

**REQUEST FOR QUALIFICATION
(RFQ)
FOR
Programme Management Consultancy (PMC)
For the Sagarmala Programme**



Indian Ports Association

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INR 25,000/-

(NOVEMBER 2016)

DISCLAIMER

1. This RFP document is neither an agreement nor an offer by the Indian Ports Association (IPA) to the prospective Applicants or any other person. The purpose of this RFP is to provide information to the interested parties that may be useful to them in the formulation of their proposal pursuant to this RFP.
2. IPA does not make any representation or warranty as to the accuracy, reliability or completeness of the information in this RFP document and it is not possible for IPA to consider particular needs of each party who reads or uses this RFP document. This RFP includes statements which reflect various assumptions and assessments arrived at by IPA in relation to the consultancy. Such assumptions, assessments and statements do not purport to contain all the information that each Applicant may require. Each prospective Applicant should conduct its own investigations and analyses and check the accuracy, reliability and completeness of the information provided in this RFP document and obtains independent advice from appropriate sources.
3. IPA will not have any liability to any prospective Consultancy Company/ Firm/ Consortium or any other person under any laws (including without limitation the law of contract, tort), the principles of equity, 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 Assignment, the information and any other information supplied by or on behalf of IPA or their employees, any consultants or otherwise arising in any way from the selection process for the Assignment. IPA will also not be liable in any manner whether resulting from negligence or otherwise however caused arising from reliance of any Applicant upon any statements contained in this RFP.
4. IPA will not be responsible for any delay in receiving the proposals. The issue of this RFP does not imply that IPA is bound to select an Applicant or to appoint the Successful Applicant, as the case may be, for the consultancy and IPA 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. IPA also reserves the right to withhold or withdraw the process at any stage with intimation to all who submitted the RFP Application.
5. The information given is not an exhaustive account of statutory requirements and should not be regarded as a complete or authoritative statement of law. IPA accepts no responsibility for the accuracy or otherwise for any interpretation or opinion on the law expressed herein.

6. IPA reserves the right to change / modify / amend any or all provisions of this RFQ document. Such revisions to the RFP / amended RFP will be made available on the website of IPA.

Indian Ports Association

IPA/MSD/ICTD/PMC Sagarmala/2016

Dated: 16/11/2016

Notice inviting RFP for Programme Management Consultancy (PMC) for Sagarmala Programme

Indian Ports Association (IPA) on behalf of Ministry of Shipping (MoS), Government of India invites Requests for Proposal (RFP) from interested consultants to enable Ministry of Shipping in discharging its functions related to Sagarmala Programme, including project planning, budgeting, supervision, monitoring and evaluation, reporting and coordination to ensure project development in accordance with the NPP and other deliverables provided by the consultants of Sagarmala.

The RFP document providing the Term of Reference (ToR), pre-qualification criteria, terms and conditions including evaluation criteria and application fee are available on the web site <http://ipa.nic.in>.

The schedule for receipt of the application is as follows:-

1. Receiving of queries/request for clarifications on or before 4.00 pm (1600 Hrs) on 22/11/2016
2. Pre-Bid Meeting on 23/11/2016 at 2.30 pm (1430 Hrs)
3. Reply to queries/clarifications on 29/11/2016.
4. Receipt of offers on or before 3.30 pm (1530 Hrs) on 09/12/2016.
5. Opening of offers at 4.00 PM (1600 Hrs) on 09/12/2016

Reputed and interested consultants/consulting firms/consortia may download the RFP from the above website and send in their response to the Chief Administrative Officer, Indian Ports Association, 1st floor, South Tower, NBCC Place, Bhasham Pitamah Marg, Lodi Road, New Delhi – 110 003.

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SECTION-1: LETTER OF INVITATION

New Delhi

Date: 16 November, 2016

1. Background

The Sagarmala Programme has been launched by the Government of India to promote port-led development in the country. The ‘Sagarmala - Concept and Implementation’ was approved by the Union Cabinet on 25th March, 2015. The Sagarmala Programme will focus on four pillars of development, namely:

- a. Port Modernization & New Port Development: Transforming existing ports into world class ports through capacity augmentation, modernization of port infrastructure and improving operational efficiency of the ports. Development of new ports is also envisaged as part of this objective
- b. Efficient Evacuation: Improving port evacuation and connectivity to the hinterland and developing optimal multi-modal logistic solution for efficient, cost effective movement of cargo and to harness the potential of inland waterways / coastal shipping
- c. Port-led Industrialization: Undertaking development of Coastal Economic Zones with projects like port based industrialization, coastal tourism, logistics parks etc. and aligning with the ‘Make in India’ initiative. Port based industrialization will include development of port based industrial parks, promoting captive industries and ancillary facilities and covering ship building / repair and other maritime related industries
- d. Coastal Community Development: Sustainable development of coastal communities through skill training programs, development of coastal tourism, fisheries and other activities.

As part of the Sagarmala Programme, a National Perspective Plan, April 2016, for the comprehensive development of India’s coastline and maritime sector has been prepared and includes more than 200 projects across the areas of Port Modernization & New Port Development, Port Connectivity Enhancement, Port-led Industrial Development and Coastal Community Development.

Implementation of the projects identified under National Perspective Plan, will be taken up, starting FY 16-17, by the respective Ports, State Governments / Maritime Boards, Central Ministries, mainly through private or PPP mode. Sagarmala Development Company (SDC) has been set up by Ministry of Shipping to provide equity support to the project SPVs and funding support to residual projects. SDC was incorporated on 31st August 2016 under the Companies Act, 2013.

2. Objective

IPA wishes to engage a Programme Management Consultant (PMC) for a period of 2 years which may be extended for a subsequent period of maximum 2 years, on mutual consent, to enable Sagarmala Development Company in discharging its functions related to Sagarmala Programme, including project planning, budgeting, supervision, monitoring and evaluation, reporting and coordination to ensure project development in accordance with the NPP and other deliverables provided by the consultants of Sagarmala.

Ministry of Shipping has incorporated SDC for the purpose of coordinating the implementation of projects under Sagarmala. Therefore wherever “Sagarmala Development Company (SDC)” appears in the document it may be construed as SDC and / or Ministry of Shipping.

3. A firm will be selected under Combined Quality cum Cost Based Selection (CQCCBS) and procedures described in this RFP.

4. The RFP includes the following documents:

- Section 1 – Letter of Invitation
- Section 2 – Instructions to Consultants (including Data Sheet)
- Section 3 – Prequalification and Technical Proposal - Standard
- Section 4 – Financial Proposal - Standard Forms
- Section 5 – Terms of Reference
- Section 6 – I – Standard Form of Contract
II – General Conditions of contract
III – Standard conditions of contract

Appendices Other relevant information, forms and formats

All clarifications / corrigenda will be published only on the IPA website. The official website for accessing the information related to this RFP is: www.ipa.nic.in (the "Official Website").

Yours sincerely,

Managing Director
Indian Ports Association

SECTION 2: INSTRUCTIONS TO CONSULTANTS

1.0 INTRODUCTION

- 1.1. The Client named in the data sheet will select a Consulting Firm / Organization (the Consultant) in accordance with the method of selection specified in the data sheet. Applicants are advised that the selection of the Consultant shall be on the basis of an evaluation by Client through the selection process specified in this RFP (the "Selection Process"). Applicants shall be deemed to have understood and agreed that no explanation or justification for any aspect of the Selection Process will be given and that Client's decisions are without any right of appeal whatsoever.
- 1.2. The Applicants are invited to submit Technical and Financial Proposals (collectively called as the "Proposal"), as specified in the Data Sheet, for the services required for the Assignment. The term "Applicant" refers to a single entity or the group of entities coming together to submit the Proposal. The Proposal will form the basis for contract signing with the selected Applicant / Consultant. The Consultant shall provide Project Management Consulting services in accordance with the Terms of Reference of this RFP (the "TOR").
- 1.3. The Applicant shall submit the Proposal in the form and manner specified in this RFP. The Proposal shall be submitted as per the forms given in relevant sections herewith. Upon selection, the Applicant shall be required to enter into a contract with the Client in the form specified in this RFP (the "Contract").
- 1.4. Consultants should familiarize themselves with local conditions and take them into account in preparing their Proposals.
- 1.5. The Client will timely provide, at no cost to the Applicants, the inputs, facilities, relevant project data and reports related to the project available with the Client for preparation of bid proposals of the Applicants. However, for avoidance of doubt, it is hereby clarified that the aforesaid data / information provided under the RFP or to be provided later, is only indicative and solely for the purposes of rendering assistance to the Applicants towards preparation of their Proposals. The Applicants are hereby advised to undertake their own due diligence (to their complete satisfaction) before placing reliance on any such data / information furnished or to be provided later by the Client and / or any of his consultants.
- 1.6. Applicants shall bear all costs associated with the preparation and submission of their proposals, presentation and contract negotiation including but not limited to postage, delivery fees, expenses associated with any demonstrations or presentations which may be required by Client or any other costs incurred in connection with or relating to its Proposal. The Client is not bound to accept any proposal, and reserves the right to annul the

selection process at any time prior to Contract award, without thereby incurring any liability to the Applicants.

- 1.7. Client requires that the selected Applicant / Consultant provide professional, objective, and impartial advice and at all times hold Client's interests' paramount, avoid conflicts with other assignments or its own interests, and act without any consideration for future work. The selected Applicant / Consultant shall not accept or engage in any assignment that may place it in a position of not being able to carry out the assignment in the best interests of Client and the Project.
- 1.8. It is the Client's policy to require that the Consultants observe the highest standard of ethics during the Selection Process and execution of such contracts. In pursuance of this policy, the Client:
 - i. defines, for the purposes of this provision, the terms set forth below as follows:
 - a. "Corrupt practice" means the offering, giving, receiving, or soliciting anything of value to influence the action of officials in the Selection Process or in contract execution; and
 - b. "Fraudulent practice" means a misrepresentation of facts in order to influence the selection process or the execution of a contract in a way which is detrimental to the Client, and includes collusive practices 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.
 - ii. will reject the Proposal for award if it determines that the Applicant has engaged in corrupt or fraudulent activities in competing for the contract in question;
 - iii. will declare an Applicant ineligible, either indefinitely or for a stated period of time, to be awarded a contract if it at any time determines that the Applicant has engaged in corrupt or fraudulent practices in competing for and in executing the contract.
- 1.9. All members of the consortium are required to follow the highest level of work ethics, if any member of the consortium has a Conflict of Interest or indulge in "Prohibited Practices"; the whole Consortium is liable to be disqualified. Further, in the event any entity has been barred by the Central Government, any State Government, a statutory authority or a public sector undertaking, as the case may be, from participating in any project or bid, and the bar subsists as on the date of the Proposal Due Date, it would not be eligible to submit a Proposal either by itself or as part of a Consortium.
- 1.10. **Arbitration:** 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 RFP, 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, India 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.

- 1.11. Termination of Contract: Client will have the right to terminate the contract by giving 30 (thirty) days written notice. In the event of termination, the client will not be liable to pay any compensation whatsoever to the consultants. If the contract is terminated due to the fault of the Consultant or in case of termination of the contract by the Consultant for reasons not attributable to the Client, the Client will forfeit the performance security of the Consultant.
- 1.12. Details related to timelines and submission of deliverables at each stage is given in the TOR.
- 1.13. The Proposal shall be valid for a period of not less than 180 (one hundred and eighty) days from the Proposal Due Date (the "POD").
- 1.14. Brief description of the selection process: The Client has adopted a two stage (collectively referred to as the "Selection Process") for the evaluation of the Proposals. The Bids shall comprise of two parts namely the Technical and Financial Proposals to be submitted in two separate sealed envelopes. The Technical Proposal along with the processing fee as prescribed in this RFP document, Bid Security and Financial Proposal shall be placed in a sealed envelope titled "Request for Proposal" as prescribed in this RFP document. Subsequently the technical evaluation as specified in this RFP will be carried out only for all Applicants. Based on this technical evaluation, a list of technically qualified Applicants shall be prepared. Only the Financial Proposals of technically qualified Applicants will be opened. Proposals will finally be ranked according to their combined technical and financial scores as specified in this RFP. The first ranked Applicant (the "Successful Applicant") shall be invited for Negotiations while the second ranked Applicant will be kept in reserve.
- 1.15. Number of Proposals: No Applicant or its Associate shall submit more than one Application for the Consultancy. An Applicant applying individually or as a member of a consortium shall not be entitled to submit another

application either individually or as a member of any other consortium, as the case may be.

1.16. Visit to the Client and Verification of Information: Applicants are encouraged to submit their respective Proposals after visiting the office of the Client or its delegates as the case may be, and ascertaining for themselves the availability of documents and other data with the Client, Applicable Laws and regulations or any other matter considered relevant by them.

1.17. Right to reject any or all Proposals:

- i. Notwithstanding anything contained in this RFP, the Client 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.
- ii. Without prejudice to the generality of above, the Client 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 Client, the supplemental information sought by the Client for evaluation of the Proposal.
- iii. Such misrepresentation / improper response by the Applicant may lead to the disqualification of the Applicant. If such disqualification / rejection occurs after the Proposals have been opened and the highest ranking Applicant gets disqualified / rejected, then the Client 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 Client, including annulment of the Selection Process.

1.18. Acknowledgement by Applicant

- i. It shall be deemed that by submitting the Proposal, the Applicant has:
 - a. made a complete and careful examination of the RFP;
 - b. received all relevant information requested from the Client;
 - c. accepted the risk of inadequacy, error or mistake in the information provided in the RFP or furnished by or on behalf of the Client;
 - d. satisfied itself about all matters, things and information, including matters herein above, necessary and required for submitting an informed Application and performance of all of its obligations there under;
 - e. acknowledged that it does not have a Conflict of Interest; and
 - f. agreed to be bound by the undertaking provided by it under and in term hereof.

