



Request for Proposal (RFP)

For Selection of

**Financial Consultant and Transaction Adviser for
the work of “Development of a Liquid Bulk Cargo Berth
at Vasco Bay on PPP basis at Mormugao Port, Goa”**

**Tender No. CE/28/2017
Tender Notice No. CE/N-23/2017**

**Civil Engineering Department
Mormugao Port Trust
Goa**

Feb' 2017

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 or an offer 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 may be on a wide range of matters, some of which may depend upon interpretation of law. The information given is not intended to be an exhaustive account of statutory requirements and should not be regarded as a complete or authoritative statement of law. 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 however 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.

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Glossary

Agreement	As defined in Schedule-2
Agreement Value	As defined in Clause 5.1.2 of Schedule-2
Applicable Laws	As defined in Schedule-2
Applicant	As defined in Clause 2.1.1
Authority	As defined in Clause 1.1.1
Bid Documents	As defined in Clause 1.2
Concession Agreement	As defined in Clause 1.1.2
Concessionaire	As defined in Clause 1.1.2
Conflict of Interest	As defined in Clause 2.2.1
Consultancy	As defined in Clause 1.2
Consultant	As defined in Clause 1.2
DBFOT	Design, Build, Finance, Operate and Transfer
Deliverables	As defined in Clause 4 of Schedule-1
Documents	As defined in Clause 2.11
Effective Date	As defined in Clause 2.1 of Schedule-2
Financial Proposal	As defined in Clause 2.12.1
Form of Agreement	Form of Agreement as in Schedule-2
INR, Re, Rs.	Indian Rupee(s)
Inception Report	As specified in Clause 4(A) of Schedule-1
Key Date or KD	As defined in Clause 5.2 of Schedule-1
LOA	Letter of Award
Lead Member	As defined in Clause 2.1.1
MCA	As defined in Clause 1.2 of Schedule – 1
Member	As defined in Clause 2.2.3 (a)
PPP	Public Private Partnership
Personnel	As defined in Clause 1.1.1(m) of Schedule-2
Project	As defined in Clause 1.1.1
Project Manager	As defined in Clause 4.6 of Schedule-2
Prohibited Practices	As defined in Clause 3.1
Proposals	As defined in Clause 1.2
Proposal Due Date or PDD	As defined in Clause 1.5
RFP	As defined in Disclaimer
Resident Personnel	As defined in Clause 1.1.1(n) of Schedule-2

Revenue Model	As defined in Clause 1.2
Scheduled Bank	As specified in RBI Act, 1934
Selected Applicant	As defined in Clause 1.6
Selection Process	As defined in Clause 1.6
Services	As defined in Clause 1.1.1(p) of Schedule-2
Sole Firm	As defined in Clause 2.1.1
Statutory Auditor	An Auditor appointed under Applicable Laws
Sub-Consultant	As defined in Clause 1.1.1(q) of Schedule-2
TOR	As defined in Clause 1.1.3
US\$	United States Dollar

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.

1. INTRODUCTION

1.1 Background

- 1.1.1 Mormugao Port Trust (the “Authority”) is engaged in the enhancement of the infrastructure of the Port, as part of this endeavour, the Authority has decided to undertake, “**Development of a Liquid bulk Cargo berth at Vasco bay on PPP basis at Mormugao Port Trust, Goa**”. (the “Project”) through Public- Private Partnership on Design, Build, Finance, Operate and Transfer (the “DBFOT”) basis. The estimated cost of the Project is **Rs 116 cr.** (Rupees One hundred and sixteen crores).
- 1.1.2 The Authority has conducted a feasibility study for determining the technical feasibility and financial viability of the Project. Based on the outcome of this study, the Project may be awarded on DBFOT basis to a private entity (the “Concessionaire”) selected through a competitive bidding process. The Project would be implemented in accordance with the terms and conditions stated in the Concession Agreement to be entered into between the Authority and the Concessionaire (the “Concession Agreement”).
- 1.1.3 In pursuance of the above, the Authority has decided to carry out the process for selection of a Financial Consultant and Transaction Adviser in accordance with the Terms of Reference specified at Schedule-1 (the “TOR”) and assist the Authority in the bidding process.

1.2 Requests for Proposal

The Authority invites financial proposals from shortlisted IPA empanelled Financial & Transaction Advisors, in single cover system as detailed in Clause 2.14, and 2.15 (the “Proposals”) for selection of a Financial Consultant and Transaction Adviser (the “Consultant”) who shall develop a revenue model and appropriate structure for the Project (the “Revenue Model”), prepare bid documents for selection of the Concessionaire (the “Bid Documents”) and assist the Authority in the bidding process including legal advisory, shortlisting of eligible bidders and co-ordinate with the Authority for selection of a bidder. (collectively the “Consultancy”).

The Authority intends to select the Consultant through an open competitive bidding 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 Authority and the Project site, sending written queries to the Authority, and attending a Pre-Proposal Conference on the date and time specified in Clause 1.11.

1.4 Sale of RFP Document and Earnest Money Deposit

RFP document will be issued only to the shortlisted consultants as per the IPA's selected list . For submission of the bid, a participation fee of Rs. 2000/- (Rupees Two thousand only) is payable, in the form of a demand draft or banker's cheque drawn on any Scheduled Bank in India in favour of **FA & CAO, Mormugao Port Trust** and payable at **Vasco da Gama**. **The aforesaid demand draft towards the participation fee shall be enclosed alongwith cover of the Tender (Financial Bid)**. Similarly the Earnest Money Deposit of Rs. 20,000 (Rupees Twenty Thousand Only) payable in the form of Demand Draft shall also be enclosed in the cover.

1.5 Validity of the Proposal

The Proposal shall be valid for a period of not less than 120 days from the Proposal Due Date (the "PDD").

1.6 Brief description of the Selection Process

The Authority will prepare a list of short-listed applicants as per the IPA's list who will be invited to submit their financial bids for the work. The L-1 Applicant (the "**Selected Applicant**") shall be called for negotiation, if necessary, while the L-2 Applicant will be kept in reserve.

1.7 Currency for payment

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

1.8 Schedule of Selection Process

The Authority would endeavour to adhere to the following schedule:

	Event Description	Date
1.	Last date for receiving queries / clarifications	15--03-2017
2.	Pre-Proposal Conference	17-03-2017
3.	Authority response to queries	22-03-2017
4.	Proposal Due Date or PDD	06-04-2017 at 3.00 pm
5.	Opening of Proposal	06-04-2017 at 3.30 pm
6.	Letter of Award (LOA)	Within 30 Days of PDD
7.	Signing of Agreement	Within 60 Days of LOA

Note: Validity of Bids will be 120 days from P.D.D

1.9 Pre-Proposal visit and inspection of data

Prospective applicants may visit the office of the Project Authority and the Project site and review the available documents and data at any time prior to PDD. For this purpose, they will provide at least two days' notice to the nodal officer specified below:

Executive Engineer (P-II)
Civil Engineering Department,
2nd floor, Administrative Bldg,
Mormugao Port Trust,
Headland, Sada, Goa 403804
Phone: 0832-2594617
Fax No.0832-2521165
Email:sudin.pd@gmail.com

1.10 Communications

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

The Chief Engineer
Civil Engineering Department,
2nd floor, Administrative Bldg.,
Mormugao Port Trust,
Headland, Sada, Goa 403804
Phone: 0832-2521160
Fax No.0832-2521165
Email: mgptce@gmail.com , sudin.pd@gmail.com

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

Tender Notice No. CE/N-23/2017 FOR SELECTION OF FINANCIAL CONSULTANT AND TRANSACTION ADVISER

1.11 Pre-Proposal Conference

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

Date: 17-03-2017
Time: 1030hrs
Venue: Board Room,
3rd floor, Administrative Office Building,
Mormugao Port Trust,
Headland, Sada, Goa – 403804

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 submit its bid 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 Consultant shall be on the basis of their financial bid submitted for 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 Section of the RFP. The Financial Proposal shall be submitted in the form at Appendix-I. Upon selection, the Applicant shall be required to enter into an Agreement with the Authority.

