by the Contractor in the payment of such statutory dues not necessarily pertaining to its personnel/employees, the Authority shall be entitled to adjust the same from the Performance Security and pay such statutory dues to the appropriate authority. The Contractor shall replenish the Performance Security within 7 (seven) days of the notice by the Authority. The decision of the Authority in this regard shall be final and binding on the Contractor.

15. PROVISION OF INFRASTRUCTURE:

- (a) The minimum infrastructure to be provided (in case not provided by NHAI or the BOT (Annuity) Concessionaire) and maintained by the Contractors are as under;
 - (i) Computers and its peripherals,
 - (ii) Software for running the system if the contractor is not using NHAI's software,*
 - (iii) Generator/ Standby Generator for power if there is no electricity connection/ for stand by requirement.

* The software used by the Contractor shall be able to provide vehicle crossing details with number of vehicle, type of vehicle, date and time of crossing the plaza etc.

- (b) The Authority shall handover the Toll Plaza to the Agency in the condition as existing on 7 days prior to bid due date on 'as is where is basis'. The agency shall carry out upgradation/provide facilities as required, to discharge his duties.
- (c) The repair and maintenance of such facilities once provided by the Authority shall be the responsibility of the Contractor including but not limited to payment of electricity bill, fuel, consumables like electricity bulbs, water charges etc. The Authority may provide consumables at the time of handing over of the User Fee collection plazas/booths only, thereafter all consumables shall be arranged by the Contractor at its own cost and at the time of taking over the facility by the Authority, if any liability/obligation(s) regarding repair and maintenance and consumables remains unfulfilled by the Contractor, same shall be adjusted by the Authority from Performance Security.
- (d) All expenses for printing receipts or passes to be issued to users shall be borne by the Contractor. The Contractor shall abide by the instruction of the Authority in the matter of its format or size or language.
- (e) An inventory (along with the condition and present book value) of infrastructural facility /equipment, and all other articles (properties of NHAI only) shall be prepared and duly signed by both the parties at the time of handing over or taking over of the User Fee Plaza(s). All rental article /equipments shall be returned immediately after handling over the plaza to the Contractor and no rent shall be paid thereafter.
- (f) The Contractor shall abide by all the instructions issued by the Authority from time to time. The Contractor also undertakes to abide by such instructions in order to make the process of User Fee collection simple, faster and hassle free by extending necessary cooperation in adopting the technological advancements in the process/work of User Fee collection.

- (g) The user fee collecting agency shall make necessary arrangements for power/lighting to ensure proper working of the User Fee plaza(s) including various office equipment installed, maintaining and running all electric arrangements and stand-by generator along with electric lighting and bearing all expenses thereon during the entire period of this Contract and paying punctually electricity and water charges in respect of the User Fee plaza(s)/collection booths as they become due and payable during period of this Contract.
- (h) The repair of the road section at the Toll Plaza site will be the responsibility of the NHAI.
- (i) In case of BOT (Annuity) stretches, whatever facilities and maintenance obligations fall within the mandate of the Concessionaire, same shall be provided by the Concessionaire, during the Concession period.

16. INSURANCE:

- (a) If required under the law for the time being in force, the Contractor shall arrange adequate insurance to cover each of its personnel deployed against any type of accidents, for all the assets owned by the Contractor and cash in booth, cash in chest, and cash in transit. The expenditure incurred for procuring such insurance shall be borne by the Contractor alone.
- (b) As per the instruction of the Authority the Contractor shall also arrange adequate Insurance cover at its own cost favouring the Authority, for all the properties handed over by the Authority for comprehensive risk.

1. PERFORMANCE SECURITY:

- (a) The successful Bidder shall furnish to the authority Performance Security consisting of (a) a crossed account payee demand draft/pay order, amounting to Rs. [•] (an amount equal to one (1) month's agreed remittance) issued by a Scheduled Bank in India, drawn in favour of the Authority and payable at New Delhi and (b) a bank guarantee as per the format prescribed by National Highway Authority of India from any Nationalized Indian Bank/State Bank of India or its subsidiaries/IDBI/ICICI/Export Import Bank/Foreign Bank with counter guarantee from any Nationalized Indian Bank or State Bank of India or its subsidiaries/any RBI approved Scheduled Commercial Bank having net worth of more than Rs. 500 Crore (Rupees Five Hundred Crores) from its Indian Operations for Rs. [•] *(an amount equal to one (1) month agreed remittance), valid for a period of 14 (Fourteen) months from the Date of LOA* for due observance of the terms and conditions contained herein and the performance of its obligation as per the Contract to be entered into for 1 (one) year. The Bidder is at liberty to submit a crossed account payee demand draft/pay order issued by a Scheduled Bank in India in lieu of the bank guarantee. If the successful Bidder desires that the Bid Security of Rs. [•] should be adjusted towards performance security, then the Bidder has to remit the balance amount towards Performance Security as stated at (a) above in addition to submission of the bank guarantee as stated at (b) above.
- (b) The said Performance Security including the Bid Security, shall not bear any interest except when the collection is not started within 120 days of signing of the Contract for the reasons not attributable to the Contractor. In such a case, interest @8% p.a. shall be paid for the period beyond 120 days. Performance Security shall be refunded within 90 days after settlement of all the accounts by the Contractor and

upon issuance of no due certificate by the Authority. No Dues Certificate shall be issued not later and within 7 days after settlement of accounts.

