



Government of Kerala  
Department of Ports

Request for Proposal

for the

Selection of Safety Consultant

for

Vizhinjam  
International Deepwater  
Multipurpose Seaport  
Kerala



VIZHINJAM INTERNATIONAL SEAPORT LIMITED

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### **Disclaimer**

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

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

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

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

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

The Authority may in its absolute discretion, but without being under any obligation to do so, update, amend or supplement the information, assessment or assumption contained in this RFP. The issue of this RFP does not imply that the Authority is bound to select an Applicant or to appoint the Selected Applicant, as the case may be, for the Consultancy and the Authority reserves the right to reject all or any of the Proposals without assigning any reasons whatsoever.

The Applicant shall bear all its costs associated with or relating to the preparation and submission of its Proposal including but not limited to preparation, copying, postage, delivery fees, expenses associated with any demonstrations or presentations which may be required by

the Authority or any other costs incurred in connection with or relating to its Proposal. All such costs and expenses will remain with the Applicant and the Authority shall not be liable in any manner whatsoever for the same or for any other costs or other expenses incurred by an Applicant in preparation or submission of the Proposal, regardless of the conduct or outcome of the Selection Process.

## **Glossary**

<b>Agreement</b>	As defined in Schedule-2
<b>Agreement Value</b>	As defined in Clause 6.1.1 of Schedule-2
<b>Applicable Laws</b>	As defined in Schedule-2
<b>Applicant</b>	As defined in Clause 2.1.1
<b>Associate</b>	As defined in Clause 2.3.3
<b>Authorised Representative</b>	As defined in Clause 2.13.3
<b>Authority</b>	As defined in Clause 1.1.1
<b>Bid Security</b>	As defined in Clause 2.20.1
<b>Concession Agreement</b>	As defined in Clause 1.1.1
<b>Concessionaire</b>	As defined in Clause 1.1.1
<b>Conditions of Eligibility</b>	As defined in Clause 2.2.1
<b>Conflict of Interest</b>	As defined in Clause 2.3.1
<b>Consultancy</b>	As defined in Clause 1.2
<b>Consultancy Team</b>	As defined in Paragraph 7 of Schedule-1
<b>CV</b>	Curriculum Vitae
<b>DBFOT</b>	Design, Build, Finance, Operate and Transfer
<b>Deliverables</b>	As defined in Paragraph 4 of Schedule-1
<b>Documents</b>	As defined in Clause 2.12
<b>Effective Date</b>	As defined in Clause 2.1 of Schedule-2
<b>Eligible Assignments</b>	As defined in Clause 3.1.4
<b>Expatriate Personnel</b>	As defined in Clause 1.1.1(i) of Schedule-2
<b>Financial Proposal</b>	As defined in Clause 2.15.1
<b>Form of Agreement</b>	Form of Agreement as in Schedule-2
<b>INR, Re, Rs.</b>	Indian Rupee(s)
<b>Implementing Agency</b>	As defined in Clause 1.1.2
<b>Key Date or KD</b>	As defined in Paragraph 5.2 of Schedule-1
<b>Key Personnel</b>	As defined in Clause 2.1.4
<b>Lead Member</b>	As defined in Clause 2.1.1
<b>LOA</b>	Letter of Award
<b>Manual</b>	As defined in Clause 1.1.2
<b>Member</b>	As defined in Clause 2.3.3 (a)
<b>Official Website</b>	As defined in Clause 1.11.2
<b>Personnel</b>	As defined in Clause 1.1.1(o) of Schedule-2

<b>PPP</b>	Public Private Partnership
<b>Professional Personnel</b>	As defined in Clause 2.14.6
<b>Prohibited Practices</b>	As defined in Clause 4.1
<b>Project</b>	As defined in Clause 1.1.1
<b>Proposal</b>	As defined in Clause 1.2
<b>Proposal Due Date or PDD</b>	As defined in Clauses 1.8
<b>Resident Personnel</b>	As defined in Clause 1.1.1(p) of Schedule-2
<b>RFP</b>	As defined in Disclaimer
<b>Safety Consultant</b>	As defined in Clause 1.1.5
<b>Selected Applicant</b>	As defined in Clause 1.6
<b>Selection Process</b>	As defined in Clause 1.6
<b>Services</b>	As defined in Clause 1.1.1(f) of Schedule-2
<b>Sole Firm</b>	As defined in Clause 2.1.1
<b>Statutory Auditor</b>	An Auditor appointed under Applicable Laws
<b>Sub-Consultant</b>	As defined in Clause 1.1.1(r) of Schedule-2
<b>Support Personnel</b>	As defined in Clause 2.14.6
<b>Team Leader</b>	As defined in Clause 2.1.4
<b>Technical Proposal</b>	As defined in Clause 2.14.1
<b>TOR</b>	As defined in Clause 1.1.5
<b>US\$</b>	United States Dollar
<b>WG</b>	As defined in Paragraph 8.1 of Schedule-1

The words and expressions beginning with capital letters and defined in this document shall, unless repugnant to the context, have the meaning ascribed thereto herein. Capitalised words and expressions not defined in this document shall, unless repugnant to the context, have the meaning ascribed to them in the concession agreement dated 17<sup>th</sup> August, 2015 executed between the Government of Kerala and Adani Vizhinjam Port Private Limited.

## **Invitation for Proposals**



## 1. INTRODUCTION<sup>§</sup>

### 1.1 Background

- 1.1.1 The Government of Kerala, represented by Principal Secretary, Department of Ports (the “**Authority**”) is engaged in the development of port and as part of this endeavour, the Authority has decided to undertake development and operation of the Vizhinjam International Deepwater Multipurpose Seaport Project (the “**Project**”) through Public Private Partnership (the “**PPP**”) on Design, Build, Finance, Operate and Transfer (the “**DBFOT**”) basis. The Project has been awarded to M/s Adani Ports and SEZ Limited (“**APSEZ**”) through an international competitive bidding process. APSEZ has formed a special purpose vehicle, M/s Adani Vizhinjam Port Private Limited (“**Concessionaire**”) for the implementation of the Project. The Project would be implemented in accordance with the terms and conditions stated in the concession agreement executed between the Authority and the Concessionaire (the “**Concession Agreement**”).
- 1.1.2 Details of the Project including the Feasibility Report, Master Plan, Detailed Project Report, Concession Agreement, Manual of Specifications and Standards (the “**Manual**” which is provided as Annexure-B to this agreement) etc., are available on the official website of Vizhinjam International Seaport Limited (the “**Implementing Agency**”), ([www.vizhinjamport.in](http://www.vizhinjamport.in)). The Implementing Agency shall work for and on behalf of the Authority in discharging the functions and obligations of the Authority under this Agreement and the Concession Agreement which is provided as Annexure-A to this agreement.
- 1.1.3 The Project is to be implemented in four phases and the Concessionaire has to complete the construction of first phase (“**Phase-I**”) within a maximum of 1460 (One thousand four hundred and sixty) days from the Appointed Date, i.e., 5<sup>th</sup> December 2015. The indicative cost of the Phase-I of the Project is Rs. 5,552 (Rupees five thousand five hundred and fifty two) crore.
- 1.1.4 Authority has appointed M/s STUP Consultants Private Limited (the “**Independent Engineer**”) to provide advisory or consultancy services for the review of design, drawings and inspection of construction works undertaken for Phase-I of the Project. The Independent Engineer will discharge all its roles and functions in accordance with the terms set forth in the Concession Agreement and Manual.
- 1.1.5 Article 18.1.2 of the Concession Agreement provides that the Authority shall appoint an experienced and qualified firm or organisation for carrying out safety audit of the Port in accordance with the Safety Requirements set out in the Concession Agreement and the Manual (the “**Safety Consultant**”). In pursuance of the above, the Authority

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#### <sup>§</sup>Instructions for Applicants

**Note 1:** Blank spaces contain formats that are to be used by the Applicant after the RFP is issued. (See Appendix-III)

**Note 2:** Footnotes marked “\$” in the relevant Clauses of the RFP and Schedules are for guidance of the Applicants. In case of Appendices, the footnotes marked “\$” or in other non-numerical characters shall be omitted by the Applicants while submitting their respective Proposals. (See Appendix-III)

has decided to carry out the process for selection of a Safety Consultant to provide specified services till the completion of safety audit for the first Accounting Year after COD, in accordance with the Terms of Reference specified at Schedule-1 (the “**TOR**”). Provided however, if the first Accounting Year after COD has less than 100 (hundred) days, the Safety Consultant shall provide the specified services till the completion of safety audit the second Accounting Year after COD, being one consolidated safety audit for the first and second Accounting Year after COD.

## 1.2 Request for Proposal

The Authority invites proposals (the “**Proposals**”) for selection of a Safety Consultant who shall provide the specified services and perform the role and functions set out in the Concession Agreement and the Manual. TOR for the Safety Consultant is specified in Schedule-I of this RFP. The Safety Consultant shall review Safety Drawings containing the design details that have a bearing on safety of Users, carry out safety audits including that of the completed Construction Works, review and analyse the annual report and accident data and shall perform all services in conformity with the TOR (collectively the “**Consultancy**”). The Authority intends to select the Safety Consultant through an open competitive bidding process in accordance with the procedure set out herein.

## 1.3 Due diligence by Applicants

Applicants are encouraged to inform themselves fully about the assignment and the local conditions before submitting the Proposal by paying a visit to the Implementing Agency and the Project site, sending written queries to the Implementing Agency, and attending a Pre-Proposal Conference on the date and time specified in Clause 1.10.

## 1.4 Sale of RFP Document

RFP document can be obtained between 1100 hrs and 1600 hrs on all working days on payment of a fee of Rs. 1,000 (Rupees one thousand only) in the form of a demand draft or banker’s cheque drawn on any scheduled bank in India in favour of Vizhinjam International Seaport Limited and payable at State Bank of India, Althara Junction Branch, Thiruvananthapuram. The document can also be downloaded from the Official Website (<http://www.vizhinjamport.in/tender.php>) of the Authority. In case of a downloaded form, the Applicant need not deposit the aforesaid fee.

## 1.5 Validity of the Proposal

The Proposal shall be valid for a period of not less than 90 (ninety) days from the Proposal Due Date.

## 1.6 Brief description of the Selection Process

The Authority has adopted a two stage selection process (collectively the “**Selection Process**”) for evaluating the Proposals comprising technical and financial bids to be submitted in two separate sealed envelopes. In the first stage, a technical evaluation will be carried out as specified in Clause 3.1. Based on this technical evaluation, a list

of short-listed applicants shall be prepared as specified in Clause 3.2. In the second stage, a financial evaluation will be carried out as specified in Clause 3.3. Proposals will finally be ranked according to their combined technical and financial scores as specified in Clause 3.4. The first ranked Applicant shall be selected for negotiation (the “**Selected Applicant**”) while the second ranked Applicant will be kept in reserve.

## **1.7 Currency conversion rate and payment**

1.7.1 For the purposes of technical evaluation of Applicants, Rs. 50 (Rupees fifty) per US\$ shall be considered as the applicable currency conversion rate. In case of any other currency, the same shall first be converted to US\$ as on the date falling 60 (sixty) days prior to the Proposal Due Date, and the amount so derived in US\$ shall be converted into INR at the aforesaid rate. The conversion rate of such currencies shall be the daily representative exchange rates published by the International Monetary Fund for the relevant date.

1.7.2 All payments to the Safety Consultant shall be made in INR in accordance with the provisions of this RFP. The Safety Consultant may convert INR into any foreign currency as per Applicable Laws and the exchange risk, if any, shall be borne by the Safety Consultant.

## **1.8 Schedule of Selection Process**

The Authority would endeavour to adhere to the following schedule:

<b>Event Description</b>	<b>Date</b>
1. Release of RFP document	25 <sup>th</sup> September 2018
2. Last date for receiving queries/clarifications	1 <sup>st</sup> October 2018
3. Pre-Proposal Conference	8 <sup>th</sup> October 2018
4. Authority response to queries	15 <sup>th</sup> October 2018
5. Proposal Due Date (“ <b>PDD</b> ”)	22 <sup>nd</sup> October 2018
6. Opening of Proposals	On Proposal Due Date
7. Letter of Award (LOA)	Within 15 days of PDD
8. Signing of Agreement	Within 10 days of LOA
9. Validity of Applications	90 days of Proposal Due Date

## **1.9 Pre-Proposal visit to the Site and inspection of data**

Prospective Applicants may visit the Site and review the available data at any time

prior to PDD. For this purpose, they will provide at least 'two days' notice to the nodal officer specified below:

The Managing Director & CEO  
Vizhinjam International Seaport Limited (VISL),  
1<sup>st</sup> Floor, Vipanchika Tower,  
Near Government Guest House, Thycaud P.O,  
Thiruvananthapuram – 695014, Kerala, India.  
Phone: 0091 - 471 - 2328616  
Email: [ceo@vizhinjamport.in](mailto:ceo@vizhinjamport.in)

However, for the convenience of the Applicants, a pre-Proposal visit to the Site has been arranged on 8<sup>th</sup> October 2018, at 1500 hrs, after the Pre- Proposal Conference. The Applicants who desire to avail this facility may visit Site on the date and time mentioned above.

### **1.10 Pre-Proposal Conference**

The date, time and venue of Pre-Proposal Conference shall be:

Date: 8th October 2018

Time: 1400 hrs

Venue: Mascot Hotel, PMG Junction, Thiruvananthapuram, Kerala, India.

### **1.11 Communications**

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

The Managing Director & CEO  
Vizhinjam International Seaport Limited (VISL)  
1<sup>st</sup> Floor, Vipanchika Tower,  
Near Government Guest House, Thycaud P.O,  
Thiruvananthapuram – 695014, Kerala, India.  
Phone: 0091 - 471 - 2328616  
Email: [ceo@vizhinjamport.in](mailto:ceo@vizhinjamport.in)

1.11.2 The Official Website of the Authority is:

<http://www.vizhinjamport.in>

Note: Please open the page 'Tenders' (<http://www.vizhinjamport.in/tender.php>) to access all the posted and uploaded documents related to this RFP.

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

### **RFP Notice No. 4 – Selection of Safety Consultant**

## 2. INSTRUCTIONS TO APPLICANTS

### A. GENERAL

#### 2.1 Scope of Proposal

- 2.1.1 Detailed description of the objectives, scope of services, Deliverables and other requirements relating to this Consultancy are specified in this RFP. In case an applicant firm possesses the requisite experience and capabilities required for undertaking the Consultancy, it may participate in the Selection Process either individually (the “**Sole Firm**”) or as lead member of a consortium of firms (the “**Lead Member**”) in response to this invitation. The term applicant (the “**Applicant**”) means the Sole Firm or the Lead Member, as the case may be. The manner in which the Proposal is required to be submitted, evaluated and accepted is explained in this RFP.
- 2.1.2 Applicants are advised that the selection of Safety Consultant shall be on the basis of an evaluation by the Authority through the Selection Process specified in this RFP. 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 the Authority’s decisions are without any right of appeal whatsoever.
- 2.1.3 The Applicant shall submit its Proposal in the form and manner specified in this Part-2 of the RFP. The Technical Proposal shall be submitted in the form at Appendix-I and the Financial Proposal shall be submitted in the form at Appendix-II. Upon selection, the Applicant shall be required to enter into an agreement with the Authority in the form specified at Schedule-2.
- 2.1.4 **Key Personnel**

The Consultancy Team shall consist of the following key personnel (the “**Key Personnel**”) who shall discharge their respective responsibilities as specified below:

<b>Key Personnel</b>	<b>Responsibilities</b>
<b>Team Leader</b> (the “ <b>Team Leader</b> ”)	He will lead, co-ordinate and supervise the multidisciplinary team for providing services as specified in the Concession Agreement, Manual and TOR. He will be responsible for providing specified services with regard to safety in respect of all elements within and operational area associated to the Port/Project.
<b>Navigation Expert</b>	He will be responsible for providing the specified services with regard to safety in respect of all marine and navigational aspects including safe navigation in the channel and harbour basin, berthing, mooring and securing of vessels related to the Port/Project.
<b>Port Operations Safety Expert</b>	He will be responsible for providing the specified services with regard to all Port Operations Safety aspects related to the Port/Project. ‘Port Operation’

	means and includes all and any part of the work of loading and unloading of any ship as well as any work incidental thereto, including storage of cargo/containers, clerical, rail and road transport operators and others that are employed within the port confines.
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## 2.2 Conditions of Eligibility of Applicants

2.2.1 Applicants must read carefully the minimum conditions of eligibility (the “**Conditions of Eligibility**”) provided herein. Proposals of only those Applicants who satisfy the Conditions of Eligibility will be considered for evaluation.

2.2.2 To be eligible for evaluation of its Proposal, the Applicant shall fulfil the following Conditions of Eligibility:

(A) **Technical Capacity:** The Applicant shall have, over the past 10 (ten) years preceding the PDD, undertaken a minimum of 2 (two) Eligible Assignments as specified in Clause 3.1.4.

(B) **Financial Capacity:** The Applicant shall have received a minimum income of Rs.5 (five) crore or US \$1(one) million per annum from professional fees during each of the 3 (three) financial years preceding the Proposal Due Date. For the purpose of evaluation, Applicants having comparatively larger revenues from professional fees shall be given added weightage. For the avoidance of doubt, professional fees hereunder refer to fees received by the Applicant for providing advisory or consultancy services to its clients.

(C) **Availability of Key Personnel:** The Applicant shall offer and make available all Key Personnel meeting the requirements specified in sub-clause (D) below.

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

Key Personnel	Educational Qualification	Length of Professional Experience	Experience on Eligible Assignments
Team Leader	Graduate in Civil Engineering or Mechanical Engineering or Electrical Engineering or equivalent.	12 years.	He should have worked in the capacity of Team Leader for 1 (one) Eligible Assignment.
Navigation Expert	Master of foreign-going ship issued by the Ministry of Shipping, Government of India or an equivalent qualification recognised by the Ministry of Shipping,	12 years.	He should have worked as a Navigational expert for 1 (one) Eligible Assignment or

	Government of India. One-year post qualification experience as Master/Chief Officer of a foreign-going ship.		He should have worked as a Harbour Master/Deputy Conservator or equivalent position in a Port of capacity not less than 5,00,000 (five lakhs) TEU in India with not less than 5 (five) years' service in the cadre of Harbour Master or above.
Port Operations Safety Expert	Graduate in Mechanical/Electrical Engineering with diploma in Industrial Safety engineering (from DGFASLI (Director General Factory Advice service and Labour Institute) approved institutions) or graduate in Industrial safety engineering from DGFASLI approved institutions.	10 years experience for graduate in Industrial safety engineering /15years experience for others.	He should have worked as a Port Operations Safety Expert for 1 (one) Eligible Assignment Or He should have worked as a Safety Officer in a r Port of capacity not less than 5,00,000 (five lakhs) TEU in India with not less than 5 years service in the Cadre Or He should have worked as a Safety Officer in a Container Terminal (Annual throughput not less than 3,00,000 (three lakhs) TEU), with not less than 5 years service in the Cadre.