2.2 Conflict of Interest

2.2.1 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 Performance Security, if available, 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.

2.2.2 The Authority requires that the Consultant provides professional, objective, and impartial advice and at all times hold the Authority’s interests paramount, avoid conflicts with other assignments or its own interests, and act without any consideration for future work. The 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.

2.2.3 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 Associates (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 per cent 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 per cent) of the subscribed and paid up equity share capital thereof. For the purposes of this Clause 2.2.3(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 per cent) 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 others’ 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 other members, if any) and any subsidiaries or entities controlled by such Applicant or having common controlling shareholders. The duties of the Consultant will depend on the circumstances of each case. While providing consultancy services to the Authority for this particular assignment, the Consultant shall not take up any assignment that by its nature will result in conflict

with the present assignment; or

- (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 2.2.4; 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 per cent) 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 per cent) of the paid up and subscribed share capital of such Concessionaire or its contractor(s) or sub-contractor(s); provided further that this disqualification shall not apply to ownership by a bank, insurance company, pension fund or a Public Financial Institution referred to in section 4A of the Companies Act 1956. For the purposes of this Sub-clause (h), indirect shareholding shall be computed in accordance with the provisions of Sub-clause (a) above.

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, or is deemed or published as an "Associate Office"; or has a formal arrangement such as tie up for client referral or technology sharing, joint venture with the Applicant (the "**Associate**"); provided, however, that if the Applicant has any formal arrangement such as consortium membership in a consortium of advisers/ consultants for a particular assignment/ project, not being this project, with any other person, then such other person shall not be treated to be an Associate of the Applicant solely due to the reason of forming such consortium. 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 per cent) 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.

- 2.2.4 An Applicant eventually appointed to provide Consultancy for this Project, its Associates, affiliates and the Financial Expert, 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 3 (three) years from the completion of this assignment or to any 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 Consultant shall include a partner in the Consultant's firm or a person who holds more than 5% (five per cent) of the subscribed and paid up share capital of the Consultant, as the case may be, and any Associate thereof. For the avoidance of doubt, in the event that: (a) the Financial Expert of an Applicant/ Consultant was a partner or an employee of another firm, which attracts the provisions relating to Conflict of Interest hereunder; and (b) was directly or indirectly associated with any assignment that causes a Conflict of Interest hereunder, then such Financial Expert shall be deemed to suffer from Conflict of Interest for the purpose hereof.

- 2.2.5 In the event that the Consultant, its Associates or affiliates are auditors or financial advisers to any of the bidders for the Project, they shall make a disclosure to the Authority as soon as any potential conflict comes to their notice but in no case later than 2 (two) days from the opening of the RFQ applications for the Project and any breach of this obligation of disclosure shall be construed as Conflict of Interest. The Authority shall, upon being notified by the Consultant under this Clause 2.2.5, decide whether it wishes to terminate this Consultancy or otherwise, and convey its decision to the Consultant within a period not exceeding 15 (fifteen) days.

2.3 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.

2.4 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.

2.5 Visit to the Authority and verification of information

Applicants are encouraged to submit their respective Proposals after visiting the office of the Authority and ascertaining for themselves the availability of documents and other data with the Authority, Applicable Laws and regulations or any other matter considered relevant by them.

2.6 Acknowledgement by Applicant

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

Development of a Liquid Bulk cargo berth at Vasco bay on PPP basis at Mormugao Port Trust, Goa

- (a) made a complete and careful examination of the RFP;
- (b) received all relevant information requested from the Authority;
- (c) 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 2.5 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.

2.6.2 The Authority shall not be liable for any omission, mistake or error in respect of any of the above or on account of any matter or 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.

2.7 Right to reject any or all Proposals

2.7.1 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 therefore.

2.7.2 Without prejudice to the generality of Clause 2.7.1, 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.

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**2.8 Contents of the RFP**

2.8.1 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 2.10.

Request for Proposal

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

Schedules

- 1 **Terms of Reference**
- 2 **Form of Agreement**
 - Annex-1 : Terms of Reference
 - Annex-2 : Cost of Services
 - Annex-3 : Payment Schedule
 - Annex-4 : Bank Guarantee for Performance Security
- 3 **Guidance Note on Conflict of Interest**
- 4 **Appendices**
 - Appendix – I : Financial Proposal**
 - Form 1 : Covering Letter
 - Form 2 : Financial Proposal

2.9 Clarifications

2.9.1 Applicants requiring any clarification on the RFP may seek from the Authority by email.

The Authority shall endeavour to respond to the queries within the period specified therein but no later than 2 (two) days prior to the PDD. The responses will be sent by e-mail.

2.9.2 The Authority reserves the right not to respond to any queries or provide any clarifications, in its sole discretion, and nothing in this Clause 2.9 shall be construed as obliging the Authority to respond to any question or to provide any clarification.

2.10 Amendment of RFP

- 2.10.1 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 by conveying the same to the prospective Applicants (who have been shortlisted) by e-mail.
- 2.10.2 All such amendments will be notified by e-mail to those Applicants who have been shortlisted.
- 2.10.3 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 PDD.

C. PREPARATION AND SUBMISSION OF PROPOSAL**2.11 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 all the relevant passages in English, in which case, for all purposes of interpretation of the Proposal, the translation in English shall prevail.

2.12 Financial Proposal

- 2.12.1 Applicants shall submit the financial proposal in the formats at Appendix-I (the “**Financial Proposal**”) clearly indicating the total cost of the Consultancy in both figures and words, in Indian Rupees, and signed by the Applicant’s Authorized 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.
- 2.12.2 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 normally cover remuneration for all the Personnel (Expatriate and Resident, in the field, office etc), accommodation, air fare, equipment, printing of documents, etc. The total amount indicated in the Financial Proposal shall be without any condition attached or subject to any assumption, and shall be final and binding. In case any assumption or condition is indicated in the Financial Proposal, it shall be considered non-responsive and liable to be rejected.

- (ii) The Financial Proposal shall take into account all expenses and tax liabilities, except Service Tax. Service Tax will be borne by the Authority and shall not be included in the Financial Proposal. All payments shall be subject to deduction of taxes at source as per Applicable Laws.
- (iii) All costs shall be expressed in INR.

2.13 Submission of Proposal

2.13.1 The Applicants shall submit the Proposal with all pages numbered serially and by giving an index of submissions. Each page of the submission shall be initialed by the Authorized Representative of the Applicant as per the terms of this RFP.

2.13.2 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 Clause 1.10.1 and 1.10.2 and the name and address of the Applicant. It shall bear on top, the following:

“Do not open, except in presence of the Authorized 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.

2.13.3 The envelope marked “Financial Proposal” shall contain the financial proposal in the prescribed format (Forms 1 & 2 of Appendix-I).

2.13.4 The Financial Proposal shall be typed or written in indelible ink and signed by the Authorized Representative of the Applicant. All pages of the original Financial Proposal must be numbered and initialed by the person or persons signing the Proposal.

2.13.5 The completed Proposal must be delivered on or before the specified time on PDD. Proposals submitted by fax, or e-mail shall not be entertained.

2.13.6 The rates quoted shall be firm throughout the period of performance of the assignment upto and including discharge of all obligations of the Consultant under the Agreement.

2.14 Proposal Due Date

2.14.1 Proposal should be submitted before 1500 hrs on the PDD specified at Clause 1.8 at the address provided in Clause 1.10 in the manner and form as detailed in this RFP. A receipt thereof should be obtained from the person specified therein.

2.14.2 The Authority may, in its sole discretion, extend the PDD by email in accordance with Clause 2.10 uniformly for all Applicants.

2.15 Late Proposals

Proposals received by the Authority after the specified time on PDD shall not be eligible for Development of a Liquid Bulk cargo berth at Vasco bay on PPP basis at Mormugao Port Trust, Goa

consideration and shall be summarily rejected.