- ii. The Client and /or its advisors / consultants shall not be liable for any omission, mistake or error on the part of the Applicant in respect of any of the above or on account of any matter or thing arising out of or concerning or relating to RFP or the Selection Process, including any error or mistake therein or in any information or data given by the Client and / or its consultant.
- 1.19. RFP Processing Fee: The RFP submissions shall be accompanied by a Bank Draft of INR 25000.00 (Indian Rupees Twenty Five Thousand only) in favour of Indian Ports Association, as a non-refundable RFP processing fee {the "RFP Processing Fee"}. Proposals not accompanied with the aforesaid RFP Processing Fee shall be liable to be rejected by the Client.

2.0 CLARIFICATION AND AMENDMENT OF RFP DOCUMENT

- 2.1. Applicants may seek clarification on this RFP document, within a week of the date of issue of this RFP document. Any request for clarification must be sent by standard electronic means (PDF and word file) / fax to the Client's office addressed to:

Managing Director,
Indian Ports Association,
1st Floor, South Tower, NBCC Place,
Bhishmah Pitamah Marg,
Lodi Road, New Delhi – 110 003
Phone No.: 011 24369061/63; Fax No.: 011 24365866

- 2.2. At any time before the submission of Proposals, the Client may, for any reason, whether at its own initiative or in response to a clarification requested by a prospective Applicant, modify the RFP documents by an amendment. All amendments / corrigenda will be posted only on the Client's Official Website. In order to afford the Applicants a reasonable time for taking an amendment into account, or for any other reason, the Client may at its discretion extend the Proposal Due Date.
- 2.3. The date of the Pre-Bid Meeting and venue is mentioned in Data Sheet. Applicants willing to attend the pre-bid should inform client beforehand in writing and email. The maximum no. of participants from an applicant, who chose to attend the pre-bid meeting, shall not be more than two per applicant. The representatives attending the pre-bid meeting shall accompany with an authority letter duly signed by the authorised signatory of his / her organisation.

3.0 PAYMENT TERMS

- 3.1. The consultant shall be eligible to receive the payment on a retainerhip (monthly) basis and payment shall be made to the Consultant as per the Terms and Conditions as specified in Special Conditions of Contract (Section 6).

4.0 OWNERSHIP OF DOCUMENT AND COPYRIGHT

- 4.1. All the deliverables and study outputs including primary data shall be compiled, classified and submitted by the Consultant to the Client in hard copies and editable soft copies in addition to the requirements for the reports and deliverables indicated in the Terms of Reference.

The study outputs 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 prior written permission of the Client. In the case of any deliverables by Consultant consisting of any Intellectual Property Rights ("IPR") of the Consultant, the Consultant shall provide the Client with necessary irrevocable royalty-free license to use such IPR. Further, for the avoidance of any doubt, it is clarified that any intellectual property developed during the course of, or as a result of, the services rendered in relation to the consultancy, shall be and remain property of the Client

5.0 BID SECURITY

- 5.1. A Bid Security in the form of a Bank Guarantee or Demand Draft, from a Scheduled Indian Bank in favour of Indian Ports Association, valid for 180 (one hundred and eighty) days from the POD as given in the Data Sheet, payable at New Delhi, for the sum of Rupees Ten Lakhs only (INR 1,000,000) shall be required to be submitted by each Applicant. For the purpose of clarity, Scheduled Indian Bank shall mean State Bank of India and its Associates, Nationalised Banks, Other Public Sector Banks and Private Sector Banks as prescribed in the Second Schedule to the RBI Act, 1934.
- 5.2. 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 "RFP -{Name of the Assignment}" and "Not to be opened before [insert date, month] 2016 and in presence of Evaluation Committee only". Bids received without the specified Bid Security shall be summarily rejected.
- 5.3. The Client 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 on acceptance of the proposal of the successful applicant or when the selection process is cancelled by Client.

The Successful Applicant's Bid Security shall be returned, without any interest upon, to the Applicant signing the contract and furnishing the Performance Security in accordance with provision of the RFP and the Contract.

- 5.4. The Client will be entitled to forfeit and appropriate the bid security as mutually agreed loss and damage payable to Client in regard to the RFP without prejudice to Client's any other right or remedy under the following conditions:
- i. If an Applicant engages in a corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice as envisaged under this RFP (including the Standard Form of Contract);
 - ii. 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,
 - iii. In the case of the Successful Applicant, if the Successful Applicant fails to sign the contract or provide the Performance Security within the specified time limit, or
 - iv. If the Applicant commits any breach of terms of this RFP or is found to have made a false representation to Client.
- 5.5. Performance Security equivalent to the amount indicated in this RFP shall be furnished before signing of the contract in form of a Bank Guarantee substantially in the form specified in the RFP contract.
- 5.6. For the successful Applicant the Performance Security shall be retained by Client until the completion of the assignment by the Consultant and be released 180 (One Hundred Eighty) days after the completion of the assignment.

6.0 ELIGIBILITY OF APPLICANTS

- 6.1. The Applicant for participation in the Selection Process, may be a single entity or a group of entities (the "Consortium"), coming together to execute the Assignment. However, no applicant applying individually or as a member of a Consortium, as the case may be, can be member of another consortia bidding for the Assignment.
- 6.2. An Applicant or a member of Consortium may either be a sole proprietorship firm / a partnership firm / a limited liability partnership / a company incorporated under the Companies Act 1956 or a body corporate incorporated under the applicable laws of its origin.
- 6.3. An Applicant shall not have a conflict of interest that may affect the Selection Process or the Consultancy (the "Conflict of Interest"). Any Applicant found to have a Conflict of Interest shall be disqualified. In the event of disqualification, the Client will forfeit and appropriate the Bid Security as mutually agreed genuine pre-estimated compensation and damages payable to

the Client for, inter alia, the time, cost and effort of the Client including consideration of such Applicant's Proposal, without prejudice to any other right or remedy that may be available to the Client hereunder or otherwise.

6.4. An Applicant shall be deemed to have a Conflict of Interest affecting the Selection Process, if:

- (i) the Applicant, its consortium member (the "Member") or Associate (or any constituent thereof) and any other Applicant, its consortium member or Associate (or any constituent thereof) have common controlling shareholders or other ownership interest; provided that this disqualification shall not apply in cases where the director indirect shareholding or ownership interest of an Applicant, its Member or Associate (or any shareholder thereof having a shareholding of more than 5 percent of the paid up and subscribed share capital of such Applicant, Member or Associate, as the case may be) in the other Applicant, its consortium member or Associate is less than 5 percent of the subscribed and paid up equity share capital thereof; provided further that this disqualification shall not apply to any ownership by a bank, insurance company, pension fund or a public financial institution referred to in section 4A of the Companies Act, 1956.

For the purposes of this clause, indirect shareholding held through one or more intermediate persons shall be computed as follows: (aa) where any intermediary is controlled by a person through management control or otherwise, the entire shareholding held by such controlled intermediary in any other person (the "Subject Person") shall be taken into account for computing the shareholding of such controlling person in the Subject Person; and (bb) subject always to sub-clause (aa) above, where a person does not exercise control over an intermediary, which has shareholding in the

Subject Person, the computation of indirect shareholding of such person in the Subject Person shall be undertaken on a proportionate basis; provided, however, that no such shareholding shall be reckoned under this sub-clause (bb) if the shareholding of such person in the intermediary is less than 26 percent of the subscribed and paid up equity shareholding of such intermediary; or (ii) a constituent of such Applicant is also a constituent of another Applicant; or

- (iii) such Applicant or its Associate receives or has received any direct or indirect subsidy or grant from any other Applicant or its Associate; or
- (iv) such Applicant has the same legal representative for purposes of this Application as any other Applicant; or

- (v) such Applicant has a relationship with another Applicant, directly or through common third parties, that puts them in a position to have access to each other's information about, or to influence the Application of either or each of the other Applicant; or
- (vi) there is a conflict among this and other consulting assignments of the Applicant (including its personnel and sub-consultants) and any subsidiaries or entities controlled by such Applicant or having common controlling shareholders. The duties of the Consultant will depend on the circumstances of each case. While providing consultancy services to the Client for this particular assignment, the Consultant shall not take up any assignment that by its nature will result in conflict with the present assignment; or
- (vii) a firm which has been engaged by the Client to provide goods or works or services for a project, and its Associates, will be disqualified from providing consulting services for the same project save and except as per provisions of this RFP, conversely, a firm hired to provide consulting services for the preparation or implementation of a project, and its Members or Associates, will be disqualified from subsequently providing goods or works or services related to the same project; or
- (viii) the Applicant, its Member or Associate (or any constituent thereof), and the bidder or Concessionaire, if any, for the Project, its contractor(s) or sub-contractor(s) (or any constituent thereof) have common controlling shareholders or other ownership interest; provided that this disqualification shall not apply in cases where the direct or indirect shareholding or ownership interest of an Applicant, its Member or Associate (or any shareholder thereof having a shareholding of more than 5 percent of the paid up and subscribed share capital of such Applicant, Member or Associate, as the case may be,) in the bidder or Concessionaire, if any, or its contractor(s) or sub-contractor(s) is less than 5 percent of the paid up and subscribed share capital of such Concessionaire or its contractor(s) or sub-contractor(s); provided further that this disqualification shall not apply to ownership by a bank, insurance company, pension fund or a Public Financial Institution referred to in section 4A of the Companies Act, 1956. For the purposes of this sub-clause (h), indirect shareholding shall be computed in accordance with the provisions of sub-clause (a) above
- (ix) For purposes of this RFP, Associate means, in relation to the Applicant, a person who controls, is controlled by, or is under the common control with such Applicant (the "Associate"). As used in this definition, the expression "control" means, with respect to a person which is a company

or corporation, the ownership, directly or indirectly, of more than 50 percent of the voting shares of such person, and with respect to a person which is not a company or corporation, the power to direct the management and policies of such person by operation of law or by contract.

- 6.5. An Applicant eventually appointed to provide Consultancy for this Assignment / Project, or its Affiliates, shall be disqualified from subsequently providing goods or works or services related to the design, project management, review, supervision, construction and operation of any other Project or assignment initiated or managed by SDC for the duration for which the appointed PMC will be engaged by Indian Ports Association. Breach of this obligation shall be construed as Conflict of Interest. For the avoidance of doubt, an entity affiliated with the PMC Consultant shall include a partner in the Consultant's firm or a person who holds more than 5 percent of the subscribed and paid up share capital of the Consultant, as the case may be.
- 6.6. Any entity which has been barred by the Central Government, any State Government, a statutory authority or a public sector undertaking, as the case may be, from participating in any project, and the bar subsists as on the date of the Proposal

Due Date, would not be eligible to submit a Proposal either by itself or through its Associate.

- 6.7. An Applicant or its Associate should have, during the last 3 (three) years, neither failed to perform on any agreement, as evidenced by imposition of a penalty by an arbitral or judicial authority or a judicial pronouncement or arbitration award against the Applicant or its Associate, nor been expelled from any project or agreement nor have had any agreement terminated for breach by such Applicant or its Associate.
- 6.8. An Applicant shall submit its Proposal either individually or as a JV / Consortium. However, it may as part of its Proposal specify specialty sub-consultants provided however that the compensation for the sub consultant(s) shall not exceed 30% of the of the contract amount (as defined in the Standard Form of Contract of this RFP) at any time. Sub-consultant(s) envisaged to deliver the scope of work for year 1 must be listed in the Proposal with their role(s) and responsibility clearly noted in the organization chart.
- 6.9. In case the Applicant is a Consortium, it shall, comply with the following additional requirements:
- i. Number of members in a consortium shall not exceed 4 (four) and limited to two Joint Venture partners including lead; (One Lead member of the JV + One JV Partner+ Two Sub Consultants)

- ii. Subject to the provisions of sub-clause (1) above, the Application should contain the information required for each member of the Consortium;
- iii. Members of the Consortium shall nominate one member as the lead member (the "Lead Member"). The nomination(s) shall be supported by a Power of Attorney, as per the format in this RFP, signed by all the other members of the Consortium. The duties, responsibilities and powers of such Lead Member shall be specifically included in the joint Bidding Agreement. It is expected that the Lead Member would be authorized to incur liabilities and to receive instructions and payments for and on behalf of the Consortium. The Client expects that Lead Member should have maximum responsibility pertaining to execution of Assignment;
- iv. The Application should include a brief description of the roles and responsibilities of individual members;
- v. An individual Applicant cannot at the same time be a member of a Consortium applying for the Assignment. Further, a member of a particular Applicant Consortium cannot be member of any other Applicant Consortium applying for the Assignment;
- vi. No Change in the composition of the Consortium will be permitted by the Client during the Selection Process and during the subsistence of the contract (in case the successful applicant/ consultant is a consortium).
- vii. Members of the Consortium shall enter into a binding Joint Bidding Agreement (the "Jt. Bidding Agreement"), for the purpose of submitting a Proposal. The Jt. Bidding Agreement, to be submitted along with the Application, shall, inter alia:
 - a. clearly outline the proposed roles and responsibilities, if any, of each member;
 - b. include a statement to the effect that all members of the Consortium shall be liable jointly and severally for all obligations of the Consultant in relation to the Assignment until the completion of the Assignment in accordance with the contract and the TOR;
 - c. clearly define the proposed administrative arrangements (organisation chart) for the management and execution of the Assignment, if awarded to the Consortium;
 - d. except as provided under this RFP, there shall not be any amendment to the Jt. Bidding Agreement without the prior written consent of the Client.

- 6.10. Submission of Progress Reports: The Consultant shall submit a monthly progress report and detailed time sheets in agreed formats to the Client. The monthly progress report must include as a minimum:
- i. general description of the work performed in the preceding month
 - ii. work plan for the next month and quarter
 - iii. key issues and challenges facing the Programme with action items (who, when, what) listed and
 - iv. issues that need Client's attention and action. The progress report will be submitted monthly, coinciding with the invoice cycle and will be a pre- condition for payment approval.