- (c) (i) The Authority shall also be competent to utilize the said Performance Security against any loss or damage caused to the property of the Authority by any act of omission and/or commission by the Contractor or its agents and servants or adjust it towards any claim of the Authority.
- (ii) The Contractor undertakes that, in case of any default on its part to perform and observe any of the covenants, conditions or provisions contained in this Contract, it shall be lawful for the Authority in its absolute discretion to forfeit the whole or any part of the said Performance Security, without prejudice to any other remedy that the Authority may have against the Contractor under this Contract or under general law for such breach.
- (d) The amounts lying with the Authority towards the Performance Security shall not be adjusted towards instalments due to the Authority from the Contractor including the instalment for the last month of the contract period of **One year**

18. PENALTY FOR CHARGING EXCESS USER FEE:

- (a) In case, it is observed and/or established to the satisfaction of the Authority that the fee collecting agency has charged User Fee in excess of the prescribed rate, the Authority may impose a penalty of an amount equal to fifty times of the actual amount so charged per day for 30 days i.e. (actual amount charged x 30 days x 50). After three such incidents of levy of penalty for excess charging, the part performance security of an amount equal to 1 (One) months agreed remittance i.e. Rs. _____ lakhs as per amount stated in Letter of Award shall be forfeited in addition to such recoveries. The contractor shall have to replenish the forfeited performance guarantee, in the same mode as it was deposited earlier, within 10 days of such forfeiture to continue with the collection work failing which the contract shall be terminated and the balance performance guarantee shall also be forfeited. If the incident of excess charging is again observed and/or established to the satisfaction of the Authority after forfeiture of part performance guarantee, the contract shall be terminated and the entire performance guarantee shall be forfeited.
- (b) The termination under this clause shall make the Contractor liable for unconditional forfeiture of the Performance Security.
- (c) The termination under this clause, in addition to unconditional forfeiture of the Performance Security, shall make the Contractor liable for debarring from assigning any future work with Authority.

19. PENALTY FOR FAILURE TO PAY INSTALMENTS:

In case of delay in remittance of the agreed amount of the weekly instalment due under this Contract to the Authority beyond the fixed day (as per clause 8, of SECTION – II), the Authority shall levy penalty @ 0.5% of the delayed amount per day for the delay beyond the due day without prejudice to the any other rights of the Authority under this Contract. Such right would, inter-alia, include unconditional right of the Authority to terminate the Contract forthwith, without assigning any reasons whatsoever and take over possession of the User Fee Plaza(s) for User Fee collection in any manner the Authority may deem fit. The penalty so levied shall be recovered from the performance guarantee which shall be

replenished by the contractor within 10 days from the date of such recovery failing which the contract is liable to be terminated.

20. PENALTY FOR FAILURE TO COMPLY ANY OF THE OBLIGATIONS SPECIFIED IN CLAUSE 23 OF THE CONTRACT:

In case of non-compliance of any of the obligations specified in clause-23 (a) to (g), the Authority shall levy penalty @ Rs. 1,00,000 (Rupees One Lakh) per default per month without prejudice to the any other rights of the Authority under this Contract. The date of default will be the date of reporting to the contractor by the Authority concerned or his authorized representative. In addition to levy of penalty as above, more **than** three defaults in a month under this clause may attract termination under clause 35 (2) of this contract. Before levy of penalty under this clause the contractor shall be given a reasonable opportunity to rectify the default. The decision of the Authority concerned or his authorized representative to levy the penalty under this clause shall be final and binding. The penalty so levied shall be recovered from the performance guarantee which shall be replenished by the contractor within 10 days from the date of such recovery failing which the contract is liable to be terminated.

21. OPERATIONAL TRANSPARENCY:

The Contractor shall be solely responsible for efficient and transparent working and management of User Fee collection at all points of time.

22. AUTHORISED REPRESENTATIVE OF THE AUTHORITY:.

- (a) The Authority has designated (to be authorised), NHAI PIU / CMU as **“the Authority”** to carry out all functions on its behalf under this Contract and may change the authorised representative from time to time.
- (b) The said Representative of the Authority shall have the overall authority to control and supervise the work of collection of User Fee carried on by the Contractor with a view to ensure that collection of User Fee is carried out smoothly, efficiently and without any hindrance or harassment to the users of National Highway.
- (c) The Authority or any other officer of the Authority or any agency as authorized by the Authority or by the Authority, shall have right and authority to inspect and check the receipt books (used/unused/ counterfoils), registers and books of accounts maintained by the Contractor at any time without giving any notice.
- (d) The instructions given from time to time by the Authority or his authorised representative in this regard shall be complied with promptly by the Contractor.
- (e) The Contractor shall keep records of all the complaints received and replied directly or otherwise by it and forward a copy on fortnightly basis to the Authority.

