

COCHIN PORT AUTHORITY



INVITATION TO TENDER THROUGH eTENDER MODE

BID DOCUMENT

FOR

CONSTRUCTION OF JETTIES, LANDSIDE FACILITIES AND ALLIED FACILITIES AT EASTERN AND WESTERN SIDES IN KADMATH ISLAND OF LAKSHADWEEP, ON ENGINEERING, PROCUREMENT AND CONSTRUCTION CONTRACT BASIS(EPC)

No. T9/T-2040/2024-C

DEAD LINES

1. Last Date for Receiving Queries	10/02/2025
2. Pre-Bid Conference Time and venue	11/02/2025 at 11:00 hrs at CochinPort Authority, W/Island Cochin-682009 [Hybrid Mode]
3. Tender submission Due Date and Time	20/03/2025 at 14:00hrs
4. Tender Opening	20/03/2025 at 15:00hrs

Chief Engineer
Chief Engineer's Office
Cochin Port Authority,
W/Island, Cochin – 682009,
Kerala, India.
Telephone: +91-0424 -2666414
91-0484-2582400

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Website : www.cochinport.gov.in

CONTENTS OF BID DOCUMENT

The Bid Document comprises the following and will additionally include any Addenda issued in accordance with Clause 3.5.

A NOTICE INVITING TENDER (NIT)

B VOLUME-I : QUALIFICATION AND COMMERCIAL

- (1) Glossary
- (2) Disclaimer
- (3) Introduction
- (4) Instructions to Bidders
- (5) General Conditions of EPC Contract
- (6) Conditions of Particular Application to this Project
- (7) Form of Contract Agreement
- (8) Fraud and Corrupt Practices
- (9) Miscellaneous
- (10) Appendix To Bid Document

PART I: QUALIFICATION REQUIREMENTS (QR)

- (1) Evaluation Parameters
- (2) Technical & Financial Criteria for the purpose of Evaluation
- (3) Details of Experience
- (4) Forwarding Letter
- (5) Other Documents

PART II: COMMERCIAL AND PRICE BID

- (1) Preamble

APPENDICES

- I Forwarding Letter Comprising the Bid for the Project
 - Annex – I* Details of Bidder
 - Annex – II* Financial Capacity of Bidder
 - Annex – III* Details of Eligible Projects
 - Annex – IV* Statement of Legal Capacity
 - Annex – V* Proforma of Integrity Pact
- II Format for Power of Attorney for signing the Bid
- III Deleted
- IV Deleted
- V Proforma of irrevocable bank guarantee towards Bid bond
- VI Parent Company Guarantee
- VII Schedule of Prices
- VIII Proforma of Undertaking that no changes have been made in the Tender Documents downloaded by the Bidder

- IX Proforma of Undertaking that Part ii: commercial & price bid is unconditional.
- X Proforma of Undertaking that no illegal methods have been used for influencing the Bid process
- XI Proforma of Undertaking for disclosure of payment made/proposed to be made to Intermediaries in connection with the Tender
- XII Special instructions to bidders for the e-submission of the bids online through e-procurement portal
- XIII Minimum key construction equipment& personnel for completion of Project
- XIV Declaration of Site visit by Bidder
- XV Bank Details of CoPA for Online Payment
- XVI Proforma of undertaking that bidder has not been Debbared/Blacklisted

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Schedule 2: General Experience Record

Schedule 3A: Statement of Similar Experience

Schedule 3B: Statement of Similar Experience

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Schedule 5: Declaration of Sub-Contractors

Schedule 6A: Bidder's Propose Site Organisation

Schedule 6B: Details of Contractor's Supervisory and Technical Staff who will be proposed to be Employed in carrying out the Works under this Contract

Schedule 7: Schedule of Plant and Equipment Proposed for Construction of Jetties, Landside Facilities and Allied Facilities Construction

Schedule 8: Applicable Permits

Schedule 9: Form of Bank Guarantee

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Schedule 11: Drawings

Schedule 12: Project Completion Schedule

Schedule 13: Test on Completion

Schedule 14: Provisional Certificate

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Schedule 17: Insurance

C. VOLUME II – EMPLOYER'S REQUIREMENT & TECHNICAL SPECIFICATIONS

C. VOLUME III – TENDER DRAWINGS

D. NOTE:

- D.1** The Bidder should first check that it is in possession of all the pages of the complete set of Bid Document as listed herein above. The Bidder should ensure that all pages are in correct sequence and that none is missing. Any deficiency, lack of

clarity or discrepancy should be notified immediately in writing to the Authority for rectification sufficiently before the Bid Due Date. **No queries or complaints will be entertained in this regard after the Bid Due Date.**

- D.2** The Bidder must also carefully examine all the Bid Documents, including the Special Conditions of Contract (collectively “Contract Conditions”) and satisfy itself as to the tasks, obligations and responsibilities envisaged to be undertaken by the Bidder under the Contract if and when the same is awarded to the Bidder.

COCHIN PORT AUTHORITY

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website: www.cochinport.gov.in



Tender No. T9/T-2040/2024-C

Date : 31.01.2025.

NOTICE INVITING TENDER (NIT) eTender

1. On behalf of Union Territory of Lakshadweep Administration (UTLA), Bids are invited under Single Stage Two Cover system [Technical Bid and Price Bid] by Cochin Port Authority (CoPA), from reputed Bidders meeting Minimum Eligibility Criteria specified hereunder for award of Project through competitive bidding in Electronic mode (e-Tenders), in accordance with the procedure set out in the Bid Document for “**Construction of Jetties, Landside facilities and allied facilities at Eastern and Western sides in Kadmath Island of Lakshadweep on EPC Contract basis**” (the “Project”) through an Engineering, Procurement and Construction (the “EPC”) Contract as per following details:

Table – 1

Estimated Project Cost	Rs.313 crore [Excluding GST]
Cost of Bid Document	Rs.11,800/- including 18% GST (Non-refundable) furnished either through Demand Draft/ Pay Order/ Banker's Cheque drawn in favour of the FA & CAO, CoPA, payable at Kochi, from any Nationalised Bank / Scheduled Bank in India. Payment can also be made online mode (NEFT/RTGS) as per Bank details furnished in the Bid Document, being the cost of single copy of the Bid Document
Download period of Detailed NIT and Bid Document	Detailed NIT : From 04-12-2024 Bid Document : From 10.00 hrs. on 31-01-2025 to 14.00 hrs. on 20-03-2025
Bid Bond	Rs. 3.23 Crore furnished either through Insurance Security Bond, fixed deposit receipt in the name of FA&CAO, CoPA, Demand Draft / Pay Order or Banker's Cheque drawn in favour of Financial Adviser & Chief Accounts Officer, CoPA, payable at Kochi from any Nationalised Bank/Scheduled Bank in India or through an irrevocable Bank Guarantee (BG) valid for a period of 225 days plus 60 days claim period, calculated from the Bid Due Date, enforceable and encashable at Kochi.

	Payment can also be made online mode (NEFT/RTGS) as per Bank details furnished in the Bid Document
Date of Site Visit arranged	11-12-2024
Last Date for receiving queries	10-02-2025
Date of Pre-Bid Meeting (Hybrid mode)	11-02-2025 at 11.00 hrs.
Last date and time of submission of Bids	14.00 hours on 20-03-2025
Date and time of opening the Bids	15.00 hours on 20-03-2025
Validity period of Tender	180 days from the Bid Due Date
Time for Completion	36 Months from the date of commencement of Work

2. The major components envisaged in the Project are as follows:

- (i) Construction of 360m x 20m Eastern Jetty
- (ii) Construction of Approach Trestle for Eastern Jetty of 310m length and width varying from 10m to 18.4 m
- (iii) Construction of 70m x 12m Western Jetty
- (iv) Construction of Approach Trestle for Western Jetty of about 75m length and width varying from 10m to 18.4m
- (v) Boat Landing facility which includes Boat Landing Center, finger jetty, boat repair shed, ice plant, fuel station, fish collection yard, etc. at western side.
- (vi) Road connecting the Approach Trestle and finger jetty to existing road network and other internal roads connecting all facilities developed for the project
- (vii) Construction of passenger facilitation center including lounge, gatehouse with all utilities, landscaping etc. at western and eastern sides.
- (viii) Providing Berth corner lights for Western and Eastern jetties.
- (ix) Providing Gangway for jetty on Eastern side
- (x) Construction of Warehouse on the Eastern side
- (xi) Providing Aesthetic lighting (External / Internal), illumination, water and power supply, LT cabling works, , ELV, DG sets, data cabling, LT panels, solar panels with battery backup, HVAC, High Masts, lightening protection, firefighting facilities, pump house with sump for fire and water, open well, CCTV including night vision etc. at western and eastern sides.

3. The Scope of Work includes the following but is not limited to:

- (i) Carryout Engineering and Design of the Marine works & other land-side facilities including buildings, electrical and utilities as detailed at para 2 above in EPC mode through a Consultant approved by CoPA.
- (ii) Appointing a Proof-Consultant, IIT /NIT, acceptable to CoPA and getting approvals for all Design, Drawings and Documents to be prepared by the EPC Contractor.
- (iii) Provide and mobilize all Workforce, Material, Plant and Equipment required for construction of the above items of work at the designated locations.
- (iv) Getting all necessary permits and clearances for construction except Environmental / CRZ Clearance.

- (v) Any additional works required to be carried out to mitigate adverse effects on the environment and also as directed by the Authority.
- (vi) Any incidental and ancillary works that may be required to complete the main works thus fulfilling the intended requirements.
4. It is brought to the notice of the prospective Bidders that the land for the development of infrastructural facilities will be handed over to the Contractor only in a phased manner as per the progress of the Work due to the constraints of land availability in the island.
5. The Govt. land available for Contractor's Work Area, area for precast yard, material collection yard in the island will be handed over to the successful Bidder on free of cost and also may be provided at different locations. Any further land required for the construction shall be arranged by the Bidder at his own cost from the private parties on lease terms.
6. **Liquidated Damages** - In case of delay in completion of the contract, half percent of the contract value per week of delay subject to a maximum of ten percent of contract value shall be levied.
7. **Incentives/ Bonus** - One percent of the contract value per month subject to a maximum of five percent of contract value for early completion of the project.
8. Bid Documents can be downloaded from the e-Tendering portal **www.tenderwizard.com/COPT** on the dates specified in the **Table – 1** above by making online requisition. **Demand Draft /Pay Order/Banker's Cheque/Original BG for Cost of Bid Document drawn in favour of the FA & CAO, Cochin Port Authority shall be submitted within 3 days from the Bid Due Date, but the scanned copy of the same shall be attached with the e-Tender.**
9. Bid Document will also be available in Cochin Port website (**www.cochinport.gov.in**) as well as Central Public Procurement (CPP) Portal **www.tenders.gov.in**.
10. The Bidders need to obtain the one time User ID & Password for log-in to e-Tender system from the service provider M/s. KEONICS by paying registration amount of Rs.1,124/- by online payment using Credit/Debit Card/Net banking or DD in favour of "KSEDCL, Bangalore".
11. The intending Bidder must have valid Class-II or III digital signature certificate to submit the Bid. For further details and to obtain the digital signature, please contact e-Tender Help Desk No. 080 – 40482000 / 9746118529 / 9605557738.
12. The Bids shall be submitted "**online**" strictly in accordance with the Instructions to Bidders and Terms & Conditions given in the Bid Document. The Bidders shall submit scanned copy of all the required documents such as DD / Pay Order/Banker's Cheque/proof document for online payment towards the Cost of Bid Document, Bid Bond, other details required as per Bid Document through the e-Tender portal.
13. The bidder is responsible to download Addenda/ Amendments/ Errata/ Replies to the Queries of the Bidders etc., if any, issued by CoPA, from the e-Tendering Portal / CoPA Website / CPP Portal before submission of the Bid. **Any shortfall in submissions of the said Addenda / Amendments / Errata / Replies to the Queries of the Bidders, duly signed, along with the downloaded documents while submitting the Bid will render the Bid Documents incomplete and incomplete Bid Documents will be rejected.**

14. All Bids are to be submitted **online** only on the website www.tenderwizard.com/COPT. No Bids shall be accepted off-line.
15. Cochin Port Authority will not be held responsible for any technical snag or network failure during online bidding. It is the Bidder's responsibility to comply with the system requirement, i.e. hardware, software and internet connectivity at Bidder's premises to access the e-Tender portal. Under any circumstances, Cochin Port Authority (CoPA) shall not be liable to the Bidders for any direct/indirect loss or damages incurred by them arising out of incorrect use of the e-Tender system or internet connectivity failures. The Bidder is advised to upload required documents well in advance in order to avoid last minute technical snags, if any, happens.
16. In Lakshadweep islands only one airport is available Agatti Island and it is a domestic one only. The islands are connected to mainland Kochi by the passenger vessels owned and operated by UTLA. The intra island connectivity is carried out by the High Speed Crafts [HSC] owned and operated by UTLA. In addition to the above, there are barges owned and operated by private parties that transport cargo to the islands. These barges ply between the islands and Beypore, Kochi and Mangalore. The high-speed vessels and barges operate only during the fair weather season.
17. **Site Visit to Kadmath Island:** Site visit to Kadmath island for the prospective Bidders was held on 11-12-2024. CoPA along with UTLA will extend all assistance for the logistics to the island. For further assistance for logistics the bidders may contact the Suptdg. Engineer, CoPA (9526062899). The prospective Bidders along with CoPA and UTLA officials and the Consultants of CoPA can visit the island and project locations and can have an open discussion regarding Project details. The Bidder is strongly advised to visit and examine the island, site and its surrounding areas and obtain, at his own cost and responsibility, all information and data that may be necessary for preparation of the Bid and for entering into and execution of Contract for the Works in accordance with the Conditions of Contract. The Bidder and his personnel or agents, up to a maximum of two individuals, only will be granted permission by the Authority to enter upon the Site for the purpose of inspection but only upon the Bidder submitting a written undertaking to the Authority that his personnel and agents, will release and indemnify the Authority and his personnel and agents from and against all liability in respect thereof. The Bidder will be solely responsible for any death or personal injury, loss of or damage to property, and any other loss, damage caused or incurred by the Bidder and also any costs, and expenses incurred by the Authority or his personnel, as a result of such inspection and Site visit by the Bidder or his personnel or agents. **Bidders will be required to submit along with their Bid an undertaking that they have visited the site and collected all necessary details required to submit their offer.**
18. The prospective Bidders and his representatives who wish to visit the island has to be submit the Aadhar card [both sides] in pdf format and a passport size photo in jpeg format to the undersigned or to thadevus@cochinport.gov.in with copy to sheeja@cochinport.gov.in, 4 days before to the site visit date intimated at **Table -1** above for availing the permit to visit the island.
19. The prospective Bidders who visit the Kadmath island can come to Agatti island by flight and HSCs can be arranged to visit Kadmath island. They can also visit Kadmath directly from Kochi in passenger vessels. The visiting schedule shall be intimated 4 days before to the site visit date so as to schedule the HSCs and passenger vessels.

- The number of personnel visiting the islands shall also be intimated by the bidders so as to request UTLA to block the tickets in the vessels / HSCs.
20. The Bidder shall submit the original documents towards the Cost of Bid Document and Bid Bond; Power of Attorney, if applicable, Integrity Pact **along with the Letter of Submission**, in a sealed cover duly mentioning the Tender No. & Name of Work, Due date of opening of Tender and Name of the Bidder to the **Chief Engineer, Cochin Port Authority, W/Island, Cochin – 682009, KERALA**, within three days from the Bid Due Date as indicated in the Table – 1 of the Notice Inviting Tender. **Non submission of the original financial instruments towards Cost of Bid Document and BID BOND and within the above period leads to disqualification of Bids.**
21. MSME Bidders who are registered with District Industries Centre (DIC) or National Small Industries Corporation (NSIC) or Udyog Aadhaar Memorandum or any other body specified by the Ministry of MSME for similar nature of works shall be eligible for issue of Bid Document free of cost. They are required to submit the documentary proof of such registration along with QR code, for claiming the available exemptions and a scanned copy of Exemption Certificate duly notarized shall be uploaded in the e – Tender Portal. **If the Registration Certificate does not pertain to Similar Works as defined in Clause 22 below of the NIT, the Bid will be rejected.**
22. However, Bid received will be considered only if they meet the following **Minimum Eligibility Criteria:**
- (A) Technical Capacity:**
- (a) The Bidder should have experience of having successfully completed or substantially completed the works as mentioned below during the last 7 (seven) years ending 30th November 2024.
- i) Three Similar Works of each costing not less than **Rs.125.20 crore**
- or**
- ii) Two Similar Works of each costing not less than **Rs.156.50 crore**
- or**
- iii) One Similar Work costing not less than **Rs.250.40 crore**
- AND**
- (b) The Bidder should have experience of having successfully completed or substantially completed one Work costing atleast **Rs.125.20 crore** on EPC basis either for the projects qualified under (a) above or for any infrastructure project.
- (B) Financial Capacity:**
- (a) The Bidder should satisfy the following financial requirements as per their latest audited Financial Statements/Balance Sheets:
- Minimum Average Annual Turnover of **Rs. 93.90 Crore** during last three financial years ending 31st March, 2024. For this purpose, only the Turnover income from operations shall be considered.
- (b) The Available Bid Capacity of the Bidder shall be more than the total Bid Value. The Available Bid Capacity will be calculated as under:
- Assessed Available Bid Capacity= $A \times N \times 1.5 - B$, where

‘N’ = Number of years prescribed for completion of the subject Contract

‘A’ = maximum value of works executed in any one year during the last five years (at current price level), taking into account the completed as well as works in progress.

‘B’ = value at current price level of existing commitments and on-going works to be completed in the next ‘N’ years.

The Bidder shall furnish statements showing the value of existing commitments and on-going works as well as the stipulated period of completion remaining for each of the works, which shall be certified by a Chartered Accountant.

- (c) The Bidder shall have positive Net Worth at the close of the last three financial years.
- (d) The Bidder shall demonstrate that they have available liquid assets, lines of credit, and other financial means (independent of any contractual advance payment) sufficient to meet the construction cash flow requirements for the subject Contract after meeting its cash flow requirements for contracts currently in progress and for future contract commitments.

Explanatory notes to (A)&(B) above:

Note 1: “Similar Work” means Construction of Marine Structures, viz. Open Piled Jetties / Berths / Wharfs in sea/ backwater and related onshore works including buildings /utilities.

Note 2: The value of executed works shall be brought to the current costing level by enhancing the actual value of the work upon completion by using the following enhancement factors.

Table - 2

Year before	Multiplying factor
One year [November, 2023]	1.07
Two years [November, 2022]	1.14
Three years [November, 2021]	1.21
Four years [November, 2020]	1.28
Five years [November, 2019]	1.35
Six years [November, 2018]	1.42

Note 3:-The experience certificate of Works executed in private sectors/organisations shall be considered for qualification, only on submission of Form 26AS along with Work Order and Completion Certificate duly notarised.