7.0 PREPARATION OF PROPOSAL

- 7.1. Applicants are requested to submit their proposal in English Language and strictly in the formats provided in this RFP. The Client will evaluate only those Proposals that are received in the specified forms and complete in all respects. Any supporting documents submitted by the Applicant with its proposal or subsequently, in response to any query / clarification from Client shall be in English and in case any of these documents is in another language, then it must be accompanied by an accurate translation of all the relevant passages in English, in which case, for all purposes of interpretation of the proposal, the translation in English shall prevail.
- 7.2. While preparing their Proposal, Consultants are expected to thoroughly examine the RFP Document. Material deficiencies in providing the information requested may result in rejection of a Proposal.
- 7.3. Technical Proposal: While preparing the Technical Proposal, Applicants must give particular attention to the following:
- i. The Key Personnel must be permanent and full time employee(s) of the firm.
 - ii. The Applicant is to ensure that the time allocated for the proposed Key Personnel does not conflict with the time allocated or proposed for any other assignment. The Client reserves the right to request a workload projection (including time spent on other projects / clients) for the Key Personnel.
 - iii. The composition of the proposed Team and Task Assignment to individual personnel shall be clearly stated.
 - iv. No such Key Personnel shall be proposed for any position if the CV of the personnel does not meet the requirements of the TOR.
 - v. The Key Personnel shall remain available for the period as indicated in the RFP Document.
 - vi. No alternative proposal for any Key Personnel shall be made and only one CV for each position shall be furnished.

- vii. Each CV needs to have been recently signed by the Key Personnel and countersigned by the authorized official of the Firm. At the time of submission of bid proposal, the scanned copies of the signature of Key Personnel will be allowed but at the time of signing of contract, the original signature will be required. However, in both the cases, original counter signature of Authorised signatory shall be required in original.
 - viii. A CV shall be summarily rejected if the educational qualification of the Key Personnel proposed does not match with the requirement of the RFP document.
 - ix. Client certifications for the projects listed under the experience section. Copy of the contract/work orders along with completion certificate indicating the details of previous assignment completed, client, value of assignment/proportionate value in use of projects/assignment in process date and year of award. The Managing Director of the consulting firm shall self-certify if the firm has done assignments on non-disclosure agreements. In such cases, broad details of the assignment have to be provided to ascertain relevance. However, if the bidder becomes a successful bidder, then the bidder has to produce the certifications duly certified by the client or a Chartered Accountant.
 - x. The Applicant should form a Joint Venture / Consortium with his Associate in case he wants to submit the proposal using the experience / strength of his Associate.
 - xi. If the Applicant being a Consortium is qualified on the strength of the experience of a member which is a foreign company / entity, requisite Key Personnel from that foreign company / entity shall be fielded.
 - xii. The personnel proposed should possess good working knowledge of English Language.
 - xiii. No Key Personnel involved should have attained the age of 65 (sixty five) years at the time of submitting the proposal. The client reserves the right to ask for proof of age, qualification and experience at any stage of the project.
 - xiv. The technical proposal must not include any financial information
- 7.4. Failure to comply with the requirements spelled out above shall lead to deduction of marks during the evaluation. Further, in such a case, Client will be entitled to reject the Proposal.
- 7.5. The Client reserves the right to remove/modify any of the positions mentioned for the Personnel in the RFP document, based on its requirements, and the selected consultant will be accordingly notified regarding the change
- 7.6. Proposals shall be typed or written in indelible ink and signed by the Authorised Representative of the Applicant who shall initial each page, in blue

ink. In case of printed and published documents, only the cover shall be initialled. All the alterations, omissions, additions, or any other amendments made to the Proposal shall be initialled by the person(s) signing the Proposal. The Proposals must be properly signed by the Authorised Representative (the "Authorised Representative") as detailed below:

- i. by the partner holding the Power of Attorney in case of a partnership firm / limited liability partnership (A certified copy of the Power of Attorney shall accompany the Proposal)
- ii. by the proprietor in case of a proprietary firm;
- iii. by a duly authorized person holding the Power of Attorney or by a Board Resolution in case of a Limited Company or a corporation (A certified copy of the Power of Attorney/Board Resolution shall accompany the proposal);
- iv. by the authorized representative of the Member in Charge in case of JV / consortium (a certified copy of Board Resolution/Power of Attorney indicating the representative shall accompany the Proposal).

7.7. Applicants should note the Proposal Due Date, as specified in Data Sheet, for submission of Proposals. Except as specifically provided in this RFP, no supplementary material will be entertained by the Client, and that evaluation will be carried out only on the basis of documents received by the closing time of Proposal Due Date as specified in Data Sheet. Applicants will ordinarily not be asked to provide additional material information or documents subsequent to the date of submission, and unsolicited material if submitted will be summarily rejected. For the avoidance of doubt, the Client reserves the right to seek clarifications in case the proposal is non-responsive on any aspects.

7.8. The Proposal shall be accompanied by a certified copy of legally binding Joint Bidding Agreement in case of Joint Venture (JV) / Consortium, in the format provided RFP, signed by all firms / entities confirming the following therein:

- i. Date and place of signing;
- ii. Purpose of JV / Consortium (must include the details of the Services hereunder for which the JV has been invited to bid);
- iii. A clear and definite description of the proposed administrative arrangements (organisation chart) for the management and execution of the assignment;
- iv. Delineation of duties / responsibilities and scope of work to be undertaken by each member along with resources committed by each member of the JV/Consortium for the proposed services;
- v. An undertaking that the members of the JV are jointly and severally liable to the Client for the performance of the services; and
- vi. The authorized representative of the JV / Consortium

- 7.9. The furnishing of this Joint Bidding Agreement to the Client shall not in any manner prejudice the provisions in the contract relating to joint and several liabilities of the Members.
- 7.10. Similarly, Power of Attorney for both authorised representative and lead member of the JV / Consortium shall also be furnished as per the formats available in the RFP.
- 7.11. A firm can bid for a project either as a sole consultant or in the form of joint venture with other consultants. In the case of a joint venture, educational background and experience of personnel who are employees of the sub-consultant in a consortium will be considered against Team Evaluation criteria. Lead partner will be made the sole liable for the same
- 7.12. The Technical Proposal should provide the following information using the attached Standard Forms:
- i. Applicant's experience for recent assignments of similar nature, the outline should indicate, inter alia, the profiles and names of the staff provided, duration of the assignment, contract amount, and firm's involvement.
 - ii. The comments and suggestions provided by the Applicant on the RFP / Contract / TOR are not binding and shall not affect the financial proposal
 - iii. Detailed Approach and Methodology for undertaking the current Assignment;
 - iv. Against the list of proposed staff, details of tasks assigned to each staff as per his / her experience shall influence the evaluation.
 - v. The CV shall be as per the prescribed format and shall be maximum of 4 single sided pages (2 sheets double sided) for each Key Professional. In addition, a one page executive summary shall be provided. In the event any averment made in the CV of a proposed staff is incorrect, such person shall be liable to be debarred for any future assignment of Client for a period of three (3) years. The award of the consultancy to the Applicant may also be liable to cancellation in such an event. Each page of the CV must be signed in original by the Authorised representative together with original or electronic signature of the key team member at the proposal stage. However, at the time of contract signing, original signatures of both authorised representative and the Key Personnel shall be required;
 - vi. The consultant shall make the assessment of support personnel both technical and administrative to undertake the Assignment. Additional support and administrative staff shall be provided as needed for the timely completion of the Assignment within the total estimated cost. Consultant should provide time estimates of Key Personnel as well as

support staff in the staffing schedule. It is stressed that the time period for the Assignment indicated in the TOR should be strictly adhered to;

- vii. On-going consulting assignments can be submitted with detail of progress supported by suitable documents (E.g. copy of invoice or payment received till date or through certificate from the respective client).
- viii. Failure to comply with or provide the above listed items in the Technical Proposal may result in disqualification.

7.13. Financial Proposal: While preparing the financial proposal (the "Financial Proposal"), Applicants are expected to take into account the various requirements and conditions stipulated in this RFP document. Except service tax on the services to be provided by the Consultant to the Client, which shall be payable by the Client, the Financial Proposal shall be inclusive of all the costs including taxes associated with the assignment. It is clarified that, for the purposes of evaluation, the Financial Proposal should be prepared in INR. Escalations will be applicable in the future in accordance with the procedure prescribed in this RFP document. In submitting the Financial Proposal, the Consultant shall adhere to the following requirements:

- i. All the costs associated with the Assignment shall be included in the Financial Proposal. These shall normally cover remuneration for all the personnel including core team, resource pool and out of pocket expenses. The total amount indicated in the Financial Proposal shall be without any condition attached or subject to any assumption, and shall be final and binding. In case any assumption or condition is indicated in the Financial Proposal, it shall be considered non-responsive and liable to be rejected.
- ii. The Financial Proposal shall take into account all the expenses, tax liabilities and cost of insurance specified in the draft contract, levies and other impositions applicable under the prevailing law on the Consultants and their staff. For the avoidance of doubt, it is clarified that all taxes, excluding service tax, shall be deemed to be included in the cost shown under different items of Financial Proposal. The Consultant shall be paid only service tax over and above the cost of Financial Proposal. Further, all payments shall be subjected to deduction of taxes at source as per Applicable Laws.
- iii. Prepare a standard schedule of monthly rates in INR only. Future adjustments to the rates will be allowed in accordance with the index described in this RFP document.
- iv. Prepare the standard schedule of rates for the core team and the resource pool for which the forms are given in section 4 of this RFP document.

- v. For bidding and transparency purposes, the Consultant must use the staffing specified and the Consultant's corresponding standard schedule of monthly rates as per the forms given in the section 4 of this RFP document.
 - vi. The Proposal is a retainership contract. The monthly fee quoted by the consultant shall take into account the expense on salaries of Professional staffs deployed on the assignment, domestic travel and related out of pocket expenditure
 - vii. If the consultant is required to undertake foreign travel on behalf / advice of the client, the PMC should take prior budgetary approval from SDC / IPA and the same shall be reimbursed by IPA after submission of documentary evidences in accordance with the approval.
 - viii. Indexation of remuneration will be done annually from Effective Date of Contract;
 - a. All payments to the Consultant shall be subjected to deduction of taxes at source as per applicable laws.
 - ix. In case of any discrepancy between the amount quoted in figures and words, the amount quoted in words will be considered for evaluation purposes.
- 7.14. The proposal should be submitted as per the standard Financial Proposal submission forms prescribed in this RFP.
- 7.15. The Financial Proposal shall be divided into professional fee (for both Core Team and Resource Pool) and out of pocket expenses as per forms prescribed in this RFP. The breakup of the remuneration and out of pocket expenses should match the total cost of the Financial Proposal. The Evaluation Committee will determine whether the submitted Financial Proposals are complete (i.e., whether Bidders have priced all items of the corresponding Technical Proposal); if not, for material omissions, the Client will price them by application of the highest unit cost and quantity of the omitted item as provided in the other Financial Proposals and add their cost to the offered price, and correct any arithmetical errors. When correcting computational errors, in case of discrepancy between (a) a partial amount and the total amount, the partial amount shall prevail; (b) words and figures, the words shall prevail.
- 7.16. Consultants shall express the price of their services (including break down of their costs) in Indian Rupees.
- 7.17. The Consultants may be subjected to local and other taxes (such as: social charges or income taxes on non-resident foreign personnel, duties, fees, levies etc.) on amounts payable by the Client under the Contract. Consultants must do their due diligence about the tax implications and Client will not be liable for any incident.

- 7.18. The Proposals must remain valid for a period as specified in the Data Sheet. During this period, the Applicant is expected to keep available the Key Professional (Core Team & Resource Pool) proposed for the assignment. The Client will make its best effort to complete negotiations within this period. If the Client wishes to extend the validity period of the Proposals, it may ask the Consultants to extend the validity of their Proposals for a stated period. The Consultant must identify in the Proposal, the names of the Key Professional members who may be at risk of losing if the validity period is extended by up to 3 months. Consultants, who do not agree with the extension of the validity period, have the right not to extend the validity of their Proposals. The Client will return the bid security deposits of the Applicants who do not extend the period of validity of their Proposals and wish to withdraw.

The Applicant may modify, substitute, or withdraw its Proposal after submission, provided that written notice of the modification, substitution, or withdrawal is received by Client prior to POD as given in the Data Sheet. No Proposal shall be modified, substituted, or withdrawn by the Applicant on or after the PDD. The modification, substitution, or withdrawal notice shall be prepared, sealed, marked, and delivered in accordance with the provisions of this RFP, with the envelopes being additionally marked "MODIFICATION", "SUBSTITUTION" or "WITHDRAWAL", as appropriate.

- 7.19. Any alteration / modification in the Proposal or additional information or material supplied subsequent to the POD, unless the same has been expressly sought for by Client, shall be disregarded.
- 7.20. The rates and amounts indicated in the Financial Proposal shall be without any condition attached or subject to any assumption and shall be final and binding. In case any assumption or condition is indicated in the Financial Proposal, it shall be considered non-responsive and liable to be rejected.

8.0 SUBMISSION, RECEIPT AND OPENING OF PROPOSALS

- 8.1 The Proposal shall be prepared in indelible ink. It shall contain no inter-lineation or overwriting, except as necessary to correct errors made by the Firm itself. Any such corrections must be initialed by the person or persons who sign(s) the Proposal.
- 8.2 The Authorized Representative of the Applicant should initial all pages of Technical and Financial proposal. The Authorized Representative's authorization should be confirmed by a written power of attorney by the competent authority accompanying the Proposal.