23. OBLIGATIONS OF THE CONTRACTOR:

- (a) The Contractor undertakes the responsibility of the complete job of User Fee collection, maintenance of all records, maintenance of User Fee collection account, maintenance of vehicle type wise Traffic Data on shift to shift basis, maintaining the cleanliness of User Fee plazas/User Fee collection booths and surrounding area etc. and any other duty as may be assigned by the Authority from time to time.

- (b) The Contractor shall make appropriate arrangement for management of the traffic at its own cost and shall ensure that the processing time for a vehicle at the User Fee counter should not be more than 30 seconds for the purpose of issuing USER Fee. All the lanes shall be kept open at all times irrespective of peak or off peak hours.
- (c) The Contractor specifically undertakes to abide by all the instructions issued by the Authority from time to time on operational matters and further agrees not to raise any dispute against the same including any additional cost that the Contractor may be required to bear to comply with such instructions.
- (d) During the contract Period, the contractor shall furnish to the Authority, within 7 (seven) days of completion of each month, a statement of User Fee substantially in the form set forth in Schedule- V (the “Monthly User Fee Statement”). Proper record is to be maintained at the plaza for the purpose of providing such information. **The Contractor shall also submit such information sought by the Authority in such format, as may be prescribed by the Authority from time to time.**
- (e) The Contractor shall, prior to the close of each day, send to the Authority, by facsimile or e-mail, a report stating accidents and unusual occurrences on the Road Section within 500 meters on either side of the plaza relating to the safety and security of the Users and Road Section. A weekly and monthly summary of such reports shall also be sent within three days of the enclosing of each week and month, as the case may be. For the purposes of this Clause 23 (e) accidents and unusual occurrences on the Road Section shall include:
 - (i) death or injury to any person;
 - (ii) damaged or dislodged fixed equipment;
 - (iii) any obstruction on the Road Section, which results in slow down of the services being provided by the Contractor;
 - (iv) disablement of any equipment during operation;
 - (v) communication failure affecting the operation of Road Section smoke or fire;
 - (vi) flooding of Road Section; and
 - (vii) such other relevant information as may be required by the Authority.
- (f) The Contractor also agrees to unconditionally abide by such other direction of the Authority issued by the authorised representative on all operational matters under the provisions of this contract.
- (g) The contractor also agree to abide by the requirement of clause 12 & clause 13 specifically on deployment of the personnel for the purpose of this Contract.

24. RIGHT OF INSPECTION:

- (a) The Authority reserves the right to conduct checks including surprise checks at any time, to check/observe/witness the activities of the Contractor including the User Fee collection Plaza(s) and to monitor or to ensure that any or all the activities including User Fee collection enunciated by this Contract are being carried out properly by the personnel deployed by the Contractor.
- (b) The Authority may exercise any check/control to ensure discharge of various obligations by the Contractor under the Contract including but not limited to following:
 - i) Correctness of the User Fee charges recovered from users, as prescribed

- ii) Issue of proper Receipts to all Vehicles;
- iii) Maintenance of proper registers including those relating to collection of User Fee from different type of vehicles;
- iv) **Weekly** remittance of amount due from the Contractor by the prescribed day;
- v) Checking of data in electronic/soft form;
- vi) Maintain User Fee Plaza(s) and its appurtenances by the Contractor at his cost and ensure that they are in good running condition;
- vii) Arrangement for lighting and water are in order;
- viii) There is no delay to the traffic due to procedure of collection of User Fee and also there is no traffic jam at the User Fee Plaza(s); and
- ix) Any other check or control as considered appropriate by the Authority including through its authorised representative.

25. **FORCE MAJEURE:**

(a) **NON-FORCE MAJEURE EVENT:**

An event (i) which involves diversion of traffic of any kind, including but not limited to any diversion ordered/implemented by local authority or any State/Central Government for a period not exceeding 15 days in continuation; or (ii) where the road users opt to access/travel through the existing alternate free User Fee (toll) roads due to deteriorated road conditions/ maintenance of road section. This may result into bypassing of User Fee Plaza/ User Fee Collection Booths and use of any part of the said Section of the National Highway/said bridge by the users.

(b) **FORCE MAJEURE EVENT:**

Except as stated in Clause (a) above, Force Majeure event means an event or circumstances or a combination of events and circumstances referred to in this clause which are beyond the reasonable control of the Party or Parties to this Contract and which party could not have prevented or reasonably overcome with the exercise of its reasonable skill and care in relation to performance of its obligations pursuant to this Contract and which are of the nature, without limitation of those described below:

- (i) Publicly declared strike by registered and recognised association of Transporters exceeding 7 days. The date of going on strike and withdrawal or start of movement of traffic will be inclusive for the purpose of calculation of 7 days under this clause.
- (ii) Floods/Earthquake having materially adverse impact i.e. complete blockade of road.
- (iii) Act of war, invasion, armed conflict or act of foreign enemy, unexpected call up of armed forces, blockade, embargo, revolution, riot, sabotage, terrorism or act of such threat, or any other political or social event having material adverse impact on the performance of obligations of the parties thereof.
- (iv) Expropriation, acquisition, confiscation or nationalisation of the User Fee collection
- (v) Any change in law which has a material adverse effect on the obligation of the parties hereto.
- (vi) Any decision or order of a court or tribunal, which has a material adverse effect on the performance of obligations of the parties to this Contract.