Note 4:- Satisfactory Clients’/Owners’ Completion Certificate or documentary proof shall be submitted in support of the Assignments / Works performed and claimed by the Bidder / Partners to Joint Venture /Consortium, in Annexure to be mentioned in the Bid Document to fulfil the Eligibility Criteria for Qualification. A statement duly certified by the Chartered Accountant / Firm showing the average Annual Financial Turnover over the last 3 financial years shall be submitted. The registration number and UDIN of the Chartered Accountant / Firm has to be mentioned/produced by the Chartered Accountant.

Note 5:- The Works reckoned for the above purpose are those executed by the Bidders as Prime Contractor or proportionately as member of Joint Venture/Consortium, authorized and approved by the Authority of the Work(s) against which the Bidder has claimed his experience. If the experience is as member of Joint Venture/Consortium, the Bidder shall attach notary attested copy(s) of the JV Agreement(s). The Bidder is also obliged to produce the original of the certified copy(s) on request by the department. Experience as a Sub-Contractor, Petty Contractor, Labour Rate Contractor, Sub-letted work shall not be accepted.

23. Other Eligibility Considerations:

23.1 Even though the Bidders meet the above qualifying criteria, they are subject to be disqualified if they have:

- i) made misleading or false representations in the forms, statements and attachments submitted in proof of the qualification requirements;
- ii) record of poor performance such as abandoning the Works, not properly completing the Contract, continuous / inordinate delays in completion of Works, constant litigation history, barred by the Central / State Government from participating in any project or financial failures etc.; and/or
- iii) Blacklisted / Debarred by any Govt. of India Organizations / PSU / PSE / Govt. Depts. / reputed Private Sector Companies etc. during the last three years.
- iv) Records of poor performance during the last five years, as on the date of application, such as abandoning the work, rescission of the contract for reasons which are attributable to non-performance of the contractor, inordinate delays in completion, consistent history of litigation resulting in awards against the contractor or any of the constituents, or financial failure due to bankruptcy, and so on. The rescission of a contract of venture JV on account of reasons other than non-performance, such as the most experienced partner (major partner) of JV pulling out.

24. The Bidders having EPF and ESI registration only shall be considered for qualification in the Bids, if applicable, as per EPF /ESI Acts.

25. No Joint Venture (JV) will be allowed.

Bid is acceptable from bidders who have submitted their bids on their individual capacity and bids **received as JV will be disqualified.**

26. Bids received after the stipulated last date and time for receipt due to any reason will not be considered.

27. Cochin Port Authority reserves the right to reject / cancel / postpone any or all the Bids at any stage of the Bidding without assigning any reasons thereof, which will be binding on all Bidders.

28. **Integrity Pact (IP)** shall cover this Bid throughout its various phases, and IP would be deemed as a part of the Contract through an appropriate provision. The Bidders shall sign and submit an "Integrity Pact" to be executed between the Bidder and Cochin Port Authority along with Bid. Bids not accompanied by a duly signed "Integrity Pact" shall be liable for rejection. IP would be implemented through the following Independent External Monitor (IEM) for this Bid or the IEM subsequently appointed.

1. Shri. M J Joseph, ICAS (Retd),
37, Da Costa Square,
3rd Cross, Cooke Town,
Bangalore – 560 084
Email : joseph,iem@cochinport.gov.in

 2. Shri. Punati Sridhar, IFoS (Retd.)
8C, Block – 4, 14-C Cross,
MCHS Colony, HSR 6th Sector,
Bangalore – 560 102
Email : sridhar.iem@cochinport.gov.in
29. For full details of the scheme of IP, Bidders may visit the website of Central Vigilance Commission, New Delhi.
30. This Notice shall form part of the Bid Document and shall be duly signed and submitted along with the Bid by the Bidders.

Sd/-
CHIEF ENGINEER i/c
COCHIN PORT AUTHORITY
Tele Fax: 91 0484 2666414
Email: ce@cochinport.gov.in;
coptce@gmail.com

VOL. I – QUALIFICATION & COMMERCIAL

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1 VOL. I - (SECTION - 1): GLOSSARY

1. The terms “Tender” and “Bid” * and their derivatives: bidding/tendering, bidder/tenderer, etc. are synonymous.
2. The words and expressions beginning with Capital Letters and defined in this document shall, unless contrary or repugnant to the context, have the meaning ascribed to them here below. These are in addition to the words and expressions defined separately in this document

Associate	As defined in Clause 4.2.7
Authority	Cochin Port Authority
Authority’s Engineer	Representative to be appointed by CoPA
Bid (s)*	Comprises of QR, Technical Bid and Commercial and Price Bid received from Bidder/s
Bidder (s)*	Party/ies who bid for the Project
Bid Price	As defined in Clause 4.11.3
Bid Bond	As defined in Clause 4.10
Bidding Documents	Bid documents defined under Bid/s, above
Bidding Process	As defined in Clause 4.11
Construction Period	As defined in Clause 4.5.4
Conflict of Interest	As defined in Clause 4.2.1 (c)
Contract Conditions	As defined in Clauses 4.6
Contractor	As defined in Clause 3.1.3
Day	A Calendar Day
Defects Liability Period	As defined in Clause 4.1.5
EPC Contract	Engineering, Procurement & Construction Contract
Estimated Project Cost	As defined in Clause 0
Financial Capacity	As defined in Clause 4.2.2 (B)
Government	Central or State Government, as case may be
LOA	Letter of Acceptance
Lowest Bidder	Lowest Evaluated Bidder as defined in Clause 4.22.1.4
CoPA	Cochin Port Authority
Project	Construction of Jetties, Landside facilities and allied facilities at Eastern and Western sides in Kadmath Island of Lakshadweep, as per Clause 3.1
Qualification Requirements	As defined in Clauses 4.2.2
Qualification Stage	As defined in Clause 4.11.2
Re. or Rs. or INR	Indian Rupees
Site	Kadmath Island, West of Kochi
Technical Capacity	As defined in Clause 4.2.2 (A)
Works	All supplies, services and other work necessary for completion of the Project as stated expressly or by implication in the EPC Contract

2 VOL. I - (SECTION - 2): DISCLAIMER

- 2-1. The information contained in this Bid Document or subsequently made available to the Bidders, in documentary or in any other form, by **Cochin Port Authority (CoPA)** (“Authority”) is provided to the Bidder strictly on the terms & conditions set out in this document.
- 2-2. This proposal is neither an offer nor an invitation to enter into any agreement by the Authority with any prospective Bidder or any other person. The purpose of this bid document is to provide interested parties with information which may be useful to them in the preparation of their bids to meet the qualification and bidding requirements pursuant to this bid document. This bid document includes statements reflecting certain assumptions and assessments made by the Authority in relation to this Project. These statements do not purport to contain all the information that the Bidders and their Advisors may desire or require in arriving at decisions regarding the Project. Bidders are, therefore, advised to make their own investigations and analysis and should also check the accuracy, adequacy, correctness, reliability and completeness of the assumptions, assessments, statements and information contained in this Bid Document and obtain independent advice from appropriate sources.
- 2-3. Information provided in this document to the Bidders is on a wide range of matters some of which may depend upon interpretation of law. The information given is not intended to be an exhaustive account of statutory requirements and should not be regarded as complete or authoritative statement of law. The Authority and its Consultants accept no responsibility for the accuracy or otherwise for any interpretation or opinion on law presented herein.
- 2-4. The Authority and its Consultants make no representation or warranty, expressed or implied, and shall have no liability to any person, including the Bidder, under any law, statute, rules or regulations or tort, principles of restitution or unjust enrichment or otherwise for any loss, damage, cost or expense which may arise from or be incurred or suffered on account of anything contained in this bid document or otherwise, including the accuracy, adequacy, omission, correctness, completeness or reliability of the bid document and any assessment, assumption, statement or information contained therein or deemed to form part of this bid document or arising in any way with the Bidders’ qualification or the subsequent bid evaluation process.
- 2-5. The Authority or its Consultants accept no liability of any nature whether resulting from negligence or otherwise howsoever caused arising out of reliance of any Bidder upon the statements contained in this bid document.
- 2-6. This bid document deemed to have superseded all previous documents or information in relation to the subject matter of this bid. The Authority may, in its absolute discretion but without being under any obligation to do so, update, amend or supplement the information, assessment or assumptions contained in this bid document by issue of suitable Addendum, which when so issued by or on behalf of the Authority, is deemed to amend and/or supersede these Documents to the extent expressly stated in such Addendum.

- 2-7. If any discrepancy is noticed by any Bidder in this Bid Documents, the same must be immediately brought to the notice of the Authority in writing and the Authority may, if deemed necessary, issue relevant corrigendum in the form of Addendum to all the Bidders. However, Bidders are precluded from raising any query in this regard after the prescribed date for receiving Bidders' Queries given in the bid document.
- 2-8. The issue of this bid document does not mean that the Authority is bound to either qualify or short-list or select any such Bidder for opening his Commercial & Price Bid ("Bid") or to appoint any such Bidder as the Contractor for the Project, as the case may be. The Authority reserves the right to reject any or all the Bidders or their Bids without assigning any reasons whatsoever.
- 2-9. The Bidder shall bear all its costs associated with or relating to the preparation and submission of its Bid including but not limited to site visits, proposal engineering, estimation, 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 this bid. All such costs and expenses will remain with the Bidder and the Authority shall not be liable in any manner whatsoever for the same or for any other costs or other expenses incurred by a Bidder in preparation or submission of the Application.
- 2-10. The Authority reserves the right to modify this bid document or to extend the deadline for submission of bid at any time by prior written notice to all the parties who have collected the bid document.

3 VOL. I – (SECTION - 3): PROJECT INFORMATION

3.1 Project Background

3.1.1. Lakshadweep, an archipelago consisting of coral islands and reefs, is the smallest Union Territory of India. These beautiful and unpolluted Islands comprising of total land area of about 32 Sq. Kms, are surrounded by about 4,200 Sq.Km territorial sea areas. Lakshadweep Island has ten inhabited islands, 17 uninhabited islands, a good number of attached islets, four newly formed islets and five submerged reefs. They are scattered in the Arabian Sea at distance of 220 to 440 Kms. off the west coast of Kerala. The main occupation of the people is fishing, coconut cultivation and coir twisting. The islands are designated as restricted area and permit from the Union Territory of Lakshadweep Administration (UTLA) is required to visit the islands.

People here mainly depend on the water transport for movement between the islands and the mainland. Apart from passengers, all the cargo such as essential commodities including medical supply, food supply, construction material, clothing, stationaries etc are brought from mainland - Cochin, Bepore or Mangalore. In addition to above, islanders depend on the mainland for specialist medical needs and higher education. Also, during the non-monsoon season, a huge number of tourists visits the islands mainly via ships. Further to the above, the export commodities such as coconuts, fish etc. are also transported to mainland using water transport. In short, shipping services is the lifeline for the people of Lakshadweep.

As a step towards improving the connectivity to the island ensuring the safety and comfort of the passengers, UTLA intends to develop a multimodal jetty that can handle all the passenger vessels being operated in Lakshadweep islands.

In this initiative, the development proposals identified for the Lakshadweep islands for immediate development that will improve the connectivity and also the accessibility of tourists to the islands are as follows:

- ✓ All the works included under this Bids
- ✓ Refurbishment and extension of Androth breakwater
- ✓ Development of multimodal jetty and Navy jetty at Androth
- ✓ Development of multimodal jetties at Androth, Kiltan and Chetlat
- ✓ Development of Boat Landing Centre, finger jetty and associated facilities at, Kiltan, Chetlat and Androth
- ✓ Dredging of harbour and Reclamation for back up area in Androth
- ✓ Development of landside facilities including passenger facilitation centre with modern amenities on both eastern and western side, warehouse etc in ,Kiltan, Chetlat and Androth
- ✓ Expansion/ development of existing eastern jetty in Kavaratti, Agatti and Minicoy islands for handling larger cruise vessels

These developments are funded under Sagarmala programme as Grant.

UTLA has engaged Cochin Port Authority (CoPA) as Project Management Consultants for providing technical support / consultancy services to UTLA for development of Port and Shipping infrastructures in all inhabited Lakshadweep

Islands. CoPA with the assistance of Consultants, M/s.Assystem India Limited (AIL), Chennai has prepared Detailed Project Report to study the requirement to refurbish and modernise the existing facilities, propose better facilities so that unhindered shipping services and safe passenger and cargo handling all around the year can be achieved.

- 3.1.2. The Authority has appointed AIL as the Consultant for the Bidding Process. (Marine Structures, land facilities and other allied facilities).

The Authority is now desirous of undertaking Construction of Jetties, Landside facilities and allied facilities at Eastern and Western sides in Kadmath Island of Lakshadweep. This Bid is being invited to identify highly experienced and reputed contractors for the “**Construction of Jetties, Landside facilities and allied facilities at Eastern and Western sides in Kadmath Island of Lakshadweep**”.

The main objective for the proposed developments is to provide all weather 24x7 unhindered shipping operations and effective & safe passenger/cargo handling.

And this bid proposal/document relates to the award of contract for execution of the Construction of Jetties, Landside facilities and allied facilities at Eastern and Western sides in Kadmath Island of Lakshadweep at an estimated cost of INR 313Crore.

- 3.1.3. The Authority intends to invite competitive bids from the experienced marine contractors who has executed similar works of Marine Structures and related onshore works including buildings/ utilities, and this will be done in Single Stage-Two Part Bidding: (i) Qualification Requirement (QR) and (ii) Commercial and Price Bids for award of the Marine Structures and related onshore works including buildings/utilities. The selected Bidder (“Contractor”) shall be responsible for the Design, Engineering, Procurement and Construction of the Project in accordance with the terms and conditions of the contract. The Contractor shall also be responsible for repairs and rectifications of defects during the Defect Liability Period.

- 3.1.4. Sale of Bid:

Bid document can be downloaded from the e-Tendering portal **www.tenderwizard.com/COPT**. Bid Document will also be available in Cochin Port website (**www.cochinport.gov.in**) as well as Central Public Procurement (CPP) Portal **www.tenders.gov.in**.

Bidder shall have to pay the prescribed cost of bid document Rs.11,800/- (Rupees Eleven Thousand Eight Hundred only) including GST @18% either through Demand Draft/ Pay Order/ Banker’s Cheque drawn in favour of the FA & CAO, CoPA, payable at Kochi, from any Nationalised Bank / Scheduled Bank in India. Payment can also be made online mode (NEFT/RTGS) as per Bank details furnished in the Bid Document at Appendix-XV, being the cost of single copy of the Bid Document.

MSME Bidders who are registered with District Industries Centre (DIC) or National Small Industries Corporation (NSIC) or Udyog Aadhaar Memorandum or any other body specified by the Ministry of MSME for similar nature of works shall be eligible for issue of Bid Document free of cost. They are required to submit the documentary proof of such registration along with QR code, for claiming the available exemptions and a scanned copy of Exemption Certificate duly notarized shall be uploaded in the

e – Tender Portal. If the Registration Certificate does not pertain to Similar Works as defined in Clause 4.2.2 below, the Bid will be rejected. Brief Scope of Work shall be as given in clause 3.3, which will include repairs and rectification of all the work performed by the Contractor for the Project (“Works”) during 2 (Two) years from the date of completion of the Works (“Defect Liability Period”).

3.2 Project Location and Project Status

3.2.1 Project Location

The Union Territory of Lakshadweep is an archipelago situated in the Arabian Sea between 08° 00’ N and 12° 30’ N latitude and 71° 00’ E and 74° 00’ E longitude and at a distance of about 220 to 440 km from the west coast of India. The length of the coastline is 132 km, which is approximately 1.6% of India’s total coastline.

Kadmath island is about 407 Km away from Kochi. Kadmath is the longest inhabited island of Aminidivi group, located in the centre of Lakshadweep islands. With an area of 3.34 sq km, Kadmath is 9.3km long and has a maximum width of 0.57 km. Similar to other islands, Kadmath also lies in the North South direction.

The lagoon of Kadmath lies on the western side of the island and extends to about 37 sq km. there is a narrow lagoon on the eastern side also. The outer ring of the lagoon is almost unbroken except at north corner (where there is an inlet) and mouth of approach channel and living corals are present inside the lagoon. The lagoon has sea grass.

3.2.2 The activities which are pursued currently in connection with the Project are as under:

- The entire water area for the construction of jetties is readily available for construction. For land side facilities the Govt. land available is not adequate for the proposed facilities. Hence, the Authority is in the process of land acquisition from the private land owners. The available land will be handed over to the Contractor immediately and balance land for the development of infrastructural facilities will be handed over to the Contractor only in a phased manner as per the progress of the Work.
- The Authority is in the process of obtaining Environment/CRZ clearance from the concerned Authority and the copy of the same will be made available to the successful Contractor before commencement of the Work.

3.3 Brief Scope of Work

3.3.1 The scope of Work is Construction of Jetties, Landside facilities and allied facilities at Eastern and Western sides in Kadmath Island of Lakshadweep on EPC Basis outlined briefly herein and is only indicative. The detailed scope of Work will be as specified in the Specifications and Drawings detailed at Volume-II and Volume – III of the Bid Document.

3.3.2 The scope of Work shall cover all the works listed below but not limited to the following:

- i. Construction of 360m x 20m Eastern Jetty

- ii. Construction of Approach Trestle for Eastern Jetty of 310m length and width varying from 10m to 18.4m
- iii. Construction of 70m x 12m new Western Jetty
- iv. Construction of Approach Trestle for Western Jetty of about 310m length and width varying from 10m to 18.4m
- v. Boat Landing facility which includes Boat Landing Centre, finger jetty, boat repair shed, ice plant, fuel station, fish collection yard, etc. at western side.
- vi. Road connecting the Approach Trestle and finger jetty to existing road network and other internal roads connecting all facilities developed for the project
- vii. Construction of passenger facilitation hall including lounge, gatehouse with all utilities, landscaping etc. at both sides ie. eastern and western sides
- viii. Warehouse on the Eastern Side
- ix. Providing Berth Corner lights for jetties on eastern and western Jetties
- x. Providing Gangway for Eastern jetty
- xi. Providing Aesthetic lighting, illumination, water and power supply fire fighting system, pump house with sump for fire and water, open well, CCTV including night vision at both side.

3.3.3 Throughout these Bid Documents, the terms bid and tender and their derivatives (bidder/tenderer, bid/tendered, bidding/tendering,) etc. is synonymous.

3.3.4 The Targeted Period for completion of the Construction of Jetties, Landside facilities and allied facilities at Eastern and Western sides in Kadmath Island of Lakshadweep is 36 months from the date of commencement of work.