- 8.3 The Applicant shall submit Two (2) copies of Technical Proposal (one original and one copy) and one copy of Financial Proposal. One soft copy in a PDF format of Technical Proposal shall also be submitted by the Applicant. The Technical and Financial Proposals must necessarily be 'Hard Bound' separately and all pages serially numbered. 'Hard Bound' implies such binding between two covers through stitching whereby it may not be possible to replace any paper without disturbing the document. In case of any discrepancy between the original and the copy (including soft copy) of the technical proposal, the contents as per original will only be considered.
- 8.4 The Processing Fee, the Bid Security and the Technical Proposal placed in a sealed envelope clearly marked "TECHNICAL PROPOSAL- [Name of Assignment]," and the Financial Proposal in a sealed envelope clearly marked "FINANCIAL PROPOSAL - [Name of Assignment]" shall be placed in a sealed envelope clearly marked "RFP- [Name of Assignment]". These two (2) sealed envelopes i.e. Technical and Financial Proposal shall be placed into an outer sealed envelope bearing the submission address, Name of Assignment and marked "DO NOT OPEN EXCEPT IN PRESENCE OF THE EVALUATION COMMITTEE."

8.5 PROPOSAL SUBMISSIONS:

Envelope	Content	Forms
Outer Envelope	Request for Proposal (RFP)	NA
Technical Proposal Envelope	Processing Fee and Bid Security (Separately sealed envelope)	Form: 3G
	Technical Proposal (Separately sealed envelope) and	Form: 3A, 3B, 3C, 3D,3E, 3F, 3H, 3I, 3J, 3K,3L
	Financial proposal (Separately sealed envelope)	Form: 4A, 4B-1, 4B-2, 4C, 4D

8.6 SUBMISSION ADDRESS:

Managing Director,
 Indian Ports Association,
 1st Floor, South Tower, NBCC Place,
 Bhishmah Pitamah Marg, Lodi Road, New Delhi – 110003
 Phone: 011 24369061/63; Fax No.: 011 24365866

The information on the outer envelope should also include name of the Assignment.

- 8.6.1 The completed Proposal must be delivered at the submission address on or before POD given in the Data Sheet before 3:00 PM (IST). No Proposal shall be accepted after the closing time of Proposals.
- 8.6.2 After the deadline for submission of proposals the Technical Proposal shall be opened by the Evaluation Committee to evaluate the Applicants. The Envelope containing the Financial Proposals shall remain sealed.
- 8.6.3 After the Proposal submission until the contract is awarded, if any Consultant wishes to contact the Client on any matter related to its proposal, it should do so in writing at the Proposal submission address. Any effort by the firm to influence the Client during the Proposal evaluation, Proposal comparison or contract award decisions may result in the rejection of the consultant's proposal.

9.0 PROPOSAL EVALUATION

- 9.1 As part of the evaluation, the Technical Proposal shall be checked for responsiveness in accordance with the requirements of the RFP and only those Technical Proposals which are found to be responsive would be further evaluated in accordance with the criteria set out.
- 9.2 Prior to evaluation of Proposals, the Client will determine whether each Proposal is responsive to the requirements as indicated below. The Client may, in its sole discretion, reject any Proposal that is not responsive hereunder. A Proposal will be considered responsive only if:

RFP Stage

Technical Proposal

- i. the Technical Proposal is received in the form specified in this RFP;
- ii. it is received by the Proposal Due Date including any extension thereof in terms hereof;
- iii. it is accompanied by the Processing Fee as specified in this RFP;
- iv. it is accompanied by the Bid Security as specified in this RFP;
- v. it is signed, sealed, bound together in hard cover and marked as stipulated in this RFP;
- vi. it is accompanied by Joint Bidding Agreement, the Power of Attorney, for the Authorized Representative and the Lead Member of the Consortium, if applicable;
- vii. it does not contain any condition or qualification; and
- viii. it is not non-responsive in terms hereof.

Financial Proposal

- i. The Financial Proposal is received in the form specified in this RFP
- ii. it is signed, sealed, bound together in hard cover and marked as stipulated in this RFP;

- iii. it does not contain any condition or qualification; and
- iv. it is not non-responsive in terms hereof.
- v. The Client reserves the right to reject any Proposal which is non-responsive and no request for alteration, modification, substitution or withdrawal will be entertained by the Client in respect of such Proposals. However, Client reserves the right to seek clarifications or additional information from the applicant during the evaluation process. The Client will subsequently examine and evaluate Proposals in accordance with the Selection Process detailed out below.

9.3 Minimum Qualification Criteria (To be satisfied by the lead partner or to be jointly satisfied by both the lead and JV partner).

For the purpose of qualification, the following criteria shall apply:

- i. Turnover to exceed Rs.100 Crore from the consultancy business in India (**excluding audit and IT consultancy revenues**) over the three preceding financial years, this should be supported by the documents certified by a Chartered Accountant;
- ii. Experience of working in at least five (5) consultancy projects, in the last 10 years, in the sectors related to Ports / Inland Waterway Development / Highways/ Railway /Metro / townships / industrial parks / industrial estates / special economic zones / special investment zones / urban cities / industrial cities
- iii. Experience of working in at least one project/programme management consultancy, in the last 10 years, in the sectors related to Ports / Inland Waterway Development / Highways / Railway / Metro / townships / industrial parks / industrial estates / special economic zones / special investment zones / urban cities / industrial cities
- iv. Experience of consulting work with at least two (2) Indian PSUs / Government agencies on driving large scale business transformation in past 10 years;

9.4 Technical Evaluation

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

9.4.2 Client reserves the right to verify all statements, information and documents, submitted by the Applicant in response to this RFP. Any such verification or absence of verification by Client shall not in any manner whatsoever relieve the Applicant of its obligations or liabilities hereunder nor will it affect any rights of Client.

9.4.3 In case it is found during the evaluation or at any time before signing of the Contract or after its execution and during the period of subsistence thereof, that any eligibility conditions have not been met by the Applicant or if the Applicant has made material misrepresentation or has given any materially incorrect or false information, the Applicant shall be disqualified forthwith if not yet selected as the Consultant (either by issuance of the LOA or entering into of the Contract), and if the Successful Applicant has already been issued the LOA or has entered into the Contract, as the case may be, the same shall, notwithstanding anything to the contrary contained therein or in this RFP, be liable to be terminated, by a communication in writing by Client without Client being liable in any manner whatsoever to the Successful Applicant or Consultant, as the case may be. In such an event, Client shall, without prejudice to any other right or remedy that may be available to Client, forfeit and appropriate the Performance Security as mutually agreed pre-estimated compensation and damages payable to Client for, inter alia, time, cost and effort of Client; provided that in the event the Performance Security has not been provided, Client have the right to forfeit the Bid Security and the Applicant or Consultant, as the case may be, shall be liable for the difference.

9.4.4 Technical Evaluation Criteria: The evaluation committee ("Evaluation Committee") appointed by the Client will carry out the technical evaluation of Proposals on the basis of the following evaluation criteria and points system. Evaluators of Technical Proposals shall have no access to the Financial Proposals until technical evaluation, is concluded Each evaluated Proposal will be given a technical score (St) as detailed below. The maximum points/ marks to be given under each of the evaluation criteria are:

S. No.	Criteria	S. No.	Sub-Criteria	Marks
A	Firm Size	A1	Average Annual Turnover*, over the three preceding financial years (FY 13-14, 14-15, 15-16) from consultancy business in India <ul style="list-style-type: none"> • > 100 Cr : 3 marks • > 150 Cr : 4 marks • > 200 Cr : 5 marks 	5
				5

B	Relevant Project Experience	B1	<p>Number of projects in ports, infrastructure and transportation sector in India, with project value of at least Rs. 3 Crore, in last 5 years</p> <ul style="list-style-type: none"> • 1-2 : 6 marks • 3-4 : 8 marks • 5 or more : 10 marks <p>The projects in the above mentioned clause should not include IT implementation / Audit projects.</p>	10
		B2	<p>Number of global projects in the Ports, infrastructure and transportation sector, with project value of at least USD 1 Million, in last 7 years</p> <ul style="list-style-type: none"> • 3-6 : 6 marks • 7-9 : 8 marks • 10 or more : 10 marks <p>The projects in the above mentioned clause should include global projects, excluding projects in India, and should not include IT implementation / Audit projects.</p>	10
				20
C	Quality of Approach & Methodology	C1	Quality of the presentation on technical proposal on the overall approach and methodology including appreciation of key engagement challenges as brought out in the overall approach and methodology	20
				20
D	Qualification & competence of the key staff for the assignment	D1	Quality of the core team	40
		D2	Quality of the resource pool	15
				55
TOTAL				100

*CA certified statement-showing revenues for 3 financial years FY 13-14, FY 14-15 and FY 15-16

** the client may at its discretion call the bidders for a detailed presentation for better understanding of the consultants approach and methodology along with their credentials related to the previous assignments.

The Technical Proposal (Tm) which secures the highest marks will be given a technical score (St) of 100 points. The technical scores (St) of the other Technical Proposals will be determined using the following formula:

$$St = 100 \times T/Tm;$$

in which St is the technical score, Tm is the highest score secured by a Technical proposal, and T is the score of the Technical Proposal under consideration.

The minimum technical score required to qualify technical evaluation is 60 Points out of 100. A proposal will be considered unsuitable and will be rejected at this stage if it does not respond to important aspects of RFP Document and the Terms of Reference or if it fails to achieve the minimum technical score. The Client will notify Applicants who fail to score the minimum technical score about the same and return their Financial Proposals unopened after completing the selection process.

The Client will notify the Applicants who secure the minimum qualifying technical score, indicating the date and time set for opening the Financial Proposals. The notification may be sent by registered letter, facsimile, or electronic mail.

The Financial Proposals will be opened publicly in the presence of Applicants representatives who choose to attend. The name of the Applicants, their technical scores and the proposed prices will be read aloud and recorded when the Financial Proposals are opened.

Prior to evaluation of the Financial Proposals, the Evaluation Committee will determine whether the Financial Proposals are complete in all respects, unqualified and unconditional, and submitted in accordance with the terms hereof.

The cost indicated in the Financial Proposal shall be deemed as final and reflecting the total cost of services and should be stated in INR only. Omissions, if any, in costing of any item shall not entitle the Applicant to be compensated and the liability to fulfil its obligations as per the Terms of Reference within the total quoted price shall be that of the Applicant. The evaluation shall exclude those taxes, duties, fees, levies and other charges imposed under the Applicable Law as applicable on foreign and domestic inputs. The lowest Financial Proposal (Fm) will be given a financial score (Sf) of 100 points. The financial scores (Sf) of the other Financial Proposals will be determined using the following formula:

$$Sf = 100 \times Fm/F;$$

in which Sf is the financial score, Fm is the lowest Financial Proposal, and F is the Financial Proposal (in INR) under consideration. Proposals will be finally be ranked in accordance with their combined technical (St) and financial (Sf) scores:

$$S = St \times Tw + Sf \times Fw;$$

where S is the combined score, and Tw and Fw are weights assigned to Technical Proposal and Financial Proposal that will be 0.70:0.30.

The Applicant achieving the highest combined technical and financial score will be considered to be the successful Applicant and will be invited for contract signing (the – Successful Applicant).

10.0 NEGOTIATIONS

The Selected Applicant may, if necessary be invited for negotiations. The negotiations shall generally not be for reducing the price of the Proposal, but will be for re-confirming the obligations of the Consultant under this RFP. Issues such a deployment of Key Personnel, understanding of the Scope of Work, methodology and quality of the work plan shall be discussed during the negotiations. In case, the Selected Applicant fails to reconfirm its commitment, the Client reserve the right to designate the next ranked Applicant as the Selected Applicant and invite it for negotiations.

The Client will examine the CVs of all other Key Personnel and those not found suitable shall be replaced by the Applicant to the satisfaction of the Client.

- 10.1 The financial negotiations will include a clarification of the Firm's tax liability in the Client's country (if any), and how it will be reflected in the Contract and will reflect the agreed technical modifications in the cost of the services. Unless there are exceptional reasons, the financial negotiations will involve neither the remuneration rates for staff (no breakdown of fees) nor other proposed unit rates.
- 10.2 If, for any reason beyond the reasonable control of the Consultant, such as retirement, resignation, death, medical incapacity, among others, it becomes necessary to replace any of the Key Personnel (Core Team & Resource Pool), the Consultant will fill the vacancy with equally qualified and experienced staff immediately with the approval of Ministry of Shipping and IPA. 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 – the consultant is expected to meet every deliverable due dates, and the project completion milestones as approved by the Client.

11.0 AWARD OF CONTRACT

- 11.1 After selection, a Letter of Award (the LOA) will be issued, in duplicate, by the Client to the Successful Applicant and the Successful Applicant shall, within 7 (seven) days of the receipt of the LOA, sign and return the duplicate copy of the LOA in acknowledgement thereof. In the event the duplicate copy of the LOA duly signed by the Successful Applicant is not received by the stipulated date, the Client may, unless it consents to extension of time for submission thereof, appropriate the Bid Security of such Applicant as mutually agreed genuine pre-estimated loss and damage suffered by the Client on account of failure of the Successful Applicant to acknowledge the LOA, and the next highest ranking Applicant may be considered.
- 11.2 Performance Security: Performance Security equivalent to 5 (five) percent of the total cost of Financial Proposal shall be furnished from a Nationalized / Scheduled Bank, before signing of the contract, in form of a Bank Guarantee substantially in the form specified at Annexure of the contract. For the successful bidder the Performance Security will be retained by Client until the completion of the assignment by the Consultant and be released 180 (One Hundred Eighty) Days after the completion of the assignment.
- 11.3 Execution of contract: After acknowledgement of the LOA and furnishing of Performance Security as aforesaid by the Successful Applicant, it shall execute the Agreement within 30 (thirty) days from the date of issue of LOA. The Successful Applicant shall not be entitled to seek any deviation in the Agreement
- 11.4 Commencement of Assignment: The Successful Applicant/ Consultant is expected to commence the Assignment on the date of Commencement of Services as prescribed in the General Conditions of Contract. If the Successful Applicant fails to either sign the Agreement or commence the assignment as specified herein, the Client may invite the second ranked Applicant for contract signing. In such an event, the Bid Security / Performance Security, as the case may be, of the first ranked Applicant shall be liable to be forfeited by the Client.