2.16 Modification/ substitution/ withdrawal of Proposals

- 2.16.1 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 PDD. No Proposal shall be modified, substituted, or withdrawn by the Applicant on or after the PDD.
- 2.16.2 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.
- 2.16.3 Any alteration / modification in the Proposal or additional information or material supplied subsequent to the PDD, unless the same has been expressly sought for by the Authority, shall be disregarded.

2.17 Performance Security

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 Performance Security, if available, 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 engages in any of the Prohibited Practices specified in Clause 3.1 of this RFP;
- (b) if the Applicant is found to have a Conflict of Interest as specified in Clause 2.2; and
- (c) if the selected Applicant commits a breach of the Agreement.

D. EVALUATION PROCESS

2.18 Evaluation of Proposals

- 2.18.1 The Authority shall open the Financial Proposals at 1530 hours on the PDD, at the place specified in Clause 1.10.1 and in the presence of the Applicants who choose to attend.
- 2.18.2 Proposals for which a notice of withdrawal has been submitted in accordance with Clause 2.16 shall not be opened.
- 2.18.3 Prior to evaluation of Proposals, the Authority will determine whether each Proposal is responsive to the requirements of the RFP. A Proposal shall be considered responsive only if:

- (a) it is received by the PDD including any extension thereof
- (b) it is signed, sealed, bound together and marked as stipulated
- (c) it does not contain any condition or qualification; and
- (d) accompanied by EMD of Rs.20,000/- and participation fee of Rs.2000/-

2.18.4 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.

2.18.5 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.

2.18.6 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.

2.19 Indemnity

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

2.20 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 2 (two) 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, cancel the LOA and the next highest ranking Applicant may be considered.

2.21 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.

2.22 Commencement of Assignment

The Consultant shall commence the Consultancy within two days of the date of award of work. If the Consultant fails to either sign the Agreement as specified or commence the assignment as specified herein, the Authority may invite the second ranked Applicant for negotiations. In such an event, the LOA or the Agreement, as the case may be, may be cancelled / terminated

3. FRAUD AND CORRUPT PRACTICES

- 3.1 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 Performance Security, if available, 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.
- 3.2 Without prejudice to the rights of the Authority under Clause 3.1 hereinabove and the rights and remedies which the Authority may have under the LOA or the Agreement, if an Applicant or 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 Agreement, such Applicant or 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 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.
- 3.3 For the purposes of this Clause, 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 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.

4. PRE-PROPOSAL CONFERENCE

- 4.1 Pre-Proposal Conference of the Applicants shall be convened at the designated date, time and place as detailed below. A maximum of two representatives of each Applicant shall be allowed to participate on production of an authority letter from the Applicant.

Date: 17-03-2017

Time: 1030hrs

Venue: Board Room

3rd Floor, Main Administrative Office Building

Mormugao Port Trust

Headland, Sada

Goa- 403804

- 4.2 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. The queries and replies will be posted on the port's website www.mptgoa.com

CONSULTANCY FOR FINANCIAL AND TRANSACTION SERVICES**SCHEDULE – 1***(See Clause 1.1.3)***Terms of Reference (TOR)****1. GENERAL**

- 1.1 The Authority seeks the services of a qualified firm for acting as a Financial Consultant and Transaction Adviser for appraising the Project, developing a revenue model and preparing bid documents and assist the Authority in the bidding process including legal advisory and evaluation and shortlisting of bidders, (collectively the “**Consultancy**”). The Terms of Reference (the “**TOR**”) and the scope of the Consultancy for this assignment are specified below.
- 1.2 The Consultant shall be guided in its assignment by the Model Concession Agreement (the “**MCA**”) for Private Sector Projects in Major Ports be developed through Public-Private Partnership published by the Ministry of Shipping, Ports Wing.
- 1.3 The Consultant shall be responsible for preparing the relevant Schedules of the Concession Agreement and for bringing out any special feature or requirement of the Project referred to in the Concession Agreement.
- 1.4 The Consultant shall assist the Authority by furnishing clarifications as required for the structuring, documentation and award of the Project.
- 1.5 The Consultant shall also participate in the pre-bid conferences with the Bidders of the Project and assist the Authority in clarifying the, Technical, Financial, Legal aspects and in evaluation and shortlisting of bidders, preparation of SFC memo & presentation to Ministry from time to time.
- 1.6 The Consultant shall make available the Financial Expert and other Key Personnel to attend and participate in meetings, conferences and discussions with the Authority and shall otherwise advise on and assist the Authority in the diverse commercial, legal and Tariff issues that may arise from time to time.

2. OBJECTIVE

The objective of this Consultancy (the “**Objective**”) is to procure transaction related advice, develop a revenue model, undertake a financial appraisal, legal advisory, and assist in the bidding, evaluation and shortlisting process and award of the Project in a manner which ensures:

- (a) participation by the best available companies in the bidding process;
- (b) financing of the capital cost by the Concessionaire; and
- (c) optimizing the revenue potential of the Project.

3. SCOPE OF SERVICES

3.1 The scope of services shall include:

- (i) assisting in the entire bidding process up to the signing of the Concession Agreement;
- (ii) evaluation of the strategic objectives of the Authority in relation to the Project and advising on the commercial and capital structuring, especially with reference to Applicable Laws;
- (iii) collection, compilation and analysis of relevant financial data relating to all costs and revenues;
- (iv) review / study/ update cost estimates contained in the Feasibility Report (FR);
- (v) assisting the Authority in identification of project risks and in allocation of the same in an efficient and economic manner;
- (vi) identification and quantification of estimated financial impact of the Project on government resources;
- (vii) development of various possible alternatives for revenue maximization and preparation of financial model for the project;
- viii) advising on tax-related issues arising out of the Project structuring;
- (ix) comment on the draft Concession Agreement; along with a declaration that there is no deviation from MCA.
- (x) preparation of a consolidated list of approvals/consents/clearances required from Government Instrumentalities; and
- (xi) assist in preparation of Bid documents including the relevant Schedules of the Concession Agreement.
- (xii) Assist the Authority during joint hearing meetings, if any, with the TAMP.
- (xiii) Legal vetting of documents and issue of legal certificate.
- (xiv) advise the Authority on all legal matters associated with the successful conduct of the Bidding Process and execution of the Concession Agreement with the selected bidder
- (xv) Preparation of SFC memo
- (xvi) Presentation to Ministry /Authority from time to time

In making its projections, recommendations and Reports, the Consultant shall identify the underlying assumptions and reach an agreement with the Authority in relation thereto. The services to be rendered by the financial consultants are briefly explained

hereunder:

3.2 Transaction Adviser

The Consultant shall be responsible for review of the financial parameters and examination of the viability of the Project. The Consultant will also render advisory & legal services for conducting the bid process and will assist in the preparation of bidding documents and in conducting the bidding process for selection of the concessionaire for the project. The Consultant shall also maintain, update and disseminate the necessary data and information related to the Project and the bid process. During interaction with the bidders and stakeholders, the Consultant shall assist the Authority in responding to all queries satisfactorily and within the specified time. The Consultant shall render advisory services upto the signing of the Concession Agreement.

3.3 Compilation and analysis of Data

The Consultant shall, based on available information, compile and analyse the financial and commercial data relating to the Project and prepare a revenue and expenditure statement, on commercial accounting principles, for three financial years preceding the consultancy. The expenditure statement shall include expenses on staff, material, contractual payments, etc.

3.4 Review of costs

FR along with Concession Agreement will indicate the nature and extent of infrastructure, facilities and services to be provided by the Concessionaire. The Consultant shall review and comment on the cost estimates contained in the FR. He shall ensure that appropriate provisions have been made for physical and price contingencies, financing costs, interest during construction, etc. The Consultant shall also make a broad assessment of O&M expenses to be incurred by the Concessionaire during the entire Concession period based on standards.

3.5 Estimation of revenues

The Consultant shall evaluate the available data and information with a view to preparing a reasonable estimation of the likely revenues of the concessionaire from the charges to be collected from the Project and from other sources of revenue, if any. It shall propose various options for optimising such revenues.