3.4 Object and Scope of Bidding Process

3.4.1 The object of this Bid Document is to have SINGLE STAGE of bidding two cover (envelope) processes; Cover 1: Qualification Requirement. Cover 2: Financial Bid. Cover 1 of the Bidders for their eligibility in respect of technical and financial capability for execution of the Project. On fulfilling the Qualification Requirement, the Bidders will be eligible for consideration of their proposals during the commercial price bidding contained in Cover 2 for award of the Project in accordance with the procedure set forth herein.

3.4.2 The Authority shall receive Bid Proposals from the Bidders in accordance with the terms set forth herein as amended or clarified from time to time by the Authority and all Bid Proposals shall be prepared and submitted in accordance with such terms on

or before the date and time specified for submission of such Bid Proposals (“Bid Due Date and Time”).

3.5 Queries, Clarifications and Addendum to Bid Document

- 3.5.1 Any query or request for any clarification or additional information concerning this Bid proposal shall be submitted in writing or by fax and e-mail to the Officer of the Authority designated below. The envelopes/communications shall clearly bear the following identification/ title:

"Queries/Requests for Clarification or Additional Information:"

Designated Officer:CHIEF ENGINEER

The Chief Engineer
Chief Engineer’s Office
Cochin Port Authority
W/Island
Cochin- 682009
Kerala(India).

Tel +91 – 0484-2666414
+91-0484-2582400

Email:ce@cochinport.gov.in;
coptce@gmail.com

- 3.5.2 Bidder requiring any clarification or additional information on the bid document may notify the Authority in writing or e-mail in accordance with Clause 3.5.1. They should send in their queries before the date specified in the Bidding Schedule contained in Clause 3.7 The Authority shall endeavor to respond to the queries within the period specified therein, but not later than 10 (ten) days prior to the Bid Due Date. The Authority has also proposed to have a pre-bid conference for its clarification to queries raised in the meeting and also the queries received earlier through mail/letter. The Authority will host queries and its responses/clarification(s) without identifying the Bidder who made such queries in its Website / e-tendering portal / CPP portal. The Authority will not send the queries and its responses to the prospective Bidders
- 3.5.3 The Authority reserves the right not to respond to any query or provide any clarification or additional information, in its sole discretion, and nothing in this Clause shall be taken or mean as compelling or requiring the Authority to respond to any query or to provide any clarification or additional information.
- 3.5.4 The Authority may also, on its own discussion, if deemed necessary, issue amendments, interpretations and clarifications to all Bidders by way of duly numbered Addenda. All such amendments, clarifications and interpretations issued by the Authority shall be deemed to be part of the bid document. Any such Addenda issued will be sent in writing by email to all those who have purchased the Bid Documents and will also be hosted in Authority’s web-site. Verbal clarifications and information

given by Authority, or its Consultants, employees or representatives shall not, in any way or manner, be binding on the Authority.

3.6 Language of the Bid

The bid document and all correspondence relating thereto to be exchanged between the Bidder and the Authority shall all be in English.

3.7 Bidding Schedule

3.7.1 The Authority shall endeavor to adhere to the following Bidding Schedule:

Bid Document download start time and date	From 10.00 hrs. on 31-01-2025 to 14.00 hrs. on 20-03-2025
Pre-bid Meeting	11-02-2025 at 11.00 hrs.
Last date and time of submission of Bids	14.00 hours on 20-03-2025
Date and time of opening the Bids	15.00 hours on 20-03-2025

3.8 Extension of Bid Due Date

3.8.1 In order to afford the Bidders reasonable time for taking an Addendum into account, or for any other reason, the Authority may, in its sole discretion, by prior written notice to all the Bidders, extend the Bid Due Date. It will also be hosted in Authority's website / e-tendering portal / CPP portal.

3.9 Bid Validity

3.9.1 The Bid shall be valid initially for a period of 180 (One Hundred and Eighty) days from the Bid Due Date.

In exceptional circumstances, prior to expiry of the above validity period, CoPA may by a request in writing, may require the Bidders to extend the period of validity for a specified additional periods. Bidders who are willing for such an extension shall have to communicate their acceptance, within the specified time as mentioned in the request made by the Authority for validity extension. A bidder may also refuse the request without forfeiting its Earnest Money Deposit. However, no claim from such bidders, whatsoever, concerned with this bidding, will be entertained by the Authority. A bidder agreeing to this request will not be allowed to modify its proposal.

4 VOL. I – (SECTION - 4): INSTRUCTIONS TO BIDDERS (ITB)

4.1 Examination and Detailed Study of the Project

- 4.1.1 The scope of the EPC contractor includes detailed engineering design, procurement and construction as per the Authority's requirement, design criteria and specifications. The scope also covers the testing of structures for its soundness, stability and durability at various stages of pre-commissioning, on-commissioning and after commissioning during operation. The Operation & Maintenance manual shall be submitted to the Authority. The architectural and general layout of the structures shall be as per the drawings issued along with the Bid Document.
- 4.1.2 Contractor's attention is drawn to note that the details furnished in the Drawings and Site Information are indicative and for information only. It is the responsibility of the contractor, being EPC in nature, for its verification of the information and details furnished by the Authority with regard to its sufficiency, correctness and completeness. No claim whatsoever is acceptable on this account and also on account of any change on the sequence and other related activities.
- 4.1.3 Bidders are further invited to examine the Project detail, and to carry out, at their cost, such studies as may be required for submitting their respective Bids for qualification and, subject to such qualification, for commercial and price bidding for the Project.
- 4.1.4 As part of the Bid Documents, the Authority has provided General Conditions of EPC Contract, based on Model Agreement for EPC contract prepared by NITI Ayog, Government of India, during 2019 with certain site specific modifications and incorporating the project work specific requirement.
- 4.1.5 Bids shall be invited for the Project on the basis of Techno-Commercial Evaluation and the Lowest Evaluated Price quoted by the Bidder (the "Bid Price"). The Construction Period and the Defects Liability Period, during which the Contractor shall be liable for rectification of any defect or deficiency in the Project after completion of the Construction Period ("Defects Liability Period"), shall be pre-determined and indicated in the Contract Conditions forming part of the Bidding Documents. The Project shall be awarded to the qualified Bidder quoting the Lowest Evaluated Price. In this Bid Document, the term "Lowest Bidder" shall mean the Bidder whose bid is evaluated to be the lowest price.

4.2 Eligibility Criteria of Bidders

- 4.2.1 For determining the eligibility of Bidders based on their technical and financial qualifications, the following criteria shall apply:
- The Bidder for such qualification may be a single entity. No JV or a group of entities (the "**Consortium**") is allowed to participate the tender. The term Bidder used herein would apply to a single entity.
 - A Bidder may be a company incorporated under the Indian Companies Act, 2013.

- c) A Bidder shall not have a conflict of interest (“**Conflict of Interest**”) that affects the Bidding Process. Any Bidder found to have a Conflict of Interest shall be disqualified. A Bidder shall be deemed to have a Conflict of Interest affecting the Bidding Process, if:
- i. the Bidder, its Member or Associate (or any constituent thereof) and any other Bidder, its Member or any Associate thereof 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 of a Bidder, its Member or an Associate thereof (or any shareholder thereof having a shareholding of more than 5% (five per cent) of the paid up and subscribed share capital of such Bidder, Member or Associate, as the case may be, in the other Bidder, its Member or Associate is less than 5% (five per cent) of the subscribed and paid up equity share capital thereof; provided further that this disqualification shall not apply to any ownership by a bank, insurance company, pension fund or a public financial institution referred to in section 4A of the Companies Act 1956. For the purposes of this Clause 4.2.1c), indirect shareholding held through one or more intermediate persons shall be computed as follows: (a) 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 (“**Subject Person**”) shall be taken into account for computing the shareholding of such controlling person in the Subject Person; and (b) subject always to sub-clause (a) 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 (b) if the shareholding of such person in the intermediary is less than 26% of the subscribed and paid up equity shareholding of such intermediary; or
 - ii. a constituent of such Bidder is also a constituent of another Bidder; or
 - iii. such Bidder, or any Associate thereof receives or has received any direct or indirect subsidy, grant, concessional loan or subordinated debt from any other Bidder, or any Associate thereof or has provided any such subsidy, grant, concessional loan or subordinated debt to any other Bidder, its Member or any Associate thereof; or
 - iv. such Bidder has the same legal representative for purposes of this Bid as any other Bidder; or
 - v. such Bidder, or any Associate thereof has a relationship with another Bidder, or any Associate thereof, directly or through common third party/parties, that puts either or both of them in a position to have access to each other’s’ information about, or to influence the Bid of either or each other; or

- vi. Such Bidder or any Associate thereof has participated as a consultant to the Authority in the preparation of any documents, design or technical specifications of the Project.
- d) A Bidder shall be liable for disqualification if any legal, financial or technical adviser of the Authority in relation to the Project is engaged by the Bidder, its Member or any Associate thereof, as the case may be, in any manner for matters related to or incidental to the Project. For the avoidance of doubt, this disqualification shall not apply where such adviser was engaged by the Bidder, its Member or Associate in the past but its assignment expired or was terminated 6 (six) months prior to the date of issue of this Bid document. Nor will this disqualification apply where such adviser is engaged after a period of 3 (three) years from the date of commercial operation of the Project.

4.2.2 To be eligible for Qualification, a Bidder shall fulfill the following eligibility criteria:

(A) Technical Capacity:

(a) The Bidder should have experience of having successfully completed or substantially completed the works as mentioned below during the last 7 (seven) years ending 30th November 2024.

i) Three similar works of each costing not less than **Rs.125.20crore**

or

ii) Two similar works of each costing not less than **Rs.156.50crore**

or

iii) One similar work costing not less than **Rs.250.40crore**

AND

(b) The Bidder should have experience of having successfully completed or substantially completed one Work costing atleast **Rs.125.20crore** on EPC basis either for the projects qualified under (a) above or for any infrastructure project.

“Similar Work” means Construction of Marine Structures, viz. Open Piled Jetties / Berths / Wharfs in sea/ backwater and related onshore works including buildings / utilities.

(c) The value of executed works shall be brought to current costing level by enhancing the actual value of the work upon completion by using the following enhancement factors.

Year before	Multiplying factor
One year [November, 2023]	1.07
Two years [November, 2022]	1.14
Three years [November, 2021]	1.21
Four years [November, 2020]	1.28

Five years [November, 2019]	1.35
Six years [November, 2018]	1.42

The experience certificate of Works executed in private sectors/organisations shall be considered for qualification, only on submission of Form 26AS along with Work Order and Completion Certificate duly notarised.

Satisfactory Clients'/Owners' Completion Certificate or documentary proof shall be submitted in support of the Assignments / Works performed and claimed by the Bidder / Partners to Joint Venture /Consortium, in Annexure to be mentioned in the Bid Document to fulfill the Eligibility Criteria for Qualification.

The Works reckoned for the above purpose are those executed by the Bidders as Prime Contractor or proportionately as member of Joint Venture/Consortium, authorized and approved by the Authority of the Work(s) against which the Bidder has claimed his experience. If the experience is as member of Joint Venture/Consortium, the Bidder shall attach notary attested copy(s) of the JV Agreement(s). The Bidder is also obliged to produce the original of the certified copy(s) on request by the department. Experience as a Sub-Contractor, Petty Contractor, Labour Rate Contractor, Sub-letted work shall not be accepted.

(B)Financial Capacity:

- a) The Bidder must satisfy the following financial requirement as per their latest audited Financial Statements/Balance Sheets:
 - Minimum Average Annual Turnover of Rs.93.90Crore during last three financial years ending 31st March, 2024. For this purpose, only the Turnover income from operations shall be considered.
- b) The Available Bid Capacity of the Bidder shall be more than the total Bid Value. The Available Bid Capacity will be calculated as under:
Assessed Available Bid Capacity= $A \times N \times 1.5 - B$, where
'N' = Number of years prescribed for completion of the subject

Contract

'A' = maximum value of works executed in any one year during the last five years (at current price level) taking into account the completed as well as works in progress.
'B' = value at current price level of existing commitments and ongoing works to be completed in the next 'N' years.

The Bidder shall furnish statements showing the value of existing commitments and on-going works as well as the stipulated period of completion remaining for each of the works, which shall be certified by a Chartered Accountant.

- c) The Bidder shall have positive Net Worth at the close of the last three financial years.
- d) The Bidder shall demonstrate that they have available liquid assets, lines of credit, and other financial means (independent of any contractual advance payment) sufficient to meet the construction cash flow requirements for the subject Contract after meeting its cash flow requirements for contracts currently in progress and for future contract

commitments.

(C) Other Eligibility Considerations:

Even though the Bidders meet the above qualifying criteria, they are subject to be disqualified if they have:

- i) made misleading or false representations in the forms, statements and attachments submitted in proof of the qualification requirements;
- ii) record of poor performance such as abandoning the Works, not properly completing the Contract, continuous / inordinate delays in completion of Works, constant litigation history, barred by the Central / State Government from participating in any project or financial failures etc.; and/or
- iii) Blacklisted / Debarred by any Govt. of India Organizations / PSU / PSE / Govt. Depts. / reputed Private Sector Companies etc. during the last three years.
- iv) Records of poor performance during the last five years, as on the date of application, such as abandoning the work, rescission of the contract for reasons which are attributable to non-performance of the contractor, inordinate delays in completion, consistent history of litigation resulting in awards against the contractor or any of the constituents, or financial failure due to bankruptcy, and so on. The rescission of a contract of venture JV on account of reasons other than non-performance, such as the most experienced partner (major partner) of JV pulling out.

The Bidders having EPF and ESI registration only shall be considered for qualification in the Bids, if applicable, as per EPF /ESI Acts.

4.2.3 The Bidder along with its Forwarding Letter and *Appendix-I*, shall also submit the following additional documents:

- i. Certificate(s) from the concerned Authority/ Owner with details of project name, construction cost of project, date of commencement of construction, date of completion of construction and scope of works executed, stating the payments received towards construction.
- ii. Certificate(s) from its statutory auditors specifying the Annual turnover for the past 3 (three) years of the Bidder, as at the close of the preceding financial year.

4.2.4 The Bidder should submit a Power of Attorney as per the format given in *Appendix-II*, authorizing the signatory of the Bid Proposal to commit the Bidder for tendering for the project.

4.2.5 Any entity *which* has been barred by the Central/State Government, or any entity controlled by it, from participating in any project, and the bar subsists as on the date of Bid Proposal, would not be eligible to submit its Bid.

4.2.6 A Bidder, including any Member or Associate, should, in the last 3 (three) years, have neither failed to perform on any contract, as evidenced by imposition of a

penalty by an Arbitral or Judicial authority or a judicial pronouncement or arbitration award against the Bidder, Member or Associate, as the case may be, nor has been expelled from any project or contract by any public entity, nor have had any contract terminated by any public entity for breach by such Bidder, Member or Associate, would not be eligible to submit its Bid either individually or as member of Consortium.

- 4.2.7 In computing the Technical Capacity and Financial Capacity of the Bidder under *Clauses 4.2.2*, the Technical Capacity and Financial Capacity of their respective Associates would also be eligible as outlined hereunder.

For purposes of this bid document, Associate means, in relation to the Bidder, a person who controls, is controlled by, or is under the common control with such Bidder (“**Associate**”). As used in this definition, the expression “control” means, with respect to a person which is a company or corporation, the ownership, directly or indirectly, of more than 50% (fifty 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.

In case the Bidder claiming the capabilities of their Associates for qualification, it will be required to submit a “**Parent Company Guarantee**” as per format in **Appendix-VI**

- 4.2.8 The following conditions shall be adhered to, by the Bidder while submitting its Bid Proposal:
- a) Bidders should attach clearly marked and referenced continuation sheets in the event that the space provided in the prescribed formats in the **Annexes** or **Appendices** is insufficient. Alternatively, Bidders may format the prescribed formats making due provision for incorporation of the requested information;
 - b) Information supplied by a Bidder must pertain to the Bidder, Member or Associate named in the Bid Proposal.
 - c) The bidders shall give an undertaking that they have not made any payment or illegal gratification to any person/authority connected with the bid process so as to influence the bid process and have not committed any offence under the PC Act in connection with the bid as per proforma at **Appendix-X**.
 - d) The bidders shall disclose any payments made or proposed to be made to any intermediaries in connection with the bid as per preform as in **Appendix-XI**. In case no payment is made or proposed to be made a ‘Nil’ statement shall be enclosed.
 - e) The bidder shall also give an undertaking that Part (ii) Commercial and Price bid is Unconditional as per Proforma at Appendix-IX.
 - f) In case of Bid Document being downloaded from the Authority’s web site, at the time of submission of Bid Documents (hard copies), the Bidder shall give an Undertaking that no change have been made in the document as per Proforma at **Appendix-VIII**. The successful Bidder shall be issued an Acknowledgment at the time of the issue of Letter of Acceptance of Bid by the Authority on the condition that the printed version of the Bid Document will be treated as authentic and if any discrepancy is noticed at any stage between this and the one submitted by the Bidder, the

Authority's version of the Bid Documents shall prevail. Besides, the Bidder shall be liable for legal action for corresponding lapses.

- g) All the Bank Guarantees (BGs) shall be furnished by the Bidder/Contractor in connection with the Bid/Contract shall be issued by a Nationalised Bank/Scheduled Bank in India having its Branch at Kochi and made in the name of the FA & CAO, CoPA, Kochi - 682009, Kerala State, India. All BGs except Bid Bond shall be sent to The Chief Engineer directly by the Bank under registered post with AD. The Bidder/Contractor shall take sole responsibility for issue, extension of validity and delivery of such BGs to the Authority in a timely manner without any request or reminders from the Authority.

4.3 Number of Bids and costs thereof

- 4.3.1 No Bidder shall submit more than one Bid Proposal for the Project. The Bidders shall be responsible for all of the costs associated with the preparation of their Bid Proposal and their participation in the Bid Process. The Authority will not be responsible or in any way liable for such costs, regardless of the conduct or outcome of the Bidding Process.

4.4 Acknowledgement by the Bidder

- 4.4.1 It shall be deemed that by submitting the Bid Proposal, the Bidder has:

- a) made a complete and careful examination of the Bid document;
- b) received all relevant information requested from the Authority;
- c) inspected the site of work and its surroundings and discussed with connected agencies and collected all necessary information for the purpose of quoting for the work. Bidder shall rely on his own judgment, skill and expertise in all matters connected with the tender and submission thereof.
- d) Bidders will be required to submit along with their Bid an undertaking that they have visited the site and collected all necessary details required to submit their offer as per Appendix - XIV.**
- e) accepted the risk of inadequacy, error or mistake in the information provided or furnished by or on behalf of the Authority relating to any of the matters referred to hereinabove; and
- f) Agreed to be bound by the undertakings provided by it under and in terms hereof.

- 4.4.2 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 the bid document or the Bidding Process, including any error or mistake therein or in any information or data given by the Authority.