- (vii) Suspension of traffic on the said section of National Highway/said bridge or any part thereof, exceeding 15 (fifteen) days at a stretch.
- (viii) Any event or circumstances of a nature analogous to the foregoing.

Either party to this Contract shall be entitled to suspend or excuse performance of his obligations, including remittance of instalments by the Contractor to the Authority for the period of continuance of the Force Majeure event, under this Contract to the extent that such performance is impeded by an event of Force Majeure prevailing continuously for more than 7 (seven) days at a time.

(c) **PROCEDURE FOR FORCE MAJEURE:**

(i) **NOTICE:**

- (1) If a party claims relief on account of a Force Majeure event, then the Party claiming to be affected by the Force Majeure event shall, as soon as reasonably practicable and in any event within 7 days of becoming aware of the Force Majeure event, give notice giving details of the effects of such Force Majeure on the Party's obligations under this Contract to the other Party in writing, including the dates of commencement and actual/likely date of cessation of such Force Majeure and its effects, with necessary supporting documents and data.
- (2) The Party receiving the claim for relief under Force Majeure shall, if wishes to dispute the claim, give a written notice of the dispute to the Party making the claim within 30 days of receiving the notice of claim.

(ii) **CONSULTATION AND DUTY TO MITIGATE:**

- (1) The Party claiming relief under Force Majeure shall, at its own cost, take reasonable steps to remedy and mitigate the effects of the Force Majeure event and restore its ability to perform its obligations under this Contract as soon as reasonably possible. The Parties shall consult with each other to determine the measures to be implemented to minimise the losses of either Party as a result of the Force Majeure event.
- (2) The Party affected by Force Majeure shall keep the other Party informed of such efforts to remedy and make reasonable efforts to mitigate on a continuous basis and shall provide written notice of the resumption of performance hereunder.
- (3) Notwithstanding anything contrary to the specifically stated in this Contract no party shall be relieved of its obligations under this Contract by reason of impossibility of performance or any other circumstance whatsoever not beyond its control.
- (4) Any Party claiming cessation of the event of Force Majeure may, if the other party has not served a notice of resumption of performance, give notice to the other party, of cessation of such event, notifying the date of alleged cessation and unless the party to whom such notice is given does not dispute the same within 30 days of the receipt of such notice the Force Majeure event shall be deemed to have ceased to consequences thereof and shall be deemed to have come to an end on the date so notified.

- (5) The relief under force Majeure will be calculated on the basis of average collection per day, arrived based on the agreed weekly remittance. The difference in collection per day during force majeure and average amount of collection per day, arrived based on the agreed weekly remittance multiplied by number of days of force majeure will be payable to the contractor .

(iii) **TERMINATION DUE TO FORCE MAJEURE:**

If any event of Force Majeure shall continuously impede or prevent a Party's performance for longer than 60 days from the date of commencement of such Force Majeure event, the parties shall decide through mutual consultation, either the terms upon which to continue the performance of this Contract or to terminate this Contract by mutual consent. If the parties are unable to agree on such terms or to terminate the Contract by mutual consent within 90 days from the date of commencement of such Force Majeure event, either Party may issue a Notice to terminate this Contract.

- (iv) The Authority on behalf of the Authority is authorised specifically to settle claims for force majeure events.

26. MATTERS NON-ARBITRABLE:

Any disputes or differences between the parties in regard to the matters covered under Clauses 3, 7, 8, 10, 14, 18 and 19 shall be referred to the Authority, Project Implementation Unit / Corridor Management Unit whose decision shall be final.

27. ARBITRATION:

- (a) All disputes and/or difference except those which are mentioned in the matters non-arbitral under Clause 26 above arising between the parties out of this Contract shall be settled by Arbitration under and in accordance with the provisions of the Arbitration and Conciliation Act, 1996. The Chairman of the Authority or his nominee shall be the sole Arbitrator. The award made and published in pursuance of such Arbitration proceedings shall be final and binding on both the parties.
- (b) The proceedings of the Arbitration shall be held in English language and shall be held at such place as may be decided by the Chairman of the Authority or his nominee. The award of the Arbitration shall be final and binding on both the parties to the Contract.
- (c) Pending resolution of any dispute pursuant to Arbitration, under all circumstances the Contractor shall continue to remit the agreed instalments of money to the Authority as prescribed in this Contract including when the dispute is about the amount to be remitted.

