

Request for Proposal (RFP) for

**Selection of Consultant for preparing
Detailed Design Concept and Detailed
Project Report for Development of
National Maritime Heritage Complex**

(E-Tendering)



Indian Ports Association

1st Floor, South Tower, NBCC Place

B. P Marg, Lodi Road

New Delhi - 110 003

Ph No: 011-24369061/63; Fax No : 011-24365866

Disclaimer

1. This RFP document is neither an agreement nor an offer by the IPA. The purpose of this RFP is to provide information to the short listed parties that may be useful to them in the formulation of their proposal pursuant to this RFP.
2. Though adequate care has been taken in preparation of this Request for Proposal (RFP) document, Consultancy Company/ Firm/Consortium (Applicant) submitting detailed financial proposal in response to this RFP should satisfy itself that the information provided in the RFP document is complete in all respects.
3. Neither IPA nor their employees will have any liability to any prospective Consultancy Company/ Firm/Consortium (Applicant) or any other person under the law of contract, tort, the principles of restitution or unjust enrichment or otherwise for any loss, expense or damage which may arise from or be incurred or suffered in connection with anything contained in this RFP document, any matter deemed to form part of this RFP document, the award of the Project/Assignment.
4. IPA will not be responsible for any delay in receiving the proposals and reserves the right to accept/reject any or all of proposals submitted in response to this RFP document at any stage without assigning any reasons whatsoever.
5. IPA also reserves the right to withhold or withdraw the process at any stage with intimation to all who submitted the RFP Application and it reserves the right to change/modify/amend any or all provisions of this RFP document.

TABLE OF CONTENTS

| | |
|--------------------------------------------------------------------------------------------------|-----------|
| 1. Letter of invitation | 2 |
| 2. Instructions to the Consultants/Applicants | 3 |
| 3. Data Sheet..... | 10 |
| 4. Terms of Reference..... | 11 |
| 5. Technical proposal - standard forms | 13 |
| <i>Form 5A: Technical Proposal Submission Form.....</i> | <i>14</i> |
| <i>Form 5B: Description of Approach, Methodology and Work Plan for Performing the Assignment</i> | <i>15</i> |
| <i>Form 5C: Team Composition and Task Assignment</i> | <i>16</i> |
| <i>Form 5D: Curriculum Vitae (CV) for Proposed Professional Staff.....</i> | <i>18</i> |
| 6. FINANCIAL PROPOSAL - STANDARD FORMS..... | 20 |
| <i>Form 6A: Financial Proposal Submission Form.....</i> | <i>21</i> |
| <i>(TO BE FILLED BY THE BIDDERS AND ATTACHED IN PDF FORMAT IN SECOND COVER ON CPPP).....</i> | <i>21</i> |
| <i>Form 6B: Summary of Costs.....</i> | <i>22</i> |
| <i>(TO BE FILLED BY THE BIDDERS AND ATTACHED IN PDF FORMAT IN SECOND COVER ON CPPP).....</i> | <i>22</i> |
| <i>Form 6C: Breakdown of Costs.....</i> | <i>23</i> |
| <i>(TO BE FILLED BY THE BIDDERS AND ATTACHED IN PDF FORMAT IN SECOND COVER ON CPPP).....</i> | <i>23</i> |
| <i>Form 6D: Breakdown of Remuneration.....</i> | <i>24</i> |
| <i>(TO BE FILLED BY THE BIDDERS AND ATTACHED IN PDF FORMAT IN SECOND COVER ON CPPP)...</i> | <i>24</i> |
| <i>Form 6E: Breakdown of Out of Pocket Expenses.....</i> | <i>24</i> |
| <i>(TO BE FILLED BY THE BIDDERS AND ATTACHED IN PDF FORMAT IN SECOND COVER ON CPPP)....</i> | <i>24</i> |
| SECTION 7: STANDARD FORM OF CONTRACT | 25 |
| Annexure – I | 46 |
| <i>Form of Bank Guarantee for Performance Security</i> | <i>46</i> |
| Annexure – II | 48 |
| <i>Format of Bank Guarantee for Bid Security.....</i> | <i>48</i> |
| Annexure – III | 50 |
| <i>Power of Attorney for Authorised representative</i> | <i>50</i> |
| Annexure – IV | 52 |
| <i>Format for Joint Bidding Agreement (in case of JV/Consortium</i> | <i>52</i> |

No. IPA/GAD/Heritage-SM/2016

Dated: 25th Oct 2016

The set of RFP document is issued to:

Name: _____

Address: _____

Signature of the Officer

Issuing the RFP Document: _____

1. LETTER OF INVITATION

New Delhi,

Date: 25th October , 2016

Dear Mr./Ms.

Name of the Consultant

Address of the Consultant

1. Introduction

The Indian Port Association invites online proposals to provide the following consulting services:

Preparation of Detailed Design Concept and Detailed Project Report for Development of National Maritime Heritage Complex at Lothal in Ahmedabad District in Gujarat. More details on the services are provided in the Terms of Reference.

2. Background

Lothal is one of the most prominent cities of the ancient Indus valley civilization, located in the Bhal region of the modern state of Gujarat and dating from 3700 BC. Lothal, where world's oldest man made dockyard which is over 4600 years old, is located, is an attractive location for setting up of a maritime heritage complex. Such a complex will befit the history, archaeological importance and international renown of Lothal as a place of extraordinary and unparalleled maritime heritage of India.

It is proposed that to showcase and to preserve India's rich and diverse Maritime Heritage, a museum along with a heritage complex will be built at Lothal or at sites associated with Lothal. Museum will specialize in the display of objects relating to ships and travel on large bodies of water. It also intends to highlight the ancient shipbuilding and navigational technologies towards which India contributed handsomely.

3. Objective

The objective of this RFP is to engage a consultant for **Preparation of Detailed Design Concept and Detailed Project Report for Development of National Maritime Heritage Complex at Lothal in Ahmedabad District in Gujarat**

4. A firm will be selected under Quality and Cost Based Selection (QCBS) method and procedures for it has been described in this RFP.

5. Online Bids will be accepted only at eProcurement web site <https://eprocure.gov.in/eprocure/app> (CPPP). If any bidder failed to submit online, then Bid shall be treated as "Non-Responsive"

6. All communications including the submission of Proposal should be addressed to:

Managing Director,

Indian Port Association,

1st Floor, South Tower, NBCC Place,

B.P.Marg, Lodi Road, New Delhi – 110 003

Ph: 011 – 24369061; Fax No: 011-24365866

The official website for accessing the information related to RFP: www.ipa.nic.in

2. INSTRUCTIONS TO THE CONSULTANTS/APPLICANTS

- 2.1 The applicant will be required to submit their financial offer strictly on the basis of terms of reference provided in this RFP document without attaching any counter conditions and certificate to this effect has to be furnished.
- 2.2 The applicant has to submit a non-refundable bid processing fee Rs. 10,000/- along with the proposal through a DD/Banker's cheque drawn in favour of Indian Ports Association, New Delhi.
- 2.3 In case of any dispute arising while performing the services as described in this RFP document, the decision of the IPA will be final.
- 2.4 For applicants who are subsidiaries of foreign companies (Equity of Foreign entity more than 50%) and if their turnover are claimed, the IPA shall insist for a letter from the Parent Company to make their services available to Indian Company as required and demanded by IPA without any extra financial liabilities. In case of JV/Consortium, the consultant has to provide the undertaking in the format provided in this document along with the Power of Attorney for the Authorised representative.
- 2.5 The applicant must be a well-established consultant in India for more than 5 years having experience in conceptualizing/ planning/engineering/design/proof-checking, preparing feasibility reports, design and estimation, preparation of architectural / structural drawings, preparation of tender documents, evaluation of tenders, comprehensive project management with quality and quantity survey, preparation of bills etc. of the work (s).
- 2.6 The applicant should have regular set up of a team of experience professional having handled such specific projects.
- 2.7 The applicant shall be able to hire the services of some other suitable consulting agencies for specialized jobs.
- 2.8 When two or more firms are forming a consortium to participate in RFP then one firm shall become the lead member of the consortium and shall submit an authorization letter for other members of consortium. The evaluation will be conducted on the basis of document submitted by consortium as a whole against evaluation criteria. However, no applicant applying individually or as a member of a consortium, as the case may be, can be member of another applicant.
- 2.9 Even though applicants satisfy the necessary requirements they are subject to disqualification if they have:
 - Made untrue or false representation in the form, statements required in the application document.
 - Records of poor performance such as abandoning work, not properly completing contract, financial failures or delayed completion.
- 2.10 It may be noted, Project shall be allotted to an Applicant commensurate to their capabilities and capacities as assessed by IPA. No representation in this respect will be entertained.

- 2.11 For selection of consultant, proposals received will be evaluated based on the details furnished and minimum criteria specified by the IPA in this document.
- 2.12 **Bid Undertaking:** Applicant has to furnish following undertaking along with bid.

“I/we certify that in the last three years, we/any of the consortium members have neither failed to perform on any contract, as evidenced by imposition of Penalty by an arbitral or judicial authority or a judicial pronouncement or arbitration award, nor been expelled from any project or contract by any public authority nor have had any contract terminated by any public authority for breach on our part”.

2.13 Bid Security

A Bid Security in the form of a Bank Guarantee or Demand Draft, from a scheduled Indian Bank in favour of 'Indian Port Association' valid for 180 days from the last date of submission, payable at New Delhi, for the sum of Rs1,00,000/- (Rupees One Lakh Only) will be required to be submitted by each Applicant.

The Bank Guarantee or Demand Draft in original shall be placed in an envelope and attached with the envelope containing the Technical proposal marked as “Technical Proposal - Preparation of Detailed Design Concept and Detailed Project Report for Development of National Maritime Heritage Complex at Lothal in Ahmedabad District in Gujarat”.

The Financial bid should be submitted online only as per the Price Schedule given in Clause 6 Financial Proposal and attached in PDF format in e-procurement Portal only(CPPP) <https://eprocure.gov.in/eprocure/app> .Any Indication of 'Quoted Price' in the online technical Bid documents shall lead to rejection of the bid outrightly. For evaluation purpose the uploaded offer documents will be treated as authentic and final .No hard copy of financial Bid shall be submitted. The Price Bid submitted through e-procurement mode only will be taken up for the purpose for evaluation. Please refer Appendix-I for further details.

Bids received without the specified Bid Security shall be summarily rejected. The envelope containing bid security should be marked as Bid Security.

IPA shall not be liable to pay any interest on bid security deposits. Bid security of unsuccessful applicants will be returned, without any interest, as promptly as possible after signing the contract with Successful Applicant or when the selection process is cancelled by IPA.

IPA shall be entitled to forfeit and appropriate the bid security as mutually agreed loss and damage payable to IPA in regard to the RFP without prejudice to IPA any other right or remedy under the following conditions:

- 1) If any Applicant withdraws its proposal during the period of its validity as specified in this RFP and as extended by the applicant from time to time, or
- 2) In the case of a Successful Applicant, if the applicant fails to sign the agreement within the specified time limit, and/or fails to submit the inception report within the specified time, or
- 3) If the Applicant commits any breach of terms of this RFP or is found to have made a false representation to IPA.

For the Successful Applicant the bid security will be retained by IPA till the submission of the Final Report. After selection of the Successful Applicant the Bid Security will be converted into Performance Guarantee and it will be released 180 days after the approval of the final report.

2.14 Right to accept or reject any or all proposals

Notwithstanding anything contained in this document, the IPA reserves the right to accept or reject any Proposal and to annul the Selection Process and reject all Proposals, at any time without any liability or any obligation for such acceptance, rejection or annulment, and without assigning any reasons thereof.

The Authority reserves the right to reject any Proposal if: (a) at any time, a material misrepresentation is made or discovered, or (b) the Applicant does not provide, within the time specified by the Authority, the supplemental information sought by the Authority for evaluation of the Proposal. Misrepresentation/ improper response by the Applicant may lead to the disqualification of the Applicant. If the Applicant is the Lead Member of a consortium, then the entire consortium may be disqualified / rejected. If such disqualification/ rejections occurs after the proposals have been opened and the highest ranking Applicant gets disqualified / rejected, then the Authority reserves the right to consider the next best Applicant, or take any other measure as may be deemed fit in the sole discretion of the Authority, including annulment of the Selection Process.

2.15 Language

The Proposal with all accompanying documents (as specified in this RfP document) and all communications in relation to or concerning the Selection Process shall be in English language and strictly on the forms provided in this document. No supporting document or printed literature shall be submitted with the Proposal unless specifically asked for and in case any of these Documents is in another language, it must be accompanied by an accurate translation of the relevant passages in English, in which case, for all purposes of interpretation of the Proposal, the translation in English shall prevail.

2.16 Evaluation processes

The RFP is for all the interested parties i.e. consultants/consortium and through this RFP, technical proposal comprising of approach and methodology and the financial offer along with key personnel required specifically for this project is requested from the Consultants for evaluation.