4.5 Right to accept or reject any or all Bids

- 4.5.1 Notwithstanding anything contained in this Bid proposal, the Authority reserves the right to accept or reject any Bid and to annul the Bidding Process and reject all Bids, at any time without any liability or any obligation for such acceptance, rejection or

annulment, and without assigning any reasons therefore. In the event that the Authority rejects or annuls all the Bids, it may, in its discretion, invite all eligible Bidders to submit fresh Bids hereunder.

4.5.2 The Authority reserves the right to reject any Bid if:

- a) at any time, a material misrepresentation is made or uncovered, or
- b) The Bidder does not provide, within the time specified by the Authority, the supplemental information sought for by the Authority for proper evaluation of the Bid.

If the Bidder is a Consortium, then the Bid submitted by Consortium may be rejected.

If such rejection occurs after the Bids have been opened and the **Lowest Evaluated Bidder** gets rejected, then the Authority reserves the right to:

- Take any such measure as may be deemed fit in the sole discretion of the Authority, including annulment of the Bidding Process.

4.5.3 The Authority reserves the right to verify all statements, information and documents submitted by the Bidder in response to the bid document. Any such verification or lack of such verification by the Authority shall not relieve the Bidder of its obligations or liabilities hereunder nor will it affect any rights of the Authority hereunder or under the Contract Conditions, as the case may be.

4.5.4 The Project as a whole has been divided into different Sections for sequential completion within the (“Construction Period”) as under:

Section – 1 : Detailed Engineering including Completion of Design Documents, Technical Specification, Operation Manuals, GFC Drawings, etc required for construction of the various facilities. To be completed within 12 months from Date of Commencement of Work.

Section – 2 : Construction of marine and landside facilities on eastern side including jetty and the approach trestle. To be completed within 36months from Date of Commencement of work.

Section – 3 : Construction of marine and land side facilities including jetty and approach trestle on western side. To be completed within 18 months from Date of Commencement of work.

Section – 4 : Construction of Boat landing facility(on western side) and ancillary works and Allied On-shore facilities including road network, drainage facilities etc. on both eastern and western sides. To be completed within 36months from Date of Commencement of work.

The whole of the Works for the project including essential punch list items, if any, shall be completed within **36 months** from the date of Commencement of work.

The completion of the whole of the Works in different Sections as above shall be subject to the following:

- i) The Works or any Sections thereof, as the case may be, shall successfully pass the “**Tests on Completion**” in terms of the EPC Contract, and

- ii) Completion of all such works as is expressly stated to be within the Scope of Works or which is implied to be so though not expressly stated as such but under terms of the Contract is required for the Works to be considered as completed for the purposes of taking-over of the whole of the Works by the Authority

Save as the above, the Authority may, by prior written notice to the Contractor, change the priority of the dates for completion of any Sections or parts of the Works comprised in the respective Sections of the Works and the Contractor shall be required to adhere to such changes at no extra cost to the Authority.

4.6 Conditions of Contract

The “**Conditions of Contract**” applicable for the execution of the Works shall be the General Conditions of Contract based on Model EPC document prepared by NITI Ayog, Government of India, during 2019 incorporating the work specific requirement along with **Conditions of Particular Application** framed to suit the specific Project requirements and Site conditions.

4.7 Reference to Codes and Standards

Reference numbers of Codes or any Standards stipulated in the Tender Document shall be deemed to mean the latest revisions of such Codes or Standards current at the time of issue of this Bid Document.

4.8 Site Visit

- 4.8.1 Site visit to Kadmath Island for prospective Bidders was arranged on 11-12-2024. The Bidder is strongly advised to visit and examine the island, site and its surrounding areas and obtain, at his own cost and responsibility, all information and data that may be necessary for preparation of the Bid and for entering into and execution of Contract for the Works in accordance with the Conditions of Contract. The Bidder and his personnel or agents, up to a maximum of two individuals, will be granted permission by the Authority to enter upon the Site for the purpose of inspection but only upon the Bidder submitting a written undertaking to the Authority that his personnel and agents, will release and indemnify the Authority and his personnel and agents from and against all liability in respect thereof. The Bidder will be solely responsible for any death or personal injury, loss of or damage to property, and any other loss, damage caused or incurred by the Bidder and also any costs, and expenses incurred by the Authority or his personnel, as a result of such inspection and Site visit by the Bidder or his personnel or agents. Bidders will be required to submit along with their Bid an undertaking as per proforma at Appendix XIV that they have collected all necessary details required to submit their offer.
- 4.8.2 No claim whatsoever shall be entertained by the Authority at any time for any expense or extension of time in completion of the works on any ground, including but not limited to inaccurate or inadequate data and details given in the Bid Documents; non-availability of resources and facilities including labour and infrastructure at work site and surrounding areas; adverse weather and working conditions prevailing at Site; or any other similar difficulties which may be encountered by the Contractor during the course of execution of the Works at Site.

4.9 Pre-Bid Meeting

- 4.9.1 A pre-bid Meeting will be arranged by the Authority on the date and time specified at Table 1 of the NIT at Cochin Port Authority and also in Hybrid mode. An authorized representative of the Bidder may be present at such pre-bid meeting.
- 4.9.2 The purpose of the pre-bid meeting will be to clarify issues and to answer queries raised by the Bidders on any matter concerning the Bid Document.
- 4.9.3 The Bidders are requested, to submit their queries in writing or by email so as to reach the Authority by the date specified at Table 1 of the NIT. It will not be possible to answer queries received later than this date.
- 4.9.4 Notes of the pre-bid meeting, including the queries raised and the responses given, together with any responses prepared after the pre-bid meeting will be uploaded in the CoPA's website, e-tendering portal and CPP portal within 7 (seven) days of such meeting. Any modifications to the bid documents which may become necessary as a result of such pre-bid meeting shall be issued by the Authority only by way of Addendum pursuant to Sub-Clause 3.5, hereinabove and not as record note of the pre-bid meeting.

4.10 Bid Bond

- 4.10.1 The Bidder shall furnish, as part of its Bid Proposal an unconditional irrevocable Bid Bond in the form of a Bank Guarantee for a sum of Rs.3,23,00,000 (Rupees Three Crore and twenty three lakh only) as per *Appendix-V*.
- 4.10.2 This Bank Guarantee shall be furnished either through Demand Draft / Pay Order or Banker's Cheque drawn in favour of Financial Adviser & Chief Accounts Officer, CoPA (FA & CAO, CoPA), payable at Kochi from any Nationalised Bank/Scheduled Bank in India or through an irrevocable Bank Guarantee (BG) and en-cashable as per the format given in Appendix-V [Format for Bid Bond in the Form of Bank Guarantee]. This Bank Guarantee shall remain to be valid for a period of 225 (two hundred and twenty five) days and claim period of 60 (Sixty) days, calculated from the Bid Due Date. The Bid Bond validity shall be automatically extended subject to extension by the Bidder corresponding to the extension of the Bid Validity by the Bidder at the written request of the Authority. Any failure by the Bidder to automatically extend the validity of Bid Bond corresponding to the extension of the Bid Validity will result in automatic rejection of the Bidder's Bid Proposal by the Authority without any notice to the Bidder. Bid Bond can also be submitted as Insurance Security Bond (or) Fixed Deposit Receipt issued in the name of FA&CAO, CoPA payable at Kochi from any Nationalised Bank/Scheduled Bank in India.
- 4.10.3 The Bid Bond of unsuccessful Bidders other than L1 and L2 will be refunded immediately after ranking of the Bids. The Bid Bond of L2 Bidder shall be refunded immediately after acceptance of the Performance Security and entering into Agreement with L1 Bidder. The Bid Bond of the Successful Bidder will be discharged after he has furnished the required Performance Security, which has been accepted and has signed the Agreement.
- 4.10.4 The Bid Bond may be invoked and the proceeds forfeited if the Bidder-

- i) withdraws its Bid any time after Bid Due Date during the period of Bid validity;
- ii) fails to accept the correction of the Bid Prices, pursuant to Clause 4.25; or
- iii) in the case of a successful Bidder, if he fails within the time limit specified in the Bid and the award of Contract to –
 - sign the Contract Agreement; or
 - submit the required Performance Security in the form of Bank Guarantee in terms of the Contract

4.11 2 (Two) Parts of Bid Submission Process

The mode of bid submission shall be online strictly via www.tenderwizard.com/COPT.

The instructions to the bidders for e-tender submission are detailed in **Appendix XII**

4.11.1 The Bidder shall submit its Bid Proposal in 2 (TWO) separate Parts.

“Part I : Qualification Requirement (QR) Documents”;

“Part II : Commercial and Price Bid”.

The contents of Part-I and Part-II shall respectively be as follows:

4.11.2 Part I : Qualification Requirement (QR) Documents (To be submitted online)

- (a) Duly Signed Integrity Pact as per format given in **Annex-V of Appendix-I [Integrity Pact]**
- (b) Bid Bond as indicated in the Table 1 of the Notice Inviting Tender or duly notarised scanned copy of Exemption Certificate.
- (c) Cost of Bid Document as indicated in the Table 1 of the Notice Inviting Tender or duly notarised scanned copy of Exemption Certificate.
- (d) Forwarding Letter comprising the Bid for the Project as per format given in **Appendix I** together with the following **Annexes**:
 - Annex – I Details of the Bidder**
 - Annex – II Financial Capacity of the Bidder**
 - Annex – III Details of Eligible Projects**
 - Annex – IV Statement of Legal Capacity**
- (e) A Notarised Copy of the **Power of Attorney** issued by the Bidder to the **authorised signatory** of the Bid as per format given in **Appendix II [Format for Power of Attorney for signing the Bid]**, as the case may be.
- (f) Copies of:
 - (i) GST and PAN registrations;
 - (ii) EPF and ESI registration, if applicable as per EPF/ESI Acts.

- (g) The **Original set of BID Documents** downloaded from Authority's website together with all Addenda duly signed on the first and last pages and initiated on all other pages by the Bidder.
- (h) **An Undertaking that no changes** have been made in the Bid Documents downloaded by the Bidder in the Proforma given in **Appendix VIII**
- (i) **An Undertaking that Part II : Commercial & Price Bid is unconditional** as per Proforma given in **Appendix IX**
- (j) **An Undertaking** that no illegal methods have been used for influencing the Bid Process as per Proforma given in **Appendix X**
- (k) **An Undertaking for disclosure of payments** made/proposed to be made to Intermediaries in connection with the Bid as per Proforma given in **Appendix XI**
- (l) **An Undertaking that the Bidder has visited the site and collected all necessary details required to submit their offer as per Appendix - XIV.**
- (m) **An Undertaking that Bidder has not been Debarred/Blacklisted as per Appendix-XVI**
- (n) **Any other document or literature** which the Bidder thinks is necessary for proper evaluation of its Bid. The Bidder shall draw special attention of the Authority to such document or literature in its forwarding letter as per **Appendix-1**
- (o) **SCHEDULES 1 to 17 issued as part of Vol.1: Qualification Requirement (QR) Documents** duly completed and signed by the Bidder

4.11.3 Part II: Commercial and Price Bid (To be submitted online only)

The Commercial Bid shall comprise the following pursuant to this clause:

- i) Signed and Priced copy of '**Schedule Of Prices**' as per Appendix VII

The Commercial and Price Bid shall be without any conditions. A conditional Commercial Bid will be subject to summary rejection by the Authority.

4.11.3.1 Schedule of Prices

- i) The Bidder shall provide Schedule of Prices for the scope of Works, as described in Clause 3.3. **hereinabove**
- ii) The Schedule of Prices and the Aggregate Tender Price quoted by the Bidder shall be inclusive of all incidentals and overheads and considering the provision of taxes and duties.

4.11.4 Part I : Qualification Requirement (QR) Documents (**To be submitted as hard copy within 3 days from Bid Due Date**)

- (a) Duly Signed Integrity Pact as per format given in **Annex-V of Appendix-I [Integrity Pact]**
- (b) Bid Bond as indicated in the Table 1 of the Notice Inviting Tender or duly notarised scanned copy of Exemption Certificate.

- (c) Cost of Bid Document as indicated in the Table 1 of the Notice Inviting Tender or duly notarised scanned copy of Exemption Certificate.
- (d) Forwarding Letter comprising the Bid for the Project as per format given in **Appendix I**
- (e) A Notarised Copy of the **Power of Attorney** issued by the Bidder to the **authorised signatory** of the Bid as per format given in **Appendix II [Format for Power of Attorney for signing the Bid]**, as the case may be.

4.12 Instructions Common to all Parts

4.12.1 The Bid Document must be signed by the authorized signatory holding necessary Power of Attorney issued by the Bidder to represent the Bidder and bind the Bidder to the Tender and in case of successful Bidder, to the Contract Agreement for the Project

4.12.2 Incomplete or improper Bids shall be subject to summary rejection by the Authority without assigning any reason.

4.12.3 In addition, the Bidder, without in any way binding on the Authority, must also provide supplementary documents listed here below either generally as per the corresponding formats appearing in the respective Appendices, Annexes and Schedules or in any other form as "Attachments" there to under Part I : Qualification Requirements (QR) .

- i) **Site Organization Chart**, as per Schedule-6B, giving details of (i) supervisory and technical staff to be engaged by the Bidder for execution of the Works with their qualifications and experience profile; estimated skilled and unskilled labour to be employed and CVs of key personnel proposed to be deployed on execution of the Works.

The Selected Bidder and Contractor is required, to the extent practicable and reasonable, to employ local labour.

- ii) **List of all machinery and equipment**, as referred in Schedule-7, needed for construction of Berthing Structures and Approach.
- iii) **List of Sub-contractors and suppliers**, as referred in Schedule-5, proposed to be engaged by the Bidder and description of parts of the Works on which they are proposed to be engaged together with documentary evidence of their capability and experience in support thereof.
- iv) **A list of all major works of similar nature**, as referred in Schedule-3, which the Bidder has completed in the past ten years and of all works which are presently under construction, giving the name of the Client, Consultant, location, value, date of contract award, contracted period of completion and actual completion.

The Bidder shall also indicate therein the details of equipment employed and also extent of their participation, whether as a Main Contractor, Joint Venture Partner or as Sub-contractor.

- v) **A Statement of Bidder's Financial Standing** including the names and addresses of his banks/branches together with the authority issued in favour of the Authority to

approach the banks/branches for relevant information. The Bidder shall also provide details of their Turnover for the past 3 (three) years

- vi) **A Written Statement certifying that the Bidder has visited the Site**, obtained all relevant data and familiarised himself with all the Site conditions which may affect execution of Works covered by this Tender and that he has no queries or clarifications to be had on any matter concerning the execution of the Tendered Works.
- vii) **Bidder's proposed Execution Plan**, as referred in Schedule-6A, for completion of different Sections of the Works within the stipulated completion period as required by the Authority as per Clause 4.5.4 hereinabove.
- viii) **Bidder's Design Basis** for Construction of Jetties, Landside facilities and allied facilities at Eastern and Western sides in Kadmath Island of Lakshadweep with supporting calculations (if any), drawings, etc.
- ix) **A Detailed Method Statement** of the Bidder defining each element clearly indicating the methodology and sequence proposed for the execution of Works, including critical factors affecting the execution, along with proposed implementation schedule with reference to PERT chart prepared for execution of the project.

4.12.4 Bidder's attention is hereby drawn that it is utmost important that all the documents, listed in Clause 4.11 are required to be submitted along with the Bid. Any Bid not accompanied by such documents shall be subject to rejection by the Authority without assigning any reason.

4.12.5 No alterations to the Form of Bid or any of the Bid Documents shall be permitted. Any such alteration (other than merely filling in the blanks for the intended purpose) will result in rejection of the Bid.

4.12.6 The Bidder is required to submit his Bid based solely on the Bid Documents issued to him without any of his own remarks or qualifications expressed or implied.

4.12.7 The Bidder, while submitting his Bid, shall ensure that his Bid is fully compliant with all the requirements of the Bid Documents. A non-compliant Bid is likely to be rejected.

4.12.8 Bid Price: Bidders shall quote for the whole of the Works/Project on a single responsibility basis such that the total Bid Price covers all the Contractor's obligations mentioned in the Bid Documents in respect of the design, manufacture, including procurement and subcontracting (if any), transportation, packing, forwarding, delivery, construction, installation and completion of the Works/Project. This includes all requirements under the Contractor's Responsibilities for design, design vetting by third party agencies (i.e. IIT/NIT/any other national/international) of repute, testing, test on completion, pre-commissioning, commissioning, test after completion, submission of warranty & guarantee certificates and defects rectification and, where so required by the Bid Documents, the acquisition of all permits, approvals and licenses, etc.; the operation, maintenance and training services and such other items and services as may be specified in the Bid Documents, all in accordance with the requirements of the Conditions of Contract.

4.13 Currency of Tender and Payment

4.13.1 The Bidder shall quote Schedule of Prices only in **Indian Rupees**.

4.14 Deleted

4.15 Deleted

4.16 Deadline for Submission of Bids

4.16.1 The Bids must be submitted online only.

4.16.2 The hard copies of submissions as stated in Clause 4.11.4 shall be submitted to the Authority at the address stated in the cover page of the Tender not later than three days from the Bid Due Date

4.16.3 The Authority may, at its sole discretion, extend the deadline for submission of Bids by issuing an Addendum in accordance with Clause 3.5 herein above, in which case all rights and obligations of the Authority and the Bidders previously subject to the original deadline will automatically be subject to the deadline as extended.

4.17 Modifications and Withdrawal of Bids

4.17.1 No Bid shall be subject to any modification by the Bidder after the submission of Bid.

4.17.2 Withdrawal of any Bid after the deadline for submission of Bids and before expiration of the Bid validity period or the extended Bid validity period, as the case may be, shall result in the forfeiture of the amount of Bid Bond.

4.18 Bid Opening Process

4.18.1 Opening & Evaluation

The Authority shall open the Bids at the date and time mentioned in the NIT or at on such date and time as may hereafter be conveyed by the Authority to the Bidders by way of an Addendum pursuant to Clause 3.5 hereinabove, in the presence of all Bidders who may be present through their authorized representatives.

4.18.1.1 The Authority will then examine and evaluate Bids in accordance with the provisions set forth hereunder.

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

4.18.1.3 The Bidders are advised that qualification of Bidders will be entirely at the discretion of the Authority. Bidders will be deemed to have understood and agreed

that no explanation or justification on any aspect of the Bidding Process or qualification or selection of Bidders will be given.

4.19 Bid Opening - Qualification requirements [Technical Bid]

- 4.19.1 Opening of Bids will be done through online process. The TECHNICAL BIDs will be opened in the office of **Chief Engineer, Cochin Port Authority** on the time and date notified in **Table 1 of Notice Inviting Tender** in the presence of the authorized representatives of the Bidders, who choose to attend.
- 4.19.2 The Technical Bids submitted online will be opened only if Cost of Bid Document and Bid Bond are in order. The Technical Bids will then be examined and evaluated in accordance with the conditions set forth in the Document.
- 4.19.3 In the event of a Bid being rejected, the Bid Bond paid with such unaccepted Bid shall be refunded to the Bidder.