3.6 Comment on Draft Concession Agreement

The Consultant shall comment on the draft Concession Agreement (CA) provided by the Authority and take into account the provisions of MCA, if any, while making its recommendations.

3.7 Impact of Project on Government Resources

Development of a Liquid Bulk cargo berth at Vasco bay on PPP basis at Mormugao Port Trust, Goa

The Consultant shall also identify and quantify the estimated financial impact of the Project on the resources of the Central / State Governments and the Project Authority.

3.8 Development of Financial Model

The Consultant shall identify and quantify all costs, expenses and revenues of the Project, and shall prepare cash-flow statements for the concession period, based on which, the Consultant shall prepare the Revenue Model which will indicate the possible capital structure, likely sources of financing, the costs of financing, the cash flow, debt service, return on investment etc. (the “**Financial Model**”). This would also include sensitivity analysis in relation to the critical parameters of the Financial Model.

3.9 Project Appraisal

Based on the parameters specified in the draft Bid documents as well as the Revenue Model, the Consultant shall prepare an Appraisal Report for the Project outlining the salient features of the Project, its financial viability and its social and economic benefits. The Consultant shall work out the financial viability of the Project with a view to estimating the likely IRR over a concession period of 30 (thirty) years. The Consultant shall review the FR and the draft Concession Agreement to estimate the capital costs, O&M costs, revenues etc. and prepare a financial appraisal report for the Project (the “**Appraisal Report**”).

3.10 Evaluation of the RFQ process

The bidding process is specified in the Model Request for Qualification (RFQ) document published by the Planning Commission and available at www.infrastructure.gov.in. The Consultant shall assist in adapting the Model RFQ document for project-specific purposes. The Consultant shall also assist the Authority in the pre-qualification process. The Authority intends to pre-qualify bidders on the basis of the response to the RFQ document.

3.11 Preparation of RFP and MCA Documents

The Consultant shall assist in preparing the Request for Proposal and draft Concession Agreement based on the Model RFP and MCA. The Model RFP published by the Planning Commission (Niti Ayog) is available at www.infrastructure.gov.in. The MCA shall be provided by the Authority. The Consultant may also suggest improvements in the development plan and in the Bid Documents. For this purpose, he shall work closely with the Authority and its legal advisers. Bid documents would include the draft Concession Agreement and the FR. Bids to be submitted by the bidders shall be based on the aforesaid bid documents.

3.12 Assistance in the Bid Process

Development of a Liquid Bulk cargo berth at Vasco bay on PPP basis at Mormugao Port Trust, Goa

The Consultant shall assist the Authority in the bid process for selection of the Concessionaire from among the Bidders and till the signing of the Concession Agreement. This will primarily relate to participation in pre-bid meetings and answering questions or issuing clarifications with the approval of the Authority. The Consultant shall also assist the Authority in engaging with the bidders on different aspects of the Project such as its assets, the process of the transaction, the Revenue Model, legal aspects and the structure of the Project. It will also assist the Authority in preparing internal notes and projections for securing governmental approvals, if any.

3.13 Assistance in selection of the preferred Bidder

The Authority intends to select the preferred bidder on the basis of the Proposals received from pre-qualified bidders. Only financial proposals will be invited as part of the Bidding Process. The Consultant shall also assist the Authority in evaluating the financial proposals and in engaging with the selected bidder till execution of the Concession Agreement.

3.14 Rendering Advisory Services

The Consultant shall provide such other advice and assistance as may be necessary and incidental to the Services and as may be requested by the Authority in respect of the Project, including but not limited to attending meetings, conferences and discussions with the Authority, and shall otherwise advise on and assist the Authority in the diverse commercial issues that may arise from time to time. The Consultant shall be responsible primarily for providing advice relating to financial issues arising from or during the course of the bidding process and the documents relating thereto.

3.15 Tax and Insurance-related Matters

During the course of the Consultancy, the Consultant may be called upon to advise on tax and / or insurance related issues affecting the Project.

3.16 Specific Requirements for the Project

As specified in Clause 3.1 of TOR.

3.17 Scope not exhaustive

The Scope of Services specified in this Clause 3 are not exhaustive and the Consultant shall undertake such other tasks as may be necessary to appraise the project financially, prepare the Revenue Model, assisting in legal aspects, and successfully complete the bid process for the Project.

4. DELIVERABLES

In pursuance of this TOR, the Consultant shall undertake/deliver the following deliverables (the “**Deliverables**”) during the course of this Consultancy. Each deliverable shall include an executive summary, analyses, assumptions, results of

computations, tables, charts, recommendations, and such other contents that generally comprise deliverables for similar consultancy work by way of best practices. **10 hard copies and 3 soft copies** of all the Reports mentioned herein below shall be submitted to the Authority. The deliverables shall include:

A. Evaluation of the RFQ document (Refer Clause 3.10)

B. Financial Model (Refer Clause 3.8)

C. Appraisal Report (Refer Clause 3.9)

In the event that a viable project does not seem possible, the Consultant shall not proceed with the Consultancy and the same shall be terminated. Upon such termination, the Consultant shall be entitled to (a) full payment for the Deliverables completed by it; and (b) part payment for the non-completed deliverables on pro-rata basis as assessed by the Authority and the Authority's decision in this regard shall be final.

D. Preparation of RFP and Concession Agreement (Refer Clauses 3.10 & 3.11).

E. Assistance in Bidding Process (Refer Clause 3.12)

F. Assistance Port in the process of signing Concession Agreement

5. TIME AND PAYMENT SCHEDULE

5.1 Subject to the provisions of Clause 10.1 of the TOR, the total duration for preparation of the Revenue Model, Appraisal Report, and bid documents and the bidding process shall be **20 weeks**, excluding the time taken by the Authority in providing the requisite documents or in conveying its comments on the Draft Reports. The Consultant shall deploy the Key Personnel as per the deployment of Personnel proposed. Intermittent services will be required beyond the 15th week and until the end of 20 weeks or two months after the signing of the Concession Agreement, whichever is earlier. The period for completing the Deliverables specified under Clauses 4A to 4E shall be 15 weeks. Deliverables under Clause 4F may continue till the execution of the Concession Agreement.

5.2 The schedule for completing the Deliverables shall be determined by the maximum number of days/ weeks from the Effective Date of the Agreement (the "**Key Dates**" or "**KD**"). Time schedule for important Deliverables of the Consultancy and the payment schedule linked to the specified Deliverables are given below:

Key Date	Description of Deliverables	Week	Payment
KD1	Evaluation of the RFQ document	1	20%
KD2	Financial Model	2	20%
KD3	Preparation of the RFP and Concession Agreement	2	15%
KD4	Preparation of Appraisal Report for EFC/PIB/SFC	1	15%
KD5	Assistance in conducting the bid process	-	20%
KD6	Completion of Services	-	10%
Total			100%

Note: (1) Excludes time taken by the Authority in providing comments on Draft Reports. The Consultant shall get one week for submission of the Appraisal Report after comments of the Authority are provided.

(2) In case of premature closure or work, the amount payable to the consultant will be as per the deliverable completed and delivered to the Port, and the balance amount related to other undelivered deliverables shall not be paid, and the consultancy services will be discontinued as per written notice from the Port to the consultant.

5.3 Payment for the Services shall be based on the percentage specified in Clause 5.2. Reimbursement of expenses relating to travel for participating in meetings and shall be made in accordance with the provisions of the Financial Proposal contained in Form-2 of Appendix-II of the RFP. Bills for such reimbursement may be submitted on a monthly basis.