2.2.3 The Applicant shall enclose with its Proposal, certificate(s) from its Statutory Auditors<sup>§</sup> stating its total revenues from professional fees during each of the 3 (three) financial years preceding the PDD and the fee received in respect of each of the Eligible Assignments specified in the Proposal. In the event that the Applicant does not have a statutory auditor, it shall provide the requisite certificate(s) from the firm of chartered accountants that ordinarily audits the annual accounts of the Applicant.

2.2.4 The Applicant should submit a Power of Attorney as per the format at Form-4 of

<sup>§</sup> No separate annual financial statements should be submitted.

Appendix-I; provided, however, that such Power of Attorney would not be required if the application is signed by a partner of the Applicant, in case the Applicant is a partnership firm or limited liability partnership.

- 2.2.5 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 Proposal, would not be eligible to submit a Proposal either by itself or through its Associate.
- 2.2.6 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.
- 2.2.7 While submitting a Proposal, the Applicant should attach clearly marked and referenced continuation sheets in the event that the space provided in the specified forms in the Appendices is insufficient. Alternatively, Applicants may format the specified forms making due provision for incorporation of the requested information.

### 2.3 Conflict of Interest

- 2.3.1 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 Authority shall forfeit and appropriate the Bid Security as mutually agreed genuine pre-estimated compensation and damages payable to the Authority for, *inter alia*, the time, cost and effort of the Authority including consideration of such Applicant’s Proposal, without prejudice to any other right or remedy that may be available to the Authority hereunder or otherwise.
- 2.3.2 The Authority requires that the Safety Consultant provides professional, objective, and impartial advice and at all times hold the Authority’s interest paramount, avoid conflicts with other assignments or its own interests, and act without any consideration for future work. The Safety Consultant shall not accept or engage in any assignment that would be in conflict with its prior or current obligations to other clients, or that may place it in a position of not being able to carry out the assignment in the best interests of the Authority.
- 2.3.3 Some guiding principles for identifying and addressing Conflicts of Interest have been illustrated in the Guidance Note at Schedule-3. Without limiting the generality of the above, an Applicant shall be deemed to have a Conflict of Interest affecting the Selection Process, if:
  - (a) the Applicant, 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 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% (five 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% (five 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 sub-section (72) of section 2 of the Companies Act, 2013. For the purposes of this Clause 2.3.3(a), 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% (twenty six percent) of the subscribed and paid up equity shareholding of such intermediary; or

- (b) a constituent of such Applicant is also a constituent of another Applicant; or
- (c) such Applicant or its Associate receives or has received any direct or indirect subsidy or grant from any other Applicant or its Associate; or
- (d) such Applicant has the same legal representative for purposes of this Application as any other Applicant; or
- (e) such Applicant has a relationship with another Applicant, directly or through common third parties, that puts them in a position to have access to each other’s information about, or to influence the Application of either or each of the other Applicant; or
- (f) there is a conflict among this and other consulting assignments of the Applicant (including its personnel and Sub-consultant) and any subsidiaries or entities controlled by such Applicant or having common controlling shareholders. The duties of the Safety Consultant will depend on the circumstances of each case. While providing consultancy services to the Authority for this particular assignment, the Safety Consultant shall not take up any assignment that by its nature will result in conflict with the present assignment; or
- (g) a firm which has been engaged by the Authority 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 provided in Clause 2.3.4; 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

- (h) 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% (five 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% (five 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 sub-section (72) of section 2 of the Companies Act, 2013. For the purposes of this sub-clause (h), indirect shareholding shall be computed in accordance with the provisions of sub-clause (a) above.

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% (fifty 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.

- 2.3.4 An Applicant eventually appointed to provide Consultancy for this Project, and its Associates, shall be disqualified from subsequently providing goods or works or services related to the construction and operation of the same Project and any breach of this obligation shall be construed as Conflict of Interest; provided that the restriction herein shall not apply after a period of 5 (five) years from the completion of this assignment or to consulting assignments granted by banks/ lenders at any time; provided further that this restriction shall not apply to consultancy/ advisory services performed for the Authority in continuation of this Consultancy or to any subsequent consultancy/ advisory services performed for the Authority in accordance with the rules of the Authority. For the avoidance of doubt, an entity affiliated with the Safety Consultant shall include a partner in the Safety Consultant’s firm or a person who holds more than 5% (five percent) of the subscribed and paid up share capital of the Safety Consultant, as the case may be, and any Associate thereof.

## 2.4 Number of Proposals

No Applicant or its Associate shall submit more than one application for the Consultancy. An Applicant applying individually or as an Associate shall not be entitled to submit another application either individually or as a member of any consortium, as the case may be.

## **2.5 Cost of Proposal**

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

## **2.6 Site visit and verification of information**

Applicants are encouraged to submit their respective Proposals after visiting the Project site and ascertaining for themselves the site conditions, location, surroundings, climate, access to the site, availability of drawings and other data with the Authority, Applicable Laws and regulations or any other matter considered relevant by them. Visits shall be organised for the benefit of prospective Applicants on dates, time and venue as specified in Clause 1.9.

## **2.7 Acknowledgement by Applicant**

2.7.1 It shall be deemed that by submitting the Proposal, the Applicant has:

- (a) made a complete and careful examination of the RFP;
- (b) received all relevant information requested from the Authority;
- (c) acknowledged and accepted the risk of inadequacy, error or mistake in the information provided in the RFP or furnished by or on behalf of the Authority or relating to any of the matters referred to in Clause 2.6 above;
- (d) satisfied itself about all matters, things and information, including matters referred to in Clause 2.6 herein above, necessary and required for submitting an informed application and performance of all of its obligations thereunder;
- (e) acknowledged that it does not have a Conflict of Interest; and
- (f) agreed to be bound by the undertaking provided by it under and in terms hereof.

2.7.2 The Authority 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 Authority.

## **2.8 Right to reject any or all Proposals**

2.8.1 Notwithstanding anything contained in this RFP, the Authority 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.

2.8.2 Without prejudice to the generality of Clause 2.8.1, the Authority reserves the right to reject any Proposal if:

- (a) at any time, a material misrepresentation is made or discovered, or
- (b) the Applicant does not provide, within the time specified by the Authority, the supplemental information sought by the Authority for evaluation of the Proposal.

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

## **B. DOCUMENTS**

### **2.9 Contents of the RFP**

This RFP comprises the Disclaimer set forth hereinabove, the contents as listed below and will additionally include any addendum / amendment issued in accordance with Clause 2.11:

#### **Request for Proposal**

- 1 Introduction
- 2 Instructions to Applicants
- 3 Criteria for Evaluation
- 4 Fraud and corrupt practices
- 5 Pre-Proposal Conference
- 6 Miscellaneous

#### **Schedules**

- 1 **Terms of Reference**

## 2 **Form of Agreement**

- Annex-1: Terms of Reference
- Annex-2: Professional Personnel
- Annex-3: Approved Sub-Consultant(s)
- Annex-4: Cost of Services
- Annex-5: Payment Schedule
- Annex-6: Bank Guarantee for Performance Security
- Annex-A: Concession Agreement
- Annex-B: Manual of Specifications and Standards

## 3 **Guidance Note on Conflict of Interest**

### **Appendices**

#### **Appendix-I: Technical Proposal**

- Form-1: Letter of Proposal
- Form-2: Particulars of the Applicant
- Form-3: Statement of Legal Capacity
- Form-4: Power of Attorney
- Form-5: Financial Capacity of Applicant
- Form-6: Particulars of Key Personnel
- Form-7: Proposed Methodology and Work Plan
- Form-8: Abstract of Eligible Assignments of Applicant
- Form-9: Abstract of Eligible Assignments of Key Personnel
- Form-10: Eligible Assignments of Applicant
- Form-11: Eligible Assignments of Key Personnel
- Form-12: Curriculum Vitae (CV) of Key Personnel
- Form-13: Professional Personnel
- Form-14: Proposal for Sub-Consultant(s)

#### **Appendix-II: Financial Proposal**

- Form-1: Covering Letter
- Form-2: Financial Proposal

### **2.10 Clarifications**

- 2.10.1 Applicants requiring any clarification on the RFP may send their queries to the Authority in writing by speed post/ courier/ special messenger or by e-mail so as to reach before the date mentioned in the Schedule of Selection Process at Clause 1.8. The envelopes shall clearly bear the following identification:

**“Queries concerning RFP for Selection of Safety Consultant”**

- 2.10.2 The Authority shall endeavour to respond to the queries within the period specified therein but not later than 4 (four) days prior to the Proposal Due Date. The responses

will be sent by e-mail. The Authority will post the reply to all such queries on the Official Website and copies thereof will also be circulated to all Applicants who have purchased the RFP document without identifying the source of queries.

- 2.10.3 The Authority reserves the right not to respond to any questions or provide any clarifications, in its sole discretion, and nothing in this Clause 2.10 shall be construed as obliging the Authority to respond to any question or to provide any clarification.

## **2.11 Amendment of RFP**

- 2.11.1 At any time prior to the deadline for submission of Proposal, the Authority may, for any reason, whether at its own initiative or in response to clarifications requested by an Applicant, modify the RFP document by the issuance of addendum / amendment and posting it on the Official Website and by conveying the same to the prospective Applicants (who have purchased the RFP document) by e-mail.

- 2.11.2 All such amendments will be notified through e-mail to all Applicants who have purchased the RFP document. The amendments will also be posted on the Official Website along with the revised RFP containing the amendments and will be binding on all Applicants.

- 2.11.3 In order to afford the Applicants a reasonable time for taking an amendment into account, or for any other reason, the Authority may, in its sole discretion, extend the Proposal Due Date<sup>§</sup>.

## **C. PREPARATION AND SUBMISSION OF PROPOSAL**

### **2.12 Language**

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

### **2.13 Format and signing of Proposal**

- 2.13.1 The Applicant shall provide all the information sought under this RFP. The Authority would evaluate only those Proposals that are received in the specified forms and complete in all respects.

- 2.13.2 The Applicant shall prepare one original set of the Proposal (together with originals /

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<sup>§</sup>While extending the Proposal Due Date on account of an addendum, the Authority shall have due regard for the time required by Applicants to address the amendments specified therein. In the case of significant amendments, at least 10 (ten) days shall be provided between the date of amendment and the Proposal Due Date, and in the case of minor amendments, at least 7 (seven) days shall be provided.

copies of Documents required to be submitted along therewith pursuant to this RFP) and clearly marked “ORIGINAL”. In addition, the Applicant shall submit 2 (two) copies of the Proposal, along with Documents, marked “COPY”. In the event of any discrepancy between the original and its copies, the original shall prevail.

2.13.3 The Proposal, and its copy, shall be typed or written in indelible ink and signed by the authorised signatory 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:

- (a) by the proprietor, in case of a proprietary firm; or
- (b) by a partner, in case of a partnership firm and/or a limited liability partnership; or
- (c) by a duly authorised person holding the Power of Attorney, in case of a limited company or a corporation; or
- (d) by the Authorised Representative of the Lead Member, in case of consortium.

A copy of the Power of Attorney certified under the hands of a partner or director of the Applicant and notarised by a notary public in the form specified in Appendix-I (Form-4) shall accompany the Proposal.

2.13.4 Applicants should note the Proposal Due Date, as specified in Clause 1.8, for submission of Proposals. Except as specifically provided in this RFP, no supplementary material will be entertained by the Authority, 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 Clause 2.17.1. 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 Authority reserves the right to seek clarifications under and in accordance with the provisions of Clause 2.24.

## **2.14 Technical Proposal**

2.14.1 Applicants shall submit the technical proposal in the formats at Appendix-I (the “**Technical Proposal**”).

2.14.2 While submitting the Technical Proposal, the Applicant shall, in particular, ensure that:

- (a) The Bid Security is provided;
- (b) All forms are submitted in the prescribed formats and signed by the prescribed signatories;

- (c) Power of Attorney, if applicable, is executed as per Applicable Laws;
- (d) CVs of all Professional Personnel have been included;
- (e) Key Personnel have been proposed only if they meet the Conditions of Eligibility laid down at Clause 2.2.2 (D) of the RFP;
- (f) No alternative proposal for any Key Personnel is being made and only one CV for each position has been furnished;
- (g) The CVs have been recently signed and dated in blue ink by the respective Personnel and countersigned by the Applicant. Photocopy or unsigned / countersigned CVs shall be rejected;
- (h) The CVs shall contain an undertaking from the respective Key Personnel about his / her availability for the duration specified in the RFP;
- (i) Professional Personnel proposed have good working knowledge of English language;
- (j) Key Personnel would be available for the period indicated in the TOR;
- (k) No Key Personnel should have attained the age of 75 (seventy five) years at the time of submitting the proposal; and
- (l) The proposal is responsive in terms of Clause 2.22.3.

2.14.3 Failure to comply with the requirements spelt out in this Clause 2.14 shall make the Proposal liable to be rejected.

2.14.4 If an individual Key Personnel makes a false averment regarding his qualification, experience or other particulars, or his commitment regarding availability for the Project is not fulfilled at any stage after signing of the Agreement, he shall be liable to be debarred for any future assignment of the Authority for a period of 5 (five) years. The award of this Consultancy to the Applicant may also be liable to cancellation in such an event.

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

2.14.6 The proposed team shall be composed of experts and specialists (the “**Professional Personnel**”) in their respective areas of expertise and managerial / support staff (the “**Support Personnel**”) such that the Safety Consultant should be able to complete the Consultancy within the specified time schedule. The Key Personnel specified in Clause 2.1.4 shall be included in the proposed team of Professional Personnel. Other competent and experienced Professional Personnel in the relevant areas of expertise must be added as required for successful completion of this Consultancy. The CV of each such Professional Personnel, if any, should also be submitted in the format at



Form-12 of Appendix-I.

- 2.14.7 An Applicant may, if it considers necessary, propose suitable Sub-Consultants in specific areas of expertise. Credentials of such Sub-Consultants should be submitted in Form-14 of Appendix-I. A Sub-Consultant, however, shall not be a substitute for any Key Personnel.
- 2.14.8 The Authority reserves the right to verify all statements, information and documents, submitted by the Applicant in response to the RFP. Any such verification or the lack of such verification by the Authority shall not relieve the Applicant of its obligations or liabilities hereunder nor will it affect any rights of the Authority thereunder.
- 2.14.9 In case it is found during the evaluation or at any time before signing of the Agreement or after its execution and during the period of subsistence thereof, that one or more of the eligibility conditions have not been met by the Applicant or the Applicant has made material misrepresentation or has given any materially incorrect or false information, the Applicant shall be disqualified forthwith if not yet appointed as the Safety Consultant either by issue of the LOA or entering into of the Agreement, and if the Selected Applicant has already been issued the LOA or has entered into the Agreement, as the case may be, the same shall, notwithstanding anything to the contrary contained therein or in this RFP, be liable to be terminated, by a communication in writing by the Authority without the Authority being liable in any manner whatsoever to the Applicant or Safety Consultant, as the case may be.

In such an event, the Authority shall forfeit and appropriate the Bid Security as mutually agreed pre-estimated compensation and damages payable to the Authority for, *inter alia*, time, cost and effort of the Authority, without prejudice to any other right or remedy that may be available to the Authority.

## 2.15 Financial Proposal

2.15.1 Applicants shall submit the financial proposal in the formats at Appendix-II (the “**Financial Proposal**”) clearly indicating the total cost of the Consultancy (Form-2 of Appendix-II) in both figures and words, in Indian Rupees, and signed by the Applicant’s Authorised Representative. In the event of any difference between figures and words, the amount indicated in words shall prevail. In the event of a difference between the arithmetic total and the total shown in the Financial Proposal, the lower of the two shall prevail.

2.15.2 While submitting the Financial Proposal, the Applicant shall ensure the following:

- (i) All the costs associated with the assignment shall be included in the Financial Proposal. These shall cover remuneration for all the Personnel (Expatriate Personnel and Resident Personnel, in the field, office etc.), accommodation, air fare, equipment, printing of documents, surveys, investigations etc. The total amount indicated in the Financial Proposal shall be total lump sum cost, 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 expenses and tax liabilities. For the avoidance of doubt, it is clarified that all taxes shall be deemed to be included in the costs shown under different items of the Financial Proposal. Further, all payments shall be subject to deduction of taxes at source as per Applicable Laws.
- (iii) The total lump sum cost, being the Agreement Value shall be expressed in INR.

## **2.16 Submission of Proposal**

2.16.1 The Applicants shall submit the Proposal in hard bound form with all pages numbered serially and by giving an index of submissions. Each page of the submission shall be initialled by the Authorised Representative of the Applicant as per the terms of the RFP. In case the proposal is submitted on the document downloaded from Official Website, the Applicant shall be responsible for its accuracy and correctness as per the version uploaded by the Authority and shall ensure that there are no changes caused in the content of the downloaded document. In case of any discrepancy between the downloaded or photocopied version of the RFP and the original RFP issued by the Authority, the latter shall prevail.

2.16.2 The Proposal will be sealed in an outer envelope which will bear the address of the Authority, RFP notice number, Consultancy name as indicated at Clauses 1.11.1 and 1.11.3 and the name and address of the Applicant. It shall bear on top, the following:

**“Do not open, except in presence of the Authorised Person of the Authority”**

If the envelope is not sealed and marked as instructed above, the Authority assumes no responsibility for the misplacement or premature opening of the contents of the Proposal submitted and consequent losses, if any, suffered by the Applicant.

2.16.3 The aforesaid outer envelope will contain two separate sealed envelopes, one clearly marked ‘**Technical Proposal**’ and the other clearly marked ‘**Financial Proposal**’. The envelope marked “Technical Proposal” shall contain:

- (i) Application in the prescribed format (Form-1 of Appendix-I) along with Forms 2 to 14 of Appendix-I and supporting documents; and
- (ii) Bid Security as specified in Clause 2.20.1.

The envelope marked “Financial Proposal” shall contain the Financial Proposal in the prescribed format (Forms 1 and 2 of Appendix-II).

2.16.4 The Technical Proposal and Financial Proposal shall be typed or written in indelible ink and signed by the Authorised Representative of the Applicant. All pages of the original Technical Proposal and Financial Proposal must be numbered and initialled by the person or persons signing the Proposal.