4.20 Bid Opening – Price Bids

Price Bid of those Bidders who are found responsive and satisfying Bid requirements on evaluation of Technical Bid, will be opened later. Short listed Bidders will be communicated about the date and time of opening of the Price Bid through e-Tender portal notification / communication only and there will be no direct communication from department in this regard.

4.21 Clarification of Bids

To assist in the examination and comparison of Bids, the Authority may, at his discretion, ask any Bidder for clarification on his Bid, including breakdown of unit rates. The request for clarification and the response shall be in writing, but no change in the rate / amount or substance of the Bid shall be sought, offered, or permitted.

No Bidder shall contact the Authority on any matter relating to his Bid from the time of the Bid Opening to the time the Contract is awarded. If the Bidder wishes to bring additional information to the notice of the Authority, he should do so in writing.

Any effort by the Bidder to influence the Authority's Bid Evaluation, Bid Comparison or Contract Award decisions may result in the rejection of his Bid.

4.22 Evaluation and Selection of Bidder

- 4.22.1.1 Only those Bidders who meet the eligibility criteria specified in Clause 4.2 above shall qualify for evaluation of their Bids. Bids of individual Bidders/ who do not meet these criteria shall be subject to rejection.
- 4.22.1.2 The Bidder's competence and capability is proposed to be established by the parameters set out in Clause 4.2.2 with regard to (A) Technical Capacity; and (B) Financial Capacity.
- 4.22.1.3 In the event where any information is found to be patently false or amounting to a material misrepresentation, the Authority reserves the right to reject the Bids in accordance with Clause 4.5.
- 4.22.1.4 Generally, the Lowest Evaluated Bidder ("Lowest Bidder") shall be the selected Bidder. The remaining Bidders shall be kept in reserve and may, in accordance

with the process specified in the bid document, be invited to match the Bid submitted by the Lowest Bidder in case such Lowest Bidder withdraws or is not selected for any other reason. In the event that none of the other Bidders match the Bid of the Lowest Bidder, the Authority may, in its discretion, invite fresh Bids from the remaining Bidders or annul the Bidding Process, as the case may be.

4.23 Process to be Confidential

The entire Bidding Process pertaining to scrutiny, seeking clarifications, evaluation and comparison of Qualification Requirement (QR) and Commercial & Price Bid, recommendations for issue of LoA (of the Tender for the Project) to the successful Bidder shall be deemed to be confidential and shall not be subject to disclosure to any other person or party not officially concerned with Bid process until the announcement of the of the issue of LoA to the successful Bidder. Any effort by any Bidder to influence the Authority's processing of Bids or the Authority's decisions regarding selection of a successful Bidder and issue of LoA to such Bidder, may result in the rejection of its Bid.

4.24 Scrutiny of Bids for Determination of their Responsiveness

4.24.1 Prior to undertaking the detailed evaluation of Bids, the Authority will undertake scrutiny of all Bids to determine whether each Bid

- a) has been properly signed;
- b) is accompanied by the required Cost of Bid Document, **INTEGRITY PACT, BID BOND, Appendices, Schedules and Undertakings in the prescribed formats;**
- c) is substantially responsive to the requirements of the Bid Documents; and
- d) Provides necessary clarification and/or substantiation that the Authority may require to determine its responsiveness. Furthermore, the Bidder shall, if required, provide further clarification and/or substantiation that the Authority may require.

4.24.2 A substantially responsive Bid is one that conforms to all the terms, conditions, and specifications of the Bid Documents without any material deviation or reservation. A material deviation or reservation is one;

- a) which affects in any substantial way the scope, quality or performance of the Works;
- b) which limits in any substantial way, inconsistent with the Bid documents, the Authority's rights or the Bidder's obligations under the Contract; or
- c) whose rectification would affect unfairly the competitive position of other Bidders presenting substantially responsive Tenders.

If any material deviation or reservation as stated in (a) to (c) above is observed in the Bidder's submission, its Bid will be judged as non-responsive and rejected.

4.24.3 If a Bid is not substantially responsive and is therefore rejected by the Authority, it cannot subsequently be made responsive by correction or withdrawal of the nonconforming deviation or reservation.

4.24.4 The Authority, may at its discretion, call for clarifications / presentation from any or all the Bidders, or conduct clarification meeting(s) /presentations with any or all the Bidders for proper evaluation of the Bids received by the Authority.

4.24.5 The Evaluation of Bids shall be done on the basis of the Bidder's Technical submission and the Bid has satisfied fully the QR pursuant to Part I Qualification Requirement (QR) of the Bid document.

4.25 Correction of Arithmetical Errors

4.25.1 Only those Bids which are determined to be substantially responsive will be checked by the Authority for any arithmetical errors. Errors will be corrected where there is a discrepancy between the amounts in figures and in words, the amount in words will govern; and shall be binding on the Bidder.

The amount stated in the Bid will be adjusted by the Authority in accordance with the above procedure for the correction of total price quoted by the Bidder and, with the concurrence of the Bidder, shall be considered as binding upon the Bidder. If the Bidder does not accept the corrected amount of Bid, his Bid will stand rejected, and the Bid Bond amount may be forfeited. Acknowledgement from the Bidder shall be provided that the bidder agrees that the decision made by the Authority is final and that the Authority shall carryout necessary adjustment in accordance with the above procedure for the corrections.

4.26 Award of Contract

4.26.1 Authority shall award the Contract for the work to the Bidder whose Bid has been determined to be substantially responsive to the Bid Document and who has been selected by the Authority to be competitive based on its Qualification Requirement (QR) and Commercial & Price Bid and has been found to be the "Lowest Price".

4.27 Authority's Right to Accept and/or to Reject any or all Bids

4.27.1 The Authority reserves the right to accept or reject any and/or all Bids and annul the bidding process, or to seek additional responses, or to enter into negotiations with and subsequently enter into contract with more than one Bidder, and/or to award the contract on the basis of criteria other than only the Lowest Evaluated Price at any time prior to award of Contract, without thereby incurring any cost/liability to the affected Bidder/s or any obligation to inform the affected Bidder/s of the grounds for the Authority's action thereof. Mere issuance of Bid Document to any Bidder or opening of Bidder's QR and Techno-Commercial Bids shall not be construed that such Bidder is automatically qualified or its Bid has been considered for evaluation and Award of Contract for the Works.

Records of poor performance during the last five years, as on the date of application, such as abandoning the work, rescission of the contract for reasons which are attributable to non-performance of the contractor, inordinate delays in completion, consistent history of litigation resulting in awards against the contractor or any of the constituents, or financial failure due to bankruptcy, and so on. The rescission of a contract of venture JV on account of reasons other than non-

performance, such as the most experienced partner (major partner) of JV pulling out.

4.28 Letter of Acceptance (“LoA”)

4.28.1 Prior to expiry of the validity or extended validity period of the Bid, the Authority will notify the successful Bidder by email confirmed by registered letter that its Bid has been accepted. This Letter (hereinafter and in the Contract Conditions referred to as the “Letter of Acceptance” (“LoA”) shall specify the sum which the Authority will pay the Contractor (hereinafter and in the Contract Conditions referred to as the “Contract Price”) in consideration of the execution and completion of the Works for the Project and the remedying of any defects therein by the Contractor in terms of the Contract.

4.28.2 The LoA shall be deemed to constitute a binding Contract between the Authority and the Bidder-cum-Contractor for execution and completion of the Works for the Project and remedying defects therein in terms of the Contract Conditions.

4.29 Signing of Contract Agreement

4.29.1 Subsequent to issue of the LoA to the successful Bidder, the Authority and such Bidder shall, within 30 days from the date of LoA or such extended period as may be agreed to by the Authority, execute a Contract Agreement to formally give effect to the Contract

4.30 Performance Security

4.30.1 The Contractor shall comply with clause 7.1 of Article 7 (GCC) with regards to submission of Performance security.

4.31 Material Breach of Contract

4.31.1 Failure of the successful Bidder to comply with the requirements of *Clause 4.28* shall constitute a material breach of Contract, resulting in annulment of the Project Award pursuant to LoA, forfeiture of the Bid Bond, and any such other remedy the Authority may have under the Contract and at law.

4.32 Assignment of the Contract

4.32.1 The Authority shall be entitled to assign and/or transfer any of its rights and obligations under the Contract to be entered by the Authority with the successful Bidder to any other person by prior notification to such successful Bidder-cum-Contractor except that no such notification shall be required in the event of assignment to the Lender or its agent or its nominee or to any Affiliate of Authority or to a Promoter of Authority.

4.32.2 The Successful Bidder-cum-Contractor is deemed to have consented to the assignment by the Authority of the Contract in favour of the Lenders and hereby undertakes to execute such additional documents as may be reasonably required to give effect to any such assignment provided that execution of such additional documents shall not impose upon the Successful Bidder-cum-Contractor any duty,

liability or responsibility over and above those set forth in this Tender and the Contract envisaged herein.

5 VOL.I – (SECTION – 5) –GENERAL CONDITIONS OF CONTRACT PREAMBLE

These General Conditions of Contract (“GCC”) has been prepared in line with Model agreement for EPC contract prepared by NITI Ayog, Government of India, during 2019. These are to read, understood and complied with in conjunction with the accompanying ‘Special Conditions of Contract’ made applicable for the Tendered Works by appropriately modifying this GCC.

Part I

Preliminary

ARTICLE 1 DEFINITIONS AND INTERPRETATION

1.1 Definitions

The words and expressions beginning with capital letters and defined in this Agreement (including those in Article 26) shall, unless the context otherwise requires, have the meaning ascribed thereto herein, and the words and expressions defined in the Schedules and used therein shall have the meaning ascribed thereto in the Schedules.

1.2 Interpretation

1.2.1 In this Agreement, unless the context otherwise requires,

- a) references to any legislation or any provision thereof shall include amendment or re-enactment or consolidation of such legislation or any provision thereof so far as such amendment or re-enactment or consolidation applies or is capable of applying to any transaction entered into hereunder;
- b) references to laws of India or Indian law or regulation having the force of law shall include the laws, acts, ordinances, rules, regulations, bye laws or notifications which have the force of law in the territory of India and as from time to time may be amended, modified, supplemented, extended or re-enacted;
- c) references to a “**person**” and words denoting a natural person shall be construed as a reference to any individual, firm, company, corporation, society, trust, government, state or agency of a state or any association or partnership (whether or not having separate legal personality) of two or more of the above and shall include successors and assigns;
- d) the table of contents, headings or sub-headings in this Agreement are for convenience of reference only and shall not be used in, and shall not affect, the construction or interpretation of this Agreement;
- e) the words “**include**” and “**including**” are to be construed without limitation and shall be deemed to be followed by “without limitation” or “but not limited to” whether or not they are followed by such phrases
- f) references to “**construction**” or “**building**” include, unless the context otherwise requires, survey and investigation, design, developing, engineering, procurement, supply of plant, materials, equipment, labour, delivery, transportation, installation, processing, fabrication, testing, and commissioning of the Project, including maintenance during the Construction Period, removing of defects, if any, and other activities incidental to the construction and “**construct**” or “**build**” shall be construed accordingly;
- g) references to “**development**” include, unless the context otherwise requires, construction, renovation, refurbishing, augmentation, up-gradation and other activities incidental thereto during the Construction Period, and “develop” shall be construed accordingly;
- h) any reference to any period of time shall mean a reference to that according to Indian

- standard time;
- i) any reference to day shall mean a reference to a calendar day;
 - j) reference to a “**business day**” shall be construed as reference to a day (other than a Sunday) on which banks in the State are generally open for business;
 - k) any reference to month shall mean a reference to a calendar month as per the Gregorian calendar;
 - l) references to any date, period or Project Milestone shall mean and include such date, period or Project Milestone as may be extended pursuant to this Agreement;
 - m) any reference to any period commencing “from” a specified day or date and “**till**” or “**until**” a specified day or date shall include both such days or dates; provided that if the last day of any period computed under this Agreement is not a business day, then the period shall run until the end of the next business day;
 - n) the words importing singular shall include plural and vice versa;
 - o) references to any gender shall include the other and the neutral gender;
 - p) “**lakh**” means a hundred thousand (100,000) and “**crore**” means ten million (10,000,000)
 - q) “**indebtedness**” shall be construed so as to include any obligation (whether incurred as principal or surety) for the payment or repayment of money, whether present or future, actual or contingent;
 - r) references to the “**winding-up**”, “**dissolution**”, “**insolvency**”, or “**reorganization**” of a company or corporation shall be construed so as to include any equivalent or analogous proceedings under the law of the jurisdiction in which such company or corporation is incorporated or any jurisdiction in which such company or corporation carries on business including the seeking of liquidation, winding-up, reorganization, dissolution, arrangement, protection or relief of debtors;
 - s) save and except as otherwise provided in this Agreement, any reference, at any time, to any agreement, deed, instrument, license or document of any description shall be construed as reference to that agreement, deed, instrument, license or other document as amended, varied, supplemented, modified or suspended at the time of such reference; provided that this Sub-clause (s) shall not operate so as to increase liabilities or obligations of the Authority hereunder or pursuant hereto in any manner whatsoever;
 - t) any agreement, consent, approval, authorization, notice, communication, information or report required under or pursuant to this Agreement from or by any Party or the Authority’s Engineer shall be valid and effective only if it is in writing under the hand of a duly authorized representative of such Party or the Authority’s Engineer, as the case may be, in this behalf and not otherwise;
 - u) the Schedules and Recitals to this Agreement form an integral part of this Agreement and will be in full force and effect as though they were expressly set out in the body of this Agreement;
 - v) references to Recitals, Articles, Clauses, Sub-clauses, Provisos or Schedules in this Agreement shall, except where the context otherwise requires, mean references to Recitals, Articles, Clauses, Sub-clauses, Provisos and Schedules of or to this Agreement; reference to an Annex shall, subject to anything to the contrary specified therein, be construed as a reference to an Annex to the Schedule in which such reference occurs; and reference to a Paragraph shall, subject to anything to the contrary specified therein, be construed as a reference to a Paragraph of the

Schedule or Annex, as the case may be, in which such reference appear;

- w) the damages payable by either Party to the other of them, as set forth in this Agreement, whether on per diem basis or otherwise, are mutually agreed genuine pre-estimated loss and damage likely to be suffered and incurred by the Party entitled to receive the same and are not by way of penalty (the “**Damages**”); and
 - x) timeshall be of the essence in the performance of the Parties’ respective obligations. If any time period specified herein is extended for the reasons specified in the Agreement, such extended time shall also be of the essence.
- 1.2.2 Unless expressly provided otherwise in this Agreement, any Documentation required to be provided or furnished by the Contractor to the Authority shall be provided free of cost and in three copies, and if the Authority is required to return any such Documentation with its comments and/or approval, it shall be entitled to retain two copies thereof.
- 1.2.3 The rule of construction, if any, that a contract should be interpreted against the parties responsible for the drafting and preparation thereof, shall not apply.
- 1.2.4 Any word or expression used in this Agreement shall, unless otherwise defined or construed in this Agreement, bear its ordinary English meaning and, for these purposes, the General Clauses Act, 1897 shall not apply.

1.3 Measurements and arithmetic conventions

All measurements and calculations shall be in the metric system and calculations done to 2 (two) decimal places, with the third digit of 5 (five) or above being rounded up and below 5 (five) being rounded down.

1.4 Priority of agreements and errors/discrepancies

- 1.4.1 This Agreement, and all other agreements and documents forming part of or referred to in this Agreement are to be taken as mutually explanatory and, unless otherwise expressly provided elsewhere in this Agreement, the priority of this Agreement and other documents and agreements forming part hereof or referred to herein shall, in the event of any conflict between them, be in the following order:

- a) the Letter of Acceptance
- b) the Addenda/ Corrigenda issued
- c) the Contractor’s Bid
- d) the Special Conditions of Contract
- e) the General Conditions of Contract;
- f) the Employer’s Requirement
- g) the Technical Specifications
- h) the Drawings; and
- i) the completed Schedules,
- j) the Contractor’s Proposal and any other documents forming part of the Contract.

i.e. this Agreement at (a) above shall prevail over the agreements and documents at (c).

1.4.2 Subject to the provisions of Clause 1.4.1, in case of ambiguities or discrepancies within this Agreement, the following shall apply:

- a) between two or more Clauses of this Agreement, the provisions of a specific Clause relevant to the issue under consideration shall prevail over those in other Clauses;
- b) between the Clauses of this Agreement and the Schedules, the Clauses shall prevail and between Schedules and Annexes, the Schedules shall prevail;
- c) between any two Schedules, the Schedule relevant to the issue shall prevail;
- d) between the written description on the Drawings and the Specifications and Standards, the latter shall prevail;
- e) between the dimension scaled from the Drawing and its specific written dimension, the latter shall prevail; and
- f) between any value written in numerals and that in words, the latter shall prevail.

Part II

Scope of the Project

ARTICLE 2 SCOPE OF THE PROJECT

2.1 Scope of the Project

Under this Agreement, the scope of the Project (the “**Scope of the Project**”) shall mean and include: Project Site location, Development of the Project and Facilities, Specifications and Standards.

a) **Project site location** is as referred in Clause 3.2 of Volume: 1 Section 3 : Project Information

b) **Development of the Project and Facilities:**

- Construction of Jetties, Landside facilities and allied facilities at Eastern and Western sides in Kadmath Island of Lakshadweep. The scope of work for the Project outlined briefly herein is only indicative and detailed scope of work will be as specified in the Specifications and Drawings given in Section Volume-II of this bid document.
- The scope of Work shall cover all the works listed below but not limited to following:
 1. Construction of 360m x 20m Eastern Jetty
 2. Construction of Approach Trestle for Eastern Jetty of 310m length and width varying from 10m to 18.4m
 3. Construction of 70m x 12m new Western Jetty
 4. Construction of Approach Trestle for Western Jetty of about 75m length and width varying from 10m to 18.4m
 5. Boat Landing facility which includes Boat Landing Centre, finger jetty, boat repair shed, ice plant, fuel station, fish collection yard, etc. at western side.
 6. Road connecting the Approach Trestle and finger jetty to existing road network and other internal roads connecting all facilities developed for the project.
 7. Construction of passenger facilitation centre including lounge, gatehouse with all utilities, landscaping etc. at both sides.
 8. Providing berth corner lights for jetties on eastern and western sides
 9. Providing Gangway for Eastern Jetty
 10. Providing Aesthetic lighting (External / Internal), illumination, water and power supply, LT cabling works, , ELV, DG sets, data cabling, LT panels, solar panels with battery backup, HVAC, High Masts, lightning protection, fire fighting facilities, pump house with sump for fire and water, open well, CCTV including night vision etc. at western and eastern sides.
- Performance and fulfillment of all other obligations of the Contractor in accordance with the provisions of this Agreement and matters incidental thereto or necessary for the performance of any or all of the obligations of the Contractor under this Agreement.
- The Targeted Period for completion of the all the Marine and landside work items as specified above is 36 months from the date of Commencement of Work (“Construction Period”).