12.0 CONFIDENTIALITY

- 12.1 Information relating to evaluation of proposals and recommendations concerning awards of contract shall not be disclosed to the consultants who submitted the proposals or to other persons not officially concerned with the process, until the winning firm has been notified that it has been awarded the contract.

13.0 FRAUD AND CORRUPT PRACTICES

- 13.1 The Applicants and their respective officers, employees, agents and advisers shall observe the highest standard of ethics during the Selection Process. Notwithstanding anything to the contrary contained in this RFP, the Client will 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 will, without prejudice to its any other rights or remedies, forfeit and appropriate the Bid Security, 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 the RFP, including consideration and evaluation of such Applicant's Proposal.
- 13.2 Without prejudice to the rights of the Client under this Clause, hereinabove and the rights and remedies which the Client may have under the LOA or the Agreement, if an Applicant or Consultant, 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 or Consultant shall not be eligible to participate in any tender or RFP issued by the Client during a period of 2 (two) years from the date such Applicant or Consultant, 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.

For the purposes of this Clause, the following terms shall have the meaning hereinafter respectively assigned to them:

- (i) —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 there from, 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;

- (ii) —fraudulent practice means a misrepresentation or omission of facts or disclosure of incomplete facts, in order to influence the Selection Process;
- (iii) —coercive practice means impairing or harming or threatening to impair or harm, directly or indirectly, any persons or property to influence any person participation or action in the Selection Process;
- (iv) —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
- (v) —restrictive practice means (i) forming a cartel or arriving at any understanding or arrangement among Applicants with the objective of restricting or (ii) manipulating a full and fair competition in the Selection Process.

14.0 PRE-BID MEETING

Pre-Bid Meeting of the Applicants will be convened at the designated date, time and place. A maximum of two representatives of each Applicant will be allowed to participate on production of an authorization letter from the Applicant.

During the course of Pre-Bid Meeting, the Applicants will be free to seek clarifications and make suggestions for consideration of the Client. The Client will endeavour to provide clarifications and such further information as it may, in its sole discretion, consider appropriate for facilitating a fair, transparent and competitive selection process.

15.0 MISCELLANEOUS

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

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

- i. suspend and / or cancel the Selection Process and / or amend and / or supplement the Selection Process or modify the dates or other terms and conditions relating thereto;
- ii. consult with any Applicant in order to receive clarification or further information;
- iii. retain any information and / or evidence submitted to the Client by, on behalf of and / or in relation to any Applicant; and / or
- iv. 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.

It shall be deemed that by submitting the Proposal, the Applicant agrees and releases the Client, its employees, agents and advisers, irrevocably, unconditionally, fully and finally from any and all liability for claims, losses, damages, costs, expenses or liabilities in any way related to or arising from the exercise of any rights and / or performance of any obligations hereunder, pursuant hereto and / or in connection herewith and waives any and all rights and/ or claims it may have in this respect, whether actual or contingent, whether present or future.

All documents and other information provided by Client or submitted by an Applicant to Client shall remain or become the property of Client. Applicants and the Consultant, as the case may be, are to treat all information as strictly confidential. Client will not return any Proposal or any information related thereto. All information collected, analysed, processed or in whatever manner provided by the Consultant to Client in relation to the consultancy shall be the property of Client.

The Client reserves the right to make inquiries with any of the clients listed by the Applicants in their previous experience record.

Tentative schedule for selection process

The Client will endeavour to follow the following schedule:

Date of issue of RFP	16/11/2016
Last date for receiving queries/requests for clarifications	22/11/2016, 16:00 Hrs
Pre Bid Meeting	23/11/2016, 14:30 Hrs
Clients response to queries/requests for clarifications	29/11/2016
Proposal Due Date (PDD)	09/12/2016, 15:30 Hrs

DATA SHEET

INFORMATION TO CONSULTANTS

Reference

1.0 The name of Client is: “Indian Ports Authority”

The method of selection is Combined Quality cum Cost Based Selection (CQCCBS)

The weights given to technical and financial proposals are: Technical = 0.7

Financial = 0.3

1.2 Objective and description of the assignment:

The objective of this RFP is to engage a Programme Management Consultant to enable Ministry of Shipping in discharging its functions related to Sagarmala Programme including project planning, budgeting, supervision, monitoring and evaluation, reporting and coordination to ensure project development in accordance with the NPP and other deliverables provided by the consultants of Sagarmala.

The detailed descriptions of services are mentioned in the Terms of Reference.

2.1 Clarification must be requested on or before 22/11/2016: 16:00 Hrs. The address for requesting clarification is:

Managing Director,
Indian Ports Association,
1st Floor, South Tower, NBCC Place,
Bhishmah Pitamah Marg, Lodi Road, New Delhi – 110003
Phone: 011 24369061/63; Fax No.: 011 24365866

3.0 The proposal of the consultant should be valid for 180 days from the last date of submission.

Duration of assignment: Duration of assignment shall be for a period of Two (2) years and is extendable for subsequent period of maximum Two (2) years by mutual consent.

The consultant shall employ a core team, consisting of Five (5) key personnel, which shall be working with the client for project duration. Since an array of disciplines is required from time to time, the PMC should propose a resource pool across disciplines, to give their inputs in the project whenever required. For resource pool, a minimum contribution of Six (6)

man-days per month is desirable. However, this may increase depending on the project requirement.

- 4.1 The last date of submission of proposal is: 09/12/2016 before 3:30 PM (IST) and opening of date is: 09/12/2016 at 4.00 PM

The address for submission of proposal is:

Managing Director,
Indian Ports Association,
1st Floor, South Tower, NBCC Place,
Bhishmah Pitamah Marg, Lodi Road, New Delhi – 110003
Phone: 011 24369061/63; Fax No.: 011 24365866

The consultant should state the costs in Indian Rupees (INR) only. Consultants must submit:

- Technical proposal: Two copies (one original + one copy) and one soft copy (PDF Format)
- Financial proposal: One copy

ANNEXURE 2-1

Team Composition

Consultant would be required to deploy an appropriate team consisting of professionals at least as per the minimum requirements mentioned below. The consultant should include the number and the level of people to be deployed along with timeframes as indicated. The expectations on the resources that would be proposed for the project are as follows:

- The core team should have personnel as detailed in the table below.
- The consultant shall ensure that the appropriate team shall be deployed on an exclusive basis in order to ensure the required coordination with Ministry of Shipping, and to complete the tasks assigned.
- Without the consent of client, no changes shall be made in the resources deployed on the project.
- If, for any reason beyond the reasonable control of the consultant, such as retirement, resignation, death, medical incapacity, among others, it becomes necessary to replace any of the Key Personnel, the consultant shall be allowed to provide as a replacement a person of equivalent or better qualifications, with approval from the client.
- In case of replacement of resource(s) or deployment of additional manpower, if any, the decision of Ministry of Shipping shall be final and binding.
- Consultant shall have no claim for additional costs arising out of or incidental to any removal and / or replacement of Personnel.

Since an array of disciplines is required from time to time, the consultant should propose a resource pool across disciplines, which may be approved by Ministry of Shipping. Through the resource pool, the consultant shall ensure access to services of its technical, commercial, financial, legal and other experts, as and when required enabling Experts to give all-inclusive comment / opinion on the queries / matters forwarded by Ministry of Shipping.

Consultant shall ensure that services of the core team are provided full time for the contractual period. The core team is also expected to spend significant time in the ports to support the port teams as required (on an average 10 working days every month). Services of the experts from the resource pool would normally be on call down basis.

For resource pool, a minimum contribution of Six (6) man- days per month is envisaged. However, this may increase depending on the project requirement. For man-days beyond the envisaged Six (6) man- days, will be paid as per clauses of General Condition of Contract.

The PMC shall deploy professionals in the core team and the resource pool as per details given below:

MINIMUM REQUIRED EXPERIENCE AND EXPERTISE OF PROPOSED CORE TEAM AND RESOURCE POOL

Core Team			
S. No	Position	Number	Educational Background and Experience
1	Projects Manager	1 No.	<ul style="list-style-type: none"> • Should have Bachelors Degree in Engineering and Masters Degree in Business Administration from a reputed and recognized university or institutions • Minimum 10 years of professional experience in all facets and domains of infrastructure with appropriate experience in planning / supervision / appraisal of large cities / industrial regions / Road / Rail / Inland Waterways / Port Sector / other allied infrastructure projects • Minimum 3 years of professional experience in a leadership capacity for 1-2 projects, with accountability and responsibility for performance including quality, budget, schedule, client and stakeholder management • Should have experience in: <ul style="list-style-type: none"> ○ Strategy / Financial Analysis / Structuring / Project Management in large scale mega industrial corridor / SEZs / Urban development / Ports / Road / Rail / other infrastructure sector ○ Infrastructure project finance, PPP project development, structuring Special Purpose Vehicles (SPVs) and other entities for infrastructure projects and understanding of cash flow, revenue assurance and other related matters
2	Contracts & Procurement Specialist	1 No.	<ul style="list-style-type: none"> • Should have Bachelors Degree in Engineering and Masters Degree in Business Administration from a reputed and recognized University or Institution • Minimum 8 years of relevant professional experience in managing procurement of various consultancy / works contracts under different modes of funding including the multilateral / bi-lateral funded public sector programs and procurement of Contracts under different PPP modes of delivery as per the procurement guidelines of Govt. of India. • Experience should include preparation and maintenance of procurement plans, bid process management, documentations, audit / review of procurement records, handling procurement related queries/complaints and any other requirement.
3	Projects Associate	3 Nos.	<ul style="list-style-type: none"> • Should have Bachelors Degree in Engineering and Masters Degree in Business Administration from a reputed and recognized University or Institution. • Minimum 3 years of professional experience, including working in projects related to Ports / Highways / Railways / Inland Waterways / Infrastructure sector etc. or projects related to sectors critical to Ports such as Power / Coal / Steel / Oil & Gas etc.

Core Team			
S. No	Position	Number	Educational Background and Experience
			<ul style="list-style-type: none"> • Experience of working in at least one project with Government Agencies / PSUs in India will be preferred

Resource Pool			
S. No	Position	Number	Educational Background and Experience
1	Financial and PPP Expert	1 No.	<ul style="list-style-type: none"> • Should be an MBA / CA / CFA from a reputed and recognized University or Institution • Minimum 12 years of progressive professional experience with roles in the field of infrastructure finance and PPP projects • Experience in advising / consulting Government Agencies / PSUs / Multilateral and Bilateral Funding Institutions on strategy / financial analysis / project funding / project structuring
2	Engineering / Technical Expert	1 No.	<ul style="list-style-type: none"> • Should have a Graduate / Masters Degree in Civil Engineering from a reputed and recognized University or Institution • Minimum 12 years of progressive professional experience with roles in conducting engineering studies, design / planning / project appraisal of Ports and other infrastructure projects
3	Urban / Regional Planner	1 No.	<ul style="list-style-type: none"> • Should have a Masters Degree in Urban Planning from a reputed and recognized University or Institution with appropriate qualifications in planning of large cities and industrial regions with allied infrastructure • Minimum 12 years of professional experience in urban planning with exposure to commercial ventures / business models

It is desired that the key personnel must be available during all working days on which the client office remains open. Even on non-working days the key staff should be available if required by the client.

The client reserves the right to ask for the details regarding the proof of age and educational qualification. Age limit for key professionals mentioned above to be deployed on project should not be more than 65 years on the date of bid submission.

Marks allocated for Core Team

Total of 40 marks is allocated for qualification and competence of the proposed core team, distributed among 5 key personnel, as detailed below:

S. No.	Key Personnel	Number of Marks
1	Projects Manager	12
2	Contracts & Procurement Specialist	10
3	Projects Associate 1	6
4	Projects Associate 2	6
5	Projects Associate 3	6
	TOTAL	40

Marks allocated for Resource Pool

Total of 15 marks is allocated for qualification and competence of the proposed Resource Pool, distributed among 3 key personnel, as detailed below:

S. No.	Resource Pool	Number of Marks
1	Financial and PPP Expert	5
2	Engineering / Technical Expert	5
3	Urban / Regional Planner	5
	TOTAL	15

Evaluation Criteria for the Key Staff and Resource Pool

Detailed evaluation criteria such as qualification, professional experience, competence, skill sets relevant to requirements of Sagarmala Programme etc. will be prepared by the Evaluation Committee for assessing the quality of the core team and resource pool for the assignment.

SECTION 3: RESPONSIVENESS AND TECHNICAL PROPOSAL – STANDARDFORMS

The Technical Proposal shall comprise of an Executive Summary plus 3 sections as described below:

Executive Summary: This section shall be limited to 10 single sided pages (5 sheets double sided printing, excluding cover and back page if stand-alone document), minimum 11 font size, A4 paper size, inclusive of graphics

Section 1 - Specific experience of the firm(s) related to this assignment. In addition to requisite information as requested in this RFP document, indicate the projects where the consortium firms / individuals / sub consultants have successfully worked together. The write-up should also include the roles and responsibilities of the consortium members and sub-consultants, how decisions were made and quality ensured. The write up in this section shall be limited to 20 single sided sheets excluding the requisite Format, with minimum 11 font size, A4 paper size.

Section 2 - Proposed technical approach & methodology, work plan and organization / staffing. The write up in this section shall be limited to 40 single sided pages (20 sheets double sided), minimum 11 font size, A4 paper size. The write-up should also include the roles and responsibilities of the consortium members and sub-consultants, how decisions will be made and quality would be ensured.