2.16.5 The completed Proposal must be delivered on or before the specified time on Proposal Due Date. Proposals submitted by fax, telex, telegram or e-mail shall not be

entertained.

- 2.16.6 The Proposal shall be made in the Forms specified in this RFP. Any attachment to such Forms must be provided on separate sheets of paper and only information that is directly relevant should be provided. This may include photocopies of the relevant pages of printed documents. No separate documents like printed annual statements, company brochures, copy of contracts etc. will be entertained.
- 2.16.7 The rates quoted shall be firm throughout the period of performance of the assignment up to and including acceptance of the reports submitted by the Safety Consultant to the Authority and discharge of all obligations of the Safety Consultant under the Agreement.

## **2.17 Proposal Due Date**

- 2.17.1 Proposal should be submitted at or before 1500 hrs on the Proposal Due Date specified in Clause 1.8 at the address provided in Clause 1.11.1 in the manner and form as detailed in this RFP. A receipt thereof should be obtained from the person specified therein.
- 2.17.2 The Authority may, in its sole discretion, extend the Proposal Due Date by issuing an addendum in accordance with Clause 2.11 uniformly for all Applicants.

## **2.18 Late Proposals**

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

## **2.19 Modification/ substitution/ withdrawal of Proposals**

- 2.19.1 The Applicant may modify, substitute, or withdraw its Proposal after submission, provided that written notice of the modification, substitution, or withdrawal is received by the Authority prior to Proposal Due Date. No Proposal shall be modified, substituted, or withdrawn by the Applicant on or after the Proposal Due Date.
- 2.19.2 The modification, substitution, or withdrawal notice shall be prepared, sealed, marked, and delivered in accordance with Clause 2.16, with the envelopes being additionally marked "MODIFICATION", "SUBSTITUTION" or "WITHDRAWAL", as appropriate.
- 2.19.3 Any alteration / modification in the Proposal or additional information or material supplied subsequent to the Proposal Due Date, unless the same has been expressly sought for by the Authority, shall be disregarded.

## **2.20 Bid Security**

- 2.20.1 The Applicant shall furnish as part of its Proposal, a bid security of Rs. 20,000 (twenty thousand) in the form of a demand draft issued by one of the nationalised / scheduled banks in India in favour of the Vizhinjam International Seaport Limited

payable at State Bank of India, Althara Junction Branch, Thiruvananthapuram (the “**Bid Security**”), returnable not later than 30 (thirty) days from PDD except in case of the two highest ranked Applicants as required in Clause 2.25.1. In the event that the first ranked Applicant commences the assignment as required in Clause 2.30, the second ranked Applicant, who has been kept in reserve, shall be returned its Bid Security forthwith, but in no case not later than 120 (one hundred and twenty) days from PDD. The Selected Applicant’s Bid Security shall be returned, upon the Applicant signing the Agreement and completing the Deliverables assigned to it for the first 2 (two) months of the Consultancy in accordance with the provisions thereof.

- 2.20.2 Bid not accompanied by the Bid Security shall be rejected by the Authority as non-responsive.
- 2.20.3 The Authority shall not be liable to pay any interest on the Bid Security and the same shall be interest free.
- 2.20.4 The Applicant, by submitting its application pursuant to this RFP, shall be deemed to have acknowledged that without prejudice to the Authority’s any other right or remedy hereunder or in law or otherwise, the Bid Security shall be forfeited and appropriated by the Authority as the mutually agreed pre-estimated compensation and damage payable to the Authority for, *inter alia*, the time, cost and effort of the Authority in regard to the RFP including the consideration and evaluation of the Proposal under the following conditions:
- (a) If an Applicant submits a non-responsive Proposal;
  - (b) If an Applicant engages in any of the Prohibited Practices specified in Section 4 of this RFP;
  - (c) If an 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;
  - (d) In the case of the Selected Applicant, if the Applicant fails to reconfirm its commitments during negotiations as required vide Clause 2.25.1;
  - (e) In the case of a Selected Applicant, if the Applicant fails to sign the Agreement or commence the assignment as specified in Clauses 2.29 and 2.30 respectively; or
  - (f) If the Applicant is found to have a Conflict of Interest as specified in Clause 2.3.

## **2.21 Performance Security**

- 2.21.1 The Applicant, by submitting its application pursuant to this RFP, shall be deemed to have acknowledged that without prejudice to the Authority’s any other right or remedy hereunder or in law or otherwise, its Performance Security shall be forfeited and appropriated by the Authority as the mutually agreed pre-estimated compensation and damages payable to the Authority for, *inter alia*, the time, cost and effort of the

Authority in regard to the RFP, including the consideration and evaluation of the Proposal, under the following conditions:

- (a) If an Applicant engages in any of the Prohibited Practices specified in Clause 4.1 of this RFP;
- (b) if the Applicant is found to have a Conflict of Interest as specified in Clause 2.3; and
- (c) if the Selected Applicant commits a breach of the Agreement.

2.21.2 An amount equal to 5% (five percent) of the Agreement Value shall be deemed to be the Performance Security for the purposes of this Clause 2.21, which may be forfeited and appropriated in accordance with the provisions hereof.

## **D. EVALUATION PROCESS**

### **2.22 Evaluation of Proposals**

2.22.1 The Authority shall open the Proposals at 15:30 hours on the Proposal Due Date, at the place specified in Clause 1.11.1 and in the presence of the Applicants who choose to attend. The envelopes marked “Technical Proposal” shall be opened first. The envelopes marked “Financial Proposal” shall be kept sealed for opening at a later date.

2.22.2 Proposals for which a notice of withdrawal has been submitted in accordance with Clause 2.19 shall not be opened.

2.22.3 Prior to evaluation of Proposals, the Authority will determine whether each Proposal is responsive to the requirements of the RFP. The Authority may, in its sole discretion, reject any Proposal that is not responsive hereunder. A Proposal shall be considered responsive only if:

- (a) the Technical Proposal is received in the form specified at Appendix-I;
- (b) it is received by the Proposal Due Date including any extension thereof pursuant to Clause 2.17;
- (c) it is accompanied by the Bid Security as specified in Clause 2.20.1.
- (d) it is signed, sealed, bound together in hard cover and marked as stipulated in Clauses 2.13 and 2.16;
- (e) it is accompanied by the Power of Attorney as specified in Clause 2.2.4;
- (f) it contains all the information (complete in all respects) as requested in the RFP;
- (g) it does not contain any condition or qualification; and

(h) it is not non-responsive in terms hereof.

2.22.4 The Authority reserves the right to reject any Proposal which is non-responsive and no request for alteration, modification, substitution or withdrawal shall be entertained by the Authority in respect of such Proposals.

2.22.5 The Authority shall subsequently examine and evaluate Proposals in accordance with the Selection Process specified at Clause 1.6 and the criteria set out in Section 3 of this RFP.

2.22.6 After the technical evaluation, the Authority shall prepare a list of pre-qualified and shortlisted Applicants in terms of Clause 3.2 for opening of their Financial Proposals. A date, time and venue will be notified to all Applicants for announcing the result of evaluation and opening of Financial Proposals. Before opening of the Financial Proposals, the list of pre-qualified and shortlisted Applicants along with their technical score will be read out. The opening of Financial Proposals shall be done in presence of respective representatives of Applicants who choose to be present. The Authority will not entertain any query or clarification from Applicants who fail to qualify at any stage of the Selection Process. The financial evaluation and final ranking of the Proposals shall be carried out in terms of Clauses 3.3 and 3.4.

2.22.7 Applicants are advised that Selection shall be entirely at the discretion of the Authority. Applicants shall be deemed to have understood and agreed that the Authority shall not be required to provide any explanation or justification in respect of any aspect of the Selection Process or selection.

2.22.8 Any information contained in the Proposal shall not in any way be construed as binding on the Authority, its agents, successors or assigns, but shall be binding against the Applicant if the Consultancy is subsequently awarded to it.

## **2.23 Confidentiality**

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

## **2.24 Clarifications**

2.24.1 To facilitate evaluation of Proposals, the Authority may, at its sole discretion, seek clarifications from any Applicant regarding its Proposal. Such clarification(s) shall be

provided within the time specified by the Authority for this purpose. Any request for clarification(s) and all clarification(s) in response thereto shall be in writing.

- 2.24.2 If an Applicant does not provide clarifications sought under Clause 2.24.1 above within the specified time, its Proposal shall be liable to be rejected. In case the Proposal is not rejected, the Authority 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 of the Authority.

## **E. APPOINTMENT OF SAFETY CONSULTANT**

### **2.25 Negotiations**

- 2.25.1 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 Safety Consultant under this RFP. Issues such as deployment of Key Personnel, understanding of the RFP, methodology and quality of the work plan shall be discussed during negotiations. A Key Personnel who did not score 50% (fifty percent) marks as required under Clause 3.1.2 shall be replaced by the Applicant with a better candidate to the satisfaction of the Authority. In case the Selected Applicant fails to reconfirm its commitment, the Authority reserves the right to designate the next ranked Applicant as the Selected Applicant and invite it for negotiations.

- 2.25.2 The Authority will examine the CVs of all other Professional Personnel and those not found suitable shall be replaced by the Applicant to the satisfaction of the Authority.

- 2.25.3 The Authority will examine the credentials of all Sub-Consultants proposed for this Consultancy and those not found suitable shall be replaced by the Applicant to the satisfaction of the Authority.

### **2.26 Substitution of Key Personnel**

- 2.26.1 The Authority will not normally consider any request of the Selected Applicant for substitution of Key Personnel as the ranking of the Applicant is based on the evaluation of Key Personnel and any change therein may upset the ranking. Substitution will, however, be permitted if the Key Personnel is not available for reasons of any incapacity or due to health, subject to equally or better qualified and experienced personnel being provided to the satisfaction of the Authority.

- 2.26.2 The Authority expects all the Key Personnel to be available during implementation of the Agreement. The Authority will not consider substitution of Key Personnel except for reasons of any incapacity or due to health. Such substitution shall ordinarily be limited to one Key Personnel subject to equally or better qualified and experienced personnel being provided to the satisfaction of the Authority. As a condition to such substitution, a sum equal to 5% (five percent) of the Agreement Value shall be deducted from the payments due to the Safety Consultant. In the case of a second substitution hereunder, such deduction shall be a further 7.5% (seven point five

percent) of the Agreement Value. Any further substitution may lead to disqualification of the Applicant or termination of the Agreement. Provided, however, that (i) in case such substitution(s) is undertaken after the submission of Safety Report for Development Period, a rebate of 40% (forty percent) shall be allowed on the deduction applicable and (ii) in case such substitution(s) is undertaken after the submission of Safety Report on completion of safety audit of the completed Construction Works, a rebate of 60% (sixty percent) shall be allowed on the deduction applicable.

2.26.3 Substitution of the Team Leader will not normally be considered and may lead to disqualification of the Applicant or termination of the Agreement.

## **2.27 Indemnity**

The Safety Consultant shall, subject to the provisions of the Agreement, indemnify the Authority for an amount not exceeding 3 (three) times the Agreement Value for any direct loss or damage that is caused due to any deficiency in services.

## **2.28 Award of Consultancy**

After selection, a Letter of Award (the “**LOA**”) shall be issued, in duplicate, by the Authority to the Selected Applicant and the Selected 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 Selected Applicant is not received by the stipulated date, the Authority may, unless it consents to extension of time for submission thereof, appropriate the Bid Security of such Applicant as mutually agreed genuine pre-estimated loss and damage suffered by the Authority on account of failure of the Selected Applicant to acknowledge the LOA, and the next highest ranking Applicant may be considered.

## **2.29 Execution of Agreement**

After acknowledgement of the LOA as aforesaid by the Selected Applicant, it shall execute the Agreement within the period prescribed in Clause 1.8. The Selected Applicant shall not be entitled to seek any deviation in the Agreement.

## **2.30 Commencement of assignment**

The Safety Consultant shall commence the Services within 7 (seven) days of the date of the Agreement, or such other date as may be mutually agreed. If the Safety Consultant fails to either sign the Agreement as specified in Clause 2.29 or commence the assignment as specified herein, the Authority may invite the second ranked Applicant for negotiations. In such an event, the Bid Security of the first ranked Applicant shall be forfeited and appropriated in accordance with the provisions of Clause 2.20.4.

## **2.31 Proprietary data**

Subject to the provisions of Clause 2.23, all documents and other information



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

### 3. CRITERIA FOR EVALUATION

#### 3.1 Evaluation of Technical Proposals

- 3.1.1 In the first stage, the Technical Proposal will be evaluated on the basis of Applicant's experience, its understanding of TOR, proposed methodology and work plan, and the experience of Key Personnel. Only those Applicants whose Technical Proposals get a score of 50 (fifty) marks or more out of 100 (one hundred) shall qualify for further consideration, and shall be ranked from highest to the lowest on the basis of their technical score ( $S_T$ ).
- 3.1.2 Each Key Personnel must score a minimum of 50% (fifty percent) marks except as provided herein. A Proposal shall be rejected if the Team Leader scores less than 50% (fifty percent) marks. In case the Selected Applicant has one Key Personnel, other than the Team Leader, who scores less than 50% (fifty percent) marks, he would have to be replaced during negotiations, with a better candidate who, in the opinion of the Authority, would score 50% (fifty percent) or above.
- 3.1.3 The scoring criteria to be used for evaluation shall be as follows:

Item Code	Parameter	Maximum Marks	Criteria
1.	<b>Relevant Experience of the Applicant</b>	<b>25</b>	(i) 80% of the maximum marks shall be awarded for the number of Eligible Assignments undertaken by the Applicant firm (ii) 20% of maximum marks shall be awarded for experience based on the revenue from professional fees received in last 3 (three) years.
2.	<b>Proposed Methodology and Work Plan</b>	<b>5</b>	Evaluation will be based on the quality of submissions.
3.	<b>Relevant Experience of the Key Personnel</b>	<b>70</b>	Marks for each Key Personnel shall be awarded for the number of Eligible Assignments the respective Key Personnel has worked on.
3(a)	<b>Team Leader</b>	30	
3(b)	<b>Navigational Expert</b>	20	
3(c)	<b>Port Operations Safety Expert</b>	20	
<b>Grand Total</b>		<b>100</b>	

While awarding marks for the number of Eligible Assignments, the Applicant or Key Personnel, as the case may be, that has undertaken the highest number of Eligible Assignments shall be entitled to the maximum score for the respective category and all other competing Applicants or respective Key Personnel, as the case may be, shall be entitled to a proportionate score.

#### 3.1.4 Eligible Assignments

For the purposes of determining Conditions of Eligibility and for evaluating the Proposals under this RFP, advisory/consultancy assignments in respect of the following projects shall be deemed as eligible assignments (the “**Eligible Assignments**”):

- (i) review of Safety Drawings containing the design details that have a bearing on safety aspects of Users including navigational aspects, ‘during final detailed design used for construction’ or ‘during construction’ of ‘container seaport’ or ‘seaport container terminal’ having an estimated capital cost (excluding land) of at least Rs. 200 (two hundred) crore in case of a project in India, and US \$ 40 (forty) million for projects elsewhere; or
- (ii) review of Safety Drawings containing the design details that have a bearing on safety aspects of Users including navigational aspects, ‘during final detailed design used for construction’ or ‘during construction’ of ‘seaport’ or ‘seaport terminal’ having an estimated capital cost (excluding land) of at least Rs. 400 (four hundred) crore in case of a project in India, and US \$ 80 (eighty) million for projects elsewhere; or
- (iii) design of ‘container seaport’ or ‘seaport container terminal’ including safety and navigation of port ‘during final detailed design used for construction’ or ‘during construction’ having an estimated capital cost (excluding land) of at least Rs. 300 (three hundred) crore in case of a project in India, and US \$ 60 (sixty) million for projects elsewhere; or
- (iv) design of ‘seaport’ or ‘seaport terminal’ including safety and navigation of port ‘during final detailed design used for construction’ or ‘during construction’ having an estimated capital cost (excluding land) of at least Rs. 600 (six hundred) crore in case of a project in India, and US \$ 120 (one hundred and twenty) million for projects elsewhere ; or
- (v) design of (a) ‘seaport terminal’ including Port Operations Safety ‘during final detailed design used for construction’ or ‘during construction’ having an estimated capital cost (excluding land) of at least Rs. 400 (Four hundred) crore in case of a project in India, and US \$ 80 (Eighty) million for projects elsewhere and (b) ‘design of navigational channels and Capital dredging works’ including Marine Safety ‘during final detailed design used for construction’ or ‘during construction’ having an estimated capital cost of at least Rs. 300 (Three hundred) crore in case of a project in India, and US \$ 60 (Sixty) million for projects elsewhere

- 3.1.5 The applicant firm claiming credit for an Eligible Assignment under item (i) and (ii) shall have, prior to PDD, received professional fees of at least Rs. 10 (ten) lakh for such assignments, and where credit is being claimed by a Key Personnel, she/he should have completed the relevant assignment prior to PDD.

Provided that the Applicant firm claiming credit for an Eligible Assignment under items (iii), (iv), and (v) total professional fee for such assignment shall not be less than Rs. 1 (one) crore and shall have, prior to PDD, received at least 50% (fifty percent) of that professional fees for such assignment, and where credit is being claimed by a Key Personnel, she/he should have completed the relevant assignment prior to PDD.

- 3.1.6 Assignments commenced by the Applicant/Key Personnel in the last 10 (ten) years, preceding the Proposal Due Date shall only be considered for evaluation. Advisory or consultancy assignments for preparation of feasibility studies, detailed project report, pre-feasibility studies, techno-economic studies, tender's engineering service, tender documents, basic engineering report, specifications, environmental impact assessment, cost estimate, PMC, surveys, site supervision etc., shall not be deemed as Eligible Assignments.
- 3.1.7 Applicant / Key Personnel shall not submit more than 4 (four) Eligible Assignments for evaluation. If more than 4 (four) assignments are submitted, only first four in the order of submission will be considered for evaluation.
- 3.1.8 Applicant who has received Rs. 30 (thirty) crores as revenue from professional fees received in last 3 (three) years will be awarded maximum marks in the category (3.1.3(1) (ii)) of experience based on the revenue.
- 3.1.9 In the case of Navigation Expert, the experience as a Harbour Master / Deputy Conservator or equivalent position in a Port of capacity not less than 5,00,000 (five lakh) TEU in India with not less than 5 (five) years' service in the cadre of Harbour Master or above would be reckoned as equivalent to one Eligible Assignment.
- 3.1.10 In the case of Port Operations Safety Expert, the experience as a Safety Officer in a Port of capacity not less than 5,00,000 (five lakh) TEU in India with not less than 5 (five) years service in the cadre Or Safety Officer in a Container Terminal (Annual throughput not less than 3,00,000 (three lakhs) TEU), with not less than 5 years service in the Cadre would be reckoned as equivalent to one Eligible Assignment.
- 3.1.11 For the purpose of evaluation, only those Eligible Assignments undertaken by the Applicant under its own name will be considered.