- c) Specifications and Standards: The contractor shall comply with specifications and standards as set forth in Volume II - Part - II: Technical Specifications which includes design criteria, codes and standards and comply with details contained in Volume - III – Tender Drawings.

ARTICLE 3 OBLIGATIONS OF THE CONTRACTOR

3.1 Obligations of the Contractor

- 3.1.1 Subject to and on the terms and conditions of this Agreement, the Contractor shall undertake the survey, investigation, design, engineering, procurement, and construction of the Project and observe, fulfil, comply with and perform all its obligations set out in this Agreement or arising hereunder. The available Bathymetry survey, mathematical model study reports, geotechnical investigation reports with the Authority will be shared with the successful Bidder.
- 3.1.2 The Contractor shall comply with all Applicable Laws and Applicable Permits (including renewals as required) in the performance of its obligations under this Agreement.
- 3.1.3 Save and except as otherwise provided in this Agreement or Applicable Laws, as the case may be, the Contractor shall, in discharge of all its obligations under this Agreement, conform with and adhere to Good Industry Practice at all times.
- 3.1.4 The Contractor shall remedy any and all loss or damage to the Project, occurring on or after the Appointed Date and until the date of Provisional Certificate, with respect to the Works completed prior to the issuance of the Provisional Certificate and/or Completion Certificate, with respect to the Works referred to in the Punch List, at its own cost, save and except to the extent that any such loss or damage shall have arisen from any default of the Authority or on account of a Force Majeure Event in which case the provisions of Clause 19 shall apply.
- 3.1.5 The Contractor shall remedy any and all loss or damage to the Project during the Defects Liability Period at its own cost, to the extent that such loss or damage shall have arisen out of the reasons specified in Clause 15.3.
- 3.1.6 The Contractor shall, at its own cost and expense, in addition to and not in derogation of its obligations elsewhere set out in this Agreement:
- a) make, or cause to be made, necessary applications to the relevant Government Instrumentalities with such particulars and details as may be required for obtaining Applicable Permits set forth in Schedule-8 and obtain and keep in force and effect such Applicable Permits in conformity with Applicable Laws;
 - b) procure, as required, the appropriate proprietary rights, licenses, agreements and permissions for Materials, methods, processes, know-how and systems used or incorporated into the Project;
 - c) make reasonable efforts to maintain harmony and good industrial relations among the personnel employed by it or its Sub-contractors in connection with the performance of its obligations under this Agreement;
 - d) ensure and procure that its Sub-contractors comply with all Applicable Permits and Applicable Laws in the performance by them of any of the Contractor's obligations under this Agreement;
 - e) always act in a manner consistent with the provisions of this Agreement and not cause or fail to do any act, deed or thing, whether intentionally or otherwise,

which may in any manner be violate of any of the provisions of this Agreement;

- f) support, cooperate with and facilitate the Authority in the implementation and operation of the Project in accordance with the provisions of this Agreement;
- g) ensure that the Contractor and its Sub-contractors comply with the safety and welfare measures for labor in accordance with Applicable Laws and Good Industry Practice;
- h) keep, on the Site, a copy of this Agreement, publications named in this Agreement, the Drawings, Documents relating to the Project, and Change of Scope Orders and other communications sent under this Agreement, and provide access to all these documents at all reasonable times to the Authority's Engineer and its authorized personnel;
- i) cooperate with other contractors employed by the Authority and personnel of any other public authority; and
- j) not interfere unnecessarily or improperly with the convenience of the public, or the access to and use and occupation of all the existing facilities within the Right of Way, irrespective of whether they are public or in the possession of the Authority or of others.

3.1.7The Contractor shall undertake all necessary superintendence to plan, arrange, direct, manage, inspect and test the Works.

3.2 Obligations relating to sub-contracts and any other agreements

3.2.1The Contractor shall not sub-contract Works comprising more than 70% (seventy percent) of the Contract Price and shall carry out Works for at least 30% (thirty percent) of the total Contract Price directly under its own supervision and through its own personnel. The Parties expressly agree that for the purposes of computing the value of sub-contracts under this Clause 3.2.1, the Contract Price shall exclude any sub-contract for the procurement of goods and equipment such as [bitumen, cement, steel and equipment].

3.2.2In the event any sub-contract for Works, or the aggregate of such sub-contracts with any Sub-contractor, exceeds 5% (five per cent) of the Contract Price, the Contractor shall communicate the name and particulars, including the relevant experience of the sub-contractor, to the Authority prior to entering into any such sub-contract. The Authority shall examine the particulars of the sub-contractor from the national security and public interest perspective and may require the Contractor, no later than 15 (fifteen) business days from the date of receiving the communication from the Contractor, not to proceed with the sub-contract, and the Contractor shall comply therewith.

3.2.3Without prejudice to the provisions of Clause 3.2.2, in the event any subcontract referred to in Clause 3.2.2 relates to a sub-contractor who has, over the preceding 3 (three) years, not undertaken at least one work of a similar nature with a contract value exceeding 40% (forty per cent) of the value of the sub-contract to be awarded hereunder and received payments in respect thereof for an amount equal to at least 80% (eighty per cent) of such contract, the Authority may, no later than 15 (fifteen) business days from the date of receiving the communication from the Contractor,

require the Contractor not to proceed with such sub-contract, and the Contractor shall comply therewith.

3.2.4It is expressly agreed that the Contractor shall, at all times, be responsible and liable for all its obligations under this Agreement notwithstanding anything contained in the agreements with its Sub-contractors or any other agreement that may be entered into by the Contractor, and no default under any such agreement shall excuse the Contractor from its obligations or liability hereunder.

3.3 Obligations relating to employment of foreign nationals

The Contractor acknowledges, agrees and undertakes that employment of foreign personnel by the Contractor and/or its Sub-contractors and their sub-contractors shall be subject to grant of requisite regulatory permits and approvals including employment/residential visas and work permits, if any required, and the obligation to apply for and obtain the same shall and will always be of the Contractor. Notwithstanding anything to the contrary contained in this Agreement, refusal of or inability to obtain any such permits and approvals by the Contractor or any of its Sub-contractors or their sub-contractors shall not constitute Force Majeure Event, and shall not in any manner excuse the Contractor from the performance and discharge of its obligations and liabilities under this Agreement.

3.4 Obligations relating to Contractor's personnel

- 3.4.1 The Contractor shall ensure and procure that the personnel engaged by it or by its Sub-contractors for performance of its obligations under this Agreement are at all times appropriately qualified, skilled and experienced in their respective functions in conformity with Applicable Laws and Good Industry Practice. The contractor shall deploy full time all the Key-personal as per Appendix - XII required for the project throughout the contract period. There is no specific Labour Laws for Lakshadweep and the Contractor has to follow the Laws of Government of India.
- 3.4.2 The Authority's Engineer may, for reasons to be specified in writing, direct the Contractor to remove any member of the Contractor's or Sub-contractor's personnel from the Project. Provided that any such direction issued by the Authority's Engineer shall specify the reasons for the removal of such person.
- 3.4.3 The Contractor shall, on receiving a direction from the Authority's Engineer under the provisions of Clause 3.4.2, ensure and procure the removal of such person or persons from the Project with immediate effect. The Contractor shall further ensure that such persons have no further connection with the Project.

3.5 Obligations relating to advertisement on Project

The Contractor shall not use the Project or any part thereof in any manner for branding or advertising purposes including for advertising any commercial product or services or companies.

3.6 Obligations relating to Contractor's care of the Works

The Contractor shall bear full risk in and take full responsibility for the care of Works, and of Materials, goods and equipment for incorporation therein, on and

from the Appointed Date and until the date of Provisional Certificate, with respect to the Works completed prior to the issuance of the Provisional Certificate, and/or Completion Certificate, with respect to the Works referred to in the Punch List, save and except to the extent that any such loss or damage shall have arisen from any default or neglect of the Authority.

3.7 Obligations relating to electricity, water and other services

The Contractor shall be responsible for procuring of all power, water and other services that it may require for the Project at his own cost. However, the contractor can apply with Department of Electricity for the required connection specifying the load required if excess power is available with the department.

At present there is no tariff for berthing of contractor's vessels in UTLA.

3.8 Obligations related to information

- 3.8.1 Without prejudice to the provisions of Applicable Laws and this Agreement, upon receiving a notice from the Authority for any information that it may reasonably require or that it considers may be necessary to enable it to perform any of its functions, the Contractor shall provide such information to the Authority forthwith and in the manner and form required by the Authority.
- 3.8.2 After receiving a notice from the Authority for reasoned comments on the accuracy and text of any information relating to the Contractor's activities under or pursuant to this Agreement which the Authority proposes to publish, the Contractor shall provide such comments to the Authority in the manner and form required by the Authority.

3.9 Unforeseeable difficulties

Except as otherwise specified in the Agreement:

- a) the Contractor accepts complete responsibility for having foreseen all difficulties and costs of successfully completing the Works;
- b) the Contract Price shall not be adjusted to take account of any unforeseen difficulties or costs; and
- c) the Scheduled Completion Date shall not be adjusted to take account of any unforeseen difficulties or costs.

For the purposes of this Clause, unforeseeable difficulties include physical conditions like man-made or natural physical conditions including subsurface and hydrological conditions which the Contractor encounters at the Site during execution of the Works.

3.10 Special Conditions of Contract

Specific Obligation of the Contractor has been added in Special Condition of Contract of Vol 1- Section 6.

ARTICLE 4 OBLIGATIONS OF THE AUTHORITY

4.1 Obligations of the Authority

- 4.1.1 The Authority shall, at its own cost and expense, undertake, comply with and perform all its obligations set out in this Agreement or arising hereunder.
- 4.1.2 The Authority shall be responsible for the correctness of the Scope of the Project, Project Facilities, Specifications and Standards and the criteria for Testing of the completed Works.
- 4.1.3 The Authority shall, upon receiving the Performance Security under Clause 7.1.1, provide to the Contractor:
- (a) The entire water area for the construction of jetties is readily available for construction. For land side facilities the Govt. land available is not adequate for the proposed facilities. Hence, the Authority is in the process of land acquisition from the private land owners. The available land will be handed over to the Contractor immediately and balance land for the development of infrastructural facilities will be handed over to the Contractor only in a phased manner as per the progress of the Work.
 - (b) The Govt. land available for Contractor's Work Area, area for precast yard, material collection yard in the island will be handed over to the successful Bidder on free of cost and also may be provided at different locations. Any further land required for the construction shall be arranged by the Bidder at his own cost from the private parties on lease terms.
 - (c) approval of the general arrangement drawings (the "GAD") In consultation with Cochin Port Authority (CoPA) to enable the Contractor to Construction of Jetties, Landside facilities and allied facilities at Eastern and Western sides in Kadmath Island of Lakshadweep of the Project in accordance with the Specifications and Standards, and subject to the terms and conditions specified in such approval, within a period of 60 (sixty) days from the LoA; and
 - (d) all environmental /CRZ clearances as required under Clause 4.3
 - (e) In general there is no restriction in working hours. Also no special permission is required for the contractor for working during monsoon period. However, the contractor shall comply with all safety norms while working during rough weather condition.
- 4.1.4 The Authority agrees to provide support to the Contractor and undertakes to observe, comply with and perform, subject to and in accordance with the provisions of this Agreement and Applicable Laws, the following:
- a) upon written request from the Contractor, and subject to the Contractor complying with Applicable Laws, provide reasonable support to the Contractor in procuring Applicable Permits required from any Government Instrumentality for implementation of the Project;
 - b) upon written request from the Contractor, provide reasonable assistance to the Contractor in obtaining access to all necessary infrastructure facilities and utilities, including water and electricity at rates and on terms no less favorable than those generally available to commercial customers receiving substantially

- equivalent services;
- c) procure that no barriers that would have a material adverse effect on Works are erected or placed on or about the Project by any Government Instrumentality or persons claiming through or under it, except for reasons of Emergency, national security or law and order;
 - d) not do or omit to do any act, deed or thing which may in any manner be violative of any of the provisions of this Agreement;
 - e) support, cooperate with and facilitate the Contractor in the implementation of the Project in accordance with the provisions of this Agreement; and
 - f) upon written request from the Contractor and subject to the provisions of Clause 3.3, provide reasonable assistance to the Contractor and any expatriate personnel of the Contractor or its Sub-contractors to obtain applicable visas and work permits for the purposes of discharge by the Contractor or its Sub-contractors of their obligations under this Agreement and the agreements with the Sub-contractors.

4.2 Obligations relating to Operation & Maintenance

The Authority shall undertake the operation and maintenance of the facilities existing prior to the Appointed Date within the Right of Way.

4.3 Obligations relating to Environmental and / or CRZ Clearances

The Authority represents and warrants that the environmental/CRZ clearances required for construction of the Project shall be procured by the Authority prior to the award of the Contract, save and except for Sections of the Project which do not exceed 10%(ten per cent) of the total land required for the Project..

ARTICLE 5 REPRESENTATIONS AND WARRANTIES

5.1 Representations and warranties of the Contractor

The Contractor represents and warrants to the Authority that:

- a) it is duly organized and validly existing under the laws of India, and has full power and authority to execute and perform its obligations under this Agreement and to carry out the transactions contemplated hereby;
- b) it has taken all necessary corporate and other actions under Applicable Laws to authorize the execution and delivery of this Agreement and to validly exercise its rights and perform its obligations under this Agreement;
- c) this Agreement constitutes its legal, valid and binding obligation, enforceable against it in accordance with the terms hereof, and its obligations under this Agreement will be legally valid, binding and enforceable obligations against it in accordance with the terms hereof;
- d) it is subject to the laws of India, and hereby expressly and irrevocably waives any immunity in any jurisdiction in respect of this Agreement or matters arising thereunder including any obligation, liability or responsibility hereunder;
- e) the information furnished in the Bid and as updated on or before the date of this Agreement is true and accurate in all respects as on the date of this Agreement;
- f) the execution, delivery and performance of this Agreement will not conflict with, result in the breach of, constitute a default under, or accelerate performance required by any of the terms of its memorandum and articles of association or any Applicable Laws or any covenant, contract, agreement, arrangement, understanding, decree or order to which it is a party or by which it or any of its properties or assets is bound or affected;
- g) there are no actions, suits, proceedings, or investigations pending or, to its knowledge, threatened against it at law or in equity before any court or before any other judicial, quasi-judicial or other authority, the outcome of which may result in the breach of this Agreement or which individually or in the aggregate may result in any material impairment of its ability to perform any of its obligations under this Agreement;
- h) it has no knowledge of any violation or default with respect to any order, writ injunction or decree of any court or any legally binding order of any Government Instrumentality which may result in any material adverse effect on its ability to perform its obligations under this Agreement and no fact or circumstance exists which may give rise to such proceedings that would adversely affect the performance of its obligations under this Agreement;
- i) it has complied with Applicable Laws in all material respects and has not been subject to any fines, penalties, injunctive relief or any other civil or criminal liabilities which in the aggregate have or may have a material adverse effect on its ability to perform its obligations under this Agreement;
- j) no representation or warranty by it contained herein or in any other document furnished by it to the Authority or to any Government

Instrumentality in relation to Applicable Permits contains or will contain any untrue or misleading statement of material fact or omits or will omit to state a material fact necessary to make such representation or warranty not misleading;

- k) no sums, in cash or kind, have been paid or will be paid, by it or on its behalf, to a person by way of fees, commission or otherwise for securing the contract or entering into this Agreement or for influencing or attempting to influence any officer or employee of the Authority in connection therewith;
- l) all information provided by the {selected bidder/ members of the Consortium} in response to the Request for Qualification and Request for Proposals or otherwise, is to the best of its knowledge and belief, true and accurate in all material respects;
- m) all undertakings and obligations of the Contractor arising from the Request for Qualification and Request for Proposals or otherwise shall be binding on the Contractor as if they form part of this Agreement; and
- n) nothing contained in this Agreement shall create any contractual relationship or obligation between the Authority and any Subcontractors, designers, consultants or agents of the Contractor.

5.2 Representations and warranties of the Authority

The Authority represents and warrants to the Contractor that:

- a) it has full power and authority to execute, deliver and perform its obligations under this Agreement and to carry out the transactions contemplated herein and that it has taken all actions necessary to execute this Agreement, exercise its rights and perform its obligations, under this Agreement;
- b) it has taken all necessary actions under Applicable Laws to authorize the execution, delivery and performance of this Agreement;
- c) it has the financial standing and capacity to perform its obligations under this Agreement;
- d) this Agreement constitutes a legal, valid and binding obligation enforceable against it in accordance with the terms hereof;
- e) it has no knowledge of any violation or default with respect to any order, writ, injunction or any decree of any court or any legally binding order of any Government Instrumentality which may result in any material adverse effect on the Authority's ability to perform its obligations under this Agreement;
- f) it has complied with Applicable Laws in all material respects;
- g) it has good and valid right to the Site and has the power and authority to grant the Right of Way in respect thereof to the Contractor; and
- h) it shall have procured, as on the date of LoA, environmental / CRZ clearances such that the Contractor can commence construction forthwith 100% water area for jetty construction and available land for land facilities of the Project.

5.3 Disclosure

In the event that any occurrence or circumstance comes to the attention of either Party that renders any of its aforesaid representations or warranties untrue or incorrect, such Party shall immediately notify the other Party of the same. Such notification shall not have the effect of remedying any breach of the representation or warranty that has been found to be untrue or incorrect nor shall it adversely affect or waive any obligation of either Party under this Agreement.

ARTICLE 6 DISCLAIMER

6.1 Disclaimer

- 6.1.1 The Contractor acknowledges that prior to the execution of this Agreement, the Contractor has, after a complete and careful examination, made an independent evaluation of the Request for Qualification, Scope of the Project, Specifications and Standards, Site, local conditions, physical qualities of ground, subsoil and geology, suitability and availability of access routes to the Site and all information provided by the Authority or obtained, procured or gathered otherwise, and has determined to its satisfaction the accuracy or otherwise thereof and the nature and extent of difficulties, risks and hazards as are likely to arise or may be faced by it in the course of performance of its obligations hereunder. Save as provided in Clause 4.1.2 and Clause 5.2, the Authority makes no representation whatsoever, express, implicit or otherwise, regarding the accuracy, adequacy, correctness, reliability and/or completeness of any assessment, assumptions, statement or information provided by it and the Contractor confirms that it shall have no claim whatsoever against the Authority in this regard.
- 6.1.2 The Contractor acknowledges and hereby accepts to have satisfied itself as to the correctness and sufficiency of the Contract Price.
- 6.1.3 The Contractor acknowledges and hereby accepts the risk of inadequacy, mistake or error in or relating to any of the matters set forth in Clause 6.1.1 above and hereby acknowledges and agrees that the Authority shall not be liable for the same in any manner whatsoever to the Contractor, or any person claiming through or under any of them, and shall not lead to any adjustment of Contract Price or Scheduled Completion Date.
- 6.1.4 The Parties agree that any mistake or error in or relating to any of the matters set forth in Clause 6.1.1 above shall not vitiate this Agreement, or render it voidable.
- 6.1.5 In the event that either Party becomes aware of any mistake or error relating to any of the matters set forth in Clause 6.1.1 above, that Party shall immediately notify the other Party, specifying the mistake or error.
- 6.1.6 Except as otherwise provided in this Agreement, all risks relating to the Project shall be borne by the Contractor; and the Authority shall not be liable in any manner for such risks or the consequences thereof.