28. SEVERABILITY:

If any provision of this Contract is prohibited by law or held to be invalid, illegal, or unenforceable, the remaining provisions hereof shall not be affected, unless the same materially affects the performance of the obligation of the parties under this Contract and this Contract shall continue in full force and effect to the fullest extent possible as if such prohibited, illegal or invalid provision had never constituted a part thereof.

29. BREACH:

Any breach of the terms and conditions herein contained in this Contract, which may or may not, cause any financial loss to the Authority shall attract immediate unilateral termination of this Contract by the Authority, notwithstanding anything contrary contained in any of the Clauses in this Contract.

30. WAIVER:

Failure or neglect by either of the Parties to enforce at any time any of the provisions hereof shall not be deemed to be a waiver of the right. In such an event, the same shall neither affect the validity of the whole or any part of this Contract nor prejudice the rights of Parties from taking subsequent action.

31. ASSIGNMENT:

The Contractor undertakes not to assign any right and/or obligation of this Contract to any other person without prior consent of the Authority in writing.

32. DEATH/WINDING UP:

If the Contractor being an individual/ Proprietary firm declared as insolvent or commit any act of insolvency or a partnership firm is dissolved or insolvent or commits any act of insolvency or being a Cooperative Society/a Limited Company is ordered to wind up by any Court of Law or makes arrangements with its creditors to wind up, the Contract shall forthwith stand terminated without prejudice to any other rights or remedies of the Authority under this Contract.

33. ABANDONMENT:

In the event of abandonment of the User Fee collection by the Contractor, due to his fault or due to bankruptcy or default or for any other reason, the Authority shall be entitled to take over the User Fee Plaza(s), and terminate this Contract and to continue the User Fee collection in the manner it deems fit. Further, the Authority, in such a situation, shall forfeit the performance security furnished by the Contractor to adjust any dues or claims or damages without prejudice to its other rights.

34. INDEMNITY:

The Contractor shall indemnify the Authority and its officers, agents and authorized representatives against all liabilities, damages and expenses arising from any claims for damages, suits, proceedings, recoveries, judgments or executions (including, but not limited to litigation costs and expenses and reasonable User Fees of the Attorney) which may be made or recovered from the Authority by reason of any acts, omissions (whether negligent or otherwise) or due to willful misconduct of the Contractor including its agents, survivors and personnel.

35. TERMINATION:

- (1) The Authority shall be entitled to terminate this Contract once the decision is taken to transfer the road section to BOT concessionaire (reference clause 2 of the contract) at any time after giving notice to the Contractor as under in writing and in

that event, the Contractor shall not be entitled to any claim, or any compensation whatsoever on account of such termination.

- (2) The Authority shall be entitled to terminate this Contract at any time without assigning any reason(s) after giving notice to the Contractor as under in writing and in that event, the Contractor shall not be entitled to any claim, or any compensation whatsoever on account of such termination.

- (i) By giving fourteen (14) days prior notice in writing,

- (3) Notwithstanding anything contained in clause (1) above, the Authority may terminate the Contract forthwith for breach or non-observance of any of the terms and conditions of this Contract or for any misconduct on the part of Contractor or his employee/staff/personnel or for overcharging of User Fee from a user, or for harassment of any user.
 - (4) The Authority shall be entitled to terminate this Contract for any type of non-compliances under provisions of this contract if not rectified within a given time frame.

36. DECISION OF AUTHORITY: FINAL AND BINDING

Except where otherwise provided or specified in this Contract and subject also to such powers as may be delegated by the Central Government to any of the specific official of the Authority from time to time, any decision of the Authority for the time being on all questions and matters whatsoever arising out of or in relation to or in connection with this Contract or as to the interpretation of any of its conditions whether during the subsistence of this Contract or at any time thereafter, shall be final and binding on the parties to this Contract.

37. INTEGRATED CONTRACT:

This Contract represents and constitutes the entire Contract between the Parties and shall not be explained, modified or contradicted by any prior or contemporaneous negotiations, representations or Contract(s), either written or oral or minutes of any meeting (including pre-bid meeting/s) or conference(s) and correspondence between the Parties or bid documents.

38. STAMPING AND ENGROSSING:

Within 28 (twenty eight) days from the date of signing this Contract or within such period as provided by the law applicable which ever is shorter, the Contractor, if required, shall have the Contract engrossed, have the correct Stamp Duty adjudicated by the Inspector General of Registrations, New Delhi and return the same duly signed and executed to the Authority. It would be the sole responsibility of the Contractor to comply with the applicable laws in this regard and the Contractor's failure to do so may result into termination of the Contract by the Authority, forfeiture of the performance security, without prejudice to any or other rights of the Authority. It shall be noted that the contract shall be signed at NHAI HQ at Delhi.

39. AMENDMENT:

Terms of this Contract can be amended with the mutual consent of both the parties. 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.

IN WITNESS WHEREOF the parties hereto through their duly authorised representatives have set their hands and seal on the day, month and year first above mentioned.