### **3.2 Short-listing of Applicants**

Of the Applicants ranked as aforesaid, not more than 5 (five) shall be pre-qualified and short-listed for financial evaluation in the second stage. However, if the number of such pre-qualified Applicants is less than two, the Authority may, in its sole discretion, pre-qualify the Applicant(s) whose technical score is less than 50 (fifty)

points even if such Applicant(s) do(es) not qualify in terms of Clause 3.1.2; provided that in such an event, the total number of pre-qualified and short-listed Applicants shall not exceed two.

### **3.3 Evaluation of Financial Proposal**

- 3.3.1 In the second stage, the financial evaluation will be carried out as per this Clause 3.3. Each Financial Proposal will be assigned a financial score ( $S_F$ ).
- 3.3.2 For financial evaluation, the total cost indicated in the Financial Proposal will be considered.
- 3.3.3 The Authority will determine whether the Financial Proposals are complete, unqualified and unconditional. The cost indicated in the Financial Proposal shall be deemed as final and reflecting the total cost of services. Omissions, if any, in costing any item shall not entitle the firm to be compensated and the liability to fulfil its obligations as per the TOR within the total quoted price shall be that of the Safety Consultant. The lowest Financial Proposal ( $F_M$ ) will be given a financial score ( $S_F$ ) of 100 points. The financial scores of other Proposals will be computed as follows:

$$S_F = 100 \times F_M/F$$

(F = amount of Financial Proposal)

### **3.4 Combined and final evaluation**

- 3.3.4 Proposals will finally be ranked according to their combined technical ( $S_T$ ) and financial ( $S_F$ ) scores as follows:

$$S = S_T \times T_w + S_F \times F_w$$

Where S is the combined score, and  $T_w$  and  $F_w$  are weights assigned to Technical Proposal and Financial Proposal, which shall be 0.80 and 0.20 respectively.

- 3.3.5 The Selected Applicant shall be the first ranked Applicant (having the highest combined score). The second ranked Applicant shall be kept in reserve and may be invited for negotiations in case the first ranked Applicant withdraws, or fails to comply with the requirements specified in Clauses 2.25, 2.29 and 2.30, as the case may be.

#### 4. FRAUD AND CORRUPT PRACTICES

- 4.1 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 Authority shall reject a Proposal without being liable in any manner whatsoever to the Applicant, if it determines that the Applicant has, directly or indirectly or through an agent, engaged in corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice (collectively the “**Prohibited Practices**”) in the Selection Process. In such an event, the Authority shall, without prejudice to its any other rights or remedies, forfeit and appropriate the Bid Security or Performance Security, as the case may be, as mutually agreed genuine pre-estimated compensation and damages payable to the Authority for, *inter alia*, time, cost and effort of the Authority, in regard to the RFP, including consideration and evaluation of such Applicant’s Proposal.
- 4.2 Without prejudice to the rights of the Authority under Clause 4.1 hereinabove and the rights and remedies which the Authority may have under the LOA or the Agreement, if an Applicant or Safety Consultant, as the case may be, is found by the Authority 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 Consultancy Agreement, such Applicant or Safety Consultant shall not be eligible to participate in any tender or RFP issued by the Authority during a period of 2 (two) years from the date such Applicant or Safety Consultant, as the case may be, is found by the Authority 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.
- 4.3 For the purposes of this Section, the following terms shall have the meaning hereinafter respectively assigned to them:
- (a) “**corrupt practice**” means (i) the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence the action of any person connected with the Selection Process (for avoidance of doubt, offering of employment to or employing or engaging in any manner whatsoever, directly or indirectly, any official of the Authority who is or has been associated in any manner, directly or indirectly with the Selection Process or the LOA or has dealt with matters concerning the Agreement or arising therefrom, before or after the execution thereof, at any time prior to the expiry of one year from the date such official resigns or retires from or otherwise ceases to be in the service of the Authority, 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 or Safety Consultant of the Authority in relation to any matter concerning the Project;

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

## **5. PRE-PROPOSAL CONFERENCE**

- 5.1 Pre-Proposal Conference of the Applicants shall be convened at the designated date, time and place. Only those Applicants, who have purchased the RFP document or downloaded the same from the Official Website of the Authority, shall be allowed to participate in the Pre-Proposal Conference. A maximum of two representatives of each Applicant shall be allowed to participate on production of an authority letter from the Applicant.
- 5.2 During the course of Pre-Proposal Conference, the Applicants will be free to seek clarifications and make suggestions for consideration of the Authority. The Authority shall 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.



## 6. MISCELLANEOUS

- 6.1 The Selection Process shall be governed by, and construed in accordance with, the laws of India and the courts in the State in which the Authority has its headquarters shall have exclusive jurisdiction over all disputes arising under, pursuant to and/or in connection with the Selection Process.
- 6.2 The Authority, in its sole discretion and without incurring any obligation or liability, reserves the right, at any time, to:
- (a) suspend and/or cancel the Selection Process and/or amend and/or supplement the Selection Process or modify the dates or other terms and conditions relating thereto;
  - (b) consult with any Applicant in order to receive clarification or further information;
  - (c) retain any information and/or evidence submitted to the Authority by, on behalf of and/or in relation to any Applicant; and/or
  - (d) independently verify, disqualify, reject and/or accept any and all submissions or other information and/or evidence submitted by or on behalf of any Applicant.
- 6.3 It shall be deemed that by submitting the Proposal, the Applicant agrees and releases the Authority, 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.
- 6.4 All documents and other information supplied by the Authority or submitted by an Applicant shall remain or become, as the case may be, the property of the Authority. The Authority will not return any submissions made hereunder. Applicants are required to treat all such documents and information as strictly confidential.
- 6.5 The Authority reserves the right to make inquiries with any of the clients listed by the Applicants in their previous experience record.

## **SCHEDULES**

SCHEDULE-1  
(See Clause 1.1.5)

Consultancy Services for the Vizhinjam Port Project

Terms of Reference (TOR)

for

Safety Consultant

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## **Terms of Reference (TOR)**

### **1. GENERAL**

- 1.1 The Authority seeks the services of qualified firms for providing consultancy services as Safety Consultant for the Vizhinjam International Deepwater Multipurpose Seaport Project to be developed on DBFOT basis. The Project is located approximately 15 kms from Thiruvananthapuram. The Terms of Reference (the “**TOR**”) for this assignment are specified below.
- 1.2 The Safety Consultant shall be guided in its assignment by the Concession Agreement executed between the Concessionaire and Authority and the Manual published by Government of Kerala.

### **2. OBJECTIVE**

The Safety Consultant is expected to play an independent role in discharging its functions. The role and functions of the Safety Consultant shall include the following:

- (i) The Safety Consultant shall discharge its duties and functions substantially in accordance with the provisions set forth in the Concession Agreement and the Manual. The functions of the Safety Consultant do not include Port Estate Development.
- (ii) The Safety Consultant shall review the Safety Drawings and other technical information submitted by the Concessionaire, which has a bearing on safety of Users to ensure its compliance with the Concession Agreement, the Manual and other relevant safety standard practises.
- (iii) The Safety Consultant shall submit regular periodic reports (at least once every month) to the Authority in respect of its duties and functions set forth in the Concession Agreement and this TOR.
- (iv) A true copy of all communications other than Safety Drawings and Safety Report sent by the Authority to the Safety Consultant and by the Safety Consultant to the Authority shall be sent forthwith by the Safety Consultant to the Concessionaire and Independent Engineer;
- (v) A true copy of all communications other than Safety Drawings and Safety Report sent by the Safety Consultant to the Concessionaire and by the Concessionaire to the Safety Consultant shall be sent forthwith by the Safety Consultant to the Authority and Independent Engineer; and
- (vi) A true copy of all communications other than Safety Drawings and Safety Report sent by the Safety Consultant to the Independent Engineer and by the Independent Engineer to the Safety Consultants shall be sent forthwith by the Safety Consultant to the Authority and Concessionaire.

### **3. SCOPE OF SERVICES**

#### **3.1 Scope**

- 3.1.1 These Terms of Reference for the Safety Consultant (the “**TOR**”) are being specified pursuant to the Concession Agreement dated 17<sup>th</sup> August 2015 (the “**Concession Agreement**”), which has been entered into between the Authority and M/s Adani Vizhinjam Port Private Limited (the “**Concessionaire**”) for undertaking the development and operation of the Vizhinjam International Deepwater Multipurpose Seaport on design, build, finance, operate and transfer (the “**DBFOT**”) basis, and a copy of which is annexed hereto and marked as Annex-A to form part of this TOR.
- 3.1.2 This TOR shall apply to carrying out safety audit of the Port in accordance with the Safety Requirements, till the completion of safety audit for the first Accounting Year after COD. Provided however, if the first Accounting Year after COD has less than 100 (hundred) days, the Safety Consultant shall provide the specified services till the completion of safety audit the second Accounting Year after COD, being one consolidated safety audit for the first and second Accounting Year after COD. For avoidance of doubt, the scope envisages carrying out safety audit (a) at the design stage of the Project, (b) of the completed Construction Works and (c) for the first Accounting Year after COD, or if the first Accounting Year after COD has less than 100 (hundred) days, a consolidated safety audit for the first and second Accounting Year after COD.

### **3.2 Definitions and interpretation**

- 3.2.1 The words and expressions beginning with or in capital letters used in this TOR and not defined herein but defined in the Concession Agreement shall have, unless repugnant to the context, the meaning respectively assigned to them in the Concession Agreement.
- 3.2.2 References to Articles, Clauses and Schedules in this TOR shall, except where the context otherwise requires, be deemed to be references to the Articles, Clauses and Schedules of the Concession Agreement, and references to Paragraphs shall be deemed to be references to Paragraphs of this TOR.
- 3.2.3 The rules of interpretation stated in Clauses 1.2, 1.3 and 1.4 of the Concession Agreement shall apply, *mutatis mutandis*, to this TOR.

### **3.3 Role and functions of the Safety Consultant**

- 3.3.1 The role and functions of the Safety Consultant shall include the following:
- (i) safety audit at the design stage of the Project, collection and analysis of accident data, review of the Safety Drawings and preparation and submission of Safety Report for the Development Period. Safety Report for Development Period shall be prepared from the data collected from similar operational port, preferably from International Container Transshipment Terminal at Cochin Port. Data officially collected shall be for a minimum duration of 1 (one) year and shall not be older than 2 (two) years from Appointed Date;
  - (ii) safety audit of completed Construction Works, collection and analysis of accident data, study of Safety Report for the Development Period, inspection of the Port to assess the adequacy of safety measures and submission of a Safety Report recommending a package of additional safety measures, if any, that are

considered essential for reducing accident hazards in the Port;

- (iii) safety audit of the first Accounting Year after COD, review and analysis of annual report and accident data, inspection of the Port and submission of a Safety Report recommending specific improvements, if any, required to be made to the Port. Provided however, if the first Accounting Year after COD has less than 100 (hundred) days, the Safety Consultant shall provide the specified services till the completion of safety audit the second Accounting Year after COD, being one consolidated safety audit for the first and second Accounting Year after COD; and
- (iv) undertaking all other duties and functions in accordance with the Concession Agreement.

3.3.2 The role and functions of the Safety Consultant shall not include construction works comprising Port Estate Development.

3.3.3 The Safety Consultant shall discharge its duties in a fair, impartial and efficient manner, consistent with the highest standards of professional integrity and Good Industry Practice.

### **3.4 Guiding principles**

3.4.1 Safety Requirements aim at reduction in injuries, loss of life and damage to property resulting from accidents on or about the Port, irrespective of the person(s) at fault.

3.4.2 Users of the Port include motorised and non-motorised vessels and vehicles as well as pedestrians involved in, or associated with accidents.

3.4.3 Safety Requirements apply to all phases of construction, operation and maintenance with emphasis on identification of factors associated with accidents, consideration of the same, and implementation of appropriate remedial measures.

3.4.4 Safety Requirements include measures associated with traffic management and regulation such as signs, pavement marking, traffic control devices, Port furniture, design elements, enforcement and emergency response.

3.4.5 The Concessionaire shall, in accordance with Good Industry Practice, make adequate arrangements for safety during construction and operation of roads forming part of the Project. For the avoidance of doubt, Good Industry Practice shall, for safety during construction and operation of roads mean the safety requirements applicable to National Highway projects undertaken through PPP.

### **3.5 Other duties and functions**

3.5.1 The Safety Consultant shall perform all other duties and functions specified in the Concession Agreement and the Manual.

3.5.2 Wherever no period has been specified for delivery of services by the Safety Consultant, the Safety Consultant shall act with the efficiency and urgency necessary

for discharging its functions in accordance with Good Industry Practice.

### **3.6 Miscellaneous**

- 3.6.1 The Safety Consultant shall notify its programme of Port inspection to the Independent Engineer, Authority and to the Concessionaire, who may, in their discretion, depute their respective representatives to be present during the inspection.
- 3.6.2 The Safety Consultant shall retain at least one copy each of all Drawings and Documents received by it from the Independent Engineer/Authority/Concessionaire and keep them in its safe custody.
- 3.6.3 Upon completion of each safety audit, the Safety Consultant shall furnish five hard copies of the Safety Report to the Authority or such other person as the Authority may specify, and obtain written receipt thereof. Two copies of the said documents shall also be furnished in their editable digital format or in such other medium or manner as may be acceptable to the Authority.
- 3.6.4 Wherever no period has been specified for delivery of services by the Safety Consultant either in this TOR or Concession Agreement, the Safety Consultant shall act with the efficiency and urgency necessary for discharging its functions in accordance with Good Industry Practice.

## **4. DELIVERABLES**

The Safety Consultant shall deliver the following deliverables (the “**Deliverables**”) during the course of this Consultancy. 5 (five) hard copies and 2 (two) soft copies in CDs of all the final reports, drawings, etc. shall be submitted to the Authority. For draft reports, only 3 (three) hard copies and 1 (one) soft copy in CD shall be submitted to the Authority. The size of drawings shall be A-3 (maximum). Final Safety Drawings shall be submitted in pdf to Authority and Independent Engineer.

### **A. Inception Report**

Within 10 (ten) days of commencement of the Consultancy, the Safety Consultant shall submit an Inception Report. The Inception Report shall include the Safety Consultant’s submissions towards understanding of the RFP, the methodology to be followed and the work plan.

### **B. Monthly Report**

A Monthly Report shall be submitted by the Safety Consultant to the Authority in compliance with all its obligations under the Concession Agreement and this TOR. The monthly report for a month shall be furnished before the expiry of 5 (five) working days of succeeding month. Monthly report is only required till the completion of safety audit at the design stage and Construction Works of the Project.

### **C. Review of Safety Drawings**

The Concessionaire will provide Safety Drawings in 4 (four) copies to the Safety



Consultant. The Safety Consultant shall review the design details and forward 3 (three) copies of the Safety Drawings with its recommendations, if any, to the Independent Engineer who shall record its comments, if any, and forward one copy each to the Authority and the Concessionaire. The review and forwarding of Safety Drawing shall be completed within 7 (seven) days of its receipt from the Concessionaire along with all the relevant details.

#### **D. Safety Reports**

Following Safety Reports shall be submitted by the Safety Consultant to the Authority in compliance with all its obligations under the Concession Agreement and this TOR:

- (i) Safety Report on completion of safety audit at the design stage of the Project (Safety Report for the Development Period);
- (ii) Safety Report on completion of safety audit of the completed Construction Works; and
- (iii) Safety Report on completion of safety audit for the first Accounting Year after COD. Provided however, if the first Accounting Year after COD has less than 100 (hundred) days, the Safety Consultant shall provide the specified services till the completion of safety audit the second Accounting Year after COD, being one consolidated safety audit for the first and second Accounting Year after COD.

The Safety Report shall be submitted to the Authority, in 5 (five) copies and soft copies in CDs. One copy each of the Safety Report shall be forwarded by the Authority to the Concessionaire and the Independent Engineer forthwith.

#### **5. TIME AND PAYMENT SCHEDULE**

- 5.1 The contract for the Consultancy Services shall be valid till the completion of safety audit for the first Accounting Year after COD. Provided however, if the first Accounting Year after COD has less than 100 (hundred) days, the Safety Consultant shall provide the specified services till the completion of safety audit the second Accounting Year after COD, being one consolidated safety audit for the first and second Accounting Year after COD.
- 5.2 Time schedule for important Deliverables (the “**Key Dates**”) of the Consultancy are as provided in the Concession Agreement. The payment schedule linked to the specified Deliverables is given below:

<b>Key Date No.</b>	<b>Description of Services</b>	<b>Payment in % of quoted amount</b>
KD1	Payment on submission of Safety Report on completion of safety audit at the design stage (Safety Report for the Development Period) of the Project.	40

KD2	Payment on submission of Safety Report on completion of safety audit of the completed Construction Works	40
KD3	Payment on submission of Safety Report on completion of safety audit for the first Accounting Year after COD. Provided however, if the first Accounting Year after COD has less than 100 (hundred) days, the Safety Consultant shall provide the specified services till the completion of safety audit the second Accounting Year after COD, being one consolidated safety audit for the first and second Accounting Year after COD.	20
	Total	100

**Note:**

- (i) *All the payment under this contract will be made only in Indian Rupees. The fees/price may be quoted in Indian Rupees only. The Safety Consultant shall be paid for the services rendered as per the TOR as per payment schedule given above.*
- (ii) *The Service tax prevalent will be paid separately to Safety Consultant by the Concessionaire.*
- (iii) *In case of extension, that is if COD is not achieved by 4<sup>th</sup> Dec 2019 and the completion of the safety auditing has been delayed, for reasons not attributable to the Safety Consultant, 1% of balance amount of Agreement Value to be paid after the last payment, shall be paid to Safety Consultant by the Concessionaire for every month of delay.*
- (iv) *No other additional payment is considered in the event that the Construction Works are proceeding slower than expected.*
- (v) *In case of foreclosure, for the reasons not attributable to the Safety Consultant, payment shall be made for the items of work completed on prorated basis. The decision on this by the Authority will be final and binding on the Safety Consultant and Concessionaire.*

**6. MEETINGS**

The Authority may review with the Safety Consultant, any or all of the documents and advice forming part of the Consultancy, in meetings and conferences which will be held at the Authority's office. The expenses towards attending two such one day meetings with all Key Personnel during the period of Consultancy, including travel costs and *per diem*, shall be included in the lump sum Agreement Value.