Section 3 - Qualification, experience and competence of the Key Professional and Resource Pool. The write up in this section should provide information on Key Professional qualifications, adequacy for the project assignment and familiarity with the topics covered. This section shall be limited to 20 single sided pages (10 sheets double sided), minimum 11 font size, A4 paper size. Formats to indicate the cost of additional personnel is not included in the paper count.

Form 3A: Declaration

Form 3B: Format for Responsiveness of Proposal (Eligible Projects)

- Form 3C: Format for Responsiveness of Proposal (Average Annual Turnover of Applicant)
- Form 3D: Format for Joint Bidding Agreement (in case of JV / Consortium)
- Form 3E: Format for Power of Attorney for Authorised representative
- Form 3F: Format for Power of Attorney for Lead Member of JV / Consortium
- Form 3G: Format of Bank Guarantee for Bid Security
- Form 3H: Technical Proposal Submission Form
- Form 3I: Comments and Suggestions on the Terms of Reference and on Counterpart Staff and Facilities to be provided by the Client for queries to be submitted before Pre-proposal conference.
- Form 3J: Description of Approach, Methodology and Work Plan for Performing the Assignment
- Form 3K: Team Composition and Task Assignments
- Form 3L: Curriculum Vitae (CV) for Proposed Professional Staff (with one page of summary of experience)

FORM 3A

Declaration

[Location, Date] To:

Managing Director,
Indian Ports Association,
1st Floor, South Tower, NBCC Place,
Bhishmah Pitamah Marg, Lodi Road, New Delhi – 110003
Phone: 011 24369061/63; Fax No.: 011 24365866

RFP dated [insert date and month], 2016, for selection of Programme Management Consultant for the Sagarmala Programme.

Dear Sir,

With reference to your RFP document dated, we, having examined all relevant documents and understood their contents, hereby submit our Pre-Qualification Proposal for selection as Programme Management Consultant for the Sagarmala Programme. The Proposal is unconditional and unqualified.

We are submitting our Proposal as [sole applicant / JV / Consortium] [with] [insert a list with full name and address of each JV / Consortium / Consultant].

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

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, subject only to the modifications resulting from negotiations in accordance with the RFP.

Further:

1. We acknowledge that IPA will be relying on the information provided in the Proposal and the documents accompanying the Proposal for selection of the Consultant, and we certify that all information provided in the Proposal and in the supporting documents is true and correct, nothing has been omitted which renders such information misleading; and all documents accompanying such Proposal are true copies of their respective originals.
2. This statement is made for the express purpose of appointment as the Consultant for the aforesaid Project.
3. We shall make available to IPA any additional information it may deem necessary or require for supplementing or authenticating the Proposal.

4. We acknowledge the right of IPA to reject our application without assigning any reason or otherwise and hereby waive our right to challenge the same on any account whatsoever.
5. We certify that in the last 3 years, we have neither failed to perform on any contract, as evidenced by imposition of a penalty by an arbitral or judicial authority or a judicial pronouncement or arbitration award against the Applicant, nor been expelled from any project or contract by any public authority nor have had any contract terminated by any public authority for breach on our part.
6. We declare that:
 - (a) We have examined and have no reservations to the RFP, including any Addendum issued by the Client;
 - (b) We do not have any conflict of interest in accordance with the terms of RFP
 - (c) We have not directly or indirectly or through an agent engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice, as defined in the RFP document, in respect of any tender or request for proposal issued by or any agreement entered into with Client or any other public sector enterprise or any government, Central or State; and
 - (d) We hereby certify that we have taken steps to ensure that no person acting for us or on our behalf will engage in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice.
7. We understand that you may cancel the selection process at any time and that you are neither bound to accept any Proposal that you may receive nor to select the Consultant, without incurring any liability to the Applicants.
8. We declare that we are not a member of any other Consortium / JV applying for selection as a Consultant.
9. We certify that in regard to matters other than security and integrity of the country, we or any of our affiliates have not been convicted by a court of law or indicted or adverse orders passed by a regulatory authority which would cast a doubt on our ability to undertake the Consultancy for the Project or which relates to a grave offence that outrages the moral sense of the community.
10. We further certify that in regard to matters relating to security and integrity of the country, we have not been charge-sheeted by any agency of the Government or convicted by a court of law for any offence committed by us

or by any of our affiliates. We further certify that neither we nor any of our consortium members have been barred by the central government, any state government, a statutory body or any public sector undertaking, as the case may be, from participating in any project or bid, and that any such bar, if any, does not subsist as on the date of this RFP.

11. We further certify that no investigation by a regulatory authority is pending either against us or against or against our CEO or any of our Directors / Partners / Managers.
12. We hereby irrevocably waive any right or remedy which we may have at any stage at law or howsoever otherwise arising to challenge or question any decision taken by Client in connection with the selection of Consultant or in connection with the selection process itself in respect of the above mentioned Project.
13. We agree and understand that the proposal is subject to the provisions of the RFP document. In no case, shall we have any claim or right of whatsoever nature if the consultancy for the Project is not awarded to us or our proposal is not opened or rejected.
14. We agree to keep this offer valid for one hundred eighty (180) days from the POD specified in the RFP.
15. A Power of Attorney in favour of the authorized signatory to sign and submit this Proposal and documents is attached herewith.
16. In the event of our being selected as the Consultant, we agree to enter into a Contract in accordance with the contract prescribed in the RFP. We agree not to seek any changes in the aforesaid form and agree to abide by the same.
17. We have studied the RFP and all other documents carefully. We understand that except to the extent as expressly set forth in the Contract, we shall have no claim, right or title arising out of any documents or information provided to us by Client or in respect of any matter arising out of or concerning or relating to the selection process including the award of consultancy.
18. The Technical and Financial Proposal is being submitted in a separate cover. This Technical Proposal read with the Financial Proposal shall constitute the application which shall be binding on us.
19. We agree and undertake to abide by all the terms and conditions of the RFP Document.

We remain

Yours sincerely,

Authorized Signature [In full and initials]:

Name and Title of Signatory:

Name of Firm:

Address:

(Name and seal of the Applicant/Member in Charge)

FORM 3B

Format for Responsiveness of Proposal (Eligible Projects) Project Specific Experience

[Using the format below, provide information on each assignment for which your firm, and each associate for this assignment, was legally contracted either individually as a corporate entity or as one of the major companies within an JV for carrying out consulting services similar to the ones requested under this assignment.]

- Use projects with copy of proof of experience as required for meeting the minimum qualification criteria prescribed.
- Exhibit only those projects undertaken in the last ten (10) years preceding the PDD.
- Projects without the proof of experience from respective client will not be considered

Assignment Name and project cost:	Approx. value of the Contract (in INR in Crore)
Country: Location within country:	Duration of assignment (months):
Name of Client:	Total No. of staff-months of the assignment:
Address:	Approx. value of the services provided by your firm under the contract (in INR in Crore)
Start Date (Month/Year): Completion Date (Month/Year):	No: of professional staff months provided by associated Consultants:
Name of Lead Partner: Name of Associated Consultants, If any	Name of senior professional staff of your firm involved and functions performed (indicate most significant profiles such as Project Director / Coordinator, Team Leader):
Narrative Description of Project:	
Description of actual services provided by your staff within the assignment:	

Firm's Name:

Authorized Signature:

Note:

For the purpose of evaluation of applicants INR 60.0 (INR Sixty only) per USD shall be considered as the applicable currency conversion rate. In case of any other currency the same shall first be converted to USD as on the date 60 (Sixty) days prior to the proposal due date and the amount so derived in USD shall be converted in to INR at the aforesaid rate. The conversion rate of such currency shall be the daily representative exchange rates published by the IMF for the relevant date.

Please limit the description of the project in two A4 size sheet of paper. Descriptions exceeding two A4 size sheet of paper shall not be considered for evaluation.

FORM 3C

Format for Responsiveness of Proposal (Average Annual Turnover of Applicant)

S. No.	Financial Year	Annual Turnover of Applicant (INR)
1.	2013-2014	
2.	2014-2015	
3.	2015-2016	
Average Annual Turnover		[indicate sum of the above figures divided by 3]
<p>Certificate from the Statutory Auditor</p> <p>This is to certify that..... [Name of the Firm] [Registered Address] has received the payments shown above against the respective years.</p> <p>Name of Authorized Signatory: Designation:</p> <p>Name of firm:</p> <p>(Signature of the Statutory Auditor Seal of the Firm)</p>		

Note:

1. In case of a consortium, above form has to be submitted for each consortium member
2. In case the Consultant does not have a statutory auditor, it may provide the certificate from a practicing chartered accountant.

FORM 3D

Format of 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, Bhishmah 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.
- 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.

FORM 3E

Format of Power of Attorney for Authorised Representative

Know all men by these presents, We,(name of organization and address of the registered office) do hereby constitute, nominate, appoint and authorise Mr / Msson / daughter / wife and presently residing at ... who is presently employed with / retained by us and holding the position of, as our true and lawful attorney (hereinafter referred to as the "Authorised Representative"), with power to sub- delegate to any person, 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 Programme Management Consultant for the Sagarmala Programme, being developed by Ministry of Shipping, Government of India (the "Authority") 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 Authority, representing us in all matters before the Authority, signing and execution of all contracts and undertakings consequent to acceptance of our proposal and generally dealing with the Authority 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 Contract with the Authority.

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.

Accepted

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

Notes:

1. 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 executant(s) and when it is so required the same should be under common seal affixed in accordance with the required procedure.
2. Wherever required, the Applicant should submit for verification the extract of the charter documents and other documents such as a resolution / power of attorney in favour of the person executing this Power of Attorney for the delegation of power hereunder on behalf of the Applicant
3. 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, the Power of Attorney provided by Applicants from countries that have signed the Hague Legislation Convention, 1961 are not required to be legalised by the Indian Embassy if it carries a conforming Apostille certificate.

FORM 3F

Format of Power of Attorney for Lead Member of JV / Consortium

(To be executed by all members of the Consortium)

Whereas the Indian Ports Association (the "Authority") has invited proposals from applicants for appointment as Programme Management Consultant for the Sagarmala Programme (the "Consultancy").

Whereas, and..... (collectively the "JV/ Consortium") being Members of the JV / Consortium are interested in bidding for the Consultancy in accordance with the terms and conditions of the RPP and other connected documents in respect of the Consultancy, and

Whereas, it is necessary for the Members of the Consortium to designate one of them as the Member in Charge with all necessary power and authority to do for and on behalf of the Consortium, all acts, deeds and things as may be necessary in connection with the Consortium's bid for the Consultancy and its execution.

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS

We, [name of Party] having our registered office at [registered address], M/s. [name of Party], having our registered office at [registered address], and M/s.[name of Party], having our registered office at [registered address], (hereinafter collectively referred to as the "Principals") do hereby irrevocably designate, nominate, constitute, appoint and authorise M/s [name of Member In-charge], having its registered office at [registered address], being one of the Members of the Consortium, as the Member In-charge and true and lawful attorney of the Consortium (hereinafter referred to as the "Attorney") and hereby irrevocably authorise the Attorney (with power to sub• delegate to any person) to conduct all business for and on behalf of the Consortium and any one of us during the bidding process and, in the event the Consortium is awarded the Contract, during the performance of the services related to the Consultancy, and in this regard, to do on our behalf and on behalf of the Consortium, all or any of such acts, deeds or things as are necessary or required or incidental to the submission of its bid for the Consultancy, including but not limited to signing and submission of all applications, bids and other documents and writings, accept the Letter of Acceptance, participate in bidders' and other conferences, respond to queries, submit information/documents, sign and execute contracts and undertakings consequent to acceptance of the bid of the Consortium and generally to represent the Consortium in all its dealings with the Authority, and / or any other government agency or any person, in all matters in connection with or relating to

or arising out of the Consortium's bid for the Consultancy and / or upon award thereof until the Contract is entered into with the Authority.

AND hereby agree to ratify and confirm and do hereby ratify and confirm all acts, deeds and things done or caused to be done by our said Attorney 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 Attorney in exercise of the powers hereby conferred shall and shall always be deemed to have been done by us / Consortium.

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

For

(Signature Name & Title)

For

(Signature, Name & Title)

For

(Signature, Name & Title)

(Executants) (To be executed by all the Members of the Consortium) Witnesses:

- 1.
- 2.

Notes:

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 executant(s) and when it is so required the same should be under common seal affixed in accordance with the required procedure.

Wherever required, the Applicant should submit for verification the extract of the charter documents and other documents such as a resolution/power of

attorney in favour of the person executing this Power of Attorney for the delegation of power hereunder on behalf of the Applicant.

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

In case of a consortium, above form has to be submitted for each consortium member and Minimum Eligibility Criteria for revenue should be satisfied by the Lead Member.

FORM 3G

Format of Bank Guarantee for Bid Security

BG No.