For and on behalf of

For and on behalf of

(Signature)

(Signature)

Name:-

Name:-

Designation: General Manager (CO),

Designation:-

Place:- New Delhi

Place:-

In the presence of

In the presence of

1. Signature:

1. Signature:

Name:

Name:

Address:

Address:

2. Signature:

2. Signature:

Name:

Name:

Address:

Address:

**** Contractor must affix its seal.***

SCHEDULE – I

NOTIFICATION NO. SO. 336 (E) (E) DATED 07.02.2013
PUBLISHED IN OFFICIAL GAZETTE

Fee Rates applicable are as under:

Sl	Type of vehicles	Fee rate for vehicle for one way trip (in rupees)	Fee rate for vehicles for return trip in a day (in rupees)	Fee rate for vehicles for monthly pass valid for 50 journeys in a month. (in rupees)	Fee for commercial vehicles registered in the District
(1)	(2)	(3)	(4)	(5)	(6)
1.	Car, Jeep, Van or Light Motor Vehicle	45	70	1570	25
2.	Light Commercial Vehicle, Light Goods Vehicle or Mini Bus	75	115	2535	40
3.	Bus or Truck (upto two axles)	160	240	5310	80
4.	Multi Axle Vehicle (MAV) (three axles)	175	260	5790	85
5	Multi Axle Vehicle (MAV), HCM or EME (4 - 6 axles)	250	375	8325	125
6	Oversized Vehicles (seven or more axles)	305	455	10135	150

The rate of monthly pass for local non – commercial vehicles will be **Rs 215.00**.

1. The fee rate mentioned at column 6 is for single trip and is applicable for commercial vehicles (excluding vehicle plying under National Permit), registered within the District where the fee plaza is located.

SCHEDULE – II

Not Applicable

Schedule- III

[Reference clause 12 &13 of Appendix - IV]

Key Personnel

SI No	Designation at Plaza	No	No per shift (for all lanes)	Nos. deployed per Plaza (for all shifts)	Essential Qualification
1.	Plaza Manager			1	Tech. in IT/ Computer Science/ Electronics & Communication/ Electronics or MCA from any govt. recognized university. MBA as additional qualification is desirable. Minimum 2 years post qualification experience in any commercial organization of repute
2	Security Officer			1	ate in any discipline with minimum 10 years post qualification experience in relevant field in any govt or. private organization of repute red defence personnel of rank equivalent to Capt. or above. The officer can be from paramilitary forces also of the rank of Dy. SP and above.

3	Accounts Office r			1	ate in any discipline with minimum 10 years post qualification experience in relevant field or CA/ICWA/SAS with minimum 5 years post qualification experience in any govt or. private organization of repute
OTHER STAFF					
	Shift In charge		1	3	ate in any discipline and a diploma in computing from a recognised institute of repute with minimum 2 years post qualification experience in relevant field red defence personnel of rank equivalent to ASO. or above. The officer can be from paramilitary forces also and the at least a diploma in computer application or equivalent from any govt. recognized institute in India
	Accountant		1	3	ate in any discipline with minimum 5 years post qualification experience in any in any govt or. private organization of repute
	Toll Collector	1	8 (in case of 8 lane plaza)	24*+6(2 reliever per shift)=30	12th pass from any recognised board in India or retired defence personnel

					with operational knowledge of computer.
	Toll Attendant	1	8 (in case of 8 lane plaza)	24*+6(2 reliever per shift)=30	12th pass from any recognised board in India or retired defence personnel.
	Barrier man		2+2 (up&down)	12	12th pass from any recognised board in India or retired defence personnel
	Channelizer		2 (up&down)	6	12th pass from any recognised board in India or retired defence personnel
	Gun man		4	12	Retired defence personnel only.
	Electrician		1	3	10th Standard pass from any recognised board of India with knowledge of the relevant field.
	Safaiwala		1	3	Experience in relevant field.
	Mali			1	
	Peon		1	3	8th standard pass.
	Total			109	

* The above requirement of staff is for 4 + 4 lane plaza. The bidder shall confirm the actual number of lanes and requirement of other staff from the concerned Regional Office or Project Director.

Schedule- IV

[Reference Clause 13 (b) of Appendix IV

FORMAT FOR DETAILS OF PERSONNEL TO BE DEPLOYED AT TUNDLA TOLL PLAZA AT KM 225.000 IN THE SECTION FROM KM. 219.000 TO KM. 250.500 ON THE NATIONAL HIGHWAY NO. 2 (TUNDLA-MAKHANPUR SECTION) IN THE STATE OF UTTAR PRADESH PRADESH. (To be submitted after signing of the contract to the RO in case of Key personnels and to the Project Director for other staffs.)