The weightage for the technical details and financial quote is given below:

- Technical Proposal - 80%
- Financial Bid - 20%

The scoring criteria to be used for evaluation shall be as follows:

| S. No. | Parameter | Maximum Marks |
|--------|----------------------------------------------------------------------|---------------|
| 1 | Relevant experience of the bidder | 25 |
| 2. | Proposed Methodology and Work Plan | 25 |
| 3. | Team Composition | 50 |
| | Team | Marks |
| | • Architect cum urban designer | 12 |
| | • Heritage Expert (Preferably Maritime Heritage, History & Research) | 10 |
| | • Museum Expert | 10 |
| | • Hospitality Expert | 7 |
| | • Financial Expert | 5 |
| | • Social and Environmental Expert | 6 |

*The members of the final team shall be decided in the consultation with JS(Sagarmala), Ministry of Shipping.

Marking methodology to include normalization of technical and commercial scores:

Technical Score: (X)

The bidder who secures maximum marks shall be given a technical score of 100. The technical scores of other Bidders for the project shall be computed as follows.

| | |
|---------------------------------------------------|--------------------------------------------------------------------------|
| [‘Technical’ Score of Bidder for the Project (X)] | = [Marks secured by the respective Bidder] / Highest Marks secured X 100 |
|---------------------------------------------------|--------------------------------------------------------------------------|

The score secured based on evaluation of the Technical Proposal as above shall be the Technical Score of the Bidder for the project being considered for evaluation (X).

Only those Bidders who have secured Technical Score of 65 or above shall be declared as qualified for evaluation of their ‘Financial Bid’. Bidders who have secured less than 65 for Technical Score shall be rejected.

Financial Score: (Y)

The bidders shall submit their quote as per the format provided in this RFP document. The Financial proposals shall be evaluated on the basis of total lump sum charges offered by the bidder to Indian Ports Association for a period of 3 months. Any monetary figure in decimal shall be rounded off to the nearest INR.

In cases of discrepancy between the prices quoted in words and in figures, lower of the two shall be considered. For any other calculation/ summation error etc. the bid may be rejected. The financial scores of other bidders for the project shall be computed as follows:

| | |
|------------------------------------------------------|-------------------------------------------------------------------------------------------------------------|
| [The ‘financial score’ of Bidder for the project(Y)] | = [Lowest offer quoted by the qualified bidder (Rs.)] / [Offer quoted by the respective Bidder (Rs.)] X 100 |
|------------------------------------------------------|-------------------------------------------------------------------------------------------------------------|

The marks secured as above shall be the Financial Score of the bidder for the project (Y).

Composite Score of the Bidders

Composite score of the Bidders for the bid shall be worked out as under:

| Bidder | Technical Score (X) | Financial Score (Y) | Weighted Technical Score (80% of X) | Weighted Financial Score (20% of Y) | Composite Score (F=D+E) |
|--------|---------------------|---------------------|-------------------------------------|-------------------------------------|-------------------------|
| A | B | C | D | E | F |
| | | | | | |
| | | | | | |

2.17 Correspondence with applicant

Given and except as provided in this RFP, the IPA shall not entertain any correspondence with any applicant in relation to acceptance or rejection of any application.

IPA, in its sole discretion and without incurring any obligation or liability, reserves the right, at any time to:

- Suspend and/or cancel the bidding process and/or amend and/or supplement the Bidding process or modify the dates or other terms & conditions relating there to.
- Consult with any applicant in order to receive clarification or further information.
- Select or not to select any applicant and/or to consult with any applicant in order to receive clarification or further information.
- Retain any information and / or evidence submitted to the IPA by, on behalf of, and/or in relation to any applicant and/or.
- Independently verify, disqualify, reject and/or accept any and all submissions or other information and/or evidence submitted by or on behalf of any applicant.

2.18 Fraud and corrupt practices

The Applicants and their respective officers, employees, agents and advisers shall observe the highest standard of ethics during the Selection' Process. Notwithstanding anything to the contrary contained in this document, the IPA (Client) shall reject a Proposal without being liable in any manner whatsoever to the Applicant, if it determines that the Applicant has, directly or indirectly or through an agent, engaged in corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice (collectively the "Prohibited Practices") in the Selection Process. In such an event, the Client shall, without prejudice to its

any other rights or remedies, forfeit and appropriate the Bid Security or Performance Security, as the case may be, as 'mutually agreed genuine pre-estimated compensation and damages payable to the Client for, inter alia, time, cost and effort of the Client, in regard to this document, including consideration and evaluation of such Applicant's Proposal.

2.18.1 Without prejudice to the rights of Client herein above and the rights and remedies which the Client may have under the LOA or the Agreement, if an Applicant, as the case may be, is found by the Client to have directly or indirectly or through an agent, engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice during the Selection Process, or after the issue of the LOA or the execution of the Agreement, such Applicant shall not be eligible to participate in any tender or RFP issued by the Client during a period of three years from the date such Applicant, as the case may be, is found by the Client to have directly or through an agent, engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice, as the case may be.

2.18.2 For the purposes of this Section, the following terms shall have the meaning hereinafter respectively assigned to them: (a) "corrupt practice" means (i) the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence the action of any person connected with the Selection Process (for avoidance of doubt, offering of employment to or employing or engaging in any manner whatsoever, directly or indirectly, any official of the Client who is or has been associated in any manner, directly or indirectly with the Selection Process or the LOA or has dealt with matters concerning the Agreement or arising therefrom, before or after the execution thereof, at any time prior to the expiry of one year from the date such official resigns or retires from or otherwise ceases to be in the service of the Client, shall be deemed to constitute influencing the actions of a person connected with the Selection Process); or (ii) save as provided herein, engaging in any manner whatsoever, whether during the Selection Process or after the issue of the LOA or after the execution of the Agreement, as the case may be, any person in respect of any matter relating to the Project or the LOA or the Agreement, who at any time has been or is a legal, financial or technical consultant adviser of the Client in relation to any matter concerning the Project; (b) "fraudulent practice" means a misrepresentation or omission of facts or disclosure of incomplete facts, in order to influence the Selection Process; (c) "coercive practice" means impairing or harming or threatening to impair or harm, directly or indirectly, any persons or property to influence any person's participation or action in the Selection Process; (d) "undesirable practice" means (i) establishing contact with any person connected with or employed or engaged by the Client with the objective of canvassing, lobbying or in any manner influencing or attempting to influence the Selection Process; or (ii) having a Conflict of Interest; and (e) "restrictive practice" means forming a cartel or arriving at any understanding or arrangement among Applicants with the objective of restricting or manipulating a full and fair competition in the Selection Process.

2.19 Ownership of document and copyright

All the study outputs including primary data shall be compiled, classified and submitted by the consultants to the Client in hard and soft copies shall remain the property of the client and shall not be used for any purpose other than that intended under these terms of reference without the permission of the Client.

2.20 Coordination with Ministry of Shipping and Gujarat Maritime Board

Although the RFP for preparation of **Preparation of Detailed Design Concept and Detailed Project Report for Development of National Maritime Heritage Complex at Lothal in Ahmedabad District in Gujarat** is being issued by Indian Port Association but for all work related matters the selected consultant has to work in tandem with **Ministry of Shipping and Gujarat Maritime Board**. The Gujarat Maritime Board, Govt. of Gujarat and Gujarat Tourism Development Corporation will assist the consultant in getting all the relevant information pertaining to the project on best effort basis but it will primarily be the responsibility of the consultant to arrange the information necessary for the implementation of this project.

Ministry of Shipping along with Government of Gujarat and its agencies will be forming few sub-committees to finalise various issues involved in the project. The selected consultant has to interact with all these sub-committees on regular basis to incorporate all their inputs in the deliverables.

2.21 Team for the Project

The team proposed at the time of empanelment has to be employed on this project and if the consultant wants any replacement in that case they have to take the permission of **MD IPA**. For the same, the CV of the replacement has to be provided along with a written request citing reason for replacement. The person who is the replacement has to be equal or better qualified than the person replaced.

2.22 Project Office

The selected consultant is required to open a project office in Gandhinagar/Ahmedabad for better liaison and coordination for the project. The office should be self-sufficient in terms of adequate sitting space and equipment required to undertake the project efficiently.

3. DATA SHEET

INFORMATION TO CONSULTANTS

| S.No. | |
|-------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1 | <p>The name of client is: "Indian Ports Association The method of selection is Quality and Cost - Based Selection (QCBS). The weights given to technical and financial proposals are Technical =80% Financial =20%</p> |
| 2 | <p>Objective and description of the assignment: The main objective of this assignment is to conduct: Preparation of Detailed Design Concept and Detailed Project Report for Development of National Maritime Heritage Complex at Lothal in Ahmedabad District in Gujarat The detailed description of services is mentioned in the Terms of Reference.</p> |
| 3 | <p>Clarifications must be requested before 6:00 PM on 01-11-2016. Date of pre-bid meeting will be 02-11-2016 at the address given below. The address for requesting clarifications and for pre-bid is: Managing Director, Indian Port Association, 1st Floor, South Tower, NBCC Place, B.P.Marg, Lodi Road, New Delhi – 110 003 Ph: 011 – 24369061; Fax No: 011-24365866</p> |
| 4 | <p>The proposal of the consultant should be valid for 180 days from the last date of submission. Duration of project: 7 Months</p> |
| 5 | <p>The date of submission of proposal is: 16-11-2016 (before 3.00 PM IST) and opening of proposal is: 16-11-2016 at 3.30PM IST The address for submission of proposal is: Managing Director, Indian Port Association, 1st Floor, South Tower, NBCC Place, B.P.Marg, Lodi Road, New Delhi – 110 003 Ph: 011 – 24369061; Fax No: 011-24365866 The Applicant to state cost in Indian Rupees only. Applicant must submit : <ul style="list-style-type: none"> ■ Technical proposal: Scanned copies of Technical Bid shall be submitted on eProcurement Portal (CPPP) https://eprocure.gov.in/eprocure/app in the First Cover (Technical Bid) and also two hard copies (one original + one copy) and one soft copy (PDF Format). ■ The Financial bid should be submitted online only as per the Price Schedule given in Clause 6 Financial Proposal and attached in PDF format in e-procurement Portal only (CPPP) https://eprocure.gov.in/eprocure/app. Any Indication of 'Quoted Price' in the online technical Bid documents shall lead to rejection of the bid outright. For evaluation purpose the uploaded offer documents will be treated as authentic and final. No hard copy of financial Bid shall be submitted. The price Bid submitted through e-procurement mode only will be taken up for the purpose for evaluation. Please refer Appendix-I for further details. </p> |

4. TERMS OF REFERENCE

4.1 Background

Lothal is one of the most prominent cities of the ancient Indus valley civilization, located in the Bhāl region of the modern state of Gujarat and dating from 3700 BC. Lothal, where world's oldest man made dockyard which is over 4600 years old, is located, is an attractive location for setting up of a maritime heritage complex. Such a complex will befit the history, archaeological importance and international renown of Lothal as a place of extraordinary and unparalleled maritime heritage of India.

It is proposed that to showcase and to preserve India's rich and diverse Maritime Heritage, a museum along with a heritage complex will be built at Lothal or at sites associated with Lothal. Museum will specialize in the display of objects relating to ships and travel on large bodies of water. It also intends to highlight the ancient shipbuilding and navigational technologies towards which India contributed handsomely.

4.2. Scope of work

- 4.2.1. Study of Maritime Heritage site associated with Lothal (site of Harappan-era manmade dockyard) with regard to its historicity, uniqueness, India's maritime history and heritage and other significant Indian maritime and shipping and port related sites from ancient, medieval and modern era which global appeal from tourism and maritime heritage aspects. Also Study at least 4-5 important locations and sites where maritime and other related heritage complexes are in existence worldwide, and 3-4 Maritime Museums (such as National Maritime Museum of UK, Australian National Maritime Museum Sydney and Maritime Museum of San Diego etc.) and submit a storyline based detailed report with key takeaways from the case studies of these international museums and heritage complexes.
- 4.2.2 Hold discussions with government departments/agencies and recommend to the Ministry of Shipping a detailed design concept encompassing various aspects and components of the planned National Maritime Heritage Complex. This report should contain detailed layout plan, details on available infrastructure (land, road, rail and air connectivity, water and power) for the development of Maritime Heritage Complex, site management with disaster management plan, feasibility and funding options and financing pattern for the entire NMH Complex and its management structure and implementation framework. This would include private funding and PPP potential of projects. Make interim presentations to the National Maritime Heritage Committee and other appropriate authorities before finalization of the concept design.
- 4.2.3 Prepare a Detailed Project Report for the NMH Complex which should include detailed layout plan for all components and basic infrastructure including DPR for National Maritime Museum, Maritime Heritage – based Theme Park, Interpretation Centre, Sound and Light Show, Virtual Museum, Maritime R&D and Ocean education related facilities like open installations (if possible for young children and young adults for learning about the ocean)etc. after discussions with relevant authorities, ministries/departments and make presentations to appropriate authorities before finalization. The proposed Maritime Heritage Complex and the Museum must cover the country's maritime history and should not be restricted to Lothal and nearby sites of historical importance.