Date:

1. In consideration of you, 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 "Authority" which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and assigns) having agreed to receive the proposal of [Name of company], a company registered under the Companies Act, 1956 and having its registered office at [registered address of company], [and acting on behalf of a Consortium comprising of [name of company], [name of company] and [name of company] (hereinafter referred to as the "Bidder" which expression shall unless it be repugnant to the subject or context thereof include its successors and assigns), for appointment as Programme Management Consultant for the Sagarmala Programme (hereinafter referred to as the "Consultancy") pursuant to the RFP document dated issued in respect of the Consultancy and other related documents including without limitation the draft contract for consultancy services (hereinafter collectively referred to as "RFP documents"), we (Name of the Bank) having our registered office at and one of its branches at (hereinafter referred to as the "Bank"), at the request of the Bidder, do hereby in terms of the relevant clause of the RFP document, irrevocably, unconditionally and without reservation guarantee the due and faithful fulfilment and compliance of the terms and conditions of the RFP document by the said Bidder and unconditionally and irrevocably undertake to pay forthwith to the Authority an amount of Rs. [e] (hereinafter referred to as the "Guarantee") as our primary obligation without any demur, reservation, recourse, contest or protest and without reference to the Bidder if the Bidder shall fail to fulfil or comply with all or any of the terms and conditions contained in the said RFP document.
2. Any such written demand made by the Authority stating that the Bidder is in default of the due and faithful fulfilment and compliance with the terms and conditions contained in the RFP document shall be final, conclusive and binding on the Bank. We, the Bank, further agree that the Authority shall be the sole judge to decide as to whether the Bidder is in default of due and faithful fulfilment and compliance with the terms and conditions contained in the RFP Document including, Document including without limitation, failure of the said Bidder to keep its Proposal valid during the validity period of the

Proposal as set forth in the said RFP Document, and the decision of the Authority that the Bidder is in default as aforesaid shall be final and binding on us, notwithstanding any differences between the Authority and the Bidder or any dispute pending before any court, tribunal, arbitrator or any other authority.

3. We, the Bank, do hereby unconditionally undertake to pay the amounts due and payable under this Guarantee without any demur, reservation, recourse, contest or protest and without any reference to the Bidder or any other person and irrespective of whether the claim of the Authority is disputed by the Bidder or not, merely on the first demand from the Authority stating that the amount claimed is due to the

Authority by reason of failure of the Bidder to fulfil and comply with the terms and conditions contained in the RFP Document including without limitation, failure of the said Bidder to keep its Proposal valid during the validity period of the Proposal as set forth in the said RFP Document for any reason whatsoever. Any such demand made on the Bank shall be conclusive as regards amount due and payable by the Bank under this Guarantee. However, our liability under this Guarantee shall be restricted to an amount not exceeding Rs. [in figures] ([in words]).

4. This Guarantee shall be irrevocable and remain in full force for a period of 180 (one hundred and eighty) days from the Proposal Due Date and a further claim period of thirty (30) days or for such extended period as may be mutually agreed between the Authority and the Bidder, and agreed to by the Bank, and shall continue to be enforceable till all amounts under this Guarantee have been paid.
5. The Guarantee shall not be affected by any change in the constitution or winding up of the Bidder or the Bank or any absorption, merger or amalgamation of the Bidder or the Bank with any other person.
6. In order to give full effect to this Guarantee, the Authority shall be entitled to treat the Bank as the principal debtor. The Authority shall have the fullest liberty without affecting in any way the liability of the Bank under this Guarantee from time to time to vary any of the terms and conditions contained in the said RFP document or to extend time for submission of the Proposals or the Proposal validity period or the period for conveying of Letter of Acceptance to the Bidder or the period for fulfilment and compliance with all or any of the terms and conditions contained in the said RFP document by the said Bidder or to postpone for any time and from time to time any of the powers exercisable by it against the said Bidder and either to enforce or forbear from enforcing any of the terms and conditions contained in the said RFP Document or the securities available to the Authority, and the

Bank shall not be released from its liability under these presents by any exercise by the Authority of the liberty with reference to the matters aforesaid or by reason of time being given to the said Bidder or any other forbearance, act or omission on the part of the Authority or any indulgence by the Authority to the said Bidder or by any change in the constitution of the Authority or its absorption, merger or amalgamation with any other person or any other matter or thing whatsoever which under the law relating to sureties would but for this provision have the effect of releasing the Bank from its such liability.

7. Any notice by way of request, demand or otherwise hereunder shall be sufficiently given or made if addressed to the Bank and sent by courier or by registered mail to the Bank at the address set forth herein.
8. We undertake to make the payment on receipt of your notice of claim on us addressed to [Name of bank along with branch address] and delivered at our above branch which shall be deemed to have been duly authorised to receive the said notice of claim.
9. It shall not be necessary for the Authority to proceed against the said Bidder before proceeding against the Bank and the guarantee herein contained shall be enforceable against the Bank, notwithstanding any other security which the Authority may have obtained from the said Bidder or any other person and which shall, at the time when proceedings are taken against the Bank hereunder, be outstanding or unrealized.
10. We, the Bank, further undertake not to revoke this Guarantee during its currency except with the previous express consent of the Authority in writing.
11. The Bank declares that it has power to issue this Guarantee and discharge the obligations contemplated herein, the undersigned is duly authorised and has full power to execute this Guarantee for and on behalf of the Bank.
12. For the avoidance of doubt, the Bank's liability under this Guarantee shall be restricted to Rs. [in figures] ([in words]). The Bank shall be liable to pay the said amount or any part thereof only if the Authority serves a written claim on the Bank in accordance with paragraph 8 hereof, on or before [date].

Signed and Delivered by Bank

By the hand of Mr./Ms....., its and authorised official.

(Signature of the Authorised Signatory) (Official Seal)

Notes:

1. The Bank Guarantee should contain the name, designation and code number of the officer(s) signing the Guarantee.
2. The address, telephone no. and other details of the Head Office of the Bank as well as of issuing Branch should be mentioned on the covering letter of issuing Branch.
3. If the company is registered under any other act of the Native Country of the bidder, the word Companies Act 1956 may be replaced by that Act.

The Bid Proposal, however, should be accompanied by a certified copy of certificate of incorporation under the concerned act.

FORM 3H

Technical Proposal Submission Form

To:

Managing Director,

Indian Ports Association,

1st Floor, South Tower, NBCC Place,

Bhishmah Pitamah Marg, Lodi Road, New Delhi – 110003

[Location, Date]

RFP dated [insert date and month] 2015 for Programme Management Consultant for the Sagarmala Programme.

Dear Sir,

With reference to your RFP Document dated, we, having examined all relevant documents and understood their contents, hereby submit our Technical Proposal for selection as Programme Management Consultant for the Sagarmala Programme ("Consultant"). The Proposal is unconditional and unqualified.

We are submitting our Proposal as [sole applicant / JV / Consortium] [with] [insert a list with full name and address of each Joint Venture / Consortium / Consultant].

If negotiations are held during the period of validity of the Proposal, we undertake to negotiate in accordance with the RFP. Our Proposal is binding upon us, subject only to the modifications resulting from technical discussions in accordance with the RFP.

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

1. We acknowledge that IPA will be relying on the information provided in the Proposal and the documents accompanying the Proposal for selection of the Consultant, and we certify that all information provided in the Proposal and in the supporting documents is true and correct, nothing has been omitted which renders such information misleading; and all documents accompanying such Proposal are true copies of their respective originals.
2. This statement is made for the express purpose of appointment as the Consultant for the aforesaid Project.

3. We shall make available to IPA any additional information it may deem necessary or require for supplementing or authenticating the Proposal.
4. We acknowledge the right of IPA to reject our application without assigning any reason or otherwise and hereby waive our right to challenge the same on any account whatsoever.
5. We certify that in the last 3 years, we have neither failed to perform on any contract, as evidenced by imposition of a penalty by an arbitral or judicial authority or a judicial pronouncement or arbitration award against the Applicant, nor been expelled from any project or contract by any public authority nor have had any contract terminated by any public authority for breach on our part.
6. We declare that:
 - a. We have examined and have no reservations to the RFP, including any Addendum issued by the Client;
 - b. We do not have any conflict of interest in accordance with the terms of the RFP;
 - c. We have not directly or indirectly or through an agent engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice, as defined in the RFP document, in respect of any tender or request for proposal issued by or any agreement entered into with Client or any other public sector enterprise or any government, Central or State; and
 - d. We hereby certify that we have taken steps to ensure that no person acting for us or on our behalf will engage in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice.
7. We understand that you may cancel the selection process at any time and that you are neither bound to accept any Proposal that you may receive nor to select the Consultant, without incurring any liability to the Applicants.
8. We declare that we are not a member of any other Consortium / JV applying for selection as a Consultant.
9. We certify that in regard to matters other than security and integrity of the country, we or any of our affiliates have not been convicted by a court of law or indicted or adverse orders passed by a regulatory authority which would cast a doubt on our ability to undertake the Consultancy for the Project or which relates to a grave offence that outrages the moral sense of the community.

10. We further certify that in regard to matters relating to security and integrity of the country, we have not been charge-sheeted by any agency of the Government or convicted by a court of law for any offence committed by us or by any of our affiliates. We further certify that neither we nor any of our consortium members have been barred by the central government, any state government, a statutory body or any public sector undertaking, as the case may be, from participating in any project or bid, and that any such bar, if any, does not subsist as on the date of this RFP.
11. We further certify that no investigation by a regulatory authority is pending either against us or against our affiliates or against our CEO or any of our Directors / Managers / employees.
12. We hereby irrevocably waive any right or remedy which we may have at any stage at law or howsoever otherwise arising to challenge or question any decision taken by IPA in connection with the selection of Consultant or in connection with the selection process itself in respect of the above mentioned Project.
13. We agree and understand that the proposal is subject to the provisions of the RFP document. In no case, shall we have any claim or right of whatsoever nature if the consultancy for the Project is not awarded to us or our proposal is not opened or rejected.
14. In the event of our being selected as the Consultant, we agree to enter into a Contract in accordance with the contract prescribed in the RFP. We agree not to seek any changes in the aforesaid form and agree to abide by the same.
15. We have studied RFP and all other documents carefully. We understand that except to the extent as expressly set forth in the Contract, we shall have no claim, right or title arising out of any documents or information provided to us by Client or in respect of any matter arising out of or concerning or relating to the selection process including the award of consultancy.
16. The Financial Proposal is being submitted in a separate cover. This Technical Proposal read with the Financial Proposal shall be binding on us
17. We agree and undertake to abide by all the terms and conditions of the RFP document.

Yours sincerely,

Authorized Signature [In full and initials]:

Name and Title of Signatory:

Name of Firm: Address:
(Name and seal of the Applicant / Member in Charge)

FORM 3I

Comments and Suggestions on the Terms of Reference and on Counterpart Staff and Facilities to be provided by the Client to be submitted before the Pre-proposal conference

A: On the Terms of Reference (please provide RFP clause and page no.)

- 1.
- 2.
- 3.
- 4.
- 5.

B: On the data, services and facilities to be provided by the client (please provide RFP clause and page no.)

- 1.
- 2.
- 3.
- 4.
- 5.

C: On Technical Proposal (please provide RFP clause and page no.)

- 1.
- 2.
- 3.

D: General Comments (please provide RFP clause and page no.)

- 1.
- 2.

FORM 3J

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 will present its Technical Proposal (items a, b and c below) in no more than 40 single sided or 20 double-sided printed sheets (A-4 size, minimum 11 font size). The page count does not include the Forms.

- a) Technical Approach and Methodology,
- b) Work Plan, and
- c) Organization and Staffing,

a) Technical Approach and Methodology. In this section the consultant should explain the understanding of the assignment, approach to the services and methodology for carrying out the activities to accomplish the objectives mentioned. The consultant should highlight any challenges anticipated in delivering a Programme of this nature and discuss proposed approaches to overcome the challenges and meet the requirements of the assignment.

b) Work Plan. In this section the consultant should describe the overall work plan for the activities of the 2 year assignment and a detailed work plan for 1st year of assignment. The 1st year work plan must be consistent with the overall 2 year work plan and demonstrate understanding of the 2 year scope of work and ability to translate the scope into a feasible working plan. The work plan for year 1 must show (i) mobilization details for the Core Team (ii) mobilization details for the Resource Pool and (iii) key tasks and deliverables which will form the basis of invoice payment (Section 6.4, Special Conditions of Contract).

c) Organization and Staffing. In this section the consultant should briefly discuss the structure, composition, roles and responsibility of the integrated team (Ministry + Consultant Team) and how the integrated team will drive the Programme implementation. Sub-consultant(s) envisaged to deliver the scope of work for year 1 must be listed with their role(s) and responsibility noted in the organization chart. In particular, the consultant should describe its philosophy in managing, resolving conflicts and overcoming challenges in managing integrated teams in Programmes of this nature.

FORM 3K

Team Composition and Task Assignments

1. Core team				
Name of Staff	Firm	Area of Expertise	Position Assigned	Task Assigned

2. Resource Pool				
Name of Staff	Firm	Area of Expertise	Position Assigned	Task Assigned

FORM 3L

Curriculum Vitae (CV) for Proposed Staff (Core Team and Resource Pool) with one page of summary of experience

Limit each CV to 4 pages single-sided (2 sheets double-sided) plus a one page executive summary

1	Proposed Position (Also specify whether staff is for Core Team / Resource Pool)	only one candidate shall be nominated for each position		
2	Name of Firm	Insert name of firm proposing		
3	Name of Staff	[First] [Middle] [Surname]		
4	Date of Birth	[Day, Month, Year]	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 Organizations			
7	Training & Publications:	[Indicate significant training since education degrees (under 5) were obtained]		
8	Countries of Work Experience	List countries where staff has worked in the last ten years		
9	Languages	Language	Proficiency (good/ fair/ poor)	
			Speaking	Reading
		English		
		Language 2		
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.]:	Name of Organization	Position Held	Duration
				to Present
11	Detailed Tasks Assigned			
12	Work Undertaken that Best Illustrates the Required Professional Experience	<p>[Among the assignments in which the Staff has been involved, indicate the following information for those assignments that best illustrates staff's professional experience as per the requirements listed under Annexure 2-1]</p> <p>Name of assignment or project: Year: Location: Client:</p> <p>Main project features:[size in INR , type e.g. integrated township, port, rail, etc, and services provided e.g. PMO, Design, CM] Positions held: Activities performed:</p>		

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 staff: Date:

[Signature of authorized representative of the firm]

Day/Month/Year

Full name of authorized representative:

For Key Professionals who are not employees of the firm at the time of submission of the proposal:

I, <name>, certificate that I am available to start work on this project when the notice to start work is issued by IPA.