<u>Sr.</u>	<u>Name & Designation</u>	<u>Permanent Address & Contact No.</u>	<u>Correspondence Address & Contact No.</u>	<u>Qualification & experience (self attested copy of certificate are to be enclosed)</u>	<u>Recent Passport size photo graph.</u>	<u>Specimen sig.</u>
<u>1.</u>	<u>Plaza Manager</u>	-	-	-	-	-
<u>2</u>	<u>Security Officer</u>	-	-	-	-	-
<u>3</u>	<u>Accounts Officer</u>	-	-	-	-	-
<u>4</u>	<u>Administrative Officer</u>	-	-	-	-	-
<u>5</u>	<u>Shift Incharge</u>	-	-	-	-	-
<u>6</u>	<u>User Fee Inspectors</u>	-	-	-	-	-
<u>7</u>	<u>Accountant</u>	-	-	-	-	-
<u>8</u>	<u>Astt. Accountant</u>	-	-	-	-	-
<u>9</u>	<u>Toll Collector</u>	-	-	-	-	-
<u>10</u>	<u>Toll Attendant</u>	-	-	-	-	-
<u>11</u>	<u>Barrier man</u>	-	-	-	-	-
<u>12</u>	<u>Channelizer</u>	-	-	-	-	-
<u>13</u>	<u>Gun man</u>	-	-	-	-	-
<u>14</u>	<u>Electrician</u>	-	-	-	-	-
<u>15</u>	<u>Safaiwala</u>	-	-	-	-	-
<u>16</u>	<u>Mali</u>	-	-	-	-	-
<u>17</u>	<u>Peon</u>	-	-	-	-	-

Schedule-V

[Reference clause 23 (d) of Appendix- IV]

MONTHLY USER FEE COLLECTION STATEMENT- PART-A

Sl. No.	Type of Vehicles as per notification provisions	Amount of User Fee collected through Tickets		User Fee collected through Passes		Total amount Collected		Total amount Deposited		R
		For the	Cumulative	For the	Cumulative	For the month	Cumulative	For the	Cumulative	
1	CAR, JEEP, VAN OR LIGHT MOTOR VEHICLE									
2	LIGHT COMMERCIAL VEHICLE, LIGHT GOODS VEHICLE OR MINI BUS									
3	TRUCK / BUS (TWO AXLES)									
4	THREE AXLE COMMERCIAL VEHICLES									
5	HEAVY CONSTRUCTION MACHINERY (HCM) OR EARTH MOVING EQUIPMENT (EME) OR MULTI AXLE VEHICLE (MAV) (FOUR TO SIX AXLES)									
6	OVERSIZED VEHICLES (SEVEN OR MORE AXLES)									
Total										

Schedule-V
[Reference clause 23 (d) of Appendix - IV]
MONTHLY USER FEE COLLECTION STATEMENT- PART-B

MONTHLY VEHICLE PASSING REPORT							
FOR THE MONTH OF							
No of monthly passes	CAR, JEEP, VAN OR LIGHT MOTOR VEHICLE	LIGHT COMMERCIAL VEHICLE, LIGHT GOODS VEHICLE OR MINI BUS	TRUCK / BUS (TWO AXLES)	THREE AXLE COMMERCIAL VEHICLES	HEAVY CONSTRUCTION MACHINERY (HCM) OR EARTH MOVING EQUIPMENT (EME) OR MULTI AXLE VEHICLE (MAV) (FOUR TO SIX AXLES)	OVERSIZED VEHICLES (SEVEN OR MORE AXLES)	Total
Type of Vehicles as per notification	CAR, JEEP, VAN OR LIGHT MOTOR VEHICLE	LIGHT COMMERCIAL VEHICLE, LIGHT GOODS VEHICLE OR MINI BUS	TRUCK / BUS (TWO AXLES)	THREE AXLE COMMERCIAL VEHICLES	HEAVY CONSTRUCTION MACHINERY (HCM) OR EARTH MOVING EQUIPMENT (EME) OR MULTI AXLE VEHICLE (MAV) (FOUR TO SIX AXLES)	OVERSIZED VEHICLES (SEVEN OR MORE AXLES)	Total
	Nos	Nos	Nos	Nos	Nos	Nos	Nos
All types of single Entry (excluding Commercial vehicle registered in the district where the fee plaza falls)							
Multiple entry							
Reusage of Multiple Entry ticket							
Reusage of Monthly passes							
Entry of Commercial vehicle (excluding vehicles plying under national permit) registered in the district where the fee plaza falls							
Exempted etc.							
Grand Total							

Schedule- VI
(Format of Bank Guarantee)
(Reference Clause – 2.18.1)
Format for Bank Guarantee for Performance Security

BANK GUARANTEE FOR PERFORMANCE SECURITY

To

National Highways Authority of India

In consideration of “National Highways Authority of India (NHAI)” (hereinafter referred as the “Client”, which expression shall, unless repugnant to the context or meaning thereof include its successors, administrators and assigns) having awarded to M/s Having its office at (Hereinafter referred to as the “Contractor” which expression shall repugnant to the context or meaning thereof, include its successors, administrators, executors and assigns), a contract by issue of Client’s Letter of Acceptance No..... dated and the same having been unequivocally accepted by the Contractor, resulting in a Contract valued at Rs...../- (Rupees) excluding Service Tax for “.....” (Hereinafter called the “Contract”), and the Contractor having agreed to furnish a Bank Guarantee to the Client as “Performance Security as stipulated by the Client in the said contract for performance of the above Contract amounting to Rs...../- (Rupees).