- 4.2.4 To prepare historic case studies of eminent Indian Travellers like traders, scholars and monks who went across the seas to other countries, which would be of great interest to the public.
- 4.2.5 Prepare RFP document for the selection of Execution Agency for development of necessary infrastructure at the site and components such as NMH Complex, Maritime Museum, Sound and Light Show, Maritime Theme-based Heritage Park and other selected components of the complex through Public Private Partnership (PPP) and assist the Ministry of Shipping in selection of the execution agency.
- 4.2.6 Prepare applications for obtaining various statutory and other required approvals such as town planning, electricity, water, environmental clearance.

Ministry of Shipping along with Government of Gujarat and its agencies will be forming few sub-committees to finalise various issues involved in the project. The selected consultant has to interact with all these sub-committees on regular basis to incorporate all their inputs in the deliverables.

The consultant has to arrange workshops, as and when required, to present and discuss the key finding to all the stakeholders and incorporate appropriate suggestions as decided during such workshops.

4.3 Deliverable, time frame and payment schedule

| S.No. | Milestone | Time from Start Date* | Payment (%) |
|-------|-------------------------------------------------------------------------------------------------------------------------------|-----------------------|-------------|
| 1 | Report on study of Heritage sites associated with Lothal and locations where heritage complexes are in existence. | 1 month | 15 |
| 2 | Detailed Design Concept with detail layouts and details of available infrastructure with Funding option and financing pattern | 3 month | 20 |
| 3 | Detailed Project Report for the NMH Complex with all components of basic infrastructure | 6 month | 45 |
| 4 | RFP document for the selection of Execution Agency | 7 month | 10 |
| 5 | Applications for obtaining various approvals | 7 month | 10 |

* From date of effectiveness of contract. Total 7 Months

5. TECHNICAL PROPOSAL - STANDARD FORMS

Form 5A. Technical Proposal submission form

Form 5B. Description of Approach, Methodology and work plan for performing the assignment

Form 5C. Team composition and task assignments

Form 5D. Format of Curriculum Vitae of proposed professional staff

Form 5A: Technical Proposal Submission Form

Date:

To:

Managing Director,

Indian Port Association,
1st Floor, South Tower, NBCC Place,
B.P.Marg, Lodi Road,
New Delhi – 110 003
Ph: 011 – 24369061; Fax No: 011-24365866

Subject: Consultancy Services for Preparation of Detailed Project Report for Development of National Maritime Heritage Complex at Lothal in Ahmedabad District in Gujarat

Dear Sir:

We, the undersigned, offer to provide the consulting services for **Preparation of Detailed Project Report for Development of National Maritime Heritage Complex at Lothal in Ahmedabad District in Gujarat** in accordance with your Request for Proposal dated *[Insert Date]* and our Proposal. We are hereby submitting our Proposal, which includes this Technical Proposal in sealed as well as submitted online on eProcurement Portal and a Financial Proposal should be submitted online only through eProcurement Portal.

We are submitting our Proposal in JV/Consortium with: *[Insert a list with full name and address of each Joint Venture/Consortium partner]*

We hereby declare that all the information and statements made in this Proposal are true and accept that any misinterpretation contained in it may lead to our disqualification.

The Annual Turnover from Consultancy Services of the lead firm/consortium partner for FY 2014-15 is Rs_____ (Rs._____) only (respectively). Certificate(s) from Statutory Auditor/Chartered Accountant is attached along with this letter.

If negotiations are held during the period of validity of the Proposal, i.e., before [date], we undertake to negotiate on the basis of the proposed staff. Our Proposal is binding upon us and subject to the modifications resulting from Contract negotiations.

We understand you are not bound to accept any Proposal you receive.

We remain,

Yours sincerely,

Authorized Signature [In full and initials]:

Name and Title of Signatory:

Name of Firm:

Address:

Form 5B: Description of Approach, Methodology and Work Plan for Performing the Assignment

Technical approach, methodology and work plan are key components of the Technical Proposal. The consultant is suggested to present its Technical Proposal (5 (five) A4 pages, inclusive of charts and diagrams) divided into the following three chapters:

- a) Technical Approach and Methodology
 - b) Work Plan, and
 - c) Organization and Staffing
- a) **Technical Approach and Methodology:** In this chapter the consultant should explain the understanding of the objectives of the assignment, approach to the services, methodology for carrying out the activities to obtain the expected output and the degree of detail of such output. The consultant should highlight the problems to be addressed along with their importance and explain the technical approach the consultant would adopt to address them. The consultant should also explain the proposed methodologies to adopt and highlight the compatibility of those methodologies with the proposed approach.

A Theme Paper/ Story line should be presented along with the technical approach and methodology.

- b) **Work Plan:** In this chapter the consultant should propose the main activities of the assignment, their content and duration, phasing and interrelations, milestones (including interim approvals by the Client) and delivery dates of the reports. The proposed work plan should be consistent with the technical approach and methodology, showing understanding of the TOR and ability to translate them into a feasible working plan. A list of the final documents, including reports, drawings, and tables to be delivered as final output, should be included here. The work plan should be consistent with the Form of Work Schedule.
- c) **Organization and Staffing.** In this chapter the consultant should propose the structure and composition of the proposed team. The consultant should list the main disciplines of the assignment, the key expert responsible, and proposed technical and support staff.

Form 5C: Team Composition and Task Assignment

| Professional Staff | | | | | |
|--------------------|------|------------------------------------------------------------------------------------------------------------|------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------|
| Name of Staff | Firm | Area of Expertise | Position Assigned - Professional Experience in years | Educational Qualification/ no. of eligible projects | Marks Allocated |
| | | Architectural cum Urban Designer | Team Leader – 15 years | Master degree in Architecture engineering with minimum experience of 15 years in various field of civil engineering, planning and design of heritage buildings, etc. Experience of at least 5 similar projects. Experience of implementation of any heritage building/site/complex through PPP mode will be an added advantage. | 12 |
| | | Heritage Expert /Archaeologist (Preferably Maritime Heritage, Maritime art historians, History & Research) | Deputy Project Manager – 12 years | Master's degree in Archaeology with minimum experience of 12 years in Heritage History, preferably Maritime heritage/archaeology, related projects with experience of conceptualisation of heritage concepts for tourism or museums. Experience of at least 3 such projects. | 10 |
| | | Museum Expert(Museologist) | 12 years | Master degree in Museum Studies with minimum experience of 12 years in various aspects of museum operations, management of acquisition and utilisation of permanent collection, | 10 |

| | | | | | |
|--|--|---------------------------------|-------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---|
| | | | | Museum installation design, exhibition protocol, interior construction design, etc. | |
| | | Hospitality Expert | 10 years | Master's in Business Administration with minimum experience of 7 years in market demand analysis for hospitality projects like theme restaurant, resorts etc. Experience of at least 3 similar projects | 7 |
| | | Financial Expert | Financial Expert – 7 years | MBA or equivalent qualification from any university/institution. He shall have minimum experience of 7 years in financial modelling and analysis. At least 2 relevant projects. | 5 |
| | | Social and Environmental Expert | Social and Environmental expert – 7 years | Master's Degree in Environmental Engineering or Master's Degree in Environmental Science or equivalent. At least 2 relevant projects. | 6 |

Services of other experts such as transportation planner will also be required from time to time.

For a key personnel, 20% marks is for year of experience & number of assignment and 80% for quality & relevance of the experience.

| Support Staff | | | | |
|----------------------|-------------|--------------------------|--------------------------|----------------------|
| Name of Staff | Firm | Area of Expertise | Position Assigned | Task Assigned |
| | | | | |
| | | | | |
| | | | | |

Form 5D: Curriculum Vitae (CV) for Proposed Professional Staff

1. **Proposed Position** [*only one candidate shall be nominated for each position*]:_____
2. **Name of Firm** [*Insert name of firm proposing the staff*]:_____

3. **Name of Staff** [*Insert full name*]:_____
4. **Date of Birth:**_____ **Nationality:**_____
5. **Education**[*Indicate college/university and other specialized education of staff member, giving names of institutions, qualifications obtained, and date:* _____

6. **Membership of Professional Organisations:**_____
7. **Training & Publications** [*Indicate significant training since degrees under 5 - Education were obtained*]:_____
8. **Countries of Work Experience:**[*List countries where staff has worked in the last ten years*]:_____
9. **Languages**[*For each language indicate proficiency: good, fair, or poor in speaking, reading, and writing*]:_____
10. **Employment Record**[*Starting with present position, list in reverse order every employment held by staff member since graduation, giving for each employment (see format here below): dates of employment, name of employing organization, positions held.*]:
From [Year]:_____ To[Year]:_
Employer:_____
Positions held:_____

| | |
|-------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>11. Detailed Tasks Assigned [<i>List all tasks to be performed under this assignment</i>]</p> | <p>12. Work Undertaken that Best Illustrates Capability to Handle the Tasks Assigned [<i>Among the assignments in which the Staff has been involved, indicate the following information for those assignments that best illustrate staff capability to handle the tasks listed under point 11.</i>] Name of assignment or project:_____</p> |
|-------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

| | |
|--|-----------------------------------------------------------------------------------------------------------------------------------------|
| | Year: _____ Location: _____ Client: _____ Main project features: _____ Positions held: _____ Activities performed: _____ |
|--|-----------------------------------------------------------------------------------------------------------------------------------------|

13. Certification:

I, the undersigned, certify that to the best of my knowledge and belief, this CV correctly describes me, my qualifications, and my experience. I understand that any wilful misstatement described herein may lead to my disqualification or dismissal, if engaged.

_____ Date: _____

(Signature of staff member)Day/Month/Year

Full name of the staff: -----

Signature of Authorized representative of the staff----- Date-----

(Day/Month/Year)

Full name of authorized representative: _____

6. FINANCIAL PROPOSAL - STANDARD FORMS

- Form 6A Financial Proposal Submission Form
- Form 6B Summary of Costs
- Form 6C Breakdown of Costs
- Form 6D Breakdown of Remuneration
- Form 6E Breakdown of Out of Pocket Expenses

Note : **The Financial bid should be submitted online only as per the Price Schedule given in Clause 6 Financial Proposal and attached in PDF format in e-procurement Portal only(CPPP) <https://eprocure.gov.in/eprocure/app>. Please refer Appendix-I for further details.**

Form 6A: Financial Proposal Submission Form

(TO BE FILLED BY THE BIDDERS AND ATTACHED IN PDF FORMAT IN SECOND COVER ON CPPP)

Date:

To:

Managing Director,

Indian Port Association,
1st Floor, South Tower, NBCC Place,
B.P.Marg, Lodi Road,
New Delhi – 110 003
Ph: 011 – 24369061; Fax No: 011-24365866

Subject: Preparation of Detailed Project Report for Development of National Maritime Heritage Complex at Lothal in Ahmedabad District in Gujarat

Dear Sir,

We, the undersigned, offer to provide the consulting services for *[Insert title of assignment]* in accordance with your Request for Proposal dated *[Insert Date]*. Our attached Financial Proposal is for the sum of *[Insert amount(s) in words and figures¹]*.

Our Financial Proposal shall be binding upon us subject to the modifications resulting from Contract negotiations, up to expiration of the validity period of the Proposal, i.e. *[date]*.

We undertake that, in completing for (and, if the award is made to us, in executing) the above contract, we will strictly observe the laws against fraud and corruption in force in India namely "Prevention of Corruption Act 1988".

We understand you are not bound to accept any Proposal you receive.

We remain,

Yours sincerely,

Authorized Signature [In full and initials]:

Name and Title of Signatory:

Name of Firm:

Address:

Form 6B: Summary of Costs

(TO BE FILLED BY THE BIDDERS AND ATTACHED IN PDF FORMAT IN SECOND COVER ON CPPP)

| SNo | ITEM | Cost (in Indian Rupees) | |
|-----|-----------------------------------------|-------------------------|------------------|
| | | Amount in words | Amount in figure |
| A | Costs of financial proposal | | |
| B | Service Tax | | |
| C | Other Taxes and duties | | |
| | Total cost of financial proposal | | |

Form 6C: Breakdown of Costs

(TO BE FILLED BY THE BIDDERS AND ATTACHED IN PDF FORMAT IN SECOND COVER ON CPPP)

| Cost component | Amount (s) in words (Indian Rupees) | Amount (s) in figure (Indian Rupees) |
|-----------------------------------|------------------------------------------------|-------------------------------------------------|
| Remuneration | | |
| Out of pocket Expenses | | |
| Cost of financial proposal | | |

Form 6D: Breakdown of Remuneration

**(TO BE FILLED BY THE BIDDERS AND ATTACHED IN PDF FORMAT IN
SECOND COVER ON CPPP)**

| Name | Position | Staff – month Rate | Input (Staff- months) | Amount (in Rs) |
|----------------------|----------|-----------------------|--------------------------|----------------|
| Key Staff | | | | |
| | | | | |
| | | | | |
| | | | | |
| | | | | |
| | | | | |
| | | | | |
| | | | | |
| Support Staff | | | | |
| | | | | |
| | | | | |
| | | | | |
| | | | | |
| | | | | |
| | | | | |
| | | | | |
| Total | | | | |

Form 6E: Breakdown of Out of Pocket Expenses

**(TO BE FILLED BY THE BIDDERS AND ATTACHED IN PDF FORMAT IN
SECOND COVER ON CPPP)**

| No. | Description | Unit and Unit Cost | Quantity | Amount (in Indian Rupees) |
|--------------|---------------------------------------|-----------------------|----------|---------------------------|
| 1 | Per diem allowances | | | |
| 2 | Miscellaneous travel expenses | | | |
| 3 | Communication costs | | | |
| 4 | Drafting, reproduction of reports | | | |
| 5 | Local transportation costs | | | |
| 6 | Misc. (survey, data collection, etc.) | | | |
| Total | | | | |

SECTION 7: STANDARD FORM OF CONTRACT

CONTRACT FOR CONSULTANCY SERVICES

between

[Name of Client]

and

[Name of Consultants]

Dated:

I. FORM OF CONTRACT

Contract to undertake [name of assignment]

This CONTRACT (hereinafter called the “Contract”) is made on the [Date in words] day of the month of *month+ *year in “yyyy” format+, by and between

The Indian Ports Association, having its head office at 1st Floor, South Tower, NBCC Place, Bhishmah Pitamah Marg, Lodi Road, New Delhi – 110003, India, hereinafter referred to as the “Client” which expression unless repugnant to context or meaning thereof shall include its successors, affiliates and assigns) of the First Part.

and

*Name of Consultants and registered address (hereinafter called the “Consultants”) WHEREAS

- a) The Client has requested the Consultants to provide certain consulting services as defined in the General Conditions attached to this Contract (hereinafter called the “Services”);
- b) The Consultants, having represented to the Client that they have the required professional skills, personnel and technical resources, have agreed to provide the services on the terms and conditions set forth in this Contract.