**7. CONSULTANCY TEAM**

7.1 The Safety Consultant shall form a multi-disciplinary team (the "**Consultancy Team**") for undertaking this assignment. The following Key Personnel whose experience and responsibilities are briefly described herein would be considered for evaluation of the Technical Proposal. Other expertise as required for the Project shall be included in the team through other Professional Personnel.

**(a) Team Leader**

Educational Qualifications	Graduate in Civil or Mechanical Engineering or Electrical Engineering or equivalent
Essential Experience	12(Twelve) years of total experience, of which 10 (ten) years of experience in similar projects.
Job responsibilities	He will lead, coordinate and supervise the multi-disciplinary team. It will be his responsibility to guide the team in arriving at solutions within the constraints specified in the TOR.

**(b) Navigation Expert**

Educational Qualifications	Masters of Foreign Going Ship issued by the Ministry of Shipping, Government of India or an equivalent qualification recognized by the Ministry of Shipping, Government of India. One-year post qualification experience as Master / Chief Officer of a foreign going ship.
Essential Experience	12(Twelve) years of total experience, of which 10 (ten) years of experience in similar projects.
Job responsibilities	He will be responsible for providing the specified services with regard to safety in respect of all marine and navigational aspects including safe navigation in the channel and harbour basin,berthing, mooring and securing of vessels related to the Port/Project.

**(c) Port Operations Safety Expert**

Educational Qualifications	Graduate in Mechanical/Electrical Engineering with diploma in Industrial Safety engineering (from DGFASLI (Director General Factory Advice service and Labour Institute) approved institutions) or graduate in Industrial safety engineering from DGFASLI approved institutions.
Essential Experience	10 years experience for graduate in Industrial safety engineering /15 years experience for others
Job responsibilities	He will be responsible for providing the specified services with regard to all Port Operations Safety aspects related to the Port/Project. 'Port Operation' means and includes all and any part of the work of loading and unloading of any ship as well as any work incidental thereto, including storage of cargo/containers, clerical, rail and road transport operators and others that are employed within the port confines.

**8. REPORTING**

8.1 The Safety Consultant will work closely with the Implementing Agency. The

Implementing Agency has established a Working Group (the “WG”) to enable conduct of this assignment. Managing Director of the Implementing Agency will be responsible for the overall coordination and project development. He will play a coordinating role in dissemination of the Safety Consultant’s outputs, facilitating discussions, and ensuring required reactions and responses to the Safety Consultant.

- 8.2 The Safety Consultant may prepare issue papers highlighting issues that could become critical for the timely completion of the relevant audit and that require attention from the Implementing Agency.
- 8.3 The Safety Consultant will make presentation at Authority’s office on the monthly report, if so required by the Authority, subject to a maximum of 6 (six) such one day presentations, during the term of the Agreement, on the monthly reports submitted till then, which shall be followed by a discussion with the Authority and its representatives and consultants. The Safety Consultant is required to prepare and submit a monthly report that includes and describes, *inter alia*, progress to date; data and reports obtained and reviewed, conclusions to date, if any; concerns about availability of, or access to, data, analyses, reports; questions regarding the TOR or any other matters regarding work scope and related issues; and so on. The Safety Consultants’ work on the TOR tasks should continue while the report is under consideration and is being discussed.
- 8.4 Regular communication with the WG and the Managing Director of the Implementing Agency is required in addition to all key communications. This may take the form of telephone/ teleconferencing, emails, faxes, and occasional meetings.
- 8.5 The Safety Reports shall be submitted as per schedule provided in the Concession Agreement.
- 8.6 A 2 (two) day workshop on each of the Safety Report shall be arranged at Authority’s office by the Safety Consultant including a detailed presentation of the Safety Report.

## **9. DATA AND SOFTWARE TO BE MADE AVAILABLE BY THE AUTHORITY**

The Authority shall provide to the Safety Consultant the following:

- (a) A copy of the Manual.
- (b) A copy of the Concession Agreement.

Available data as may be required by the Safety Consultant will be provided by the Implementing Agency on request. The CEO & Managing Director, Vizhinjam International Seaport Limited designated by the Authority as the Nodal Officer shall facilitate handing over of such information to the Safety Consultant.

## **10. COMPLETION OF SERVICES**

Final Safety Drawings shall be compiled, classified and submitted by the Safety Consultant to the Authority in soft and hard form and all three Safety Reports shall be submitted. Data submitted by the Concessionaire, Independent Engineer and Authority, and compiled by the Safety Consultant shall remain the property of the Authority and shall not be used for any purpose other than that intended under these

TOR without the permission of the Authority. The Consultancy shall stand completed on acceptance by the Authority of all the Deliverables of the Safety Consultant. The Authority shall issue a certificate to that effect. The Consultancy shall in any case be deemed to be completed on completion of safety audit for the first Accounting Year after COD unless extended by mutual consent of the Authority, Concessionaire and the Safety Consultant. Provided however, if the first Accounting Year after COD has less than 100 (hundred) days, the Safety Consultant shall provide the specified services till the completion of safety audit the second Accounting Year after COD, being one consolidated safety audit for the first and second Accounting Year after COD.

Annex – A to the TOR  
(Concession Agreement)  
[To be inserted]

**SCHEDULE-2**  
*(See Clause 2.1.3)*

**AGREEMENT**

**FOR**

**SERVICES OF SAFETY CONSULTANT**

**Government of Kerala**

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**AGREEMENT**  
**for providing services as Safety Consultant**

This AGREEMENT (hereinafter called the “**Agreement**”) is made on the ..... day of the month of ..... 20..., between, on the one hand, the Government of Kerala, represented by the Principal Secretary, Department of Ports (hereinafter called the “**Authority**” which expression shall include their respective successors and permitted assigns, unless the context otherwise requires) and, on the other hand, ..... (hereinafter called the “**Safety Consultant**” which expression shall include their respective successors and permitted assigns).

**WHEREAS**

- (A) The Authority vide its Request for Proposal for Safety Consultant (hereinafter called the “**Consultancy**”) for the ..... Project (hereinafter called the “**Project**”);
- (B) the Safety Consultant submitted its proposals for the aforesaid work, whereby the Safety Consultant represented to the Authority that it had the required professional skills, and in the said proposals the Safety Consultant also agreed to provide the Services to the Authority on the terms and conditions as set forth in the RFP and this Agreement; and
- (C) the Authority, on acceptance of the aforesaid proposals of the Safety Consultant, awarded the Consultancy to the Safety Consultant vide its Letter of Award dated ..... (the “**LOA**”); and
- (D) in pursuance of the LOA, the parties have agreed to enter into this Agreement.

NOW, THEREFORE, the parties hereto hereby agree as follows:

**1. GENERAL**

**1.1 Definitions and Interpretation**

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

- (a) “**Agreement**” means this Agreement, together with all the Annexes;
- (b) “**Agreement Value**” shall have the meaning set forth in Clause 6.1.1;
- (c) “**Applicable Laws**” means the laws and any other instruments having the force of law in India as they may be issued and in force from time to time;
- (d) “**Confidential Information**” shall have the meaning set forth in Clause 3.3.1;
- (e) “**Conflict of Interest**” shall have the meaning set forth in Clause 3.2 read with the provisions of RFP;

- (f) “**Consultancy Services or Services**” means the work to be performed by the Safety Consultant pursuant to this Agreement, as described in the Terms of Reference hereto;
- (g) “**Dispute**” shall have the meaning set forth in Clause 9.2.1;
- (h) “**Effective Date**” means the date on which this Agreement comes into force and effect pursuant to Clause 2.1;
- (i) “**Expatriate Personnel**” means such persons who at the time of being so hired had their domicile outside India;
- (j) “**Government**” means the Government of Kerala;
- (k) “**INR, Re. or Rs.**” means Indian Rupees;
- (m) “**Member**”, in case the Safety Consultant consists of a joint venture or consortium of more than one entity, means any of these entities, and “**Members**” means all of these entities;
- (n) “**Party**” means the Authority or the Safety Consultant, as the case may be, and Parties means both of them;
- (o) “**Personnel**” means persons hired by the Safety Consultant or by any Sub-Consultant as employees and assigned to the performance of the Services or any part thereof;
- (p) “**Resident Personnel**” means such persons who at the time of being so hired had their domicile inside India;
- (q) “**RFP**” means the Request for Proposal document in response to which the Safety Consultant’s proposal for providing Services was accepted;
- (r) “**Sub-Consultant**” means any entity to which the Safety Consultant subcontracts any part of the Services in accordance with the provisions of Clause 4.7; and
- (s) “**Third Party**” means any person or entity other than the Government, the Authority, the Safety Consultant or a Sub-Consultant.  
All terms and words not defined herein shall, unless the context otherwise requires, have the meaning assigned to them in the RFP.

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

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

(d) Letter of Award.

## **1.2 Relation between the Parties**

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

## **1.1 Rights and obligations**

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

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

## **1.2 Governing law and jurisdiction**

This Agreement shall be construed and interpreted in accordance with and governed by the laws of India, and the courts in the State in which the Authority has its headquarters shall have exclusive jurisdiction over matters arising out of or relating to this Agreement.

## **1.3 Language**

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

## **1.4 Table of contents and headings**

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

## **1.5 Notices**

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

- (a) in the case of the Safety Consultant, be given by e-mail and by letter delivered by hand to the address given and marked for attention of the Safety Consultant's Representative set out below in Clause 1.10 or to such other person as the Safety Consultant may from time to time designate by notice to the Authority; provided that notices or other communications to be given to an

address outside the city specified in sub-clause (b) below may, if they are subsequently confirmed by sending a copy thereof by registered acknowledgement due, air mail or by courier, be sent by e-mail to the number as the Safety Consultant may from time to time specify by notice to the Authority;

- (b) in the case of the Authority, be given by e-mail and by letter delivered by hand and be addressed to the Authority with a copy delivered to the Authority Representative set out below in Clause 1.10 or to such other person as the Authority may from time to time designate by notice to the Safety Consultant; provided that if the Safety Consultant does not have an office in the same city as the Authority's office, it may send such notice by e-mail and by registered acknowledgement due, air mail or by courier; and
- (c) any notice or communication by a Party to the other Party, given in accordance herewith, shall be deemed to have been delivered when in the normal course of post it ought to have been delivered and in all other cases, it shall be deemed to have been delivered on the actual date and time of delivery; provided that in the case of e-mail, it shall be deemed to have been delivered on the working days following the date of its delivery.

## **1.6 Location**

The Services shall be performed in accordance with the provisions of RFP and at such locations as are incidental thereto, including the offices of the Safety Consultant.

## **1.7 Authority of Member-in-charge**

In case the Safety Consultant consists of a consortium of more than one entity, the Parties agree that the Lead Member shall act on behalf of the Members in exercising all the Safety Consultant's rights and obligations towards the Authority under this Agreement, including without limitation the receiving of instructions and payments from the Authority.

## **1.8 Authorised Representatives**

1.8.1 Any action required or permitted to be taken, and any document required or permitted to be executed, under this Agreement by the Authority or the Safety Consultant, as the case may be, may be taken or executed by the officials specified in this Clause 1.10.

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

.....

.....

Tel: .....

Mobile: .....

Email: .....

1.10.3 The Safety Consultant may designate one of its employees as Safety Consultant's Representative. Unless otherwise notified, the Safety Consultant's Representative

shall be:

.....

.....

Tel: .....

Mobile: .....

Email: .....

## **1.9 Taxes and duties**

Unless otherwise specified in the Agreement, the Safety Consultant shall pay all such taxes, duties, fees and other impositions as may be levied under the Applicable Laws and the Authority shall perform such duties in regard to the deduction of such taxes as may be lawfully imposed on it.

## **2. COMMENCEMENT, COMPLETION AND TERMINATION OF AGREEMENT**

### **2.1 Effectiveness of Agreement**

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

### **2.2 Commencement of Services**

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

### **2.3 Termination of Agreement for failure to commence Services**

If the Safety Consultant does not commence the Services within the period specified in Clause 2.2 above, the Authority may, by not less than 2 (two) weeks’ notice to the Safety Consultant, declare this Agreement to be null and void, and in the event of such a declaration, the Bid Security of the Safety Consultant shall stand forfeited.

### **2.4 Expiry of Agreement**

Unless terminated earlier pursuant to Clauses 2.3 or 2.9 hereof, this Agreement shall, unless extended by the Parties by mutual consent, expire on completion of safety audit for the first Accounting Year after COD. Provided however, if the first Accounting Year after COD has less than 100 (hundred) days, the Safety Consultant shall provide the specified services till the completion of safety audit the second Accounting Year after COD, being one consolidated safety audit for the first and second Accounting Year after COD. Upon termination, the Concessionaire shall make payments of all amounts due to the Safety Consultant hereunder.

### **2.5 Entire Agreement**

2.5.1 This Agreement and the Annexes together constitute a complete and exclusive statement of the terms of the agreement between the Parties on the subject hereof, and no amendment or modification hereto shall be valid and effective unless such

modification or amendment is agreed to in writing by the Parties and duly executed by persons especially empowered in this behalf by the respective Parties. All prior written or oral understandings, offers or other communications of every kind pertaining to this Agreement are abrogated and withdrawn; provided, however, that the obligations of the Safety Consultant arising out of the provisions of the RFP shall continue to subsist and shall be deemed to form part of this Agreement.

- 2.5.2 Without prejudice to the generality of the provisions of Clause 2.5.1, on matters not covered by this Agreement, the provisions of RFP shall apply.

## 2.6 Modification of Agreement

Modification of the terms and conditions of this Agreement, including any modification of the scope of the Services, may only be made by written agreement between the Parties. Pursuant to Clauses 4.2.2 and 6.1.2 hereof, however, each Party shall give due consideration to any proposals for modification made by the other Party.

## 2.7 Force Majeure

### 2.7.1 Definition

- (a) For the purposes of this Agreement, “**Force Majeure**” means an event which is beyond the reasonable control of a Party, and which makes a Party’s performance of its obligations hereunder impossible or so impractical as reasonably to be considered impossible in the circumstances, and includes, but is not limited to, war, riots, civil disorder, earthquake, fire, explosion, storm, flood or other adverse weather conditions, strikes, lockouts or other industrial action (except where such strikes, lockouts or other industrial action are within the power of the Party invoking Force Majeure to prevent), confiscation or any other action by government agencies.
- (b) Force Majeure shall not include (i) any event which is caused by the negligence or intentional action of a Party or such Party’s Sub-Consultant or agents or employees, nor (ii) any event which a diligent Party could reasonably have been expected to both (A) take into account at the time of the conclusion of this Agreement, and (B) avoid or overcome in the carrying out of its obligations hereunder.
- (c) Force Majeure shall not include insufficiency of funds or failure to make any payment required hereunder.

### 2.7.2 No breach of Agreement

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

### 2.7.3 Measures to be taken

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

### 2.7.4 Extension of time

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

### 2.7.5 Payments

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

### 2.7.6 Consultation

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

## 2.8 Suspension of Agreement

The Authority may, by written notice of suspension to the Safety Consultant, suspend all payments to the Safety Consultant hereunder if the Safety Consultant shall be in breach of this Agreement or shall fail to perform any of its obligations under this Agreement, including the carrying out of the Services; provided that such notice of suspension (i) shall specify the nature of the breach or failure, and (ii) shall provide an opportunity to the Safety Consultant to remedy such breach or failure within a period not exceeding 30 (thirty) days after receipt by the Safety Consultant of such notice of suspension.

## 2.9 Termination of Agreement

### 2.9.1 By the Authority



The Authority may, by not less than 30 (thirty) days' written notice of termination to the Safety Consultant, such notice to be given after the occurrence of any of the events specified in this Clause 2.9.1, terminate this Agreement if:

- (a) the Safety Consultant fails to remedy any breach hereof or any failure in the performance of its obligations hereunder, as specified in a notice of suspension pursuant to Clause 2.8 hereinabove, within 30 (thirty) days of receipt of such notice of suspension or within such further period as the Authority may have subsequently granted in writing;
- (b) the Safety Consultant becomes insolvent or bankrupt or enters into any agreement with its creditors for relief of debt or take advantage of any law for the benefit of debtors or goes into liquidation or receivership whether compulsory or voluntary;
- (c) the Safety Consultant fails to comply with any final decision reached as a result of arbitration proceedings pursuant to Clause 9 hereof;
- (d) the Safety Consultant submits to the Authority a statement which has a material effect on the rights, obligations or interests of the Authority and which the Safety Consultant knows to be false;
- (e) any document, information, data or statement submitted by the Safety Consultant in its Proposals, based on which the Safety Consultant was considered eligible or successful, is found to be false, incorrect or misleading;
- (f) as the result of Force Majeure, the Safety Consultant is unable to perform a material portion of the Services for a period of not less than 60 (sixty) days; or
- (g) the Authority, in its sole discretion and for any reason whatsoever, decides to terminate this Agreement.

#### 2.9.2 By the Safety Consultant

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

- (a) the Concessionaire fails to pay any money due to the Safety Consultant pursuant to this Agreement and not subject to dispute pursuant to Clause 9 hereof within 45 (forty five) days after receiving written notice from the Safety Consultant that such payment is overdue;
- (b) the Authority or Concessionaire is in material breach of its obligations pursuant to this Agreement and has not remedied the same within 45 (forty five) days (or such longer period as the Safety Consultant may have subsequently granted in writing) following the receipt by the Authority of the Safety Consultant's notice specifying such breach;
- (c) as the result of Force Majeure, the Safety Consultant is unable to perform a

material portion of the Services for a period of not less than 60 (sixty) days; or

- (d) the Authority or Concessionaire fails to comply with any final decision reached as a result of arbitration pursuant to Clause 9 hereof.

### 2.9.3 Cessation of rights and obligations

Upon termination of this Agreement pursuant to Clauses 2.3 or 2.9 hereof, or upon expiration of this Agreement pursuant to Clause 2.4 hereof, all rights and obligations of the Parties hereunder shall cease, except (i) such rights and obligations as may have accrued on the date of termination or expiration, or which expressly survive such termination; (ii) the obligation of confidentiality set forth in Clause 3.3 hereof; (iii) the Safety Consultant's obligation to permit inspection, copying and auditing of such of its accounts and records set forth in Clause 3.6, as relate to the Safety Consultant's Services provided under this Agreement; and (iv) any right or remedy which a Party may have under this Agreement or the Applicable Law.