5.4 Payment shall be made in respect of each Deliverable upon completion thereof.

5.5 10% (ten per cent) of the Agreement Value has been earmarked as Final Payment to be made to the Consultant upon execution of the Concession Agreement. In the event the Concession Agreement does not get executed within 20 weeks of the Effective Date, the Final Payment shall not become due to the Consultant, save and except the costs incurred for travel costs to attend meeting in the locations other than Goa, during the period from the Effective Date. In the event that the Consultancy is terminated by the Authority prior to its completion, the Consultant shall be entitled to (a) full payment for the Deliverables completed by it; and (b) part payment for the non-completed deliverables on pro-rata basis as assessed by the Authority and the Authority's decision in this regard shall be final.

6. MEETINGS

6.1 The Authority may review with the Consultant, any or all of the documents and advice forming part of the Consultancy, in meetings and conferences which will be held in Goa at the Authority's office. Further, the Consultant may be required to attend

meetings and conferences with pre-qualified bidders / the Selected Bidder / Govt. agencies or as directed by the Authority from time to time. The expenses towards attending such meetings **in places other than Goa**, during the period of Consultancy, including travel costs shall be reimbursed in accordance with the Financial Proposal contained in Form-2 of Appendix-I of the RFP.

- 6.2 The Authority may, in its discretion, require the Consultant to participate in extended meetings and/ or work from the offices of the Authority and the Consultant shall, on a best endeavour basis and without unreasonable delay, provide such services.

7. CONSULTANCY TEAM

- 7.1 The Consultant shall form a team (the “**Consultancy Team**”) for undertaking this assignment. The Consultancy Team shall consist of experts who have the requisite qualifications and experience. Financial Expert shall be the leader of the Consultancy Team. 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 services to be rendered by the Consultant shall be included in the Team either through the Key Personnel specified below or through other Professional Personnel, as necessary.

Financial Expert-cum-Team Leader (the “Financial Expert”)

Educational Qualifications	MBA (Finance) / CA/ CFA/CMA or equivalent
Essential Experience	Should have led the financial team in preparation of Revenue Model and/or Bid Documents for 3 Eligible Assignments, of which at least 1 should be PPP projects
Job responsibilities	Lead, co-ordinate and supervise the Consultancy Team for delivering the Consultancy in a timely manner . Shall not delegate his responsibilities without the prior written approval of the Authority

Associate Consultant

Educational Qualifications	CA/CFA/ CMA/MBA or equivalent
Essential Experience	Should have worked as member of a financial team in preparation of Revenue Model and/or Bid Documents for at least one Eligible Assignments.
Job responsibilities	Assist the Financial Expert

Legal Expert

Educational Qualifications	Bachelor in law
Essential Experience	Experience in commercial contracts and/or Bid Documents for two Eligible Assignments of which at least 1 (one) should be in PPP projects.
Job responsibilities	Advise the Authority on all legal matters associated with the successful conduct of the Bidding Process and execution of the Concession Agreement with the selected bidder

Sector Expert

Educational Qualifications	Degree in Mechanical/Civil Engineering
Essential Experience	Should have worked in the relevant Engineering discipline in PPP projects
Job responsibilities	Provide sectoral perspective and analyse the cost estimates based on the Feasibility Report and the Draft Concession Agreement

7.2 The Consultant shall mobilize and demobilize its Personnel as required.

8. REPORTING

8.1 The Consultant will work closely with the Authority. The Authority has established a Working Group (the “WG”) to enable conduct of this assignment. A designated Project Director of the Authority will be responsible for the overall coordination and project development. He will play a coordinating role.

8.2 The Consultant may Issue papers highlighting issues that could become critical for the timely completion of the Project and that require attention from the Authority.

8.3 The Consultant will make a presentation on the inception report for discussion with the WG at a meeting. This will be a working document. The Consultant is required to prepare and submit a monthly report that includes and describes, *inter alia*, general 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. However, work on the TOR tasks should continue during this period.

8.4 Regular communication with the WG and the Project Director is required in addition to all key communications.

8.5 The Deliverables will be submitted as per schedule provided in this RFP.

9. DOCUMENTS TO BE MADE AVAILABLE BY THE AUTHORITY

The Authority shall provide to the Consultant the following:

- (a) Feasibility Report
- (b) A copy of the Model Concession Agreement.

Available data as may be required by the Consultant will be provided by the Authority on request. The Nodal Officer designated by the Authority shall facilitate handing over of such information to the Consultant.

10. COMPLETION OF SERVICES

Development of a Liquid Bulk cargo berth at Vasco bay on PPP basis at Mormugao Port Trust, Goa

- 10.1 All the Deliverables shall be compiled, classified and submitted by the Consultant to the Authority in soft form, to the extent possible. The documents comprising the Deliverables shall remain the property of the Authority and shall not be used by the Consultant for any purpose other than that intended under these Terms of Reference without the permission of the Authority. The Consultancy shall stand completed on acceptance by the Authority of all the Deliverables of the Consultant. Unless completed earlier, 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 60 (sixty) days after receipt of the final Deliverable unless the Authority, within such 60 (sixty) day period, gives written notice to the Consultant specifying in detail, the deficiencies in the Services. The 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 Consultancy shall in any case be deemed to be completed upon expiry of 20 weeks from the Effective Date, unless extended by mutual consent of the Authority and the Financial Consultant.
- 10.2 10% (ten per cent) of the Agreement Value has been earmarked as lump sum payment to be made to the Consultant upon execution of the Concession Agreement (the "**Lump Sum Payment**"). In consideration of the Lump Sum Payment, the Consultant would provide such services as may be required by the Authority for concluding the Bid Process and execution of the Concession Agreement. In the event the Concession Agreement does not get executed within 20 weeks of the Effective Date, the Consultancy shall stand completed as specified in Clause 10.1 above, but no Lump Sum Payment shall be due to the Consultant, save and except the costs incurred for meeting its expenses during the period after expiry of 25 (twenty five) weeks from the Effective Date, including travel costs as specified in Annex-1 of the Agreement, which shall be reimbursed to the Consultant as per actual. For the avoidance of doubt, it is agreed that reimbursement of such costs including on travel costs shall be due to the Consultant as aforesaid, even if the Concession Agreement is not executed.

SCHEDULE-2
(See Clause 2.1.3)

AGREEMENT

FOR

PROVISION OF FINANCIAL AND TRANSACTION ADVISORY SERVICES

FOR

**DEVELOPMENT OF A LIQUID BULK CARGO BERTH AT VASCO BAY
ON PPP BASIS AT MORMUGAO PORT TRUST, GOA**

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AGREEMENT

PROVISION OF FINANCIAL AND TRANSACTION SERVICES FOR REDEVELOPMENT OF BERTHS 8, 9 & BARGE BERTHS AT THE PORT OF MORMUGAO, GOA

AGREEMENT No.

This AGREEMENT (hereinafter called the “**Agreement**”) is made on the day of the month of 2***, between, on the one hand, the Chairman, Mormugao Port Trust acting through the Board of Trustees (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 “**Consultant**” which expression shall include their respective successors and permitted assigns).

WHEREAS

- (A) The Authority vide its Request for Proposal for appointment of Financial Consultant and Transaction Advisor (herein- after called the “**Consultancy**”) for Redevelopment of Berths 8, 9 & Barge Berths at the Port of Mormugao, Goa (of hereinafter called the “**Project**”);
- (B) the Consultant submitted its proposals for the aforesaid work, whereby the Consultant represented to the Authority that it had the required professional skills, and in the said proposals the 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 Consultant, awarded the Consultancy to the 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 6.1.2;
 - (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;
 - (e) "Conflict of Interest" shall have the meaning set forth in Clause 3.2 read with the provisions of RFP;
 - (f) "Dispute" shall have the meaning set forth in Clause 9.2.1;
 - (g) "Effective Date" means the date on which this Agreement comes into force and effect pursuant to Clause 2.1;
 - (h) "Expatriate Personnel" means such persons who at the time of being so hired had their domicile outside India;
 - (i) "Government" means the Government of India;
 - (j) "INR, Re. or Rs." means Indian Rupees;
 - (k) "Member", in case the Consultant consists of a consortium of more than one entity, means any of these entities, and "Members" means all of these entities;
 - (l) "Party" means the Authority or the Consultant, as the case may be, and Parties means both of them;
 - (m) "Personnel" means persons hired by the Consultant or by any Sub-Consultant as employees or retainers and assigned to the performance of the Services or any part thereof;
 - (n) "Resident Personnel" means such persons who at the time of being so hired had their domicile inside India;
 - (o) "RFP" means the Request for Proposal document in response to which the Consultant's proposal for providing Services was accepted;
 - (p) "Services" means the work to be performed by the Consultant pursuant to this Agreement, as described in the Terms of Reference hereto;
 - (q) "Sub-Consultant" means any entity to which the Consultant sub-contracts any part of the Services in accordance with the provisions of Clause 4.7; and
 - (r) "Third Party" means any person or entity other than the Government, the Authority, the 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 part of this Agreement and in case of any contradiction between or among them the priority in which a document would prevail over another would be as laid down below beginning from the highest priority to the lowest priority:

- (a) Agreement;
- (b) Annexes of Agreement;
- (c) RFP; and
- (d) Letter of 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 Consultant. The 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.