PART III CONSTRUCTION

ARTICLE 7 PERFORMANCE SECURITY

7.1 Performance Security

- 7.1.1 The Contractor shall, for the performance of its obligations hereunder, provide to the Authority, within 21 (Twenty one) days of the date of LoA, an irrevocable and unconditional guarantee, for an amount equal to 5% (five per cent) of the Contract Price rounded off to the nearest Rs.1000/- , issued by a Nationalised /Scheduled bank in India having its branch at Kochi acceptable by CoPA in the form set forth in Annex-I of Schedule-9 (the "Performance Security"). The Performance Security shall be valid until 60 (sixty) days of the expiry of the Defects Liability Period specified in Clause 15.1.1. Until such time the Performance Security is provided by the Contractor pursuant hereto and the same comes into effect, the Bid Security shall remain in force and effect, and upon such provision of the Performance Security, the Authority shall release the Bid Security to the Contractor. For the avoidance of doubt, the Parties expressly agree that the Contractor shall provide, not later than 30 (thirty) days prior to the expiry of the Performance Security for the Defects Liability Period specified in Clause 15.1.1, a Performance Security in respect of the extended Defects Liability Period, as specified in Clause 15.6 for an amount equal to 5% (five per cent) of the estimated cost of the project. **Performance Security can also be submitted as Insurance Security Bond (or) Fixed Deposit Receipt issued in the name of FA&CAO, CoPA payable at Kochi from any Nationalised Bank/Scheduled Bank in India.**
- 7.1.2 Notwithstanding anything to the contrary contained in this Agreement, the Parties agree that in the event of failure of the Contractor to provide the Performance Security in accordance with the provisions of Clause 7.1.1 and within the time specified therein or such extended period as may be provided by the Authority, in accordance with the provisions of Clause 7.1.3, the Authority may encash the Bid Security and appropriate the proceeds thereof as Damages, and thereupon all rights, privileges, claims and entitlements of the Contractor under or arising out of this Agreement shall be deemed to have been waived by, and to have ceased with the concurrence of the Contractor, and this Agreement shall be deemed to have been terminated by mutual agreement of the Parties.
- 7.1.3 If the Performance Security is not furnished within the original prescribed period by the Successful Bidder, without prejudice to CoPA's right to forfeit Bid Bond on failure to submit the Performance Security within the original prescribed period, CoPA may accept the Performance Security after the original prescribed period at its discretion subject to the condition that penal interest at the MCLR rate of SBI on

the date of payment will be charged for the period beyond the original prescribed period and the same shall be recovered from the 1st running account bill.

7.2 Extension of Performance Security

The Contractor may initially provide the Performance Security for a period of 38 months.; provided that it shall procure the extension of the validity of the Performance Security, as necessary, at least 2 (two) months prior to the date of expiry thereof. The Performance Security for the period of Defect Liability period shall be provided thereafter.

7.3 Appropriation of Performance Security

7.3.1 Upon occurrence of a Contractor Default, the Authority shall, without prejudice to its other rights and remedies hereunder or in law, be entitled to encash and appropriate from the Performance Security the amounts due to it as Damages for the Contractor's Default.

7.3.2 Upon such encashment and appropriation from the Performance Security, the Contractor shall, within 30 (thirty) days thereof, replenish, in case of partial appropriation, to its original level the Performance Security, and in case of appropriation of the entire Performance Security provide a fresh Performance Security, as the case may be, and the Contractor shall, within the time so granted, replenish or furnish fresh Performance Security as aforesaid failing which the Authority shall be entitled to terminate the Agreement in accordance with Article 21. Upon such replenishment or furnishing of a fresh Performance Security, as the case may be, the Contractor shall be entitled to an additional Cure Period of 30 (thirty) days for remedying the Contractor Default, and in the event of the Contractor not curing its default within such Cure Period, the Authority shall be entitled to encash and appropriate such Performance Security as Damages, and to terminate this Agreement in accordance with Article 21.

7.4 Release of Performance Security

The Authority shall release the Performance Security within 60 (sixty) days of the expiry of the Defects Liability Period or the extended Defects Liability Period, as the case may be, under this Agreement. Notwithstanding the aforesaid, the Parties agree that the Authority shall not be obliged to release the Performance Security until all Defects identified during the Defects Liability Period or the extended Defects Liability Period, as the case may be, have been rectified.

7.5 Retention Money

7.5.1 From every payment for Works due to the Contractor in accordance with the provisions of Clause 17.5, the Authority shall deduct 5% (five per cent) thereof as guarantee money for performance of the obligations of the Contractor during the Construction Period (the "Retention Money") subject to the condition that the maximum amount of Retention Money shall not exceed 5% (five per cent) of the Contract Price.

- 7.5.2 Upon occurrence of a Contractor's Default, the Authority shall, without prejudice to its other rights and remedies hereunder or in law, be entitled to appropriate the relevant amounts from the Retention Money as Damages for such Contractor's Default.
- 7.5.3 The Contractor may, upon furnishing an irrevocable and unconditional bank guarantee substantially in the form provided at Annex-II of Schedule-9, require the Authority to refund the Retention Money deducted by the Authority under the provisions of Clause 7.5.1. Provided that the refund hereunder shall be made when the amount reaches half the value of the limit of retention money.
- 7.5.4 After the money reaches the maximum limit of retention money, One-half of the retention money (or BG, which replaced retention money) shall be released on the within 15 (fifteen) days of the date of issue of the Completion Certificate. The other half of the retention money (or BG, which replace the retention money) shall be released upon expiration of 365 days after the defect liability period of the works or final payment whichever is earlier, on certification by the Authority's Engineer.
- 7.5.5 The Parties agree that in the event of Termination of this Agreement, the Retention Money and the bank guarantees specified in this Clause 7.5 shall be treated as if they are Performance Security and shall be reckoned as such for the purposes of Termination Payment under Clause 21.6.

ARTICLE 8 RIGHT OF WAY

8.1 The Site

The site of the Project (the “**Site**”) shall comprise the site described in Article 2 in respect of which the Right of Way shall be provided by the Authority to the Contractor. The Authority shall be responsible for:

- (a) acquiring and providing Right of Way on the Site in accordance with the project facilities finalized by the Authority, free from all encroachments and encumbrances, and free access thereto for the execution of this Agreement; and
- (b) Obtaining licenses and permits for environment/CRZ clearance and for the Project.
- (c) In general there are no permits required from UTLA for Contractor to mobilise and utilize contractor’s marine equipment like barges, tugs and boats for transportation of equipment and construction material from mainland to project site. However, prior intimation and consent from UTLA on the movement of such vessels is required.

8.2 Procurement of the Site

The Authority Representative and the Contractor shall, within 20(twenty) days of the date of this LoA, inspect the Site and prepare a memorandum containing an inventory of the Site including the vacant and unencumbered land, buildings, structures, road works, trees and any other immovable property on or attached to the Site.

The entire water area for the construction of jetties is readily available for construction.

For land side facilities the Govt. land available is not adequate for the proposed facilities. Hence, the Authority is in the process of land acquisition from the private land owners. The available land will be handed over to the Contractor immediately and balance land for the development of infrastructural facilities will be handed over to the Contractor only in a phased manner as per the progress of the Work.

The Govt. land available for Contractor’s Work Area, area for precast yard, material collection yard in the island will be handed over to the successful Bidder on free of cost and also may be provided at different locations. Any further land is required for the construction shall be arranged by the Bidder at his own cost from the private parties on lease terms.

8.3 Site to be free from Encumbrances

Subject to the provisions of Clause 8.2, the Site shall be made available by the Authority to the Contractor pursuant hereto free from all Encumbrances and occupations and without the Contractor being required to make any payment to the Authority on account of any costs, compensation, expenses and charges for the acquisition and use of such Site for the duration of the Project Completion Schedule. For the avoidance of doubt, it is agreed that the existing right of way, easements, privileges, liberties and appurtenances to the Site shall not be deemed

to be Encumbrances. It is further agreed that, unless otherwise specified in this Agreement, the Contractor accepts and undertakes to bear any and all risks arising out of the inadequacy or physical condition of the Site.

8.4 Protection of Site from encroachments

On commencement of the Work, the Contractor shall maintain a round-the-clock vigil over the Site and shall ensure and procure that no encroachment thereon takes place. During the Construction Period, the Contractor shall protect the Site from any and all occupations, encroachments or Encumbrances, and shall not place or create nor permit any Sub-contractor or other person claiming through or under the Agreement to place or create any Encumbrance or security interest over all or any part of the Site or the Project Assets, or on any rights of the Contractor therein or under this Agreement, save and except as otherwise expressly set forth in this Agreement. In the event of any encroachment or occupation on any part of the Site, the Contractor shall report such encroachment or occupation forthwith to the Authority and undertake its removal at its own cost and expenses.

8.5 Special/ Additional temporary Right of Way

The Contractor shall bear all costs and charges for any special or temporary right of way required by it in connection with access to the Site. The Contractor shall obtain at its cost such facilities on or outside the Site as may be required by it for the purposes of the Project and the performance of its obligations under this Agreement.

8.6 Access to the Authority and the Authority's Engineer

- 8.6.1 The Right of Way given to the Contractor hereunder shall always be subject to the right of access of the Authority and the Authority's Engineer and their employees and agents for inspection, viewing and exercise of their rights and performance of their obligations under this Agreement.
- 8.6.2 The Contractor shall ensure, subject to all relevant safety procedures that the Authority has unrestricted access to the Site during any Emergency.

8.7 Geological and archaeological finds

It is expressly agreed that mining, geological or archaeological rights do not form part of this Agreement with the Contractor for the Works, and the Contractor hereby acknowledges that it shall not have any mining rights or interest in the underlying minerals, fossils, antiquities, structures or other remnants or things either of particular geological or archaeological interest and that such rights, interest and property on or under the Site shall vest in and belong to the Authority or the concerned Government Instrumentality. The Contractor shall take all reasonable precautions to prevent its workmen or any other person from removing or damaging such interest or property and shall inform the Authority forthwith of the discovery thereof and comply with such instructions as the Authority or the concerned Government Instrumentality may reasonably give for the removal of such property. For the avoidance of doubt, it is agreed that any reasonable expenses incurred by

the Contractor hereunder shall be reimbursed by the Authority. It is also agreed that the Authority shall procure that the instructions hereunder are issued by the concerned Government Instrumentality within a reasonable period so as to enable the Contractor to continue its Works with such modifications as may be deemed necessary.

ARTICLE 9 UTILITIES AND TREES

9.1 Existing utilities and roads

Generally, there is no restriction to use the existing roads for movement of construction vehicle, equipment and materials. Notwithstanding anything to the contrary contained herein, the Contractor shall ensure that the respective entities owning the existing roads, right of way, structures, or utilities on, under or above the Site are enabled by it to keep them in continuous satisfactory use, if necessary, by providing suitable temporary diversions with the authority of the controlling body of that road, right of way or utility. Incase there is a requirement of widening of existing roads; permission can be accorded subject to the consent of the land owner. Any compensation in this regard shall be borne by the contractor.

9.2 Shifting of obstructing utilities

The Contractor shall, in accordance with Applicable Laws and with assistance of the Authority, shall shift any utility (including electric lines, water pipes and telephone cables) to an appropriate location or alignment, if such utility or obstruction adversely affects the execution of Works in accordance with this Agreement, at the cost of the Contractor initially, which shall be reimbursed by the Authority.

9.3 New utilities

- 9.3.1 The Contractor shall allow, subject to such conditions as the Authority may specify, access to, and use of the Site for laying telephone lines, water pipes, electric cables or other public utilities. Where such access or use causes any financial loss to the Contractor, it may require the user of the Site to pay compensation or damages as per Applicable Laws. For the avoidance of doubt, it is agreed that use of the Site under this Clause 9.3 shall not in any manner relieve the Contractor of its obligation to construct the Project in accordance with this Agreement and any damage caused by such use shall be restored forthwith at the cost of the Authority.
- 9.3.2 In the event the construction of any Works is affected by a new utility or works undertaken in accordance with this Clause 9.3, the Contractor shall be entitled to a reasonable Time Extension as determined by the Authority's Engineer in accordance with the provisions of Clause 10.4.

9.4 Felling of trees

Generally there are no restrictions on felling of trees in the project area. However, incase any objections raised, the Authority shall assist the Contractor in obtaining the Applicable Permits for felling of trees to be identified by the Authority for this purpose if and only if such trees cause a Material Adverse Effect on the construction of the Project. The Parties hereto agree that the felled trees shall be deemed to be owned by the Authority and shall be disposed in such manner and subject to such conditions as the Authority may in its sole discretion deem appropriate.

ARTICLE 10 DESIGN AND CONSTRUCTION OF THE PROJECT

10.1 Obligations prior to commencement of Works

10.1.1 Within 20 (twenty) days from the date of LoA, the Contractor shall:

- (a) appoint its representative, duly authorised to deal with the Authority in respect of all matters under or arising out of or relating to this Contract;
- (b) appoint a design director (the “**Design Director**”) who will head the Contractor’s design unit and shall be responsible for surveys, investigations, collection of data, and preparation of preliminary and detailed designs. The Design Director shall be from the Design consultancy firm to be appointed by the Contractor for the project. The Design Consultancy Firm should have the experience in carrying out Detailed Design for “Similar Works” for atleast 3 (three) projects of cost more than Rs. 125.20 crore. Contractor shall provide all supporting documents confirming the eligibility of both Design Consultancy Firm and Design Director to the Employer for their approval;
- (c) undertake and perform all such acts, deeds and things as may be necessary or required before commencement of Works under and in accordance with this Agreement, Applicable Laws and Applicable Permits; and
- (d) make its own arrangements for quarrying of materials and procurement needed for the Project under and in accordance with Applicable Laws and Applicable Permits.

10.1.2 The Authority shall, within 15 (fifteen) days from the date of LoA , appoint an engineer (the “Authority’s Engineer”) to discharge the functions and duties specified in this Agreement, and shall notify to the Contractor the name, address and the date of appointment of the Authority’s Engineer forthwith.

10.1.3 Within 30 (thirty) days from the date of LoA , the Contractor shall submit to the Authority and the Authority’s Engineer a programme (the “Programme”) for construction of the Works, developed using networking techniques and giving the following details:

Part-I - Contractor’s organisation for the Project, the general methods and arrangements for design and construction, environmental management plan, Quality Assurance Plan including design quality plan, traffic management and safety plan covering safety of users and workers during construction, Contractor’s key personnel, and equipment.

Part-II - Programme for completion of all stages of construction given in Schedule-10 and Project Milestones of the Works as specified in Project Completion Schedule set forth in Schedule-12. The Programme shall include:

- a) the order in which the Contractor intends to carry out the Works, including the anticipated timing of design and stages of Works;
- b) the periods for reviews under Clause 10.2; and
- c) the sequence and timing of inspections and tests specified in this Agreement.

The Contractor shall submit a revised programme whenever the previous programme is inconsistent with the actual progress or with the Contractor's obligations.

Part-III - Monthly cash flow forecast for the Project.

For the avoidance of doubt, the Contractor acknowledges and agrees that the Authority may, within a period of 15 (fifteen) days of receipt of the Programme, convey its comments to the Contractor stating the modifications, if any, required for compliance with the provisions of this Agreement, and the Contractor shall carry out such modifications, to the extent required for conforming with the provisions of this Agreement.

- 10.1.4 The Contractor shall compute, on the basis of the Drawings prepared in accordance with Clause 10.2.7, and provide to the Authority's Engineer, the length, cubic meter, tonnage or any other unit specified, as the case may be, in respect of the various items of work specified in the Employer's Requirement. The Parties expressly agree that these details shall form the basis for estimating the interim payments for the Works in accordance with the provisions of Clause 17.3. For the avoidance of doubt, the sum of payments to be computed in respect of all the items of work shall not exceed the Contract Price, as may be adjusted in accordance with the provisions of this Agreement.
- 10.1.5 The Contractor shall appoint a safety consultant (the "Safety Consultant") to carry out safety audit at the design stage of the Project in accordance with Applicable Laws and Good Industry Practice. The Safety Consultant shall be appointed after proposing to the Authority a panel of 3 (three) names of qualified and experienced firms from which the Authority may choose 1 (one) to be the Safety Consultant. Provided, however, that if the panel is not acceptable to the Authority and the reasons for the same are furnished to the Contractor, the Contractor shall propose to the Authority a revised panel of 3 (three) names for obtaining the consent of the Authority. The Authority shall, within 15 (fifteen) days of receiving a proposal from the Contractor hereunder, convey its decision, with reasons, to the Contractor, and if no such decision is conveyed within the said period, the Contractor may proceed with engaging of the Safety Consultant. For the avoidance of doubt, the Parties agree that no firm or person having any conflict of interest shall be engaged hereunder. The Parties further agree that any assignments completed at least 3 (three) years prior to the appointment hereunder shall not be reckoned for the purposes of conflict of interest.
- 10.1.6 The safety audit pursuant to Clause 10.1.5 shall be carried out by the Safety Consultant in respect of all such design details that have a bearing on safety of Users as well as pedestrians and animals involved in or associated with accidents. The recommendations of the Safety Consultant shall be incorporated in the design of the Project and the Contractor shall forward to the Authority's Engineer a certificate to this effect together with the recommendations of the Safety Consultant. In the event that any works required by the Safety Consultant shall fall beyond the scope of project, the Contractor shall make a report thereon and seek the instructions of the Authority for Change in Scope. For the avoidance of doubt,

the Safety Consultant to be engaged by the Contractor shall be independent of the design and implementation team of the Contractor.

10.2 Design and Drawings

10.2.1 Design and Drawings shall be developed in conformity with the Specifications and Standards set forth in Volume: II Employer's Requirements and Technical Specifications.

10.2.2 The Contractor shall appoint a proof check consultant (the "Proof Consultant") after proposing to the Authority a panel of 3 (three) names of IITs / NITs from whom the Authority may choose 1 (one) to be the Proof Consultant. Provided, however, that if the panel is not acceptable to the Authority and the reasons for the same are furnished to the Contractor, the Contractor shall propose to the Authority a revised panel of 3 (three) names for obtaining the consent of the Authority. The Authority shall, within 15 (fifteen) days of receiving a proposal from the Contractor hereunder, convey its decision, with reasons, to the Contractor, and if no such decision is conveyed within the said period, the Contractor may proceed with engaging of the Proof Consultant. For the avoidance of doubt, the Parties agree that no firm or person having any conflict of interest shall be engaged hereunder. The Parties further agree that any assignments completed at least three years prior to the appointment hereunder shall not be reckoned for the purposes of conflict of interest.