### 2.9.4 Cessation of Services

Upon termination of this Agreement by notice of either Party to the other pursuant to Clauses 2.9.1 or 2.9.2 hereof, the Safety 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 Safety Consultant and equipment and materials furnished by the Authority or Concessionaire, the Safety Consultant shall proceed as provided respectively by Clauses 3.9 or 3.10 hereof.

### 2.9.5 Payment upon Termination

Upon termination of this Agreement pursuant to Clauses 2.9.1 or 2.9.2 hereof, the Concessionaire shall make the following payments to the Safety Consultant (after offsetting against these payments any amount that may be due from the Safety Consultant to the Concessionaire and Authority):

- (i) remuneration pursuant to Clause 6 hereof for Services satisfactorily performed prior to the date of termination;
- (ii) reimbursable expenditures pursuant to Clause 6 hereof for expenditures actually incurred prior to the date of termination; and
- (iii) except in the case of termination pursuant to sub-clauses (a) through (e) of Clause 2.9.1 hereof, reimbursement of any reasonable cost incidental to the prompt and orderly termination of the Agreement including the cost of the return travel of the Safety Consultant's personnel.

### 2.9.6 Disputes about Events of Termination

If either Party disputes whether an event specified in Clause 2.9.1 or in Clause 2.9.2 hereof has occurred, such Party may, within 30 (thirty) days after receipt of notice of

termination from the other Party, refer the matter to arbitration pursuant to Clause 9 hereof, and this Agreement shall not be terminated on account of such event except in accordance with the terms of any resulting arbitral award.

### **3. OBLIGATIONS OF THE SAFETY CONSULTANT**

#### **3.1 General**

##### **3.1.1 Standards of Performance**

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

##### **3.1.2 Terms of Reference**

The scope of services to be performed by the Safety Consultant is specified in the Terms of Reference (the “**TOR**”) at Annex-1 of this Agreement. The Safety Consultant shall provide the Deliverables specified therein in conformity with the time schedule stated therein.

##### **3.1.3 Applicable Laws**

The Safety Consultant shall perform the Services in accordance with the Applicable Laws and shall take all practicable steps to ensure that any Sub-Consultant, as well as the Personnel and agents of the Safety Consultant, Concessionaire and any Sub-Consultant, comply with the Applicable Laws.

#### **3.2 Conflict of Interest**

3.2.1 The Safety Consultant shall not have a Conflict of Interest and any breach hereof shall constitute a breach of the Agreement.

3.2.2 Safety Consultant and Affiliates not to be otherwise interested in the Project  
The Safety Consultant agrees that, during the term of this Agreement and after its termination, the Safety Consultant or any Associate thereof and any entity affiliated with the Safety Consultant, as well as any Sub-Consultant and any entity affiliated with such Sub-Consultant, shall be disqualified from providing goods, works, services, loans or equity for any project resulting from or closely related to the Services and any breach of this obligation shall amount to a Conflict of Interest; provided that the restriction herein shall not apply after a period of 5 (five) years from the completion of this assignment or to consulting assignments granted by banks/ lenders at any time; provided further that this restriction shall not apply to

consultancy/ advisory services provided to the Authority in continuation of this Consultancy or to any subsequent consultancy/ advisory services provided to the Authority in accordance with the rules of the Authority. For the avoidance of doubt, an entity affiliated with the Safety Consultant shall include a partner in the Safety Consultant's firm or a person who holds more than 5% (five percent) of the subscribed and paid up share capital of the Safety Consultant, as the case may be, and any Associate thereof.

### 3.2.3 Prohibition of conflicting activities

Neither the Safety Consultant nor its Sub-Consultant nor the Personnel of either of them shall engage, either directly or indirectly, in any of the following activities:

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

### 3.2.4 Safety Consultant not to benefit from commissions, discounts, etc.

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

3.2.5 The Safety Consultant and its Personnel shall observe the highest standards of ethics and shall not have engaged in and shall not hereafter engage in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice (collectively the "**Prohibited Practices**"). Notwithstanding anything to the contrary contained in this Agreement, the Authority shall be entitled to terminate this Agreement forthwith by a communication in writing to the Safety Consultant, without being liable in any manner whatsoever to the Safety Consultant, if it determines that the Safety Consultant has, directly or indirectly or through an agent, engaged in any Prohibited Practices in the Selection Process or before or after entering into of this Agreement. In such an event, the Authority shall forfeit and appropriate the performance security, if any, as mutually agreed genuine pre-estimated compensation and damages payable to the Authority towards, *inter alia*, the time, cost and effort of the Authority, without prejudice to the Authority's any other rights or remedy hereunder or in law.

3.2.6 Without prejudice to the rights of the Authority under Clause 3.2.5 above and the

other rights and remedies which the Authority may have under this Agreement, if the Safety Consultant is found by the Authority to have directly or indirectly or through an agent, engaged or indulged in any Prohibited Practices, during the Selection Process or before or after the execution of this Agreement, the Safety Consultant shall not be eligible to participate in any tender or RFP issued during a period of 2 (two) years from the date the Safety Consultant is found by the Authority to have directly or indirectly or through an agent, engaged or indulged in any Prohibited Practices.

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

- (a) “**corrupt practice**” means (i) the offering, giving, receiving or soliciting, directly or indirectly, of anything of value to influence the actions of any person connected with the Selection Process (for removal of doubt, offering of employment or employing or engaging in any manner whatsoever, directly or indirectly, any official of the Authority who is or has been associated in any manner, directly or indirectly with Selection Process or LOA or dealing with matters concerning the Agreement before or after the execution thereof, at any time prior to the expiry of one year from the date such official resigns or retires from or otherwise ceases to be in the service of the Authority, shall be deemed to constitute influencing the actions of a person connected with the Selection Process); or (ii) engaging in any manner whatsoever, whether during the Selection Process or after the issue of LOA or after the execution of the Agreement, as the case may be, any person in respect of any matter relating to the Project or the LOA or the Agreement, who at any time has been or is a legal, financial or technical adviser the Authority in relation to any matter concerning the Project;
- (b) “**fraudulent practice**” means a misrepresentation or omission of facts or suppression of facts or disclosure of incomplete facts, in order to influence the Selection Process;
- (c) “**coercive practice**” means impairing or harming, or threatening to impair or harm, directly or indirectly, any person or property to influence any person’s participation or action in the Selection Process or the exercise of its rights or performance of its obligations by the Authority under this Agreement;
- (d) “**undesirable practice**” means (i) establishing contact with any person connected with or employed or engaged by the Authority with the objective of canvassing, lobbying or in any manner influencing or attempting to influence the Selection Process; or (ii) having a Conflict of Interest; and
- (e) “**restrictive practice**” means forming a cartel or arriving at any understanding or arrangement among Applicants with the objective of restricting or manipulating a full and fair competition in the Selection Process.

### 3.3 Confidentiality

3.3.1 The Safety Consultant, its Sub-Consultants and the Personnel of either of them shall not, either during the term or after the expiration or termination of this Agreement

disclose any proprietary information, including information relating to reports, data, drawings, design software or other material, whether written or oral, in electronic or magnetic format, and the contents thereof; and any reports, digests or summaries created or derived from any of the foregoing that is provided by the Authority or Independent Engineer or the Concessionaire to the Safety Consultant, its Sub-Consultants and the Personnel; any information provided by or relating to the Authority/Independent Engineer /Concessionaire, its technology, technical processes, business affairs or finances or any information relating to the Authority's or Independent Engineer's or the Concessionaire's employees, officers or other professionals or suppliers, customers, or contractors of the Authority/ Independent Engineer/ Concessionaire; and any other information which the Safety Consultant is under an obligation to keep confidential in relation to the Project, the Services or this Agreement ("**Confidential Information**"), without the prior written consent of the Authority.

3.3.2 Notwithstanding the aforesaid, the Safety Consultant, its Sub-Consultants and the Personnel of either of them may disclose Confidential Information to the extent that such Confidential Information:

- (i) was in the public domain prior to its delivery to the Safety Consultant, its Sub-Consultants and the Personnel of either of them or becomes a part of the public knowledge from a source other than the Safety Consultant, its Sub-Consultants and the Personnel of either of them;
- (ii) was obtained from a third party with no known duty to maintain its confidentiality;
- (iii) is required to be disclosed by Applicable Laws or judicial or administrative or arbitral process or by any governmental instrumentalities, provided that for any such disclosure, the Safety Consultant, its Sub-Consultants and the Personnel of either of them shall give the Authority, prompt written notice, and use reasonable efforts to ensure that such disclosure is accorded confidential treatment; and
- (iv) is provided to the professional advisers, agents, auditors or representatives of the Safety Consultant or its Sub-Consultants or Personnel of either of them, as is reasonable under the circumstances; provided, however, that the Safety Consultant or its Sub-Consultants or Personnel of either of them, as the case may be, shall require their professional advisers, agents, auditors or its representatives, to undertake in writing to keep such Confidential Information, confidential and shall use its best efforts to ensure compliance with such undertaking.

### **3.4 Liability of the Safety Consultant**

3.4.1 The Safety Consultant's liability under this Agreement shall be determined by the Applicable Laws and the provisions hereof.

3.4.2 The Safety Consultant shall, subject to the limitation specified in Clause 3.4.3, be liable to the Authority for any direct loss or damage accrued or likely to accrue due to

deficiency in Services rendered by it.

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

- (i) for any indirect or consequential loss or damage; and
- (ii) for any direct loss or damage that exceeds (a) the Agreement Value set forth in Clause 6.1.1 of this Agreement, or (b) the proceeds the Safety Consultant may be entitled to receive from any insurance maintained by the Safety Consultant to cover such a liability in accordance with Clauses 3.5.2 and 3.5.3, whichever of (a) or (b) is higher.

3.4.4 This limitation of liability specified in Clause 3.4.3 shall not affect the Safety Consultant's liability, if any, for damage to Third Parties caused by the Safety Consultant or any person or firm acting on behalf of the Safety Consultant in carrying out the Services subject, however, to a limit equal to 3 (three) times the Agreement Value.

### **3.5 Insurance to be taken out by the Safety Consultant**

- 3.5.1 (a) The Safety Consultant shall, for the duration of this Agreement, take out and maintain, and shall cause any Sub-Consultant to take out and maintain, at its (or the Sub-Consultant's, as the case may be) own cost, but on terms and conditions approved by the Authority, insurance against the risks, and for the coverages, as specified in the Agreement and in accordance with good industry practice.
- (b) Within 15 (fifteen) days of receiving any insurance policy certificate in respect of insurances required to be obtained and maintained under this clause, the Safety Consultant shall furnish to the Authority, copies of such policy certificates, copies of the insurance policies 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 term of this Agreement.
- (c) If the Safety Consultant fails to effect and keep in force the aforesaid insurances for which it is responsible pursuant hereto, the Authority shall, apart from having other recourse available under this Agreement, have the option, without prejudice to the obligations of the Safety Consultant, to take out the aforesaid insurance, to keep in force any such insurances, and pay such premium and recover the costs thereof from the Safety Consultant, and the Safety Consultant shall be liable to pay such amounts on demand by the Authority.
- (d) Except in case of Third Party liabilities, the insurance policies so procured shall mention the Authority as the beneficiary of the Safety Consultant and the Safety Consultant shall procure an undertaking from the insurance company to

this effect; provided that in the event the Safety Consultant has a general insurance policy that covers the risks specified in this Agreement and the amount of insurance cover is equivalent to 3 (three) times the cover required hereunder, such insurance policy may not mention the Authority as the sole beneficiary of the Safety Consultant or require an undertaking to that effect.

3.5.2 The Parties agree that the risks and coverages shall include but not be limited to the following:

- (a) Third Party liability insurance as required under Applicable Laws, with a minimum coverage of Rs. 2 (two) crore;
- (b) employer's liability and workers' compensation insurance in respect of the Personnel of the Safety Consultant and of any Sub-Consultant, in accordance with Applicable Laws; and
- (c) professional liability insurance for an amount no less than the Agreement Value.

3.5.3 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 Clause 6.1.1 of the Consultancy Agreement. In case of consortium, the policy should be in the name of Lead Member and not in the name of individual Members of the consortium.

### **3.6 Accounting, inspection and auditing**

The Safety Consultant shall:

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

### **3.7 Safety Consultant's actions requiring the Authority's prior approval**

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

- (a) appointing such members of the Professional Personnel as are not listed in Annex-2;
- (b) 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



Authority prior to the execution of the subcontract, and (ii) that the Safety Consultant shall remain fully liable for the performance of the Services by the Sub-Consultant and its Personnel pursuant to this Agreement; or

- (c) any other action that is specified in this Agreement.

### **3.8 Reporting obligations**

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

### **3.9 Documents prepared by the Safety Consultant to be property of the Authority**

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

### **3.10 Equipment and materials furnished by the Authority**

Equipment and materials made available to the Safety Consultant by the Authority shall be the property of the Authority and shall be marked accordingly. Upon termination or expiration of this Agreement, the Safety Consultant shall furnish forthwith to the Authority, an inventory of such equipment and materials and shall dispose of such equipment and materials in accordance with the instructions of the Authority. While in possession of such equipment and materials, the Safety Consultant shall, unless otherwise instructed by the Authority in writing, insure them in an amount equal to their full replacement value.

### **3.11 Accuracy of Documents**

The Safety Consultant shall be responsible for accuracy of the data collected by it directly or procured from other agencies/authorities, the designs, drawings, estimates and all other details prepared by it as part of these services. Subject to the provisions of Clause 3.4, it shall indemnify the Authority against any inaccuracy in its work which might surface during implementation of the Project, if such inaccuracy is the result of any negligence or inadequate due diligence on part of the Safety Consultant or arises out of its failure to conform to good industry practice. The Safety Consultant shall also be responsible for promptly correcting, at its own cost and risk, the drawings including any re-survey / investigations.

## **4. SAFETY CONSULTANT'S PERSONNEL AND SUB-CONSULTANTS**

### **4.1 General**

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

### **4.2 Professional Personnel**

4.2.1 The designations and names of Professional Personnel of Safety Consultant deployed for carrying out the Services are described in Annex-2 of this Agreement.

4.2.2 If additional work is required beyond the scope of the Services specified in the TOR, the Agreement Value may be increased by agreement in writing between the Authority and the Safety Consultant, provided that any such increase shall not, except as otherwise agreed, cause payments under this Agreement to exceed the Agreement Value set forth in Clause 6.1.1.

### **4.3 Approval of Personnel**

4.3.1 The Professional Personnel listed in Annex-2 of the Agreement are hereby approved by the Authority. No other Professional Personnel shall be engaged without prior approval of the Authority.

4.3.2 If the Safety Consultant hereafter proposes to engage any person as Professional Personnel, it shall submit to the Authority its proposal along with a CV of such person in the form provided at Appendix-I (Form-12) of the RFP. The Authority may approve or reject such proposal within 14 (fourteen) days of receipt thereof. In case the proposal is rejected, the Safety Consultant may propose an alternative person for the Authority's consideration. In the event the Authority does not reject a proposal within 14 (fourteen) days of the date of receipt thereof under this Clause 4.3, it shall be deemed to have been approved by the Authority.

### **4.4 Substitution of Key Personnel**

4.4.1 The Authority expects all the Key Personnel specified in the Proposal to be available during implementation of the Agreement. The Authority will not consider any

substitution of Key Personnel except under compelling circumstances beyond the control of the Safety Consultant and the concerned Key Personnel. Such substitution shall be limited to not more than two Key Personnel subject to equally or better qualified and experienced personnel being provided to the satisfaction of the Authority. Without prejudice to the foregoing, substitution of one Key Personnel shall be permitted subject to a sum equal to 5% (five percent) of the Agreement Value shall be deducted from the payments due to the Safety Consultant. In case of a second substitution, such deduction shall be further 7.5% (seven point five percent) of the Agreement Value. Provided, however, that (i) in case such substitution(s) is undertaken after the submission of Safety Report for Development Period, a rebate of 40% (forty percent) shall be allowed on the deduction applicable and (ii) in case such substitution(s) is undertaken after the submission of Safety Report on completion of safety audit of the completed Construction Works, a rebate of 60% (sixty percent) shall be allowed on the deduction applicable.

- 4.4.2 Substitution of the Team Leader will not normally be considered and may lead to termination of the Agreement. Without prejudice to the fore going, in case of substitution of Team Leader is absolutely necessary, deduction will be double that of the Key Personnel specified above.

#### **4.5 Working hours, overtime, leave, etc.**

The Personnel shall not be entitled to be paid for overtime nor to take paid sick leave or vacation leave except as specified in the Agreement, and the Safety Consultant's total lump sum cost (i.e., the Agreement Value) shall be deemed to cover these items. Any taking of leave by any Personnel for a period exceeding 7 (seven) days shall be subject to the prior approval of the Authority, and the Safety Consultant shall ensure that any absence on leave will not delay the progress and quality of the Services.

#### **4.6 Team Leader**

The person designated as the Team Leader of the Safety Consultant's Personnel shall be responsible for the coordinated, timely and efficient functioning of the Personnel and shall be responsible for day to day performance of the Services.

#### **4.7 Sub-Consultants**

Sub-Consultants listed in Annex-3 of this Agreement are hereby approved by the Authority. The Safety Consultant may, with prior written approval of the Authority, engage additional Sub-Consultants or substitute an existing Sub-Consultant. The hiring of Personnel by the Sub-Consultants shall be subject to the same conditions as applicable to Personnel of the Safety Consultant under this Clause 4.

### **5. OBLIGATIONS OF THE AUTHORITY**

#### **5.1 Assistance in clearances etc.**

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

- (a) provide the Safety Consultant, its Sub-Consultants and Personnel with work permits and such other documents as may be necessary to enable the Safety Consultant, its Sub-Consultants or Personnel to perform the Services;
- (b) facilitate prompt clearance through customs of any property required for the Services; and
- (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.

## **5.2 Access to land and property**

The Authority warrants that the Safety Consultant shall have, free of charge, unimpeded access to the Site of the Project in respect of which access is required for the performance of Services; provided that if such access shall not be made available to the Safety Consultant as and when so required, the Parties shall agree on (i) the time extension, as may be appropriate, for the performance of Services, and (ii) the additional payments, if any, to be made to the Safety Consultant as a result thereof pursuant to Clause 6.1.2.

## **5.3 Change in Applicable Law**

If, after the date of this Agreement, there is any change in the Applicable Laws with respect to taxes and duties which increases or decreases the cost or reimbursable expenses incurred by the Safety Consultant in performing the Services, by an amount exceeding 2% (two percent) of the Agreement Value specified in Clause 6.1.1, then the remuneration and reimbursable expenses otherwise payable to the Safety Consultant under this Agreement shall be increased or decreased accordingly by agreement between the Parties hereto, and corresponding adjustments shall be made to the aforesaid Agreement Value.