NOW THEREFORE the parties hereto hereby agree as follows:

1. The following documents attached hereto shall be deemed to form an integral part of this Contract:
 - a) The General Conditions of Contract (hereinafter called “GC”);
 - b) The Special Conditions of contract (hereinafter called “SC”);
 - c) The following Appendices:

Appendix A: Terms of reference containing, inter-alia, the Description of the Services and reporting requirements,

Appendix B: Key Personnel, support staff, Task assignment, work programme, manning schedule, qualification requirements of key Personnel,

Appendix C: Approach and methodology

Appendix D: Duties of the Client

Appendix E: Cost Estimate

Appendix F: “Conformed Document” which incorporates all the changes, modifications and results of the contract discussion

Appendix G: Copy of Letter of Award

- Appendix H: Copy of letter of Award/ acceptance by Consultant
- Appendix I: Copy of Bank Guarantee for Performance Security
- Appendix J: Clarifications
- Appendix K: Hours of work for Consultants' Personnel
- Appendix L: Correspondences

2. The mutual rights and obligations of the Client and the Consultants shall be as set forth in the Contract; in particular:
 - a. The Consultants shall carry out the Services in accordance with the provisions of the Contract; and
 - b. Client will make payments to the Consultants in accordance with the provisions of the Contract.
3. **Priority of documents:** The Parties expressly agree that in the event of any conflict, inconsistency or contradiction between any clauses forming part of the documents constituting the Contract, and more particularly mentioned in Clause 1 (of this contract) hereinabove, the documents shall be interpreted in the following order of precedence:
 - a. The provisions of this Contract shall override all provisions of other documents the Contract.
 - b. the provisions of the SC shall be subject to the Contract, but shall override all provisions of other documents comprising the Contract;
 - c. the provisions of the GC shall be subject to the Contract SC, but shall take precedence over all other documents comprising the Contract; and
 - d. the Appendices shall subject to each of the Contract, SC and the GC
 - e. Any decision of the Client in relation to the priority of documents shall be final and binding upon the Consultant

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

FOR AND ON BEHALF OF Client

[Signature] [Name] [Designation]

FOR AND ON BEHALF OF CONSULTANT

[Signature] [Name] [Designation]

Witness:

1. [Signature, name and address]

2. [Signature, name and address]

II. GENERAL CONDITIONS OF CONTRACT

7.1 General provisions

7.1.1 Definitions

Unless the context otherwise requires, the following terms whenever used in this Contract have the following meanings:

- a) “Applicable Law” means the all laws, bye-laws, rules, regulations, orders, ordinances, protocols, codes, guidelines, policies, notices, directions, judgments, decrees and any other instruments having the force of law in India as they may be issued and in force from time to time;
- b) “Affiliate” means, with respect to any Party, any other entity that, directly or indirectly:
 - (i) Controls such Party; (ii) is Controlled by such Party; (iii) is Controlled by the same person who, directly or indirectly, Controls such Party; and “Control” with respect to any person, shall mean:
 - (I) the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such person whether through the ownership of voting share capital, by agreement or otherwise or the power to elect more than one-half of the directors, partners or other individuals exercising similar authority with respect to such person;
 - (II) the possession, directly or indirectly, of a voting interest of more than 50%; and the terms “Controlling” and “Controlled by” shall be construed accordingly;
- c) “Client” means the Party named in the Contract, who employs the Consultant;
- d) “Consultant” or “Consultants” means the party named in the Contract, who is employed as an independent professional firm by the Client to perform the Services;
- e) “Contract” means the Contract signed by the Parties, to which these General Conditions of Contract (GC) constitute a part, together with all other documents listed in this signed Contract;
- f) “Contract Price” means the price to be paid for the performance of the Services;
- g) “GC” means the General Conditions of Contract;
- h) “Government” means the Government of Client’s country;
- i) “Local Currency” means the currency of the Government;
- j) “Member”, in case the Consultants consist of a joint venture of more than one entity, means any of these entities, and “Members” means all of these entities; “Lead Firm / Member in Charge” means the entity specified in the SC to act on behalf of Each Member in exercising all the Consultants’ rights and obligations towards the Client under this Contract;
- k) “Material Adverse Effect” means material adverse effect on (a) the ability of the Consultant to observe and perform any of its rights and obligations under and in accordance with the provisions of this Agreement and/or (b) the legality, validity, binding nature or enforceability of this Agreement;

- l) Master Services Agreement (MSA) shall mean the same as “contract”;
- m) “Party” means the Client or the Consultants, as the case may be, and Parties means both of them;
- n) “Performance Security” shall mean the irrevocable and unconditional bank guarantee provided by the Consultant from a scheduled Indian bank as guarantee for the performance of its obligations in respect of the Contract;
- o) “Personnel” means persons hired by the Consultants or by any Sub-consultant as employees and assigned to the performance of the Services or any part thereof;
- p) “Project” means “*name of assignment+”;
- q) “SC” means the Special Conditions of Contract by which these General Conditions of the Contract may be amended or supplemented;
- r) “Services” means the work to be performed by the Consultants pursuant to this Contract as described in TOR;
- s) “Sub-consultant” means any entity to which the Consultants subcontract any part of the Services in accordance with the provisions of this contract; and,
- t) “Work Order” means a specific directive or order to perform a defined scope for a defined duration and fee
- u) “Corrupt Practice” means the offering, giving, receiving or soliciting of anything of value to influence the action of a public official in the selection process or in contract execution.
- v) “Fraudulent Practice” means a misrepresentation of facts in order to influence a selection process or the execution of a contract to the detriment of the Client, and includes collusive practice among consultants (prior to or after submission of proposals) designed to establish prices at artificial non-competitive levels and to deprive the Client of the benefits of free and open competition.

7.1.2 Law Governing Contract: This Contract, its meaning and interpretation, and the relation between the Parties shall be governed by the Applicable Laws of India and shall be subject to the jurisdiction of the Courts at New Delhi.

7.1.3 Language: This Contract has been executed in the language specified in the SC, which shall be binding and controlling language for all matters relating to the meaning or interpretation of this Contract.

7.1.4 Notices: Any notice, request or consent made pursuant to the Contract shall be in writing and shall be deemed to have been made when delivered in person to an authorized representative of the Party to whom the communication is addressed, or when sent by registered mail, telex, telegram or facsimile to such Party at the address specified in the SC.

7.1.5 Location: The Services shall be performed at such locations as whether in Country or elsewhere, as the Client may approve.

7.1.6 Authorized Representatives: Any action required or permitted to be taken, and any document required or permitted to be executed, under this Contract by the Client or the Consultants may be taken or executed by the officials in the SC.

7.1.7 Taxes and Duties: Unless otherwise specified in the SC, the Consultants, Sub- consultants and their Personnel shall pay such taxes, duties, fees and other impositions as may be levied under the Applicable Law, the amount of which is deemed to have been included in the Contract Price.

7.1.7.1 The Client shall be entitled to deduct any Taxes required to be deducted at source under Applicable Law from any payments to be made by it to the Consultant.

Further, in the event that the Client receives notification or assessment of any Taxes (whether as an agent, or in substitution of the Consultant, any Sub-consultants or its Personnel, servants, agents or otherwise) in respect of or arising out of the performance of the Consultant's obligations under this Agreement which remain outstanding, the Client shall notify the Consultant of the same and the Consultant shall promptly take all necessary action for settlement and / or any other lawful disposal of such notification or assessment. Furthermore, the Consultant shall pay forthwith on demand to the Client all costs including fines and penalties, which the Client may incur as a result of:

7.1.7.1.1 the Client having been required by any governmental authority to pay any Taxes which the Consultant is liable to bear hereunder; or

7.1.7.1.2 any cost actually sustained by the Client for failure by the Consultant to pay any Taxes for which it is responsible under this Contract

7.1.8 Interpretation: In the Contract, unless the context otherwise requires:

7.1.8.1 The singular includes the plural and vice versa and any word or expression defined in the singular shall have a corresponding meaning if used in the plural and vice versa. A reference to any gender includes the other gender.

7.1.8.2 A reference to any document, agreement, deed or other instrument (including, without limitation, references to the Contract), includes a reference to any document, agreement, deed or other instrument as may be varied, amended, supplemented, restated or replaced, from time to time.

7.1.8.3 A reference to any document, agreement, deed or other instrument (including, without limitation, references to the Contract), means a reference to such document, agreement, deed or other instrument and to all appendices, annexes, schedules and parts attached or relating thereto, all of which shall form an integral part of such document, agreement, deed or other instrument, as the case may be.

7.1.8.4 A reference to any Applicable Law includes any amendment, modification, re- enactment or change in interpretation or applicability of such Law and a reference to any statutory body or authority includes a reference to any successor as to such of its functions as are relevant in the context in which the statutory body or authority was referred to

- 7.1.8.5 Where a word or phrase has a defined meaning, any other part of speech or grammatical form in respect of the word or phrase has a corresponding meaning.
- 7.1.8.6 The words “include” and “including” are to be construed without limitation. The terms “herein”, “hereof”, “hereto”, “hereunder” and words of similar purport refer to the Contract as a whole. Where a wider construction is possible, the words “other” and “otherwise” shall not be construed ejusdem generis with any foregoing words.
- 7.1.8.7 In the Contract, headings are for the convenience of reference only and are not intended as complete or accurate descriptions of the content thereof and shall not be used to interpret the provisions of the Contract.
- 7.1.8.8 Any obligation not to do something shall be deemed to include an obligation not to suffer, permit or cause that thing to be done. An obligation to do something shall be deemed to include an obligation to cause that thing to be done.
- 7.1.8.9 The rule of interpretation which requires that a Contract be interpreted against the person or Party drafting it shall have no application in the case of this Contract.
- 7.1.8.10 References to a person (or to a word importing a person) shall be construed so as to include:
- a) Individual, firm, partnership, trust, joint venture, company, corporation, body corporate, unincorporated body, association, organization, any government, or state or any agency of a government or state, or any local or municipal authority or other Governmental Authority (whether or not in each case having separate legal personality);
 - b) That person’s successors in title and assigns or transferees permitted in accordance with the terms of the Contract; and
 - c) References to a person’s representatives shall be to its officers, Personnel, legal or other professional advisors, subcontractors, agents, attorneys and other duly authorized representatives.
- 7.2 **Joint and Several Liability:** Collective action by Members
- 7.2.1 In the event the Consultant is a joint venture consortium, the Members shall be deemed to be jointly and severally liable to the Client for the performance of this Contract. Without prejudice to the foregoing, the Client shall be entitled to terminate this Contract in the event of any change in the structure or composition of the joint venture consortium, including the Member in Charge ceasing to act as such. In the event the Consultant is a joint venture consortium, the Performance Security may be provided by any member; provided that such Performance Security shall mention the details of this Contract and other members.
- 7.2.2 In the event the Consultant is a joint venture consortium, without prejudice to the joint and several liability of all the Members, each Member agrees that it shall exercise all rights and remedies under this Contract through the Member in Charge and the Client shall be entitled to deal with such Member in Charge as the representative of all Members. Each Member agrees and acknowledges that, notwithstanding anything to the contrary in the memorandum of understanding or any other such agreement or arrangement between the Members:

- 7.2.2.1 any decision (including without limitation, any waiver or consent), action, omission, communication or notice of the Member in Charge on any matters related to this Contract shall be deemed to have been on its behalf and shall be binding on it. The Client shall be entitled to rely upon any such action, decision or communication from the Member in Charge;
- 7.2.2.2 consolidated invoices for the Services performed by all the Members shall be prepared and submitted by the Member in Charge and the Client shall have the right to release payments solely to the Member in Charge and the Client shall not in any manner be responsible or liable for the inter se allocation of payments, works etc. among the Members;
- 7.2.2.3 any notice, communication, information or documents to be provided to the Consultant shall be delivered to the authorized representative of the Consultant (as designated pursuant to Clause 6.1.6 of the GCC) and any such notice, communication, information or documents shall be deemed to have been delivered to all the Members.
- 7.3 Commencement, completion, modification and termination of contract
- 7.3.1 **Effectiveness of Contract:** This Contract shall come into effect on the date the Contract is signed by both Parties or such other date as may be stated in the SC.
- 7.3.2 **Commencement of Services:** The Consultants shall commence the Services from 15th (fifteen) day of effectiveness of the Contract or any date prior to that, notified by the Client.
- 7.3.3 **Expiration of Contract:** Unless terminated earlier pursuant to relevant clauses in this contract hereof, this Contract shall expire when Services have been completed and all payments have been made at the end of such time period after the Effective Date as shall be specified in the SC.
- 7.3.4 **Modification:** Modification of the terms and conditions of this Contract, including any modification of the scope of the Services or of the Contract Price, may only be made by written agreement between the Parties.
- 7.3.5 **Force Majeure**
- 7.3.5.1 **Definition:** For the purposes of this Contract, "Force Majeure" means an event which is beyond the reasonable control of a Party, and which makes a Party's performance of its obligations under the Contract impossible or so impractical to be considered impossible under the circumstances, and includes, but not limited to war, riots, civil disorder, earthquake, fire, explosion, storm, flood or other adverse weather conditions.
- 7.3.5.2 **No Breach of Contract:** The failure of a party to fulfil any of its obligations under the Contract shall not be considered to be a breach of, or default under this Contract insofar as such inability arises from an event of Force Majeure, provided that the Party affected by such an event:
- a) has taken all precautions, due care and reasonable alternative measures in order to carry out the terms and conditions of this Contract, and

- b) has informed the other party as soon as possible about the occurrence of such an event.
 - c) the dates of commencement and estimated cessation of such event of Force Majeure; and
 - d) the manner in which the Force Majeure event(s) affects the Party's obligation(s) under the Contract.
- 7.3.5.3 The Parties agree that neither Party shall be able to suspend nor excuse the non-performance of its obligations hereunder unless such Party has given the notice specified above.
- 7.3.6 **Extension of Time:** Any period within which a Party shall, pursuant to this Contract, complete any action or task, shall be extended for a period equal to the time during which such Party was unable to perform such action as a result of Force Majeure.
- 7.3.7 **Payments:** During the period of their inability to perform the Services as a result of an event of Force majeure, the Consultants shall not be paid under the terms of this Contract. The consultant will receive the payment for only those deliverables which has been submitted and approved by the client.
- 7.4 **Termination**
- 7.4.1 **By the client:** The Client may terminate this Contract, by not less than thirty (30) days or sixty (60) days written notice of termination to the Consultants, to be given after the occurrence of any of the events specified in this clause:
- a) if the Consultants do not remedy a failure in the performance of their obligations under the Contract, within a period of sixty (60) days, after being notified or within such further period as the Client may have subsequently approved in writing;
 - b) within thirty (30) days, if the Consultants become insolvent or bankrupt;
 - c) if, as the result of Force Majeure, the Consultants are unable to perform a material portion of the Services for a period of not less than sixty (60) days;
 - d) within thirty (30) days, if the Consultant fails to comply with any final decision reached as a result of arbitration proceedings pursuant to relevant clauses hereof;
 - e) within thirty (30) days, if the Consultant submits to the Client a false statement which has a material effect on the rights, obligations or interests of the Client. If the Consultant places itself in position of conflict of interest or fails to disclose promptly any conflict of interest to the Client;
 - f) within thirty (30) days, if the Consultant, in the judgment of the Client has engaged in Corrupt or Fraudulent Practices in competing for or in executing the Contract;
 - g) if the Client, in its sole discretion and for any reason whatsoever, within a period of sixty (60) days decides to terminate this Contract.

- 7.4.2 By the Consultants: The Consultants may terminate this Contract, by not less than thirty (30) days written notice to the Client, such notice to be given after the occurrence of the events specified in this clause:
- a) if the Client fails to pay any money due to the Consultants pursuant to this Contract and not subject to dispute pursuant to relevant clauses hereof within forty-five (45) days after receiving written notice from the Consultants that such payment is overdue ; or
 - b) if, as the result of Force Majeure, the Consultants are unable to perform a material portion of the Services for a period of not less than sixty (60) days.
- 7.4.3 **Cessation of Rights and Obligations:** Upon termination of this Contract pursuant to actual Termination, or upon expiration of this Contract pursuant to relevant clause hereof, all rights and obligations of the Parties hereunder shall cease, except (i) such rights and obligations as may have accrued on the date of termination or expiration, (ii) the obligation of confidentiality set forth in relevant clause hereof, (iii) the Consultant's obligation to permit inspection, copying and auditing of their accounts and records, (iv) the rights of indemnity of the Client specified in clause 7.13.2 and (v) any right which a Party may have under the Applicable Law.
- 7.4.4 **Cessation of Services:** Upon termination of this Contract by notice of either Party to the other pursuant to relevant clauses hereof, the Consultant shall, immediately upon dispatch or receipt of such notice, take all necessary steps to bring the Services to a close in a prompt and orderly manner and shall make every reasonable effort to keep expenditures for this purpose to a minimum. With respect to documents prepared by the Consultant and equipment and materials furnished by the Client, the Consultant shall handover all project documents under procedure described in this contract.
- 7.4.5 **Payment upon termination:** Upon termination of this Contract, the Client will make the following payments to the Consultants:
- a) Remuneration pursuant to relevant clauses for Services satisfactorily performed prior to the effective date of termination;
 - b) If the Contract is terminated pursuant to Clause 7.4.1 a), b), d), e) or f), the Consultant shall not be entitled to receive any agreed payments upon termination of the Contract. However, the Client may consider to make payment for the part satisfactorily performed on the basis of the quantum merit as assessed by it, in its sole discretion, if such part is of economic utility to the Client. Under such circumstances, upon termination, the Client may also impose liquidated damages as per the provisions of relevant clauses of this Contract. The consultant will be required to pay any such liquidated damages to Client within 30 days of termination date.
- 7.4.6 **Disputes about Events of Termination:** If either Party disputes Termination of the contract under relevant clauses hereof, such Party may, within forty-five (45) days after receipt of notice of termination from the other Party, refer the matter to arbitration

under relevant clauses hereof, and this Contract shall not be terminated on account of such event except in accordance with the terms of any resulting arbitral award.

7.5 **Obligations of the Consultants**

7.5.1 General: The Consultants shall perform the Services and carry out their obligations hereunder with all due diligence, efficiency and economy, in accordance with generally accepted professional techniques and practices, and shall observe sound management practices, and employ appropriate advanced technology and safe methods. The Consultants shall always act, in respect of any matter relating to this Contract or to the Services, as faithful advisers to the Client, and shall at all times support and safeguard the Client's legitimate interests in any dealings with Sub-consultants or third parties.

7.5.2 **Conflict of interest**

7.5.2.1 Any breach of an obligation under Clause 7.5 shall constitute a conflict of interest ("Conflict of Interest"). The Consultant shall comply and shall ensure the Sub-consultants and Affiliates of the foregoing comply with the provisions of Clause 7.5 and any breach of such an obligation shall constitute an event of default by the Consultant for the purposes of this Contract. The Consultant shall promptly disclose any Conflict of Interest to the Client. For the avoidance of doubt, the Consultant agrees that a disclosure of any Conflict of Interest shall not in any manner whatsoever be deemed to cure such Conflict of Interest.

7.5.2.2 Consultants Not to Benefit from Commissions, Discounts, etc.: The remuneration of the Consultants pursuant to relevant clauses hereof shall constitute the Consultant's sole remuneration in connection with this Contract or the Services, and the Consultants shall not accept for their own benefit any trade commission, discount or similar payment in connection with activities pursuant to this Contract or to the Services or in the discharge of their obligations under the Contract, and the Consultants shall use their best efforts to ensure that the Personnel, any Sub-consultants and agents of either of them, similarly shall not receive any such additional remuneration.

7.5.2.3 Consultants and Affiliates Not to Engage in Certain Activities: The Consultants agree that, during the term of this Contract and after its termination, the Consultants and their affiliates, as well as any Sub-consultant and any of its affiliates, shall be disqualified from providing goods, works or services (other than the Services and any continuation thereof) for any project resulting from or closely related to the Services for the period of Two (2) years.

7.5.2.4 Prohibition of Conflicting Activities: Neither the Consultants nor their Sub-consultants nor the Personnel shall engage, either directly or indirectly, in any of the following activities:

- a) during the term of this Contract, any business or professional activities which would conflict with the activities assigned to them under this Contract; and
- b) after the termination of this Contract, such other activities as may be specified in the SC.

- 7.5.3 **Confidentiality:** The Consultants, their Sub-consultants, and the Personnel of either of them shall not, either during the term or within two (2) years after the expiration of this Contract, disclose any proprietary or confidential information relating to the Project, the Services, this Contract or the Client's business or operations without the prior written consent of the Client.
- 7.5.4 **Consultant's Actions Requiring Client's Prior Approval:** The Consultants shall obtain the Client's prior approval in writing before taking any of the following actions:
- a) entering into a subcontract for the performance of any part of the Services, it being understood (i) that the selection of the Sub consultant and the terms and conditions of the subcontract shall have been approved in writing by the Client prior to the execution of the subcontract, (ii) that the Consultants shall remain fully liable for the performance of the Services by the Sub consultant and its Personnel pursuant to this Contract, (iii) that the extent of sub-contracting would be restricted to 30 (thirty) percent of the contract price, and (iv) the Client will be provided by the Consultant with particulars (name, financial & technical background, sub-consultancy fee) of the sub-consultant.
 - b) appointing such members of the Personnel, as are not mentioned in the Technical Proposal, and
 - c) any other action that may be specified in the SC.
- 7.5.5 **Reporting Obligations:** The Consultants shall submit to the Client the reports and documents specified in TOR, in the numbers, and within the periods set forth in this contract.
- 7.5.6 **Documents Prepared by the Consultants to be the Property of the Client:** All plans, drawings, specifications, designs, reports, other documents and software submitted by the Consultants pursuant to this contract shall become and remain the property of the Client, and the Consultants shall, not later than upon termination or expiration of this Contract, deliver all such documents and software to the Client, together with a detailed inventory thereof. The Consultants may retain a copy of such documents and software. Restrictions about the future use of these documents and software, if any, shall be specified in the SC.
- 7.5.7 **Liability of the Consultants:** Subject to additional provisions, if any, set forth in the SC, the Consultants' liability under this Contract shall be as provided by the Applicable Law.
- 7.5.8 **Insurance to be taken out by the Consultants:** The Consultants (i) shall take out and maintain, and shall cause any Sub consultants to take out and maintain, at their (or the Sub consultants', as the case may be) own cost but on terms and conditions approved by the Client, insurance against the risks, and for the coverage, as shall be specified in the Special Conditions (SC), and (ii) within 15 (fifteen) days of receiving any insurance policy certificate in respect of insurances required to be obtained and maintained under this clause, the Consultant shall furnish to the Client, copies of such policy certificates, copies of the insurance certificates and evidence that the insurance premium have been paid in respect of such insurance. No insurance shall be cancelled, modified or allowed to expire

or lapse during the terms of this Contract. (iii) if the Consultant fails to effect and keep in force the aforesaid insurances for which it is responsible pursuant hereto, the Client will apart from having other recourse available under this Contract have the option without prejudice to the obligations of the Consultant, to take out the aforesaid insurance, to keep in force any such insurances, and pay such premia and recover the costs thereof from the Consultants, and the Consultants shall be liable to pay such amounts on demand by the Client. (iv) the insurance policies so procured shall mention the Client as the beneficiary of the Consultants and the Consultants shall procure an undertaking from the insurance company in this regard.

7.6 **Consultant's personnel**

7.6.1 Description of Personnel

7.6.1.1 The titles, agreed job descriptions, minimum qualifications and estimated periods of engagement in the carrying out of the Services of the Consultants' core team and resource pool are described in this contract. If additional work is required beyond the scope of the Services specified in TOR, the level of effort and / or staff assigned may be increased by agreement in writing between the Client and the Consultants, provided that any such increase shall not, except as otherwise agreed.

7.6.1.2 If required to comply with the provisions of this Contract, adjustments with respect to level of effort, staff assignments, time may be made by the Consultants by written notice to the Client, provided (i) that such adjustments shall not alter the originally estimated period of engagement, scope, qualifications of team or deliverables and (ii) that the aggregate of such adjustments shall not cause payments under this Contract to exceed the ceilings set forth in this Contract. Any other such adjustments shall only be made with the Client's prior written approval.