1.3 Rights and obligations

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

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

1.4 Governing law and jurisdiction

This Agreement shall be construed and interpreted in accordance with and governed by the laws of India, and the courts at Goa shall have exclusive jurisdiction over matters arising out of or relating to this Agreement.

1.5 Language

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

1.6 Table of contents and headings

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

1.7 Notices

Any notice or other communication to be given by 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 Consultant, be given by facsimile or e-mail and by letter delivered by hand to the address given and marked for attention of the Consultant's Representative set out below in Clause 1.10 or to such other person as the Consultant may from time to time designate by notice to the Authority;

- (b) in the case of the Authority, be given by facsimile or 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 Consultant; provided that if the Consultant does not have an office in Chennai it may send such notice by facsimile or 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 facsimile or email, it shall be deemed to have been delivered on the working days following the date of its delivery.

1.8 Location

- 1.8.1 The Services shall be performed at the offices of the Authority in accordance with the provisions of RFP and at such locations as are incidental thereto, including the offices of the Consultant.
- 1.8.2 The Authority may require the Financial Expert or other key personnel to spend time as required at the offices of the Authority or as directed by the Authority from time to time and the Consultant agrees and undertakes to provide such services on a best effort basis and without any unreasonable delay.

1.9 Authority of Member-in-charge

In case the 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 Consultant's rights and obligations towards the Authority under this Agreement, including without limitation the receiving of instructions and payments from the Authority.

1.10 Authorized Representatives

- 1.10.1 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 Consultant, as the case may be, may be taken or executed by the officials specified in this Clause 1.10.
- 1.10.2 The Authority may, from time to time, designate one of its officials as the Authority Representative. Unless otherwise notified, the Authority Representative shall be:

The Executive Engineer (Projects)

Mormugao Port Trust,

Civil Engineering Department,

Headland, Sada, Goa- 403804

Phone: 0832 2594617 Fax No.0832-2521165, Email: sudin.pd@gmail.com

1.10.3 The Consultant may designate one of its employees as Consultant’s Representative. Unless otherwise notified, the Consultant’s Representative shall be:

Tel: *****

Mobile: *****

Fax: *****

E-mail:*****

1.11 Taxes and duties

Unless otherwise specified in the Agreement, the 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 Consultant shall commence the Services within a period of 2 (two) days from the Effective Date, unless otherwise agreed by the Parties.

2.3 Termination of Agreement for failure to commence Services

If the Consultant does not commence the Services within the period specified in Clause 2.2 above, the Authority may, by not less than 1 (one) weeks’ notice to the Consultant, declare this Agreement to be null and void, and in the event of such a declaration, this Agreement shall stand terminated and the Consultant shall be deemed to have accepted such termination.

2.4 Expiration 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 upon the earlier of (i) expiry of a period of 60 (sixty) days after the delivery of the final Deliverable to the Authority; and (ii) the expiry of 20 weeks from the Effective Date. Upon Termination, the Authority shall make payments of all amounts due to the 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 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. 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 fulfill 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 fulfill 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 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 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 Consultant, suspend all payments to the Consultant hereunder if the 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 Consultant to remedy such breach or failure within a period not exceeding 15 (fifteen) days after receipt by the Consultant of such notice of suspension.

2.9 Termination of Agreement

2.9.1 By the Authority

The Authority may, by not less than 15 (fifteen) days' written notice of termination to the 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 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 15 (fifteen) days of receipt of such notice of suspension or within such further period as the Authority may have subsequently granted in writing;
- (b) the 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 Consultant submits to the Authority a statement which has a material effect on the rights, obligations or interests of the Authority and which the Consultant knows to be false;
- (d) any document, information, data or statement submitted by the Consultant in its Proposals, based on which the Consultant was considered eligible or successful, is found to be false, incorrect or misleading;
- (e) as the result of Force Majeure, the Consultant is unable to perform a material portion of the Services for a period of not less than 60 (sixty) days; or
- (f) the Authority, in its sole discretion and for any reason whatsoever, decides to terminate this Agreement.

2.9.2 By the Consultant

The Consultant may, by not less than 30 (thirty) days' written notice to the Authority, 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 Authority fails to pay any money due to the Consultant pursuant to this Agreement and not subject to dispute pursuant to Clause 8 hereof within 45 (forty five) days after receiving written notice from the Consultant that such payment is overdue;

- (b) the Authority 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 Consultant may have subsequently granted in writing) following the receipt by the Authority of the Consultant's notice specifying such breach;
- (c) as the result of Force Majeure, the 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 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 clause 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 survives such Termination; (ii) the obligation of confidentiality set forth in Clause 3.3 hereof; (iii) the Consultant's obligation to permit inspection, copying and auditing of such of its accounts and records set forth in Clause 3.5, as relate to the Consultant's Services provided under this Agreement, and (iv) any right or remedy which a Party may have under this Agreement or the Applicable Laws.

2.9.4 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 Consultant shall, immediately upon dispatch or receipt of such notice, take all necessary steps to bring the Services to a close in a prompt and orderly manner and shall make every reasonable effort to keep expenditures for this purpose to a minimum. With respect to documents prepared by the Consultant and materials furnished by the Authority, the Consultant shall proceed as provided respectively by Clauses 3.7 or 3.8 hereof.

2.9.5 Payment upon Termination

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

3.1 General

3.1.1 Standards of Performance

The 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 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.

3.1.2 Terms of Reference

The scope of Services to be performed by the Consultant is specified in the Terms of Reference (the "TOR") at Schedule-1 of this document. The Consultant shall provide the Deliverables specified therein in conformity with the time schedule stated therein.

3.1.3 Applicable Laws

The 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 Consultant and any Sub-Consultant, comply with the Applicable Laws.

3.2 Conflict of Interest

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

3.2.2 Consultant and Affiliates not to be otherwise interested in the Project

The Consultant agrees that, during the term of this Agreement and after its termination, the

Consultant or any Associate thereof, 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 three 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 Consultant shall include a partner in the firm of the Consultant or a person who holds more than 5% (five per cent) of the subscribed and paid up share capital of the Consultant, as the case may be, and any Associate thereof.

3.2.3 Prohibition of conflicting activities

Neither the 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 Consultant not to benefit from commissions discounts, etc.

The remuneration of the Consultant pursuant to Clause 6 hereof shall constitute the Consultant's sole remuneration in connection with this Agreement or the Services and the 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 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 Consultant and its Personnel shall observe the highest standards of ethics and not have engaged in and shall not hereafter engage in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice (collectively the **"Prohibited Practices"**). Notwithstanding anything to the contrary contained in this Agreement, the Authority shall be entitled to terminate this Agreement forthwith by a communication in writing to the Consultant, without being liable in any manner whatsoever to the Consultant, if it determines that the 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*, 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 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 Consultant shall not be eligible to participate in any tender or RFP issued during a period of 2 (two) years from the date the 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 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

The Consultant, its Sub-Consultants and the Personnel of either of them shall not, either during the term or within two years after the expiration or termination of this Agreement disclose any proprietary information, including information relating to reports, data, drawings, design software or other material, whether written or oral, in electronic or magnetic format, and the contents thereof; and any reports, digests or summaries created or derived from any of the foregoing that is provided by the Authority to the Consultant, its Sub-Consultants and the Personnel; any information provided by or relating to the Authority, its technology, technical processes, business affairs or finances or any information relating to the Authority’s employees, officers or other professionals or suppliers, customers, or contractors of the Authority; and any other information which the 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.