## **5.4 Payment**

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

## **6. PAYMENT TO THE SAFETY CONSULTANT**

### **6.1 Cost estimates and Agreement Value**

6.1.1 An abstract of the cost of the Services payable to the Safety Consultant is set forth in Annex-4 of the Agreement. Except as may be otherwise agreed under Clause 2.6 and subject to Clause 6.1.2, the payments under this Agreement shall not exceed the agreement value specified herein (the “**Agreement Value**”). The Parties agree that the Agreement Value is Rs. .... (Rupees. ....), being the total lump sum cost for the Services provided by the Safety Consultant here under.

6.1.2 Notwithstanding anything to the contrary contained in Clause 6.1.1, if pursuant to the

provisions of Clauses 2.6 and 2.7, the Parties agree that additional payments shall be made to the Safety Consultant in order to cover any additional expenditures not envisaged in the Agreement Value referred to in Clause 6.1.1 above, the Agreement Value set forth in Clause 6.1.1 above shall be increased by the amount or amounts, as the case may be, of any such additional payments.

## 6.2 Currency of payment

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

## 6.3 Mode of billing and payment

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

- (a) The Safety Consultant shall be paid for its services as per the Payment Schedule at Annex-5 of this Agreement, subject to the Safety Consultant fulfilling following conditions:
  - (i) No payment shall be due for the next stage till the Safety Consultant completes, to the satisfaction of the Authority, the work pertaining to the preceding stage.
  - (ii) The Concessionaire shall pay to the Safety Consultant, only the undisputed amount.
- (b) The Concessionaire shall cause the payment due to the Safety Consultant to be made within 60 (sixty) days after the receipt by the Concessionaire of duly completed bills with necessary particulars (the “**Due Date**”). Interest at the rate of 10% (ten percent) per annum shall become payable as from the Due Date on any amount due by, but not paid on or before, such Due Date.
- (c) The payment under this Clause shall be made only after the report and a final statement, identified as such, shall have been submitted by the Safety Consultant and approved as satisfactory by the Authority. The Services shall be deemed completed and finally accepted by the Authority and the final deliverable shall be deemed approved by the Authority as satisfactory upon expiry of 45 (forty five) days after receipt of the final deliverable by the Authority unless the Authority, within such 45 (forty five) day period, gives written notice to the Safety Consultant specifying in detail, the deficiencies in the Services. The Safety Consultant shall thereupon promptly make any necessary corrections and/or additions, and upon completion of such corrections or additions, the foregoing process shall be repeated. The Authority shall make the final payment upon acceptance or deemed acceptance of the final deliverable by the Authority.
- (d) Any amount which the Concessionaire has paid or caused to be paid in excess of the amounts actually payable in accordance with the provisions of this Agreement shall be reimbursed by the Safety Consultant to the Concessionaire within 30 (thirty) days after receipt by the Safety Consultant of notice thereof.

Concessionaire shall take approval of Authority prior to any such claim for reimbursement. Any such claim by the Concessionaire or Authority for reimbursement must be made within 1 (one) year after receipt by the Authority of a final report in accordance with Clause 6.3 (d). Any delay by the Safety Consultant in reimbursement by the due date shall attract simple interest @ 10% (ten percent) per annum.

- (e) All payments under this Agreement shall be made to the account of the Safety Consultant as may be notified to the Concessionaire by the Safety Consultant.

## **7. LIQUIDATED DAMAGES AND PENALTIES**

### **7.1 Performance Security**

7.1.1 The Safety Consultant shall furnish a Bank Guarantee to the Authority substantially in the form specified at Annex-6 of this Agreement by way of performance security (the “**Performance Security**”), 5% (five percent) of Agreement Value, to be appropriated against breach of this Agreement or for recovery of liquidated damages as specified in Clause 7.2. The balance remaining out of the Performance Security shall be returned to the Safety Consultant at the end of 3 (three) months after the expiry of this Agreement pursuant to Clause 2.4 hereof. For the avoidance of doubt, the parties hereto expressly agree that in addition to appropriation of the amounts withheld hereunder, in the event of any default requiring the appropriation of further amounts comprising the Performance Security, the Concessionaire may make deductions from any subsequent payments due and payable to the Safety Consultant hereunder, as if it is appropriating the Performance Security in accordance with the provisions of this Agreement.

7.1.2 Performance Security shall be valid for a duration of 5 (five) years from the date of Commencement of Services.

### **7.2 Liquidated Damages**

#### **7.2.1 Liquidated Damages for error/variation**

In case any error or variation is detected in the Consultancy Services rendered by the Safety Consultant and such error or variation is the result of negligence or lack of due diligence on the part of the Safety Consultant, the consequential damages thereof shall be quantified by the Authority in a reasonable manner and recovered from the Safety Consultant by way of deemed liquidated damages, subject to a maximum of 50% (fifty percent) of the Agreement Value.

#### **7.2.2 Liquidated Damages for delay**

In case of delay in providing/completion of Services, liquidated damages not exceeding an amount equal to 0.2% (zero point two percent) of the Agreement Value per day, subject to a maximum of 10% (ten percent) of the Agreement Value will be imposed and shall be recovered by appropriation from the Performance Security or otherwise. However, in case of delay due to reasons beyond the control of the Safety Consultant, suitable extension of time shall be granted.

### 7.2.3 Encashment and appropriation of Performance Security

The Authority shall have the right to invoke and appropriate the proceeds of the Performance Security, in whole or in part, without notice to the Safety Consultant in the event of breach of this Agreement or for recovery of liquidated damages specified in this Clause 7.2.

### 7.3 Penalty for deficiency in Services

In addition to the liquidated damages not amounting to penalty, as specified in Clause 7.2, warning may be issued to the Safety Consultant for minor deficiencies on its part. In the case of significant deficiencies in Services causing adverse effect on the Project or on the reputation of the Authority, other penal action including debarring for a specified period may also be initiated as per policy of the Authority.

## 8. FAIRNESS AND GOOD FAITH

### 8.1 Good Faith

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

### 8.2 Operation of the Agreement

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

## 9. SETTLEMENT OF DISPUTES

### 9.1 Amicable settlement

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

### 9.2 Dispute resolution

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

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

### 9.3 Conciliation

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

### 9.4 Arbitration

- 9.4.1 Any Dispute which is not resolved amicably by conciliation, as provided in Clause 9.3, shall be finally decided by reference to arbitration by an Arbitral Tribunal appointed in accordance with Clause 9.4.2. Such arbitration shall be held in accordance with the Rules of Arbitration of the International Centre for Alternative Dispute Resolution, New Delhi (the “**Rules**”), or such other rules as may be mutually agreed by the Parties, and shall be subject to the provisions of the Arbitration and Conciliation Act, 1996. The place of such arbitration shall be the capital of the State where the Authority has its headquarters and the language of arbitration proceedings shall be English.
- 9.4.2 There shall be an Arbitral Tribunal of three arbitrators, of whom each Party shall select one, and the third arbitrator shall be appointed by the two arbitrators so selected, and in the event of disagreement between the two arbitrators, the appointment shall be made in accordance with the Rules.
- 9.4.3 The arbitrators shall make a reasoned award (the “**Award**”). Any Award made in any arbitration held pursuant to this Clause 9 shall be final and binding on the Parties as from the date it is made, and the Safety Consultant and the Authority agree and undertake to carry out such Award without delay.
- 9.4.4 The Safety Consultant and the Authority agree that an Award may be enforced against the Safety Consultant and/or the Authority, as the case may be, and their respective assets wherever situated.
- 9.4.5 This Agreement and the rights and obligations of the Parties shall remain in full force and effect, pending the Award in any arbitration proceedings hereunder.



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

SIGNED, SEALED AND DELIVERED

For and on behalf of  
[Insert name of Safety  
Consultant]:

(Signature)  
(Name)  
(Designation)  
(Address)

SIGNED, SEALED AND DELIVERED

For and on behalf of  
Authority

(Signature)  
(Name)  
(Designation)  
(Address)

In the presence of:

1.

2.

Annex-1

**Terms of Reference**  
*(Refer Clause 3.1.2)*

(Reproduce Schedule-1 of RFP)

Annex-2

**Professional Personnel**  
*(Refer Clause 4.2)*

(Reproduce as per Form-13 of Appendix-I)

Annex-3

**Approved Sub-Consultant(s)**  
*(Refer Clause 4.7)*

(Reproduce as per Form-14 of Appendix-I)

Annex-4

**Cost of Services**  
*(Refer Clause 6.1)*

(Reproduce as per Form-2 of Appendix-II)

## Annex-5

**Payment Schedule***(Refer Clause 6.3)*

<b>Key Date No.</b>	<b>Description of Services</b>	<b>Payment</b>
KD1	Payment on submission of Safety Report on completion of safety audit at the design stage (Safety Report for the Development Period) of the Project.	40%
KD2	Payment on submission of Safety Report on completion of safety audit of the completed Construction Works.	40%
KD3	Payment on submission of Safety Report on completion of safety audit for the first Accounting Year after COD. Provided however, if the first Accounting Year after COD has less than 100 (hundred) days, the Safety Consultant shall provide the specified services till the completion of safety audit the second Accounting Year after COD, being one consolidated safety audit for the first and second Accounting Year after COD.	20%
	<b>Total</b>	<b>100%</b>

## Annex- 6

**Bank Guarantee for Performance Security**  
(Refer Clause 7.1.2)

To

The Governor of Kerala  
acting through

.....  
.....  
.....

In consideration of ..... acting on behalf of the Governor of Kerala (hereinafter referred as the “**Authority**”, which expression shall, unless repugnant to the context or meaning thereof, include its successors, administrators and assigns) awarding to ....., having its office at ..... (hereinafter referred as the “**Safety Consultant**” which expression shall, unless repugnant to the context or meaning thereof, include its successors, administrators, executors and assigns), vide the Authority’s Agreement no. .... dated ..... valued at Rs. .... (Rupees .....), (hereinafter referred to as the “**Agreement**”) the assignment for consultancy services in respect of the ..... Project, and the Safety Consultant having agreed to furnish a Bank Guarantee amounting to Rs. .... (Rupees ..... ) to the Authority for performance of the said Agreement.

1. We, ..... (hereinafter referred to as the “**Bank**”) at the request of the Safety Consultant do hereby undertake to pay to the Authority an amount not exceeding Rs. .... (Rupees ..... ) against any loss or damage caused to or suffered or would be caused to or suffered by the Authority by reason of any breach by the said Safety Consultant of any of the terms or conditions contained in the said Agreement.

2. We, ..... (indicate the name of the Bank) do hereby undertake to pay the amounts due and payable under this Guarantee without any demur, merely on a demand from the Authority stating that the amount/claimed is due by way of loss or damage caused to or would be caused to or suffered by the Authority by reason of breach by the said Safety Consultant of any of the terms or conditions contained in the said Agreement or by reason of the Safety Consultant’s failure to perform the said Agreement. Any such demand made on the bank shall be conclusive as regards the 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. .... (Rupees .....).

3. We, ..... (indicate the name of the Bank) do hereby undertake to pay to the Authority any money so demanded notwithstanding any dispute or disputes raised by the Safety Consultant in any suit or proceeding pending before any court or tribunal relating thereto, our liability under this present being absolute and unequivocal. The payment so made by us under this bond shall be a valid discharge of our liability for payment thereunder and the Safety Consultant shall have no claim against us for making such payment.

4. We, ..... (indicate the name of Bank) further agree that the Guarantee herein contained shall remain in full force and effect during the period that would be required

for the performance of the said Agreement and that it shall continue to be enforceable till all the dues of the Authority under or by virtue of the said Agreement have been fully paid and its claims satisfied or discharged or till the Authority certifies that the terms and conditions of the said Agreement have been fully and properly carried out by the said Safety Consultant and accordingly discharges this Guarantee. Unless a demand or claim under this Guarantee is made on us in writing on or before a period of one year from the date of this Guarantee, we shall be discharged from all liability under this Guarantee thereafter.

5. We, ..... (indicate the name of Bank) further agree with the Authority that the Authority shall have the fullest liberty without our consent and without affecting in any manner our obligations hereunder to vary any of the terms and conditions of the said Agreement or to extend time of performance by the said Safety Consultant from time to time or to postpone for any time or from time to time any of the powers exercisable by the Authority against the said Safety Consultant and to forbear or enforce any of the terms and conditions relating to the said Agreement and we shall not be relieved from our liability by reason of any such variation, or extension being granted to the said Safety Consultant or for any forbearance, act or omission on the part of the Authority or any indulgence by the Authority to the said Safety Consultant or any such matter or thing whatsoever which under the law relating to sureties would, but for this provision, have the effect of so relieving us.

6. This Guarantee will not be discharged due to the change in the constitution of the Bank or the Safety Consultant(s).

7. We, ..... (indicate the name of Bank) lastly undertake not to revoke this Guarantee during its currency except with the previous consent of the Authority in writing.

8. For the avoidance of doubt, the Bank's liability under this Guarantee shall be restricted to Rs. .... crore (Rupees ..... crore) only. 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 2 hereof, on or before ..... (indicate the date falling 365 days after the date of this Guarantee).

For .....

Name of Bank:

Seal of the Bank:

Dated, the .....day of ....., 20.....

(Signature, name and designation of the authorised signatory)

NOTES:

- (i) The Bank Guarantee should contain the name, designation and code number of the officer(s) signing the Guarantee.
- (ii) The address, telephone no. and other details of the Head Office of the Bank as well as of issuing Branch should be mentioned on the covering letter of issuing Branch.



**SCHEDULE-3**  
(See Clause 2.3.3)

**Guidance Note on Conflict of Interest**

1. This Note further explains and illustrates the provisions of Clause 2.3 of the RFP and shall be read together therewith in dealing with specific cases.
2. Safety Consultants should be deemed to be in a conflict of interest situation if it can be reasonably concluded that their position in a business or their personal interest could improperly influence their judgment in the exercise of their duties. The process for selection of Safety Consultants should avoid both actual and perceived conflict of interest.
3. Conflict of interest may arise between the Authority and a Safety Consultant or between Safety Consultants and present or future concessionaries/ contractors. Some of the situations that would involve conflict of interest are identified below:
  - (a) Authority and Safety Consultants:
    - (i) potential Safety Consultant should not be privy to information from the Authority which is not available to others;
    - (ii) potential Safety Consultant should not have defined the project when earlier working for the Authority;
    - (iii) potential Safety Consultant should not have recently worked for the Authority overseeing the project.
  - (b) Safety Consultants and concessionaires/contractors:
    - (i) no Safety Consultant should have an ownership interest or a continuing business interest or an on-going relationship with a potential concessionaire/ contractor save and except relationships restricted to project-specific and short-term assignments; or
    - (ii) no Safety Consultant should be involved in owning or operating entities resulting from the project; or
    - (iii) no Safety Consultant should bid for works arising from the project.

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

4. The normal way to identify conflicts of interest is through self-declaration by Safety Consultants. Where a conflict exists, which has not been declared, competing companies are likely to bring this to the notice of the Authority. All conflicts must be declared as and when the Safety Consultants become aware of them.

5. Another approach towards avoiding a conflict of interest is through the use of “Chinese walls” to avoid the flow of commercially sensitive information from one part of the Safety Consultant’s company to another. This could help overcome the problem of availability of limited numbers of experts for the project. However, in reality effective operation of “Chinese walls” may be a difficult proposition. As a general rule, larger companies will be more capable of adopting Chinese walls approach than smaller companies. Although, “Chinese walls” have been relatively common for many years, they are an increasingly discredited means of avoiding conflicts of interest and should be considered with caution. As a rule, “Chinese walls” should be considered as unacceptable and may be accepted only in exceptional cases upon full disclosure by a Safety Consultant coupled with provision of safeguards to the satisfaction of the Authority.
6. Another way to avoid conflicts of interest is through the appropriate grouping of tasks. For example, conflicts may arise if Safety Consultants drawing up the terms of reference or the proposed documentation are also eligible for the consequent assignment or project.
7. Another form of conflict of interest called “scope–creep” arises when Safety Consultants advocate either an unnecessary broadening of the terms of reference or make recommendations which are not in the best interests of the Authority but which will generate further work for the Safety Consultants. Some forms of contractual arrangements are more likely to lead to scope-creep. For example, lump-sum contracts provide fewer incentives for this, while time and material contracts provide built in incentives for Safety Consultants to extend the length of their assignment.
8. Every project contains potential conflicts of interest. Safety Consultants should not only avoid any conflict of interest, they should report any present/ potential conflict of interest to the Authority at the earliest. Officials of the Authority involved in development of a project shall be responsible for identifying and resolving any conflicts of interest. It should be ensured that safeguards are in place to preserve fair and open competition and measures should be taken to eliminate any conflict of interest arising at any stage in the process.

**APPENDICES**

APPENDIX-I  
(See Clause 2.1.3)

**TECHNICAL PROPOSAL**  
Form-1

**Letter of Proposal**  
(On Applicant's letter head)

(Date and Reference)

To,

.....  
.....  
.....

Sub: Appointment of Safety Consultant for the Vizhinjam International Seaport Project

Dear Sir,

With reference to your RFP document dated ....., I/we, having examined all relevant documents and understood their contents, hereby submit our Proposal for selection as Safety Consultant for the ..... Project. The proposal is unconditional and unqualified.