7.6.2 **Removal and / or Replacement of Key Personnel**

- a) Since this is a long term contract some staff turnover in the core team and resource pool is normal. The Consultant will fill a vacancy with equally qualified and experienced staff immediately. In cases when a critical vacancy cannot be filled immediately, due to conditions beyond the consultants control, the consultant will be allowed to fill the critical vacancy for temporary periods up to 3 months but only with Ministry of Shipping and IPA's approval and assessment that the replacement personnel is of equivalent qualifications. The remuneration payable for such temporary personnel shall not exceed 90% of the remuneration which would have been payable for the personnel replaced, for the remaining period. For avoidance of doubt, the Client will not consider any staff turnover as the basis for any project delays.
- (b) If the Client finds that any of the Personnel have (i) committed serious misconduct or has been charged with having committed a criminal action, or (ii) have reasonable cause to be dissatisfied with the performance of any of the Personnel, then the Consultants shall, at the Client's written request specifying the grounds therefore, forthwith provide as a replacement a person with qualifications and experience acceptable to the Client.

- (c) Any of the Personnel provided as a replacement under Clauses (a) and (b) above, the rate of remuneration applicable to such person as well as any reimbursable expenditure shall remain same as that of the personnel replaced. Except as the Client may otherwise agree, (i) the Consultants shall bear all additional travel and other costs arising out of or incidental to any removal and/or replacement, and (ii) the remuneration to be paid for any of the Personnel provided as a replacement shall not exceed the remuneration which would have been payable to the personnel replaced.

7.7 **Obligations of the client**

7.7.1 Assistance and Exemptions: Unless otherwise specified in the SC, the Client will use its best efforts to ensure that the Government will provide the Consultants, Sub-consultants and Personnel with work permits and such other documents as necessary to enable the Consultants, Sub consultants or Personnel to perform the Services:

- a) assist for the Personnel and, if appropriate, their eligible dependents to be provided promptly with all supporting papers for necessary entry and exit visas, residence permits, exchange permits and any other documents required for their stay in India;
- b) facilitate prompt clearance through customs of any property required for the Services;
- c) issue to officials, agents and representatives of the Government all such instructions as may be necessary or appropriate for the prompt and effective implementation of the Services;

7.7.2 Access to land: The Client warrants that the Consultants shall have, free of charge, unimpeded access to all land in the Government's country in respect of which access is required for the performance of the Services.

7.8 **Payments to the consultants shall be as per clause 4.3 of the RfP document.**

7.8.1 The authorized representative will have to self-certify the invoice. In case any wrong representation of facts being found in the later stage then the appropriate penalty will be imposed on the consultant.

The Client shall cause the payment of the Consultants periodically i.e. within sixty (60) days after the receipt by the Client of bills with supporting documents. Should any discrepancy be found to exist between actual payment and costs authorized to be incurred by the Consultants, the Client may add or subtract the difference from any subsequent payments.

7.8.2 **Currency:** The price is payable in local currency i.e. Indian Rupees.

7.8.3 **Payment for Additional Services:** For the purpose of determining the remuneration due for additional services as may be agreed under relevant clauses for modification in this contract.

7.8.4 **Price Revision:** Clause not used.

7.9 Settlement of disputes

7.9.1 Amicable Settlement: The Parties shall use their best efforts to settle amicably all disputes arising out of or in connection with this Contract or its interpretation.

7.9.2 Disputes Settlement: Any dispute between the Parties as to matters arising out of and relating to this Contract that cannot be settled amicably within thirty (30) days after receipt by one Party of the other Party's request for such amicable settlement may be submitted by either Party for settlement in accordance with the provision specified in the SC.

7.10 Responsibility for accuracy of project documents

7.10.1 General

7.10.1.1 The Consultant shall be responsible for accuracy of the Designs, drawings, estimate and all other details prepared by him as part of these services. He shall indemnify the client against any inaccuracy in the work, which might surface during implementation of the project. The Consultant will also be responsible for correcting, at his own cost and risk, the drawings including any re-survey / investigations and correcting layout etc. if required during the execution of the Services.

7.10.1.2 The Consultant shall be fully responsible for the accuracy of reports, plans and drawings. The Consultant shall indemnify the Client against any inaccuracy / deficiency in the reports, designs and drawings noticed and the Client will bear no responsibility for the accuracy of the designs and drawings submitted by the Consultants.

7.11 Liquidated damages

If the selected Consultant fails to complete the Assignment, within the period specified under the contract, the consultant shall pay to the Client, fixed and agreed liquidated damages, and not as penalty, @ 1% of the contract fees for each week of delay or part thereof. The aggregate maximum of liquidated damages payable to the Client under this clause shall be subject to a maximum of 10% of the total contract fees.

7.12 Representation, warranties and disclaimer

7.12.1 The Consultant represents and warrants to the Client that:

- a) it is duly organized, validly existing and in good standing under the applicable laws of its Country;
- b) it has full power and authority to execute, deliver and perform its obligations under this Contract and to carry out the transactions contemplated hereby;
- c) it has taken all necessary corporate and other action under Applicable Laws and its constitutional documents to authorize the execution, delivery and performance of this Contract;
- d) it has the financial standing and capacity to undertake the Project;

- e) this Contract constitutes its legal, valid and binding obligation enforceable against it in accordance with the terms hereof;
- f) it is subject to laws of India with respect to this Contract and it hereby expressly and irrevocably waives any immunity in any jurisdiction in respect thereof;
- g) there are no actions, suits, proceedings, or investigations pending or, to the Consultant's knowledge, threatened against it at law or in equity before any court or before any other judicial, quasi-judicial or other authority, the outcome of which may result in the breach of or constitute a default of the Consultant under this Contract or materially affect the discharge by the Consultant of its obligations under the Contract.
- h) no representation or warranty by the Consultant contained herein or in any other document furnished by it to the Client contains or will contain any untrue statement of material fact or omits or will omit to state a material fact necessary to make such representation or warranty not misleading; and
- i) no sums, in cash or kind, have been paid or will be paid, by or on behalf of the Consultant, to any person by way of fees, commission or otherwise for securing the Contract or for influencing or attempting to influence any officer or employee of the Client in connection therewith.

7.13 Miscellaneous

7.13.1 Assignment and Charges

- a) The Contract shall not be assigned by the Consultant save and except with prior consent in writing of the Client, which the Client will be entitled to decline without assigning any reason whatsoever.
- b) The Client is entitled to assign any rights, interests and obligations under this Contract to third parties.

7.13.2 **Indemnity:** The Consultant agrees to indemnify and hold harmless the Client from and against any and all claims, actions, proceedings, lawsuits, demands, losses, liabilities, damages, fines or expenses (including interest, penalties, attorneys' fees and other costs of defence or investigation (i) related to or arising out of, whether directly or indirectly, (a) the breach by the Consultant of any obligations specified in relevant clauses hereof; (b) the alleged negligent, reckless or otherwise wrongful act or omission of the Consultant including professional negligence or misconduct of any nature whatsoever in relation to Services rendered to the Client; (c) any Services related to or rendered pursuant to the Contract (collectively "Indemnified matter"). As soon as reasonably practicable after thereceipt by the Client of a notice of the commencement of any action by a third party, the Client will notify the Consultant of the commencement thereof; provided, however, that the omission so to notify shall not relieve the Consultant from any liability which it may have to the Client or the third party. The obligations to indemnify and hold harmless, or to contribute, with respect to losses, claims, actions, damages and liabilities relating to the Indemnified Matter shall survive until all claims for indemnification and / or contribution asserted shall survive and until their final resolution

thereof. The foregoing provisions are in addition to any rights which the Client may have at common law, in equity or otherwise.

- 7.13.3 **Governing Law and Jurisdiction:** The Contract shall be construed and interpreted in accordance with and governed by the Applicable Law of India and subject to relevant clauses hereof and the SC, the Courts at New Delhi, India shall have jurisdiction over all matters arising out of or relating to the Contract.
- 7.13.4 **Waiver**
- 7.13.4.1 Waiver by either Party of any default by the other Party in the observance and performance of any provision of or obligations or under the Contract:
- a) shall not operate or be construed as a waiver of any other or subsequent default hereof or of other provisions or obligations under the Contract;
 - b) shall not be effective unless it is in writing and executed by a duly authorised representative of such Party; and
 - c) shall not affect the validity or enforceability of the Contract in any manner.
- 7.13.4.2 Neither the failure by either Party to insist on any occasion upon the performance of the terms, conditions and provisions of the Contract or any obligation hereunder nor time or other indulgence granted by a Party to the other Party shall be treated or deemed as waiver of such breach or acceptance or any variation or the relinquishment of any such right hereunder.
- 7.13.5 **Survival:** Termination of the Contract (a) shall not relieve the Consultant or the Client of any obligations hereunder which expressly or by implication survive Termination hereof, and (b) except as otherwise provided in any provision of the Contract expressly limiting the liability of either Party, shall not relieve either Party of any obligations or liabilities for loss or damage to the other Party arising out of or caused by acts or omissions of such Party prior to the effectiveness of such Termination or arising out of such Termination.
- 7.13.6 **Notices:** Unless otherwise stated, notices to be given under the Contract including but not limited to a notice of waiver of any term, breach of any term of the Contract and termination of the Contract, shall be in writing and shall be given by hand delivery, recognized international courier, mail, telex or facsimile transmission and delivered or transmitted to the Parties at their respective addresses specified in the SC. The notices shall be deemed to have been made or delivered (i) in the case of any communication made by letter, when delivered by hand, by recognized international courier or by mail (registered, return receipt requested) at that address and (ii) in the case of any communication made by telex or facsimile, when transmitted properly addressed to such telex number or facsimile number.
- 7.13.7 **Severability:** If for any reason whatever any provision of the Contract is or becomes invalid, illegal or unenforceable or is declared by any court of competent jurisdiction or any other instrumentality to be invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions shall not be affected in any manner, and the Parties will negotiate in good faith with a view to agreeing upon one or more provisions

which may be substituted for such invalid, unenforceable or illegal provisions, as nearly as is practicable. Provided failure to agree upon any such provisions shall not be subject to dispute resolution under the Contract or otherwise.

- 7.13.8 **No Partnership:** Nothing contained in the Contract shall be construed or interpreted as constituting a partnership between the Parties. Neither Party shall have any authority to bind the other in any manner whatsoever.
- 7.13.9 **Language:** All notices required to be given under the Contract and all communications, documentation and proceedings which are in any way relevant to the Contract shall be in the language specified the SC.
- 7.13.10 **Exclusion of Implied Warranties etc.:** The Contract expressly excludes any warranty, condition or other undertaking implied at law or by custom or otherwise arising out of any other agreement between the Parties or any representation by any Party not contained in the Contract.
- 7.13.11 **Agreement to Override Other Agreements:** The Contract supersedes all previous agreements or arrangements between the Parties, including any memorandum of understanding entered into in respect of the contents hereof and represents the entire understanding between the Parties in relation thereto.
- 7.13.12 **Counterparts:** The Contract may be executed in two counterparts, each of which when executed and delivered shall constitute an original of the Contract

III. SPECIAL CONDITIONS OF CONTRACT

The Special Conditions (SC) of contract contains number of amendments and supplements to clauses in the General Conditions of the Contract.

- 7.1.1(f) The contract price payable in Indian Rupees is (inclusive of service tax)
- 7.1.1(j) The Member in-charge is [name of consultant].
- 7.1.3 The language is English.
- 7.1.4 The client address is [name, designation, telephone, facsimile, address].
- 7.1.4 The consultant address is [name, designation, telephone, facsimile, address].
- 7.1.6 The Authorized Representative for the client is [name, designation].
- 7.1.6 The Authorized Representative for the consultant is [name, designation].
- 7.1.7 For domestic consultants / personnel and foreign consultants / personnel who are permanent residents in India The Consultants and the personnel shall pay the taxes, duties, fees, levies/expenses and other impositions levied under the existing, amended or enacted laws during life of this contract and the Client will perform such duties in regard to the deduction of such tax as may be lawfully imposed. The Consultant will be paid by IPA only service tax over and above the cost of Financial Proposal. All other applicable taxes, levies, duties, etc., if any, shall be borne by Consultant.
- 7.3.1 The date on which this Contract will come into effect is [date].
- 7.5.7 Limitation of the Consultants' Liability towards the Client
- a) Except in case of negligence or wilful misconduct on the part of the Consultants or on the part of any person or firm acting on behalf of the Consultants in carrying out the Services, the Consultants, with respect to damage caused by the Consultants to the Client's property, shall not be liable to the Client:
 - i) for any indirect or consequential loss or damage; and
 - ii) For any direct loss or damage that exceeds (i) the total payments for Professional Fees and Reimbursable Expenditure made or expected to be made to the Consultants hereunder, or (ii) the proceeds the Consultants may be entitled to receive from any insurance maintained by the consultants to cover such a liability, whichever of (i) or (ii) is higher.
 - b) This limitation of liability shall not affect the Consultant's liability, if any, for damage to Third Parties caused by the Consultants or any person or firm acting on behalf of the Consultants in carrying out the Services.
- 7.5.8 **Risks and coverage**
- a) Third Party motor vehicle liability insurance as required under Motor Vehicles Act, 1988 in respect of motor vehicles operated in India by the Consultants or their Personnel or any Sub consultants or their Personnel for the period of consultancy.