Notwithstanding the aforesaid, the 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 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 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 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 Consultant or its Sub-Consultants or Personnel of either of them, as is reasonable under the circumstances; provided, however, that the 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 Consultant

- 3.4.1 The Consultant's liability under this Agreement shall be determined by the Applicable Laws and the provisions hereof.
- 3.4.2 The 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 willful misconduct on the part of the Consultant or on the part of any person or firm acting on behalf of the Consultant in carrying out the Services, the 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 5.1.2 of this Agreement, or (b) the proceeds the Consultant may be entitled to receive from any insurance maintained by the Consultant to cover such a liability, whichever of (a) or (b) is higher.
- 3.4.4 This limitation of liability specified in Clause 3.4.3 shall not affect the Consultant's liability, if any, for damage to Third Parties caused by the Consultant or any person or firm acting on behalf of the Consultant in carrying out the Services subject, however, to a limit equal to 3 (three) times the Agreement Value.

3.5 Accounting, inspection and auditing

The 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 standards such as Indian Accounting Standards, GAAP, etc 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 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.

3.6 Reporting obligations

- 3.6.1 The 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.

3.7 Documents prepared by the Consultant to be property of the Authority

- 3.7.1 All reports and other documents (collectively referred to as “**Consultancy Documents**”) prepared by the 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 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 Consultant.
- 3.7.2 The 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 Consultant may retain a copy of such Consultancy Documents. The 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.
- 3.7.3 The 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 unauthorized use of such Consultancy Documents, or due to any breach or failure on part of the 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.

3.8 Materials furnished by the Authority

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

3.9 Accuracy of Documents

The Consultant shall be responsible for accuracy of the documents drafted and/ or vetted and data collected by it directly or procured from other agencies/authorities, 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 Consultant or arises out of its failure to conform to good industry practice. The Consultant shall also be responsible for promptly correcting, at its own cost and risk, the documents including any re-survey / investigations

4. OBLIGATIONS OF THE AUTHORITY

4.1 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 Consultant, its Sub-Consultants and Personnel with work permits and such other documents as may be necessary to enable the Consultant, its Sub-Consultants or Personnel to perform the Services; and
- (b) 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.

4.2 Access to land and property

The Authority warrants that the 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 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 Consultant as a result thereof.

4.3 Changes in Applicable Law

All service tax and other taxes other than income tax, as may be applicable from time to time, on the payment of the professional fees to the Consultant, shall be borne by the Authority.

4.4 Payment

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

5. PAYMENT TO THE CONSULTANT

5.1 Cost estimates and Agreement Value

5.1.1 An abstract of the cost of the Services payable to the Consultant is set forth in Annex-5 of the Agreement.

5.1.2 Except as may be otherwise agreed under Clause 2.6, 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. (Rs.).

5.2 Currency of payment

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

5.3 Mode of billing and payment

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

- (a) The Consultant shall be paid for its services as per the Payment Schedule at Annex-1 of this Agreement, and Clauses 4, 5.2, 5.3, 5.4, 5.5, and 10 of the TOR, subject to the Consultant fulfilling the following conditions:
 - (i) No payment shall be due for the next stage till the Consultant completes to the satisfaction of the Authority the work pertaining to the preceding stage; and
 - (ii) The Authority shall pay to the Consultant, only the undisputed amount.
- (b) The Authority shall cause the payment due to the Consultant to be made within 30 (thirty) days after the receipt by the Authority of duly completed bills with necessary particulars (the “**Due Date**”).
- (c) The final payment under this Clause 5.3 shall be made only after the final Deliverable shall have been submitted by the 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 60 (sixty) days after receipt of the final Deliverable unless the Authority, within such 60 (sixty) day period, gives written notice to the Consultant specifying in detail, the deficiencies in the Services. The 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 Authority 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 Consultant to the Authority within 30 (thirty) days after receipt by the Consultant of notice thereof. Any such claim by the Authority for reimbursement must be made within 1 (one) year after receipt by the Authority of a final report in accordance with Clause 5.3 (c). Any delay by the Consultant in reimbursement by the due date shall attract simple interest @ 10% (ten per cent) per annum.
- (e) All payments under this Agreement shall be made to the account of the Consultant as may be notified to the Authority by the Consultant.

6. LIQUIDATED DAMAGES AND PENALTIES

6.1 Performance Security

6.1.1 The Authority shall retain by way of performance security (the "Performance Security"), 10% (ten per cent) of the Bid Amount. 5% of the bid amount shall be deposited by the Consultant within 7 days of receipt of the Letter of Award. This shall be in the form of Demand Draft. The balance 5 % will be recovered by the Authority from all the amounts due and payable to the Consultant. The Authority reserves the right to appropriate the Performance Security against any breach of this Agreement or for recovery of liquidated damages as specified in Clause 6.2 herein. The balance remaining out of the Performance Security shall be returned to the Consultant at the end of 3 (three) months after the expiration of this Agreement pursuant to Clause 2.4 hereof.

6.1.2 The consultant may, in lieu of retention of the amount as referred to in Clause 6.1.1, above, furnish a bank guarantee issued by any scheduled bank/Nationalized bank enforceable and encashable at Goa as per Annexure 2 of this RFP.

6.2 Liquidated Damages

6.2.1 Liquidated Damages for error/variation

In case any error or variation is detected in the reports submitted by the Consultant and such error or variation is the result of negligence or lack of due diligence on the part of the Consultant, the consequential damages thereof shall be quantified by the Authority in a reasonable manner and recovered from the Consultant by way of deemed liquidated damages, subject to a maximum of the Agreement Value.

6.2.2 Liquidated Damages for delay

In case of delay in completion of Services, liquidated damages not exceeding an amount equal to 0.5% (zero point five per cent) of the Agreement Value per week, subject to a maximum of 5% (Five per cent) of the Agreement Value shall 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 Consultant, suitable extension of time shall be granted.

6.2.3 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 Consultant in the event of breach of this Agreement or for recovery of liquidated damages specified in this Clause 6.2.

6.3 Penalty for deficiency in Services

In addition to the liquidated damages not amounting to penalty, as specified in Clause 6.2, warning may be issued to the 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.

7. FAIRNESS AND GOOD FAITH

7.1 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.

7.2 Operation of the Agreement

The Parties recognize 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 7.2 shall not give rise to a dispute subject to arbitration in accordance with Clause 8 hereof.

8. SETTLEMENT OF DISPUTES

8.1 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.

8.2 Dispute resolution

8.2.1 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 8.3.

8.2.2 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.

8.3 Conciliation

In the event of any Dispute between the Parties, either Party may call upon The Chairman, Mormugao Port Trust and the Managing Partner/ Chairman of the Board of Directors of the 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 8.2.1 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 8.4.

8.4 Arbitration

- 8.4.1 Any Dispute which is not resolved amicably by conciliation, as provided in Clause 8.3, shall be finally decided by reference to arbitration by an Arbitral Tribunal appointed in accordance with Clause 8.4.2. Such arbitration shall be held in accordance with the Rules of Arbitration of the International Centre for Alternative Dispute Resolution, New Delhi (the “Rules”), or such other rules as may be mutually agreed by the Parties, and shall be subject to the provisions of the Arbitration and Conciliation Act, 1996. The venue of such arbitration shall be Goa and the language of the proceedings shall be English.
- 8.4.2 There shall be a sole arbitrator whose appointment shall be made by the Authority in accordance with the Rules.
- 8.4.3 The arbitrators shall make a reasoned award (the “Award”). Any Award made in any arbitration held pursuant to this Clause 8 shall be final and binding on the Parties as from the date it is made, and the Consultant and the Authority agree and undertake to carry out such Award without delay.
- 8.4.4 The Consultant and the Authority agree that an Award may be enforced against the Consultant and/or the Authority, as the case may be, and their respective assets wherever situated.
- 8.4.5 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
and on behalf of
For and on behalf of
Consultant:

(Signature)

SIGNED, SEALED AND DELIVERED For

Authority

(Signature)(Name)
(Designation) (Address)
(Address) (Fax No.)(Fax No.)