We,having registered office at and branch at a body registered/constituted under the (hereinafter referred to as the Bank), which expression shall, unless repugnant to the context or meaning thereof, include its successors, administrators, executors and assigns) do hereby guarantee and undertake to pay the Client immediately on demand, without any deductions, set-off or counterclaim whatsoever, any or, all money payable by the Contractor to the extent of Rs..... (Rupees.....) as aforesaid at any time up towithout any demur, reservation, contest, recourse, cavil, arguments or protest and/or without any reference to or enquiry from the Contractor and without your needing to prove or show grounds or reasons for your demand for the sum specified therein. Any such demand made by the client on the bank shall be conclusive and binding notwithstanding any difference between the Client and the Contractor or any dispute pending before any Court, Tribunal , Arbitrator or any other authority. We agree that the Guarantee herein contained shall be irrevocable and shall continue to be enforceable till the Client discharges this guarantee.

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

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

Any demand shall be deemed to be served, if delivered by hand, when left at the property address for service; and if given or made by pre-paid registered post or facsimile transmission, on receipt.

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

"The guarantee shall also be operatable at our.....branch at New Delhi, from whom, confirmation regarding the issue of this guarantee or extension/renewal thereof shall be made available on demand. In the contingency of this guarantee being invoked and payment thereunder claimed, the said branch shall accept such invocation letter and make payment of amounts so demanded under the said invocation"

Notwithstanding anything contained herein,

- (a) Our liability under this Bank Guarantee is limited to Rs..... (Rupees) and it shall remain in force up to and including..... and shall be extended from time to time for such period as may be desired by the client in whose favor this guarantee has been issued.
- (b) This Bank Guarantee shall be valid up to
- (c) We are liable to pay the guaranteed amount or any part thereof under this Bank Guarantee Only and only if your serve upon as a written claim or demand on or before(date of expiry of Guarantee).

(Signature of the Authorised official)

(Name & Designation with Bank Stamp)

NOTE:

- (i) The bank guarantee(s) contains the name, designation and code number of the officer(s) signing the guarantee(s)
- (ii) The address, telephone no. and other details of the Head Office of the Bank as well as of issuing branch should be mentioned on the covering letter of issuing Branch.
- (iii) The bank guarantee for Rs. 10,000 and above is signed by at least two officials (or as per the norms prescribed by the RBI in this regard).

Schedule VII

FORM OF LETTER OF ACCEPTANCE (LOA)

No:

Date:

To,

Sub: Collection of User Fee by the fee collecting agency selected on the basis of competitive bidding at [•] toll plaza (near [•]) located at km. [•] on km. [•] to km. [•] ([•]) section of National Highway [•] in the State of [•] (hereinafter referred to as the said section of the National Highway).

Ref: Your offer dated [•] submitted pursuant to the referred notice

Dear Sir,

Your Bid quoting an Annual Remittance of Rs. _____ (Rupees _____) for engagement as the user fee collecting agency for collection of User Fee on the basis of competitive bidding at Km. [•] [•] toll plaza (near [•]) for the section from km. [•] to km. [•] [•] of National Highway No. [•] in the state of [•] (hereinafter referred to as the said section of the National Highway) has been accepted by the competent authority of the NHAI on the terms and conditions of Contract forming part of the Bidding Documents.

You are required to submit a Performance Security within 7 (Seveen) days as per Clause 2.18.1.

The Bid Security shall be forfeited by the Authority, in case you fail within the specified period to furnish the required Performance Security. ***You shall also be required to sign the contract within 3 (Three) days from the date of receipt of the Performance Security and after signing the contract, successful bidder shall take over the toll plaza and start the fee collection within 2(Two) days of signing the contract agreement,*** on failure to do so, the entire Performance Security including Bid Security and bank guarantee shall be liable to be forfeited and invoked. In the event of your failure to submit the Performance Security, the Letter of Acceptance for award of contract in your favour shall automatically be terminated without further notice. In such a case, your engagement shall forthwith automatically stand terminated and thereupon, without prejudice to any other rights and remedies of the Authority, the Authority shall be entitled to appoint another Contractor at your risk as to costs and consequences.

Please convey your unconditional acceptance by signing on the original of this letter as per Clause (3.3.1) and submit the required Performance Security within the specified period so that the Contract could be signed within the specified period.

Thanking you,

Yours faithfully

For National Highways Authority of India

(Signature)

Name:-

Designation: GM (CO)

Place:- & Dated

Accepted unconditionally including the draft of the contract.

(Signature)**

Name:-

Name of the regd. partnership firm/company/limited company/co-operative society/proprietary firm/individual (whichever is applicable).

Designation:

Place:-

Dated:-

*** Please affix common seal.**