- b) Third Party liability insurance with a minimum coverage, for Rs.10,00,000/- (Rupees Ten Lakhs only) for the period of consultancy.
- c) **Professional Liability Insurance:** Consultants will maintain at its expense, Professional Liability Insurance including coverage for errors and omissions caused by Consultant's negligence, breach in the performance of its duties under this Contract from an Insurance Company permitted to offer such policies in India, for a period of five years beyond completion of Consultancy Services commencing from the Effective Date, (i) For an amount not exceeding total payments for Professional Fees and Reimbursable Expenditures made or expected to be made to the Consultants hereunder or (ii) the proceeds, the Consultants may be entitled to receive from any insurance maintained by the Consultants to cover such a liability, whichever of (i) or (ii) is higher with a minimum coverage of [insert amount and currency]. The indemnity limit in terms of "Any One Accident" (AOA) and "Aggregate limit on the policy period" (AOP) should not be less than the amount stated in the contract. In case of joint venture or "in association", the policy should be in the name of joint venture / in association entity and not by the individual partners of the joint venture / association.
- d) Employer's liability and workers' compensation insurance shall be in respect of the Personnel of the Consultants and of any Sub consultant, in accordance with the relevant revisions of the Applicable Law, as well as, with respect to such Personnel, any such life, health, accident, travel or other insurance as may be appropriate; and all insurances and policies should start from the date of commencement of services and remain effective as per relevant requirements of contract agreement.
- e) Any other insurance that may be necessary to protect the Client, its employees and its assets (against loss, damage or destruction, at replacement value) including rioting and all Force Majeure Events that are insurable.

Client will try to release the payment within 15 days of receipt of the invoice and within 30 days in the case of the final payment.

7.1.1 (n) Performance security

The Consultant shall prior to the Effective Date and as a condition precedent to its entitlement to payment under this Contract, provide to the Client a legal, valid and enforceable Performance Security in the form of an unconditional and irrevocable bank guarantee as security for the performance by the Consultant of its obligations under this Contract, in the form set out in this contract, in an amount equal 5 (five) percent of the total cost of Financial Proposal under this Assignment. Further, in the event the term of this Contract is extended, the Consultant shall at least fifteen (15) days prior to the commencement of every Subsequent Year or at least thirty (30) days prior to the date of expiry of the then existing bank guarantee, whichever is earlier, provide an unconditional and irrevocable bank guarantee as Performance Security for an amount equivalent to 5 (five) percent of the total cost of Financial Proposal under this Assignment.

The Performance Security shall be obtained from a scheduled commercial Indian bank, in compliance with Applicable Laws (including, in case the Consultant is a non-resident, in compliance with applicable foreign exchange laws and regulations). {In the event the Consultant is a joint

venture consortium, the Performance Security may be provided by any Member; provided that such Performance Security shall mention the details of this Contract and the other Members.}

The Performance Security shall be extended accordingly such that the Performance Security remains valid until the expiry of a period of 180 (One Hundred Eighty) Days from the date of submission of the last deliverable under this Contract. If the Client shall not have received an extended / replacement Performance Security in accordance with this clause at least thirty(30) days prior to the date of expiry of the then existing Performance Security, the Client shall be entitled to draw the full amount of the bank guarantee then available for drawing and retain the same by way of security for the performance by the Consultant of its obligations under this Contract until such time as the Client shall receive such an extended / replacement Performance Security whereupon, subject to the terms of this Contract, the Client will refund to the Consultant the full amount of the bank guarantee, unless the Client has drawn upon the Performance Security in accordance with the provisions of this Contract, in which case only the balance amount remaining will be returned to the Consultant; provided that the Client will not be liable to pay any interest on such balance. The Client will return the bank guarantee provided as Performance Security to the issuer thereof for cancellation promptly upon receipt of any extension/ replacement thereof. Subject to satisfactory completion of all deliverables under this Contract, the Performance Security will, subject to any drawdowns by the Client in accordance with the provisions hereof, be released by the Client within a period of 180 (One Hundred Eighty) Days from the date of submission of the last deliverable under this Contract.

The Client shall have the right to claim under the Performance Security and appropriate the proceeds if any of the following occur:

- a) the Consultant becomes liable to pay liquidated damages;
- b) occurrence of any of the events listed in sub-clauses (a) through (f) of Clause 6.3.1 of the GCC;
- c) any material breach of the terms hereof; and/or
- d) without prejudice to paragraph above, the Consultant fails to extend the validity of the Performance Security or provide a replacement Performance Security in accordance with the provisions of this Contract.

Dispute settlement: If any dispute or difference of any kind whatsoever arises between the parties in connection with or arising out of or relating to or under this Contract, the parties shall promptly and in good faith negotiate with a view to its amicable resolution and settlement. In the event no amicable resolution or settlement is reached within a period of thirty (30) days from the date on which the above- mentioned dispute or difference arose, such dispute or difference shall be finally settled by arbitration. The arbitral tribunal shall consist of a sole arbitrator appointed by mutual agreement of the parties. In case of failure of the parties to mutually agree on the name of a sole arbitrator, the arbitral tribunal shall consist of three arbitrators. Each party shall appoint one arbitrator and the two arbitrators so appointed shall jointly appoint the third arbitrator. The seat of arbitration shall be New Delhi and the arbitration shall be conducted in the English language. The Arbitration and Conciliation Act, 1996 shall govern the arbitral proceedings. The award rendered by the arbitral tribunal shall be final and binding on the parties.

ANNEXURE – I

Form of Bank Guarantee for Performance Security

(To be stamped in accordance with Stamp Act if any, of the country for issuing bank)

Ref.:

Bank

Guarantee: Date:

Dear Sir,

In consideration of Indian Ports Association (hereinafter referred as the “Client”, which expression shall, unless repugnant to the context of meaning thereof include its successors, administrators and assigns) having awarded to M/s [name of consultant] a [type of company], established under laws of [country] and having its registered office at*address+ (hereinafter referred to as the “Consultant” which expression shall unless repugnant to the context or meaning thereof, include its successors, administrators, executors and permitted assigns), an Assignment for preparation of [name of assignment] Contract by issue of Client’s Contract Letter of Award No. *reference+ dated [date] and the same having been unequivocally accepted by the Consultant, resulting in a Contract valued at Rs. [amount in figures and words] for (Scope of Work) (hereinafter called the “Contract”) and the Consultant having agreed to furnish a Bank Guarantee amounting to Rs. [amount in figures and words] to the Client for performance of the said Agreement.

We [Name of Bank] incorporated under [law and country] having its Head Office at [address](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 an or, all monies payable by the Consultant to the extent of Rs. [amount in figure and words] as aforesaid at any time up to [date] without any demur, reservation, contest, recourse or protest and/ or without any reference to the Consultant. Any such demand made by the Client on the Bank shall be conclusive and binding notwithstanding any difference between the Client and the Consultant 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 until 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 the advance or to extend the time for performance of the Contract by the Consultant nor shall the responsibility of the bank be affected by any variations in the terms and conditions of the contract or other documents. 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 Client 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 Consultant 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 for bearance 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 Consultant and notwithstanding any security or other guarantee that the client may have in relation to the Consultant's liabilities.

This Guarantee shall be irrevocable and shall remain in full force and effect until discharge by the Bank of all its obligations hereunder. This Guarantee shall not be affected by any change in the constitution or winding up of the Consultant / the Bank or any absorption, merger or amalgamation of the Consultant / the bank with any other Person.

Notwithstanding anything contained herein above our liability under this guarantee is limited to Rs. [amount in figure and words] and it shall remain in force up to and including [date] and shall extend from time to time for such period(s) (not exceeding one year), as may be desired by M/s [name of consultant] on whose behalf this guarantee has been given. Date this [date in words] day *month+ of *year in 'yyyy' format+ at *place+.

WITNESS

1. [signature, name and address]
2. [signature, name and address]

[Official Address] Designation

[With Bank Stamp]

Attorney as Per Power of Attorney No.

Dated

Strike out, whichever is not applicable.

The date will be fixed as indicated in S.C.C.

The stamp papers of appropriate value shall be purchased in the name of bank which issues the "Bank Guarantee". The bank guarantee shall be issued either by a bank (Nationalized / Scheduled) located in India or a foreign bank through a correspondent bank (scheduled) located in India or directly by a foreign bank which has been determined in advance to be acceptable to the Client.

ANNEXURE – II

Format of Bank Guarantee for Bid Security

To

Managing Director,
 Indian Port Association,
 1st Floor, South Tower, NBCC Place,
 B.P.Marg, Lodi Road,
 New Delhi – 110 003
 Ph: 011 – 24369061; Fax No: 011-24365866

WHEREAS _____ [Name and address of the consultant] (hereinafter called “the consultant”) in pursuance of the consultancy project _____ to provide the services on terms and conditions set forth in this Request for Proposal (RFP) dated _____ [Name of project and brief description of works] (hereinafter called the “bid”).

AND WHEREAS it has been stipulated by you in the RFP inviting bid(s) that the Applicant shall furnish to you a bank guarantee issued by a Nationalised / Scheduled bank for the sum specified therein as security for compliance with his obligations in accordance with the bid submitted.

AND WHEREAS we have agreed to issue on behalf of the Applicants such a bank guarantee;

NOW THEREOF we hereby affirm that we are the Guarantor and responsible to you, on behalf of, the Applicant up to a total of _____ [amount of Guarantee] _____ [in words], such sum being payable in the types and proportions of currencies in which the contract price is payable, and we undertake to pay you, upon your first written demand and without cavil or argument, any sum or sums within the limits of _____ [amount of Guarantee] as aforesaid without you needing to prove or to show grounds or reasons for your demand for the sum specified therein.

We hereby waive the necessity of your demanding the said debt from the Applicants before presenting us with the demand.

We further agree that no change or addition to or other modification of the terms of the RFP or the bid or of the services to be performed there under or of any of the bid documents which may be made between you and the Applicant shall in any way release us from any liability under this guarantee, and we hereby waive notice of any such change, addition or modification or by the extension of time for performance granted to the Applicant or postponement/non exercise/ delayed exercise of any of its rights by IPA or any indulgence shown by IPA to the Applicant and the Guarantor shall not be relieved from its obligations under this Guarantee on account of any such variation, extension, postponement, non-exercise, delayed exercise of any of its rights by IPA or any

indulgence shown by IPA provided nothing contained herein shall enlarge the Guarantor's obligation hereunder.

The liability of the bank under this guarantee shall not be affected by any change in the constitution of the Applicant or of the bank.

Notwithstanding anything contained herein before, our liability under this guarantee is restricted to Rs. _____ (Rs. _____) and the guarantee shall remain valid till _____. Unless a claim or a demand in writing is served upon us on or before _____ our liability under this guarantee shall cease.

Signature and seal of the Guarantor _____ in presence of

Name and designation _____ 1. _____

(Name, Signature & Occupation)

Name of the bank _____

Address _____ 2. _____

(Name, Signature & Occupation)

Date _____

ANNEXURE – III

Power of Attorney for Authorised representative

Know all men by these presents, we, (name of Firm and address of the registered office) do hereby constitute, nominate, appoint and authorize Mr / Ms. son/daughter/wife and presently residing at , who is presently employed with us and holding the position of as our true and lawful attorney (hereinafter referred to as the "Authorised Representative") to do in our name and on our behalf, all such acts, deeds and things as are necessary or required in connection with or incidental to submission of our Proposal for and selection as the Consultant {Project Name}, proposed to be developed by the Client (the "IPA") including but not limited to signing and submission of all applications, proposals and other documents and writings, participating in pre-bid and other conferences and providing information/ responses to the Client, representing us in all matters before the Client, signing and execution of all contracts and undertakings consequent to acceptance of our proposal and generally dealing with the Client in all matters in connection with or relating to or arising out of our Proposal for the said Project and/or upon award thereof to us till the entering into of the Agreement with the Client.

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

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

For

(Signature, name, designation and address)

Witnesses:

1.

2.

Notarized

Accepted

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

The mode of execution of the Power of Attorney should be in accordance with the procedure, if any, laid down by the applicable law and the charter documents of the executants(s) and when it is so required the same should be under common seal affixed in accordance with the required

procedure,. The Power of Attorney should be executed on a non-judicial stamp paper of Ras.50 (fifty) and duly notarised by a notary public.

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

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

ANNEXURE – IV

Format for Joint Bidding Agreement (in case of JV/Consortium)

(To be executed on stamp paper of appropriate value)

THIS JOINT BIDDING AGREEMENT is entered into on this the day of.....20...

AMONGST

1. [•], (a company incorporated under the Companies Act, 1956 and having its registered office at] (hereinafter referred to as the "First Part" which expression shall, unless repugnant to the context include its successors and permitted assigns)

AND

2. [•+, (a company incorporated under the Companies Act, 1956 and having its registered office at]..... (hereinafter referred to as the "Second Part" which expression shall, unless repugnant to the context include its successors and permitted assigns)

AND

3. [•+, [a company incorporated under the Companies Act, 1956 and having its registered office at]..... (hereinafter referred to as the "Third Part" which expression shall, unless repugnant to the context include its successors and permitted assigns)}

The above mentioned parties of the [FIRST, SECOND AND THIRD] PART are collectively referred to as the "Parties" and each is individually referred to as a "Party"

WHEREAS,

- (A) India Ports Association, having its head office at 1st Floor, South Tower, NBCC Place, Bhisamah Pitamah Marg, Lodi Road, New Delhi – 110003, India (hereinafter referred to as the "Authority" which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and assigns) has invited proposals (the Applications") by its Request for Proposal No.... dated(the "RFP") for appointment as Programme Management Consultant for the Sagarmala Programme for the {Project name} (the "Consultancy").
- (B) The Parties are interested in jointly bidding for the Consultancy as members of a Consortium and in accordance with the terms and conditions of the RFP document and other bid documents in respect of the Consultancy, and
- (C) It is a necessary condition under the Consultancy document that the members of the Consortium shall enter into a Joint Bidding Agreement and furnish a copy thereof with the Application.