In the presence of:

1.

2.

Annex-1

Payment Schedule**(Refer Clause 5.3)*

Key Date No.	Description of Deliverables	Week No.	Payment
KD1	Evaluation of the RFQ document	1	20%
KD2	Financial Model	2	20%
KD3	Preparation of the RFP and Concession Agreement	2	15%
KD4	Preparation of Appraisal Report for SFC	1	15%
KD5	Assistance in conducting the bid process	-	20%
KD6	Completion of Services	-	10%
Total			100%

Notes:

- All Reports shall first be submitted as draft reports for comments of the Authority. The Authority shall provide its comments no later than three weeks from the date of receiving a draft report and in case no comments are provided within such one week, the Consultant shall finalise its report. Provided, however, that the Authority may take up to two weeks in providing its comments on the Draft Financial Appraisal Report.*
- Financial Model shall be completed in 2 weeks excluding the time taken by the Authority in providing its comments on the Draft Report. The Consultant may take one week for submitting its Final Financial Appraisal Report after receipt of comments from the Authority.*
- Final payment of 10% (ten percent) shall be released upon completion of Services in their entirety including execution of the Concession Agreement.*
- All activities stated under key date will have to be completed in a time bound manner in consultation with AUTHORITIES. It may be noted that subject project is proposed for award during the current financial year 2015-16.*
- In case of premature closure or work, the amount payable to the consultant will be as per the deliverable completed and delivered to the Port, and the balance amount related to other undelivered deliverables shall not be paid, and the consultancy services will be discontinued as per written notice from the Port to the consultant.*

Annex-2

Bank Guarantee for Performance Security

The Board of Trustees,
 (acting through The Chairman, Mormugao Port Trust)
 Headland, Sada
 Goa 403804

In consideration of the Board of Trustees of Mormugao Port Trust (hereinafter called "The Board") having offered to accept the terms and conditions of the proposed agreement between Board and(hereinafter called "the said contractor(s)" for the work.....(hereinafter called "the said agreement") having agreed to production of an irrevocable Bank Guarantee for Rs.....(Rupees.....only) as a security/guarantee from the contractor(s) for compliance of his obligations in accordance with the terms and conditions in the said agreement.

1. We.....(hereinafter referred to as the "Bank") hereby undertake to (indicate the name of the Bank)
 Pay to the Board an amount not exceeding
 Rs.....(Rupees.....only)
 on demand by the Board.
2. Wedo hereby undertake to pay the amounts due and payable(indicate the name of the Bank)under this Guarantee without any demur, merely on a demand from the Board stating the amount claimed is required to meet the recoveries due or likely to be due from the said Contractor(s). 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.....only).
3. We, the said Bank, further undertake to pay to the Board any money so demanded not withstanding any dispute or disputes raised by the Contractor(s) 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 there under, and the Contractor(s) shall have no claim against us for making such payment.
4. We..... further agree that the Guarantee herein contained shall(indicate the name of the Bank) remain in full force and effect during the period that would be taken for the performance of the said agreement, and it shall continue to be enforceable till all the dues of the Board under or by virtue of the said agreement have been fully paid, and its claims satisfied or discharged, or till the Engineer-in-charge on

behalf of the Board, it certifies that the terms and conditions of the said agreement have been fully and properly carried out by the said contractor(s), and accordingly discharges this guarantee.

5. We..... further agree with the Board that the Board (indicate the name of the Bank) shall have the fullest liberty without our consent, and without effecting 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 contractor(s) from time to time or to postpone for any time or from time to time any of the powers excisable by the Board against the said contractor(s),and to forbear or enforce any of the terms and conditions relating to the said agreement and we shall be relieved from our liability by reason of any such variation or extension being granted to the said contractor(s) or for any forbearance, act of omission on the part of the Board or any indulgence by the Board to the said contractor(s) or by any such matter or thing whatsoever which under the law relating to sureties would, but for this provision have effect of so relieving us.
6. This Guarantee will not be discharged due to the change in the constitution of the Bank or the contractor(s).
7. We..... lastly undertake not to revoke this Guarantee except with (indicate the name of the Bank) the previous consent of the Board in writing.
8. This Guarantee shall be valid up tounless extended on demand by the Board. Notwithstanding anything mentioned above, our liability against this Guarantee is restricted to Rs.....(Rupees.....), and unless a claim in writing is lodged with us within six months of the date of expiry or extended date of expiry of this Guarantee all our liabilities under this Guarantee shall stand discharged.

Dated the.....day of.....for
 (indicate the name of the Bank)

- (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

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. 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 consultants should avoid both actual and perceived conflict of interest.
3. Conflict of interest may arise between the Authority and a consultant or between consultants and present or future concessionaries/ contractors. Some of the situations that would involve conflict of interest are identified below:
 - (a) Authority and consultants:
 - (i) Potential consultant should not be privy to information from the Authority which is not available to others.
 - (ii) Potential consultant should not have defined the project when earlier working for the Authority.
 - (iii) Potential consultant should not have recently worked for the Authority overseeing the project.
 - (b) Consultants and concessionaires/contractors:
 - (i) No 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.
 - (ii) No consultant should be involved in owning or operating entities resulting from the project.
 - (iii) No 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, there- fore, needs to be avoided.

4. The normal way to identify conflicts of interest is through self-declaration by 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 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 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 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 consultants drawing up the terms of reference or the pro- posed documentation are also eligible for the consequent assignment or project.
7. Another form of conflict of interest called “scope–creep” arises when 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 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 consultants to extend the length of their assignment.
8. Every project contains potential conflicts of interest. 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.

APPENDIX-I

FINANCIAL PROPOSAL

Form-1

Covering Letter

(On Applicant's letter head)

(Date and Reference)

To,

The Chief Engineer,
Mormugao Port Trust

Dear Sir,

Subject: Appointment of Consultant for Financial and Transaction Advisory Services for "Development of a Liquid Bulk Cargo berth at Vasco bay on PPP basis at Mormugao Port trust, Goa".

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

I/We agree that this offer shall remain valid for a period of 120 (One hundred and twenty) days from the Proposal Due Date or such further period as may be mutually agreed upon.

Yours faithfully,

(Signature, name and designation of the authorized signatory)

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

APPENDIX-I

Form-2

**Financial Proposal
(to be enclosed only in Cover No.2)**

Item No.	Description	Amount (Rs.) (in figures)
A	PROFFESIONAL FEE OF THE SERVICES	

Amount in words _____

Notes:

1. The aforesaid professional fees, payable to the Consultant in accordance with the Financial Proposal, shall cover the costs of telephone/fax, photocopying, couriers and postage, collections and deliveries, traveling expense, boarding and lodging stationery, costs of support staff and counsel fee, overheads, etc., including all taxes and duties except service tax. No additional charges in respect thereof shall be due or payable. The fees shall be limited to the amounts indicated above and no escalation on any account will be payable on the above amounts.
2. Outstation travel (**for locations other than Goa**) shall be undertaken as per request of the Authority. The Consultant(s) shall be entitled to economy class air travel, and board and lodging in a 3-star hotel. Bills for reimbursement hereunder may be submitted along in original supporting materials, along with a Statement of Expenses, duly certified by the Authorized Representative.
3. All payments shall be made in Indian Rupees and shall be subject to applicable Indian withholding taxes if any.
4. The Service Tax shall be paid extra as applicable on production of tax invoice.