2. All information provided in the Proposal and in the Appendices is true and correct and all documents accompanying such Proposal are true copies of their respective originals.
3. This statement is made for the express purpose of appointment as the Safety Consultant for the aforesaid Project.
4. I/We shall make available to the Authority any additional information it may deem necessary or require for supplementing or authenticating the Proposal.
5. I/We acknowledge the right of the Authority to reject our application without assigning any reason or otherwise and hereby waive our right to challenge the same on any account whatsoever.
6. I/We certify that in the last 3 (three) years, we or any of our Associates 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 entity nor have had any contract terminated by any public entity for breach on our part.
7. I/We declare that:
  - (a) I/We have examined and have no reservations to the RFP Documents, including any Addendum issued by the Authority;
  - (b) I/We do not have any Conflict of Interest in accordance with Clause 2.3 of the

RFP document;

- (c) I/We have not directly or indirectly or through an agent engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice, as defined in Clause 4.3 of the RFP document, in respect of any tender or request for proposal issued by or any agreement entered into with the Authority or any other public sector enterprise or any government, Central or State; and
- (d) I/We hereby certify that we have taken steps to ensure that in conformity with the provisions of Section 4 of the RFP, no person acting for us or on our behalf will engage in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice.
8. I/We understand that you may cancel the Selection Process at any time and that you are neither bound to accept any Proposal that you may receive nor to select the Safety Consultant, without incurring any liability to the Applicants in accordance with Clause 2.8 of the RFP document.
9. I/We declare that we/any member of the consortium, are/is not a Member of a/any other consortium applying for selection as a Safety Consultant.
10. I/We certify that in regard to matters other than security and integrity of the country, we or any of our Associates have not been convicted by a court of law or indicted or adverse orders passed by a regulatory authority which would cast a doubt on our ability to undertake the Consultancy for the Project or which relates to a grave offence that outrages the moral sense of the community.
11. I/We further certify that in regard to matters relating to security and integrity of the country, we have not been charge-sheeted by any agency of the Government or convicted by a court of law for any offence committed by us or by any of our Associates.
12. I/We further certify that no investigation by a regulatory authority is pending either against us or against our Associates or against our CEO or any of our Directors/Managers/employees.<sup>\$</sup>
13. I/We hereby irrevocably waive any right or remedy which we may have at any stage at law or howsoever otherwise arising to challenge or question any decision taken by the Authority or the Government of Kerala in connection with the selection of Safety Consultant or in connection with the Selection Process itself in respect of the above mentioned Project.
14. The Bid Security of Rs. .... (Rupees .....) in the form of

---

<sup>\$</sup>In case the Applicant is unable to provide the certification specified in Paragraph 12, it may precede the Paragraph by the words viz. "Except as specified in Schedule ..... hereto". The exceptions to the certification or any disclosures relating thereto may be clearly stated in a Schedule to be attached to the Application. The Authority will consider the contents of such Schedule and determine whether or not the exceptions/disclosures are material to the suitability of the Applicant for pre-qualification hereunder.

a Demand Draft is attached, in accordance with the RFP document.

15. I/We agree and understand that the proposal is subject to the provisions of the RFP document. In no case, shall I/we have any claim or right of whatsoever nature if the Consultancy for the Project is not awarded to me/us or our proposal is not opened or rejected.
16. I/We agree to keep this offer valid for 90 (ninety) days from the Proposal Due Date specified in the RFP.
17. A Power of Attorney in favour of the authorised signatory to sign and submit this Proposal and documents is attached herewith in Form-4.
18. In the event of my/our firm/ consortium being selected as the Safety Consultant, I/we agree to enter into an Agreement in accordance with the form at Schedule 2 of the RFP. We agree not to seek any changes in the aforesaid form and agree to abide by the same.
19. I/We have studied RFP and all other documents carefully and also surveyed the Project site. We understand that except to the extent as expressly set forth in the Agreement, we shall have no claim, right or title arising out of any documents or information provided to us by the Authority or in respect of any matter arising out of or concerning or relating to the Selection Process including the award of Consultancy.
20. The 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.
21. I/We agree and undertake to abide by all the terms and conditions of the RFP Document. In witness thereof, I/we submit this Proposal under and in accordance with the terms of the RFP document.

Yours faithfully,

(Signature, name and designation of the authorised signatory)  
(Name and seal of the Applicant / Lead Member)

APPENDIX-I  
Form-2

**Particulars of the Applicant**

1.1	Title of Consultancy: SAFETY CONSULTANT FOR VISL
1.2	Title of Project: ..... Project
1.3	State whether applying as Sole Firm or Lead Member of a consortium: Sole Firm or Lead Member of a consortium
1.4	<p>State the following:</p> <p>Name of Company or Firm:</p> <p>Legal status (e.g. incorporated private company, unincorporated business, partnership etc.):</p> <p>Country of incorporation:</p> <p>Registered address:</p> <p>Year of Incorporation:</p> <p>Year of commencement of business:</p> <p>Principal place of business:</p> <p>Brief description of the Company including details of its main lines of business</p> <p>Name, designation, address and phone numbers of authorised signatory of the Applicant:</p> <p>Name:</p> <p>Designation:</p> <p>Company:</p> <p>Address:</p> <p>Phone No.:</p> <p>E-mail address:</p>
1.5	<p>If the Applicant is Lead Member of a consortium, state the following for each of the other Member Firms:</p> <p>(i) Name of Firm:</p> <p>(ii) Legal Status and country of incorporation:</p> <p>(iii) Registered address and principal place of business:</p>
1.6	For the Applicant, (in case of a consortium, for each Member), state the following

	<p>information:</p> <p>(i) In case of non-Indian firm, does the firm have business presence in India? Yes/No</p> <p>If so, provide the office address(es) in India.</p> <p>(ii) Has the Applicant or any of the Members in case of a consortium been penalized by any organization for poor quality of work or breach of contract in the last 5 (five) years? Yes/No</p> <p>(iii) Has the Applicant/ Member ever failed to complete any work awarded to it by any public authority/ entity in last 5 (five) years? Yes/No</p> <p>(iv) Has the Applicant or any member of the consortium been blacklisted by any Government department/Public Sector Undertaking in the last 5 (five) years? Yes/No</p> <p>(v) Has the Applicant or any of the Members, in case of a consortium, suffered bankruptcy/insolvency in the last 5 (five) years? Yes/No</p> <p><b>Note: If answer to any of the questions at (ii) to (v) is yes, the Applicant is not eligible for this consultancy assignment.</b></p>
1.7	<p>Does the Applicant's firm/company (or any member of the consortium) combine functions as a Safety Consultant or adviser along with the functions as a contractor and/or a manufacturer? Yes/No</p> <p>If yes, does the Applicant (and other Member of the Applicant's consortium) agree to limit the Applicant's role only to that of a Safety Consultant/ adviser to the Authority and to disqualify themselves, their Associates/ affiliates, subsidiaries and/or parent organization subsequently from work on this Project in any other capacity? Yes/No</p>
1.8	<p>Does the Applicant intend to borrow or hire temporarily, personnel from contractors, manufacturers or suppliers for performance of the Consulting Services? Yes/No</p> <p>If yes, does the Applicant agree that it will only be acceptable as Safety Consultant, if those contractors, manufacturers and suppliers disqualify themselves from subsequent execution of work on this Project (including tendering relating to any goods or services for any other part of the Project) other than that of the Safety Consultant? Yes/No</p> <p>If yes, have any undertakings been obtained (and annexed) from such contractors, manufacturers, etc. that they agree to disqualify themselves from subsequent execution of work on this Project and they agree to limit their role to that of Safety Consultant/ adviser for the Authority only? Yes/No</p> <p>(Signature, name and designation of the authorised signatory) For and on behalf of .....</p>



APPENDIX-I

Form-3

**Statement of Legal Capacity**

*(To be forwarded on the letter head of the Applicant)*

Ref. Date:

To,

.....  
.....  
.....

Dear Sir,

Sub: RFP for Safety Consultant: .....Project

I/We hereby confirm that we, the Applicant (along with other members in case of consortium, the constitution of which has been described in the Proposal<sup>s</sup>), satisfy the terms and conditions laid down in the RFP document.

I/We have agreed that ..... (insert Applicant's name) will act as the Lead Member of our consortium.

I/We have agreed that ..... (insert individual's name) will act as our Authorised Representative/ will act as the Authorised Representative of the consortium on our behalf and has been duly authorized to submit our Proposal. Further, the authorised signatory is vested with requisite powers to furnish such proposal and all other documents, information or communication and authenticate the same.

Yours faithfully,

For and on behalf of .....

(Signature, name and designation of the authorised signatory)

---

<sup>s</sup>Please strike out whichever is not applicable

APPENDIX-I

Form-4

**Power of Attorney**

Know all men by these presents, we, ..... (name of Firm and address of the registered office) do hereby constitute, nominate, appoint and authorise Mr / Ms..... son/daughter/wife and presently residing at ....., who is presently employed with us and holding the position of ..... as our true and lawful attorney (hereinafter referred to as the “**Authorised Representative**”) to do in our name and on our behalf, all such acts, deeds and things as are necessary or required in connection with or incidental to submission of our Proposal for and selection as the Safety Consultant for the Vizhinjam International Deepwater Multipurpose Seaport Project, to be developed by the Department of Ports, Government of Kerala(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 Agreement 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.

Notarised

Accepted

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

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. The Power of Attorney should be executed on a non-judicial stamp paper of Rs. 100 (hundred) and duly notarised by a notary public.*

- *Wherever required, the Applicant should submit for verification the extract of the charter documents and other documents such as a resolution/power of attorney in favour 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, Applicants from countries that have signed the Hague Legislation Convention 1961 need not get their Power of Attorney legalised by the Indian Embassy if it carries a conforming Apostille certificate.*

APPENDIX-I  
Form-5

**Financial Capacity of the Applicant**  
(Refer Clause 2.2.2 (B))

S. No.	Financial Year	Annual Revenue (Rs. /US \$ in million)
1.		
2.		
3.		

**Certificate from the Statutory Auditor<sup>§</sup>**

This is to certify that .....(name of the Applicant) has received the payments shown above against the respective years on account of professional fees.

Name of the audit firm:

Seal of the audit firm

Date:

(Signature, name and designation of the authorised signatory)

<sup>§</sup> In case the Applicant does not have a statutory auditor, it shall provide the certificate from its chartered accountant that ordinarily audits the annual accounts of the Applicant.

**Note:** Please do not attach any printed Annual Financial Statement.

APPENDIX-I  
Form-6

**Particulars of Key Personnel**

S. No.	Designation of Key Personnel	Name	Educational Qualification	Length of Professional Experience	Present Employment		No. of Eligible Assignments <sup>\$</sup>
					Name of Firm	Employed Since	
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
1.	Team Leader						
2.	Port Operations Safety Expert						
3.							

<sup>\$</sup>Refer Form 9 of Appendix I Experience of Key Personnel

APPENDIX-I  
Form-7

**Proposed Methodology and Work Plan**

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

1. Understanding of TOR (not more than two pages)

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

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

The Applicant will submit its methodology for carrying out this assignment, outlining its approach toward achieving the Objectives laid down in the TOR. The Applicant will submit a brief write up on its proposed team and organisation of personnel explaining how different areas of expertise needed for this assignment have been fully covered by its proposal. In case the Applicant is a consortium, it should specify how the expertise of each firm is proposed to be utilised for this assignment. The Applicant should specify the sequence and locations of important activities, and provide a quality assurance plan for carrying out the Consultancy Services.

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

APPENDIX-I  
Form-8

**Abstract of Eligible Assignments of the Applicant<sup>§</sup>**  
(Refer Clause 3.1.4)

S. No	Name of Project	Name of Client	Estimated capital cost of Project (in Rs. crore/ US\$ million)	Payment <sup>\$\$</sup> of professional fees received by the Applicant (in Rs. crore)
(1) <sup>£</sup>	(2)	(3)	(4)	(5)
1				
2				
3				
4				

<sup>§</sup> The Applicant should provide details of only those projects that have been undertaken by it under its own name.

<sup>\$\$</sup> Exchange rate for conversion of US \$ shall be as per Clause 1.7.1.

<sup>£</sup> The names and chronology of Eligible Assignments included here should conform to the project-wise details submitted in Form-10 of Appendix-I.

**Certificate from the Statutory Auditor<sup>§</sup>**

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

Name of the audit firm:

Seal of the audit firm

Date:

(Signature, name and designation of the authorised signatory)

<sup>§</sup> In case the Applicant does not have a statutory auditor, it shall provide the certificate from its chartered accountant that ordinarily audits the annual accounts of the Applicant.

**Note:** The Applicant may attach separate sheets to provide brief particulars of other relevant experience of the Applicant.

APPENDIX-I  
Form-9

**Abstract of Eligible Assignments of Key Personnel<sup>§</sup>**  
(Refer Clause 3.1.4)

Name of Key Personnel:

Designation:

<b>Sr. No</b>	<b>Name of Project<sup>§</sup></b>	<b>Name of Client</b>	<b>Estimated capital cost of project (in Rs. cr./ US\$ million)</b>	<b>Name of firm for which the Key Personnel worked</b>	<b>Designation of the Key Personnel on the assignment</b>	<b>Date of completion of the assignment</b>	<b>Man days spent</b>
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
1							
2							
3							
4							

<sup>§</sup> Use separate Form for each Key Personnel.

<sup>§§</sup> The names and chronology of projects included here should conform to the project-wise details submitted in Form-11 of Appendix-I.

**Note:** The Applicant may attach separate sheets to provide brief particulars of other relevant experience of the Key Personnel.



APPENDIX-I  
Form-10

**Eligible Assignments of Applicant**  
(Refer Clause 3.1.4)

1.	Name of Applicant:	
2.	Name of the Project:	
3.	Length in km or other particulars	
4.	Description of services performed by the Applicant Firm:	
5.	Name of client and Address: (indicate whether public or private)	
6.	Name and telephone no. of client's representative:	
7.	Estimated capital cost of the Project (in Rs crore or US\$ million):	
8.	Payment received by the Applicant (in Rs. crore):	
9.	Start date of the services (month/ year):	
10.	Finish date of the services (month/ year):	
11.	Brief description of the Project:	
It is certified that the aforesaid information is true and correct to the best of my knowledge and belief.		
(Signature and name of the authorised signatory)		

**Notes:**

1. Use separate sheet for each Eligible Assignment.
2. The Applicant may attach separate sheets to provide brief particulars of other relevant experience of the Applicant.
3. Exchange rate for conversion of US \$ shall be as per Clause 1.7.1.

APPENDIX-I  
Form-11

**Eligible Assignments of Key Personnel**  
(Refer Clause 3.1.4)

1.	Name of Key Personnel:	
2.	Designation of Key Personnel:	
3.	Name of the Project:	
4.	Length in km or other particulars	
5.	Name of Consulting Firm where employed:	
6.	Description of services performed by the Key Personnel (including designation):	
7.	Name of client and Address: (indicate whether public or private)	
8.	Name and telephone no. of client's representative:	
9.	Estimated capital cost of the Project (in Rs. crore or US\$ million):	
10.	Start date of the services (month/ year):	
11.	Finish date of the services (month/ year):	
12.	Brief description of the Project:	
It is certified that the aforesaid information is true and correct to the best of my knowledge and belief.		
(Signature and name of Key Personnel)		

**Notes:**

1. Use separate sheet for each Eligible Assignment.
2. The Applicant may attach separate sheets to provide brief particulars of other relevant experience of the Key Personnel.
3. Exchange rate for conversion of US \$ shall be as per Clause 1.7.1.



APPENDIX-I  
Form-13**Professional Personnel**

S. No.	Name	Designation
1.		
2.		
3.		
4.		

## APPENDIX-I

Form-14**Proposal for Sub-Consultant(s)**

1. Details of the Firm				
Firm's Name, Address and Telephone				
Name and Telephone No. of the Contact Person				
Fields of Expertise				
No. of Years in business in the above Fields				
2. Services that are proposed to be sub contracted:				
3. Person who will lead the Sub- Consultant Name: Designation: Telephone No: Email:				
4. Details of Firm's previous experience				
Name of Work	Name, address and telephone no. of Client	Total Value of Services Performed	Duration of Services	Date of Completion of Services
1.				
2.				
3.				

(Signature and name of the authorised signatory)

**Notes:**

1. The Proposal for Sub-Consultant(s) shall be accompanied by the details specified in Forms 12 and 13 of Appendix –I.
2. Use separate form for each Sub-Consultant

APPENDIX-II

**FINANCIAL PROPOSAL**

Form-1

**Covering Letter**

(On Applicant's letter head)

(Date and Reference)

To,

.....  
.....  
.....

Dear Sir,

Subject: Appointment of Safety Consultant for the Vizhinjam International Deepwater Multipurpose Seaport Project

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

I/We agree that this offer shall remain valid for a period of 90 (ninety) days from the Proposal

Due Date or such further period as may be mutually agreed upon.

Yours faithfully,

(Signature, name and designation of the authorised signatory)

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

APPENDIX-II  
(See Clause 2.1.3)  
Form-2

**Financial Proposal**

Description	Amount (Rs.)	
	In Figures	In Words
<p>Total lump sum cost of the consultancy for carrying out safety audit of the Port in accordance with the Safety Requirements, till the completion of safety audit for the first Accounting Year after COD which shall cover safety audit (a) at the design stage of the Project, (b) of the completed Construction Works and (c) for the first Accounting Year after COD including cost of all personnel conveyance including airfare, office stationary, survey, investigation, insurance premium, remuneration to personnel, report preparation, submission, attending meetings, workshops, communication, etc., all complete. Provided however, if the first Accounting Year after COD has less than 100 (hundred) days, the Safety Consultant shall provide the specified services till the completion of safety audit the second Accounting Year after COD, being one consolidated safety audit for the first and second Accounting Year after COD.</p> <p style="text-align: center;">(Service tax will be paid extra)</p>		

**Notes:**

1. The financial evaluation shall be based on the above Financial Proposal.
2. The reimbursement of expenses shall be limited to the amounts indicated above, in accordance with the provisions of the Agreement, on the submission of original bills.
3. No escalation on any account will be payable on the above total lump sum cost.
4. All other charges not shown here and all insurance premium are considered included in the afore mentioned total lump sum cost.
5. The Authority may require Professional Personnel to visit the Authority's offices for further consultations or undertake desk work after the reports has been accepted. The additional costs on this account shall be paid to the Safety Consultant as agreed by the Authority.
6. All payments shall be made in Indian Rupees and shall be subject to applicable Indian laws withholding taxes if any.

APPENDIX - III

**LIST OF BID-SPECIFIC PROVISIONS<sup>\$</sup>**

**A. Clauses with currency-based footnotes**

1. Introduction.
2. Clause 2.2.3: Conditions of Eligibility of Applicants.
3. Clause 2.11.3: Amendment of RFP.

**Note:** The above footnotes marked “\$” shall be retained in the RFP for guidance of the Applicants while submitting their respective Proposals.

**B. Schedules with non-numeric footnotes**

All non-numeric footnotes marked “\$” in the Schedules shall be retained in the respective Schedules for guidance of the Applicants while submitting their respective Proposals.

**C. Appendices with non-numeric footnotes**

All non-numeric footnotes in the Appendices shall be retained in the respective Appendices for guidance of the Applicants. These shall be omitted by the Applicants while submitting their respective Proposals.

**D. Schedules and Appendices with blank spaces**

All blank spaces in the Schedules and Appendices shall be retained in the RFP. These shall be filled up when the format of the respective Schedule or Appendix is used.

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<sup>\$</sup>This Appendix-III contains a list of Clauses, Schedules and Appendices that would need to be suitably modified for reflecting bid-specific provisions. This Appendix-III may, therefore, be included in the RFP document to be issued to prospective Applicants