NOW IT IS HEREBY AGREED as follows:

1. Definitions and Interpretations

In this Agreement, the capitalised terms shall, unless the context otherwise requires, have the meaning ascribed thereto under the RFP.

2. Consortium

- a. The Parties do hereby irrevocably constitute a consortium (the "Consortium") for the purposes of jointly participating in the selection process for the Consultancy. In case of Joint Venture, the Parties to hereby assure that the JV will not be dissolved during the course of this assignment.
- b. The Parties hereby undertake to participate in the Bidding process only through this Consortium and not individually and/ or through any other consortium constituted for this Consultancy, either directly or indirectly or through any of their Affiliates.

3. Covenants

The Parties hereby undertake that in the event the Consortium is declared the selected Consultant and awarded the Consultancy, the Parties shall enter into a contract for consultancy services ("Contract") with the Authority and for performing all obligations as the Consultant in terms of the Contract for the Consultancy.

4. Role of the Parties

The Parties hereby undertake to perform the roles and responsibilities as described below:

- a. Party of the First Part shall be the Member in Charge of the Consortium and shall have the power of attorney from all Parties for conducting all business for and on behalf of the Consortium during the selection process for the Consultancy and until the Effective Date under the Contract;
- b. Party of the Second Part shall be [•]; and c. Party of the Third Part shall be *•].

5. Joint and Several Liability

The Parties do hereby undertake to be jointly and severally responsible for all obligations and liabilities relating to the Consultancy and in accordance with the terms of the RFP and the Contract, for the performance of the Contract.

6. Member in Charge or Lead Member

Without prejudice to the joint and several liabilities of all the Parties, each Party agrees that it shall exercise all rights and remedies under the Contract through the Member in Charge I Lead Member and the Authority shall be entitled to deal with such Member in Charge as the representative of all Members. Each Party agrees and acknowledges that:

- a. any decision (including without limitation, any waiver or consent), action, omission, communication or notice of the Member in Charge on any matters related to the Contract shall be deemed to have been on its behalf and shall be binding on it. The

Authority shall be entitled to rely upon any such action, decision or communication from the Member in Charge;

- b. consolidated invoices for the services in relation to the Consultancy performed by all the Members shall be prepared and submitted by the Member in Charge and the Authority shall have the right to release payments solely to the Member in Charge and the Authority shall not in any manner be responsible or liable for the inter se allocation of payments, works etc. among the Parties;
- c. any notice, communication, information or documents to be provided to the Consultant shall be delivered to the authorized representative of the Consultant (as designated pursuant to the Contract) and any such notice, communication, information or documents shall be deemed to have been delivered to all the Parties

7. Representation of the Parties

Each Party represents to the other Parties as of the date of this Agreement that:

- a. Such Party is duly organised, validly existing and in good standing under the laws of its incorporation and has all requisite power and authority to enter into this Agreement;
- b. The execution, delivery and performance by such Party of this Agreement has been authorised by all necessary and appropriate corporate or governmental action and a copy of the extract of the charter documents and board resolution / power of attorney in favour of the person executing this Agreement for the delegation of power and authority to execute this Agreement on behalf of the Party is annexed to this Agreement, and will not, to the best of its knowledge:
 - i. require any consent or approval not already obtained;
 - ii. violate any Applicable Law presently in effect and having applicability to it;
 - iii. violate the memorandum and articles of association, by-laws or other applicable organisational documents thereof;
 - iv. violate any clearance, permit, concession, grant, license or other governmental authorisation, approval, judgement, order or decree or any mortgage agreement, indenture or any other instrument to which such Party is a party or by which such Party or any of its properties or assets are bound or that is otherwise applicable to such Party; or
 - v. create or impose any liens, mortgages, pledges, claims, security interests, charges or Encumbrances or obligations to create a lien, charge, pledge, security interest, encumbrances or mortgage in or on the property of such Party, except for encumbrances that would not, individually or in the aggregate, have a material adverse effect on the financial condition or prospects or business of such Party so as to prevent such Party from fulfilling its obligations under this Agreement;
- c. this Agreement is the legal and binding obligation of such Party, enforceable in accordance with its terms against it; and
- d. there is no litigation pending or, to the best of such Party's knowledge, threatened to which it or any of its Affiliates is a party that presently affects or which would have a material adverse effect on the financial condition or prospects or business of such Party in the fulfilment of its obligations under this Agreement.

8. Authorised Representation

The parties agree that, who is employed with the member in charge, or his/her nominee shall be the authorized representative of the consortium, to do on behalf of the Consortium, all such acts, deeds and things as are necessary or required in connection with or incidental to submission of the Consortium's proposal for and the Consultancy including but not limited to signing and submission of all applications, proposals and other documents, participating in pre-bid and other conferences and providing information/responses to the authority, representing the consortium in all matters before the authority, signing and execution of all contracts and undertakings consequent to acceptance of the Consortium's proposal and generally dealing with the Authority in all matters in connection with or relating or arising out of the Consultancy.

9. Termination

This Agreement shall be effective from the date hereof and shall continue in full force and effect until the Effective Date under the Contract, in case the Consultancy is awarded to the Consortium. However, in case the Consortium is not selected for award of the Consultancy, the Agreement will stand terminated upon intimation by the Authority that it has not been selected and upon return of the Bid Security by the Authority.

10. Miscellaneous

- a. This Joint Bidding Agreement shall be governed by laws of India. b. The Parties acknowledge and accept that this Agreement shall not be amended by the Parties without the prior written consent of the Authority.

IN WITNESS WHEREOF THE PARTIES ABOVE NAMED HAVE EXECUTED AND DELIVERED THIS AGREEMENT AS OF THE DATE FIRST ABOVE WRITTEN.

| | |
|-----------------------------------|------------------------------|
| SIGNED, SEALED AND DELIVERED For | SIGNED, SEALED AND DELIVERED |
| and on behalf of MEMBER IN CHARGE | |
| by: | SECOND PART |
| (Signature) | (Signature) |
| (Name) | (Name) |
| (Designation) | (Designation) |
| (Address) | (Address) |

SIGNED, SEALED AND DELIVERED

For and on behalf of
THIRD PART

(Signature)
(Name)

(Designation)

(Address)

In the presence of:

1.

Notes:

1. The mode of the execution of the Joint Bidding Agreement should be in accordance with the procedure, if any, laid down by the Applicable Law and the charter documents of the executant(s) and when it is so required, the same should be under common seal affixed in accordance with the required procedure.
2. Each Joint Bidding Agreement should attach a copy of the extract of the charter documents and documents such as resolution / power of attorney in favour of the person executing this Agreement for the delegation of power and authority to execute this Agreement on behalf of the Consortium Member.
3. For a Joint Bidding Agreement executed and issued overseas, the document shall be legalised by the Indian Embassy and notarized in the jurisdiction where the Power of Attorney has been executed.

Instructions for Online Bid Submission

Instructions to the Bidders to submit the bids online through the Central Public Procurement Portal for e Procurement at <https://eprocure.gov.in/eprocure/app>

- 1) Possession of valid Digital Signature Certificate (DSC) and enrollment/registration of the contractors/bidders on the eProcurement/ etender portal is a prerequisite for e-tendering.
- 2) Bidder should do the enrollment in the eProcurement site using the “Click here to Enroll” option available on the home page. Portal enrollment is generally free of charge. During enrollment/registration, the bidders should provide the correct/true information including valid email-id. All the correspondence shall be made directly with the contractors/bidders through email id provided.
- 3) Bidder need to login to the site through their user ID/ password chosen during enrollment/registration.
- 4) Then the Digital Signature Certificate (Class II or Class III Certificates with signing key usage) issued by SIFY/TCS/nCode/eMudra or any Certifying Authority recognized by CCA India on eToken/Smart Card, should be registered.
- 5) The DSC that is registered only should be used by the bidder and should ensure safety of the same.
- 6) Contractor/Bidder may go through the tenders published on the site and download the required tender documents/schedules for the tenders he/she is interested.
- 7) After downloading / getting the tender document/schedules, the Bidder should go through them carefully and then submit the documents as asked, otherwise bid will be rejected.
- 8) If there are any clarifications, this may be obtained online through the tender site, or through the contact details. Bidder should take into account the corrigendum published before submitting the bids online.
- 9) Bidder then logs in to the site through the secured log in by giving the user id/ password chosen during enrolment/registration and then by giving the password of the eToken/Smart Card to access DSC.
- 10) Bidder selects the tender which he/she is interested in by using the search option & then moves it to the ‘my tenders’ folder.
- 11) From my tender folder, he selects the tender to view all the details indicated.
- 12) It is construed that the bidder has read all the terms and conditions before submitting their offer. Bidder should go through the tender schedules carefully and upload the documents as asked; otherwise, the bid will be rejected.
- 13) Bidder, in advance, should get ready the bid documents to be submitted as indicated in the tender document/schedule and generally, they can be in PDF/xls/rar/zip/dwf formats. If there is more than one document, they can be clubbed together and can be provided in the requested

format. Each document to be uploaded through online for the tenders should be less than 2 MB. If any document is more than 2MB, it can be reduced through zip/rar and the same can be uploaded, if permitted. Bidders Bid documents may be scanned with 100 dpi with black and white option. However of the file size is less than 1 MB the transaction uploading time will be very fast.

14) If there are any clarifications, this may be obtained through the site, or during the pre-bid meeting if any. Bidder should take into account the corrigendum published from time to time before submitting the online bids.

15) The Bidders can update well in advance, the documents such as certificates, annual report details etc., under My Space option and these can be selected as per tender requirements and then send along with bid documents during bid submission. This will facilitate the bid submission process faster by reducing upload time of bids.

16) Bidder should submit the Tender Fee/ EMD as specified in the tender. The original should be posted/couriered/given in person to the Tender Inviting Authority, within the bid submission due date & time for the tender. Scanned copy of the instrument should be uploaded as part of the offer.

17) While submitting the bids online, the bidder reads the terms & conditions and accepts the same to proceed further to submit the bid packets.

18) The bidder has to select the payment option as offline to pay the Tender FEE/ EMD as applicable and enter details of the instruments.

19) The details of the DD/any other accepted instrument, physically sent, should tally with the details available in the scanned copy and the data entered during bid submission time. Otherwise submitted bid will not be acceptable.

20) The bidder has to digitally sign and upload the required bid documents one by one as indicated. Bidders to note that the very act of using DSC for downloading the bids and uploading their offers shall be deemed to be a confirmation that they have read all sections and pages of the bid document including General conditions of contract without any exception and have understood the entire document and are clear about the requirements of the tender requirements.

21) The bidder has to upload the relevant files required as indicated in the cover content. In case of any irrelevant files, the bid will be rejected.

22) If the price bid format is provided in a spread sheet file like PDF_xxxx.xls, the rates offered should be entered in the allotted space only and uploaded after filling the relevant columns. The Price Bid/PDF template must not be modified/replaced by the bidder, else the bid submitted is liable to be rejected for this tender.

23) The bidders are requested to submit the bids through online e-tendering system to the Tender Inviting Authority(TIA) well before the bid submission end date & time (as per Server System Clock). The TIA will not be held responsible for any sort of delay or the difficulties faced during the submission of bids online by the bidders at the eleventh hour.

24) After the bid submission (i.e. after Clicking "Freeze Bid Submission" in the portal), the acknowledgement number, given by the system should be printed by the bidder and kept as a

record of evidence for online submission of bid for the particular tender and will also act as an entry pass to participate in the bid opening date.

25) The time settings fixed in the server side & displayed at the top of the tender site, will be valid for all actions of requesting, bid submission, bid opening etc., in the e-tender system. The bidders should follow this time during bid submission.

26) All the data being entered by the bidders would be encrypted using PKI encryption techniques to ensure the secrecy of the data. The data entered will not be viewable by unauthorized persons during bid submission & not be viewable by any one until the time of bid opening.

27) Any bid document that is uploaded to the server is subjected to symmetric encryption using a system generated symmetric key. Further this key is subjected to asymmetric encryption using buyers/bid openers public keys. Overall, the uploaded tender documents become readable only after the tender opening by the authorized bid openers.

28) The confidentiality of the bids is maintained since the secured Socket Layer 128 bit encryption technology is used. Data storage encryption of sensitive fields is done.

29) The bidder should logout of the tendering system using the normal logout option available at the top right hand corner and not by selecting the (X) exit option in the browser.

30) For any queries regarding e-tendering process, the bidders are requested to contact as provided in the tender document. Parallely for any further queries, the bidders are asked to contact over phone: 0120-4200462, 0120-4001002 and 8826246593 or send a mail over to cphp-nic@nic.in ; support-eproc@nic.in.