Signature of the proposed staff:

SECTION 4: FINANCIAL PROPOSAL - STANDARD FORMS

Form 4A	Financial Proposal Submission Form
Form 4B-1	Summary of Costs
Form 4B-2	Breakdown of Costs
Form 4C	Breakdown of Remuneration
Form 4D	Breakdown of Out of Pocket Expenses

FORM 4A

Financial Proposal Submission Form

[Location] [Date]

To:

Managing Director,
Indian Ports Association,
1st Floor, South Tower, NBCC Place,
Bhishmah Pitamah Marg, Lodi Road, New Delhi – 110003

Dear Sir,

Subject: Programme Management Consultant (PMC) for the Sagarmala Programme

We, the undersigned, offer to provide the services for [name of assignment] in accordance with your Request for Proposal dated [date] and our Proposal. Our attached Financial Proposal is for the sum of [amount(s) in words and figures] for the 2 year Project Management Services.

Our Financial Proposal shall be binding upon us subject to the modifications resulting from arithmetic correction, if any, up to expiration of the validity period of the Proposal, i.e. [date].

We undertake that, in competing 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 and Address:

FORM 4B-1

Summary of Costs

(Amount in INR)

Item	Costs per Month		Cost	
	Amount in Figure	Amount in Words	Amount in Figure	Amount in Words
Costs of Financial Proposal				
Service Tax				
Other taxes and duties				
Total costs of Financial Proposal (Quoted Rate)				

FORM 4B-2

Breakdown of Costs

(Amount in INR)

Item	Costs per Month		Cost	
	Amount in Figure	Amount in Words	Amount in Figure	Amount in Words
Remuneration				
Out of Pocket Expenses				
Costs of Financial Proposal				

FORM 4C

Breakdown of Remuneration

(Amount in INR)

Core Team					
Name	Position	Man Day Rate	Input (Staff Months) (For the period of the project i.e. 2 years)	Amount per month	Amount
			Total costs		

Resource Pool					
Name	Position	Man day Rate	Input (Staff Months) (For the period of the project i.e., 2 years)	Amount per month	Amount
Total Cost (considering only Six (6) man days (for any one/or more resource person) each month for the project duration					

The time spent in man-months and the fees payable shall be calculated in accordance with the provision of Clause 6 of the General Conditions of Contract in the Standard Form of Contract of this RFP.

FORM 4D**Out of Pocket (Direct) Expenses (in INR)**

(Amount in INR)

No.	Description	Unit	Unit Cost	Quantity per Month	Monthly Amount	Yearly Amount for 1 st Year
1)	Per diem allowances	Day				
2)	Domestic flights Trip	Trip				
3)	Communication costs					
4)	Use of computers, software					
5)	Other transportation costs					
6)	Misc. (Clerical assistance, equipment, material, supplies, etc.)					
Total Cost in Indian Rupees						

Air Travel for Domestic will be reimbursed for Economy Class only. Any additional air travel expenses over and above the Economy class will be borne by the consultant. Reimbursement of expenses related to air travel shall be at actuals, subject to the maximum stipulated in this Form (as may be adjusted under and in accordance with the provisions of the Standard Form of Contract).

SECTION 5: TERMS OF REFERENCE

TERMS OF REFERENCE FOR ENGAGEMENT OF PROGRAMME MANAGEMENT CONSULTANTS FOR THE SAGARMALA PROGRAMME

1. Ministry of Shipping wishes to engage a Programme Management Consultant (PMC) for a period of 2 years which may be extended for a subsequent period of maximum 2 years, on mutual consent, to enable Sagarmala Development Company (SDC) in discharging its functions related to Sagarmala Programme, including project planning, budgeting, supervision, monitoring and evaluation, reporting and coordination to ensure project development in accordance with the NPP and other deliverables provided by the consultants of Sagarmala.

Ministry of Shipping has incorporated SDC for the purpose of coordinating the implementation of projects under Sagarmala. Therefore wherever “Sagarmala Development Company (SDC)” appears in the document it may be construed as SDC and / or Ministry of Shipping.

2. Scope of work / ToR for engagement of consultancy firms for PMC services are as follows:-

A. Scope of work:

The detailed scope of work of the PMC will include but not limited to:

1. Soliciting, evaluating and coordinating implementation of projects and initiatives under the Sagarmala Programme; In this regard the PMC shall
 - a. solicit new projects from proponents and evaluate such new projects for viability and fit with the objectives of Sagarmala
 - b. evaluate preliminary business cases put forth by project proponents outlining the project scope, its rationale and high level cost benefit analysis
 - c. identify the residual projects, that cannot be funded by any other means/mode, to be provided funding window by SDC
 - d. For projects to be taken up by SDC, the PMC shall
 - i. prepare the TOR for appointment of consultants / agencies for preparation of necessary feasibility studies, detailed project reports, EIA, land acquisition proposals and other studies as may be needed
 - ii. prepare the bidding documents (RFQ / RFP / Concession Agreement etc.) based on model documents

- iii. manage the procurement process, for appointment of consultants / agencies for preparation of necessary feasibility studies, detailed project reports, EIA, and other project related studies as may be needed
 - iv. advise on suitably structuring the projects (e.g., PPP structure, contracting strategy, project financing structure, formation of SPVs etc.) based on Sagarmala requirements
 - v. assist SDC in obtaining requisite approvals like VGF, environment clearance and other statutory clearance from competent authority
 - vi. put in place suitable risk management measures for strategic projects,
 - vii. undertake site visits / inspections to project sites if requested by SDC
 - e. For projects being undertaken by agencies outside Ministry of Shipping, the PMC shall coordinate and provide relevant inputs towards the implementation of such projects
 - f. Assist the SDC in the development and implementation of policy / regulatory aspects and schemes related to Sagarmala Programme
2. Tracking and monitoring various projects and initiatives under Sagarmala Programme. As part of this activity, the PMC shall
- a. track and monitor various projects and initiatives under the Sagarmala using the IT based MIS tool and dashboard created for this purpose by the consultant of Sagarmala. The consultants are expected to update the IT tools / apps and deploy the tool for review, monitoring and tracking.
 - b. be responsible for overall project management and coordination with all stakeholders and liaise with relevant stakeholders / project proponents within and outside the Government to identify and suggest measures to fast track implementation
3. Assisting SDC in its activities, including but not limited to:
- a. finalization SDC's Business Plan
 - b. assisting SDC in the formulation of its processes and functions
 - c. assisting SDC in the activities related to the development of Coastal Economic Zones/Coastal Economic Units identified under Sagarmala
 - d. assisting SDC in facilitating interaction/meetings with potential investors for Sagarmala and preparing responses to formal communication, related to projects under Sagarmala, from various departments and agencies of Central and State Governments

The PMC will also be responsible for any other work, related to the Sagarmala Programme, which might be given by SDC

SECTION 6: 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, Resource Pool and Sub Professional Personnel, Task assignment, work programme, manning schedule, qualification requirements of key Personnel, resource pool

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

6.1 General provisions

6.1.1 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:
 - (a) Controls such Party; (b) is Controlled by such Party; (c) is Controlled by the same person who, directly or indirectly, Controls such Party; and “Control” with respect to any person, shall mean: (a) 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; (b) 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.

6.1.2 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.

- 6.1.3 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.
- 6.1.4 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.
- 6.1.5 Location: The Services shall be performed at such locations as whether in Country or elsewhere, as the Client may approve.
- 6.1.6 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.
- 6.1.7 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.
 - 6.1.7.1 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:

- 6.1.7.1.1 the Client having been required by any governmental authority to pay any Taxes which the Consultant is liable to bear hereunder; or
 - 6.1.7.1.2 any cost actually sustained by the Client for failure by the Consultant to pay any Taxes for which it is responsible under this Contract
- 6.1.8 Interpretation: In the Contract, unless the context otherwise requires:

- 6.1.8.1 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.
- 6.1.8.2 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.
- 6.1.8.3 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 relatable thereto, all of which shall form an integral part of such document, agreement, deed or other instrument, as the case may be.
- 6.1.8.4 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
- 6.1.8.5 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.
- 6.1.8.6 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.
- 6.1.8.7 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.
- 6.1.8.8 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.
- 6.1.8.9 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.

6.1.8.10 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.

6.2 Joint and Several Liability: Collective action by Members

6.2.1 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.

6.2.2 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:

6.2.2.1 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;

6.2.2.2 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;

- 6.2.2.3 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.
- 6.3 Commencement, completion, modification and termination of contract
- 6.3.1 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.
- 6.3.2 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.
- 6.3.3 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.
- 6.3.4 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.
- 6.3.5 Force Majeure
- 6.3.5.1 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.
- 6.3.5.2 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.
- 6.3.5.3 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.
- 6.3.6 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.
- 6.3.7 Payments: During the period of their inability to perform the Services as a result of an event of Force majeure, the Consultants shall be entitled to continue to be paid under the terms of this Contract, as well as to be reimbursed for additional costs reasonably and necessarily incurred by them during such period for the purposes of the services and in reactivating the services after the end of such period.
- 6.4 Termination
- 6.4.1 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.

6.4.2 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.

6.4.3 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 11.2 and (v) any right which a Party may have under the Applicable Law.

6.4.4 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.

6.4.5 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 6.4.1 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 meruit 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.

6.4.6 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.

6.5 Obligations of the Consultants

6.5.1 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.

6.5.2 Conflict of interest

6.5.2.1 Any breach of an obligation under Clause 6.5 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 6.5 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.

- 6.5.2.2 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.
- 6.5.2.3 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.
- 6.5.2.4 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.
- 6.5.3 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.

- 6.5.4 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.
- 6.5.5 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.
- 6.5.6 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.
- 6.5.7 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.
- 6.5.8 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. 6.6 Consultants” personnel

6.6.1 Description of Personnel

6.6.1.1 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.

6.6.1.2 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.

6.6.2 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.

6.7 Obligations of the client

6.7.1 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;

6.7.2 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.

6.8 Payments to the consultants

6.8.1 Monthly Retainership Fees

The Consultants total remuneration will include fixed cost of the core team deployed full time to the client and cost of inputs of experts from the resource pool for a minimum contribution of man-days along with the Out of Pocket Expenses.

The Monthly Fees may only be increased above the Monthly Retainer Ship Fee, if the parties have agreed to additional payment in accordance with relevant clauses hereof.

As soon as practicable and not later than fifteen (15 days) after the end of each calendar month during the period of the Services, the Consultants shall submit to the Client, in duplicate, itemized statements, accompanied by copies of receipted invoices, vouchers and other appropriate supporting materials, of the amounts payable for such month. Each such monthly statement shall distinguish that portion of the total eligible costs which pertains to remuneration from that portion which pertains to reimbursable expenditures. 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. Only such portion of a monthly statement that is not satisfactorily supported may be withheld from payment. 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.

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

6.8.3 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.

6.8.4 Price Revision

In order to adjust the remuneration and reimbursable expenses for local inflation, the consultant will be entitled to a price revision from the second year as per the price adjustment formula given below. The adjustment will be made from 1st month of each subsequent year from the date of the Contract.

Quoted Rate = Monthly Fee Rate given in the Consultant's Financial Proposal, which will be applicable for the first 12 months of the contract. For subsequent years, Quoted Rate will be indexed to India's Wholesale Price Index (WPI) and such increased rate shall be deemed to be the Base Rate for subsequent years, as under.

Formula for calculation of Rates for subsequent years:

Applicable rate for Year n = Base Rate (n-1) x (WPI(n)/WPI(n-1))

WPI of the week ending on or subsequent to 1st April of the subsequent year will be considered.

WPI n is Wholesale Price Index for accounting year n

WPI n-1 is Wholesale Price Index for previous accounting year

The same principle will be applied to the resource pool as well.

6.9 Settlement of disputes

6.9.1 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.

6.9.2 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.

6.10 Responsibility for accuracy of project documents

6.10.1 General

6.10.1.1 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. However, if IPA provides any data / document, it will assume the ownership and accuracy of such data / document.

6.10.1.2 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. However, if IPA provides any data / document, it will assume the ownership and accuracy of such data / document.

6.11 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.

6.12 Representation, warranties and disclaimer

6.12.1 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.

6.13 Miscellaneous

6.13.1 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.

6.13.2 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 the receipt 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.

6.13.3 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.

6.13.4 Waiver

6.13.4.1 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.

6.13.4.2 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.

6.13.5 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.

6.13.6 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.

- 6.13.7 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.
- 6.13.8 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.
- 6.13.9 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.
- 6.13.10 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.
- 6.13.11 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.
- 6.13.12 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.

- 6.1.1(f) The contract price payable in Indian Rupees is (inclusive of service tax)
- 6.1.1(j) The Member in-charge is [name of consultant].
- 6.1.3 The language is English.
- 6.1.4 The client address is [name, designation, telephone, facsimile, address].
- 6.1.4 The consultant address is [name, designation, telephone, facsimile, address].
- 6.1.6 The Authorized Representative for the client is [name, designation].
- 6.1.6 The Authorized Representative for the consultant is [name, designation].
- 6.1.7 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.
- 6.3.1 The date on which this Contract will come into effect is [date].
- 6.5.7 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.

6.5.8 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.

6.4 Monthly retainership fee will be payable every month and will include quoted fee in the financial proposal and fees for additional inputs of the resource pool if any on the basis of their actual contribution in man days as approved by the client. If the Client has removed any role(s) of Key Personnel, from the list mentioned in this RFP Document, then the Monthly retainership fee will be calculated as per the revised list of personnel and based on the rates quoted by the consultant.

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. 6.1.1 (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.

7.0 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 A: 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 forbearance or other acts of omission or commission on the part of the Client or any other indulgence shown by the Client or by any other matter or thing whatsoever which under law would but for this provision have the effect of relieving the Bank.

The Bank also agrees that the Client at its option shall be entitled to enforce this Guarantee against the Bank as a principal debtor, in the first instance without proceeding against the 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.