10.2.3 The Proof Consultant shall:

- a) evolve a systems approach with the Design Director so as to minimize the time required for final designs and construction drawings; and
- b) proof check the detailed calculations, drawings and designs, which have been approved by the Design Director.

10.2.4 In respect of the Contractor's obligations with respect to the design and Drawings of the Project as set forth in Schedule-11, the following shall apply:

- a) The Contractor shall prepare and submit, with reasonable promptness and in such sequence as is consistent with the Project Completion Schedule along with soft copy documents, 3 (three) copies each of the design and Drawings, duly certified by the Proof Consultant, to the Authority's Engineer for review and further approval before put to use for construction. The detailed Design stage shall be completed in all aspects including review and approval of Proof Checking Consultant and representatives of the Authority within 12 (twelve) months from date of commencement of work, the Authority's Engineer may require additional drawings for its review in accordance with Good Industry Practice.;

If the Detailed Design (including submission and approval of all drawings, reports, etc.) is not completed within 15 (fifteen) months from date of commencement, of work, a recovery of Rs. 2,03,000 (Rupees Two Lakh Three Thousand only) plus GST per month shall be effected from the Contractor's Interim Bills towards the additional payment to be made to the PMC Consultant of Authority;

- b) by submitting the Drawings for review to the Authority's Engineer, the

Contractor shall be deemed to have represented that it has determined and verified that the design and engineering, including field construction criteria related thereto, are in conformity with the Scope of the Project, Specifications and Standards, Applicable Laws and Good Industry Practice;

- c) within 15 (fifteen) days of the receipt of the Drawings, the Authority's Engineer shall review the same and convey its observations to the Contractor with particular reference to their conformity or otherwise with the Scope of the Project and the Specifications and Standards. The Contractor shall not be obliged to await the observations of the Authority's Engineer on the Drawings submitted pursuant hereto beyond the said period of 15 (fifteen) days and may begin or continue Works at its own discretion and risk;
- d) if the aforesaid observations of the Authority's Engineer indicate that the Drawings are not in conformity with the Scope of the Project or the Specifications and Standards, such Drawings shall be revised by the Contractor in conformity with the provisions of this Contract / Agreement and resubmitted to the Authority's Engineer for review. The Authority's Engineer shall give its observations, if any, within 10 (ten) days of receipt of the revised Drawings. In the event the Contractor fails to revise and resubmit such Drawings to the Authority's Engineer for review as aforesaid, the Authority's Engineer may cause the payment for the affected works to be withheld under the provisions of Clause 17.5.4. If the Contractor disputes any decision, direction or determination of the Authority's Engineer hereunder, the Dispute shall be resolved in accordance with the Dispute Resolution Procedure;
- e) no review and/or observation of the Authority's Engineer and/or its failure to review and/or convey its observations on any Drawings shall relieve the Contractor of its obligations and liabilities under this Contract /Agreement in any manner nor shall the Authority's Engineer or the Authority be liable for the same in any manner; and if errors, omissions, ambiguities, inconsistencies, inadequacies or other Defects are found in the Drawings, they shall be corrected, along with the affected Works, at the Contractor's cost, notwithstanding any review under this Article 10;
- f) the Contractor shall be responsible for delays in submitting the Drawings, as set forth in Schedule-11, caused by reason of delays in surveys and field investigations, and shall not be entitled to seek any relief in respect thereof from the Authority; and
- g) the Contractor warrants that its designers, including any third parties engaged by it, shall have the required experience and capability in accordance with Good Industry Practice and it shall indemnify the Authority against any damage, expense, liability, loss or claim, which the Authority might incur, sustain or be subject to arising from any breach of the Contractor's design responsibility and/or warranty as set out in this Clause.

10.2.5 Any cost or delay in construction arising from review by the Authority's Engineer shall be borne by the Contractor.

- 10.2.6 Works shall be executed in accordance with the Drawings provided by the Contractor in accordance with the provisions of this Clause 10.2 and the observations of the Authority's Engineer thereon as communicated pursuant to the provisions of Clause 10.2.4 (d). Such Drawings shall not be amended or altered without prior written notice to the Authority's Engineer. If a Party becomes aware of an error or defect of a technical nature in the design or Drawings, that Party shall promptly give notice to the other Party of such error or defect.
- 10.2.7 Within 90 (ninety) days of the Project Completion Date, the Contractor shall furnish to the Authority and the Authority's Engineer a complete set of as-built Drawings, in 2 (two) hard copies and in its editable digital format or in such other medium or manner as may be acceptable to the Authority, including an as-built survey illustrating the layout of the Project and setback lines, if any, of the Construction of Jetties, Landside facilities and allied facilities at Eastern and Western sides in Kadmath Island of Lakshadweep forming part of Project Facilities, and shall hand them over to the Authority against receipt thereof.

10.3 Construction of the Project

- 10.3.1 The Contractor shall design and construct the Project in conformity with the Specifications, Standards and Drawings set forth in Volume: II and III of the bid document. The Contractor shall be responsible for the correct positioning of all parts of the Works, and shall rectify any error in the positions, levels, dimensions or alignment of the Works. 36 months from the date of commencement of work shall be the scheduled completion date (the "Scheduled Completion Date") and the Contractor agrees and undertakes that the construction shall be completed on or before the Scheduled Completion Date, including any extension thereof.
- 10.3.2 The Contractor shall construct the Project in accordance with the Project Completion Schedule set forth in Schedule-12. In the event that the Contractor fails to achieve any Project Milestone or the Scheduled Completion Date within a period of 30 (thirty) days from the date set forth in Schedule-12, unless such failure has occurred due to Force Majeure or for reasons attributable to the Authority, it shall pay Damages to the Authority in a sum calculated at the rate of 0.05% (zero point zero five per cent) of the Contract Price for delay of each day reckoned from the date specified in Schedule - 12 and until such Project Milestone is achieved or the Works are completed; provided that if the period for any or all Project Milestones or the Scheduled Completion Date is extended in accordance with the provisions of this Agreement, the dates set forth in Schedule-12 shall be deemed to be modified accordingly and the provisions of this Agreement shall apply as if Schedule-12 has been amended as above; provided further that in the event the Works are completed within or before the Scheduled Completion Date including any Time Extension, the Damages paid under this Clause 10.3.2 shall be refunded by the Authority to the Contractor, but without any interest thereon. For the avoidance of doubt, it is agreed that recovery of Damages under this Clause 10.3.2 shall be without prejudice to the rights of the Authority under this Agreement including the right of Termination

thereof. The Parties further agree that Time Extension hereunder shall only be reckoned for and in respect of the affected Works as specified in Clause 10.4.2.

10.3.3 The Authority shall notify the Contractor of its decision to impose Damages in pursuance of the provisions of this Clause 10.3. Provided, however, that no deduction on account of Damages shall be effected by the Authority without taking into consideration the representation, if any, made by the Contractor within 20 (twenty) days of such notice. The Parties expressly agree that the total amount of Damages under Clause 10.3.2 shall not exceed 10% (ten percent) of the Contract Price.

10.4 Extension of time for completion

10.4.1 Without prejudice to any other provision of this Agreement for and in respect of extension of time, the Contractor shall be entitled to extension of time in the Project Completion Schedule (the "Time Extension") to the extent that completion of any Project Milestone is or will be delayed by any of the following, namely:

- a) Change of Scope, unless an adjustment to the Scheduled Completion Date has been agreed under Article 13;
- b) occurrence of a Force Majeure Event;
- c) any delay, impediment or prevention caused by or attributable to the Authority, the Authority's personnel or the Authority's other contractors on the Site; and
- d) any other cause or delay which entitles the Contractor to Time Extension in accordance with the provisions of this Agreement.

10.4.2 The Contractor shall, not later than 15 (fifteen) business days from the occurrence of an event or circumstance specified in Clause 10.4.1, inform the Authority's Engineer by notice in writing, with a copy to the Authority, stating in reasonable detail with supporting particulars, the event or circumstances giving rise to the claim for Time Extension in accordance with the provisions of this Agreement. Provided that the period of 15 (fifteen) business days shall be calculated from the date on which the Contractor became aware, or should have become aware, of the occurrence of such an event or circumstance.

Provided further that notwithstanding anything to the contrary contained in this Agreement, Time Extension shall be due and applicable only for the Works which are affected by the aforesaid events or circumstances and shall not in any manner affect the Project Completion Schedule for and in respect of the Works which are not affected thereby.

10.4.3 In the event of the failure of the Contractor to issue to the Authority's Engineer a notice in accordance with the provisions of Clause 10.4.2 within the time specified therein, the Contractor shall not be entitled to any Time Extension and shall forfeit its right to any such claims in future. For the avoidance of doubt, in the event of failure of the Contractor to issue notice as specified in this Clause 10.4.3, the Authority shall be discharged from all liability in connection therewith.

10.4.4 The Authority's Engineer shall, on receipt of a claim in accordance with the provisions of Clause 10.4.2, examine the claim expeditiously within the time frame specified herein. In the event the Authority's Engineer requires any clarifications to

examine the claim, the Authority's Engineer shall seek the same within 15 (fifteen) days from the date of receiving the claim. The Contractor shall, on the receipt of the communication of the Authority's Engineer requesting for clarification, furnish the same to the Authority's Engineer within 10 (ten) days thereof. The Authority's Engineer shall, within a period of 30 (thirty) days from the date of receipt of such clarifications, forward in writing to the Contractor its determination of Time Extension. For the avoidance of doubt, the Parties agree that the Authority's Engineer shall, in accordance with the provisions of this Agreement, notify the Contractor of the aforesaid Time Extension not later than 60 (sixty) days from the date of receipt of the Contractor's claim for Time Extension.

Provided that when determining each extension of time under this Clause 10.4, the Authority's Engineer shall review previous determinations and may increase, but shall not decrease, the total Time Extension.

10.4.5 If the event or circumstance giving rise to the notice has a continuing effect:

- a) the detailed claim shall be considered as interim;
- b) the Contractor shall, not later than 10 (ten) days after the close of each month, send further interim claims specifying the accumulated delay, the extension of time claimed, and such further particulars as the Authority's Engineer may reasonably require; and
- c) the Contractor shall send a final claim within 30 (thirty) days after the effect of the event or the circumstance ceases.

Upon receipt of the claim hereunder, the Authority's Engineer shall examine and determine the same in accordance with the provisions of Clause 10.4.4 within a period of 60 (sixty) days of the receipt thereof.

10.5 Incomplete Works

In the event the Contractor fails to complete the Works in accordance with the Project Completion Schedule, including any Time Extension granted under this Agreement, the Contractor shall endeavour to complete the balance work expeditiously and shall pay Damages to the Authority in accordance with the provisions of Clause 10.3.2 for delay of each day until the Works are completed in accordance with the provisions of this Agreement. Recovery of Damages under this Clause shall be without prejudice to the rights of the Authority under this Agreement including the right to termination under Clause 21.1.

ARTICLE 11 QUALITY ASSURANCE, MONITORING AND SUPERVISION

11.1 Quality of Materials and workmanship

11.1.1 The Contractor shall ensure that the Construction, Materials and workmanship are in accordance with the requirements specified in this Agreement, Specifications and Standards and Good Industry Practice.

11.1.2 The Contractor warrants that all Materials shall be new, unused, not reconditioned and in conformity with Specification and Standards, Applicable Laws and Good Industry Practice, and that the Contractor shall not use any materials which are generally recognised as being deleterious under Good Industry Practice.

11.2 Quality control system

11.2.1 The Contractor shall establish a quality control mechanism to ensure compliance with the provisions of this Agreement (the “Quality Assurance Plan” or “QAP”).

11.2.2 The Contractor shall, within 30 (thirty) days from the date of LoA, submit to the Authority’s Engineer its Quality Assurance Plan which shall include the following:

- a) organization, duties and responsibilities, procedures, inspections and documentation;
- b) quality control mechanism including sampling and testing of Materials, test frequencies, standards, acceptance criteria, testing facilities, reporting, recording and interpretation of test results, approvals, check list for site activities, and proforma for testing and calibration in accordance with the Specifications and Standards and Good Industry Practice; and
- c) Internal quality audit system.

11.2.3 The Authority’s Engineer shall convey its comments to the Contractor within a period of 21 (twenty-one) days of receipt of the QAP stating the modifications, if any, required, and the Contractor shall incorporate those in the QAP to the extent required for conforming with the provisions of this Clause 11.2.

11.2.4 The Contractor shall procure all documents, apparatus and instruments, fuel, consumables, water, electricity, labour, Materials, samples, and qualified personnel as are necessary for examining and testing the Project Assets, Materials and workmanship in accordance with the Quality Assurance Plan.

11.2.5 The cost of testing of Construction, Materials and workmanship under this Article 11 shall be borne by the Contractor.

11.3 Methodology

The Contractor shall, at least 15 (fifteen) days prior to the commencement of construction, submit to the Authority’s Engineer for review the methodology proposed to be adopted for executing the Works, giving details of equipment to be deployed, traffic management and measures for ensuring safety. The Authority’s Engineer shall complete the review and convey its comments, if any, to the Contractor within a period of 10 (ten) days from the date of receipt of the proposed methodology from the Contractor.

11.4 Inspection and technical audit by the Authority

The Authority or any representative authorised by the Authority in this behalf may inspect and review the progress and quality of the construction of Works and issue appropriate directions to the Authority's Engineer and the Contractor for taking remedial action in the event the Works are not in accordance with the provisions of this Agreement.

11.5 External technical audit

At any time during construction, the Authority may appoint an external technical auditor to conduct an audit of the quality of the Works. The findings of the audit, to the extent accepted by the Authority, shall be notified to the Contractor and the Authority's Engineer for taking remedial action in accordance with this Agreement. The Contractor shall provide all assistance as may be required by the auditor in the conduct of its audit hereunder. Notwithstanding anything contained in this Clause 11.5, the external technical audit shall not affect any obligations of the Contractor or the Authority's Engineer under this Agreement.

11.6 Inspection of construction records

The Authority shall have the right to inspect the records of the Contractor relating to the Works.

11.7 Inspection

11.7.1 The Authority's Engineer and its authorised representative shall at all times:

- a) have full access to all parts of the Site and to all places from which natural Materials are being obtained for use in the Works; and
- b) during production, manufacture and construction at the Site and at the place of production, be entitled to examine, inspect, measure and test the Materials and workmanship, and to check the progress of manufacture of Materials.

11.7.2 The Contractor shall give the Authority's Engineer and its authorised agents access, facilities and safety equipment for carrying out their obligations under this Agreement.

11.7.3 The Authority's Engineer shall submit a monthly inspection report (the "Inspection Report") to the Authority and the Contractor bringing out the results of inspections and the remedial action taken by the Contractor in respect of Defects or deficiencies. For the avoidance of doubt, such inspection or submission of Inspection Report by the Authority's Engineer shall not relieve or absolve the Contractor of its obligations and liabilities under this Agreement in any manner whatsoever.

11.8 Monthly progress reports

During the Construction Period, the Contractor shall, not later than 10 (ten) days after the close of each month, furnish to the Authority and the Authority's Engineer a monthly report on the progress of Works in a format approved by the Authority in hard and soft

copies and shall promptly give such other relevant information as may be required by the Authority's Engineer.

11.9 Samples

The Contractor shall submit the following samples of Materials and relevant information to the Authority's Engineer for review:

- a) manufacturer's test reports and standard samples of manufactured Materials; and
- b) samples of such other Materials as the Authority's Engineer may require.

11.10 Tests

11.10.1 For determining that the Works conform to the Specifications and Standards, the Authority's Engineer shall require the Contractor to carry out or cause to be carried out tests, at such time and frequency and in such manner as specified in this Agreement and in accordance with Good Industry Practice for quality assurance. The Contractor shall, with due diligence, carry out all the tests in accordance with the Agreement and furnish the results thereof to the Authority's Engineer. Of the total tests for each category or type to be undertaken by the Contractor under the provisions of this Agreement and Good Industry Practice, the Authority's Engineer shall (a) carry out or cause to be carried out, test checks equal to about 10% (ten per cent) of the number of the tests required to be undertaken by the Contractor; and (b) witness or participate in at least 10% (ten per cent) of the number of such tests conducted or caused to be conducted by the Contractor.

11.10.2 In the event that results of any tests conducted under this Clause 11.10 establish any Defects or deficiencies in the Works, the Contractor shall carry out remedial measures and furnish a report to the Authority's Engineer in this behalf. The Authority's Engineer shall require the Contractor to carry out or cause to be carried out tests to determine that such remedial measures have brought the Works into compliance with the Specifications and Standards, and the procedure shall be repeated until such Works conform to the Specifications and Standards. For the avoidance of doubt, the cost of such tests and the remedial measures in pursuance thereof shall be solely borne by the Contractor.

11.11 Examination of work before covering up

In respect of the work which the Authority's Engineer is entitled to examine, inspect, measure or test before it is covered up or put out of view or any part of the work is placed thereon, the Contractor shall give notice to the Authority's Engineer whenever any such work is ready and before it is covered up. The Authority's Engineer shall then either carry out the examination, inspection or testing without unreasonable delay, or promptly give notice to the Contractor that the Authority's Engineer does not require to do so. Provided, however, that if any work is of a continuous nature where it is not possible or prudent to keep it uncovered or incomplete, the Contractor shall notify the schedule of carrying out such work to give sufficient opportunity, not being less than 3 (three) business days' notice, to the Authority's Engineer to conduct its inspection, measurement or test while the work is continuing. Provided further that in the event the Contractor receives no response from the Authority's Engineer within a period of 3 (three) business days from

the date on which the Contractor's notice hereunder is delivered to the Authority's Engineer, the Contractor shall be entitled to assume that the Authority's Engineer would not undertake the said inspection.

11.12 Rejection

- 11.12.1 If, as a result of an examination, inspection, measurement or testing, any Plant, Material, design or workmanship is found to be defective or otherwise not in accordance with the provisions of this Agreement, the Authority's Engineer may reject such Plant, Material, design or workmanship by giving notice to the Contractor, with reasons. The Contractor shall then promptly make good the Defect and ensure that the rejected item complies with the requirements of this Agreement.
- 11.12.2 If the Authority's Engineer requires the Plant, Material, design or workmanship to be retested, the tests shall be repeated on the same terms and conditions, as applicable in each case. If the rejection and retesting cause the Authority to incur any additional costs, such costs shall be recoverable by the Authority from the Contractor and may be deducted by the Authority from any monies due to be paid to the Contractor.
- 11.12.3 The Contractor shall not be entitled to any extension of time on account of rectifying any Defect or retesting as specified in this Clause 11.12.
- 11.12.4 No examination, inspection, measurement or testing of any Plant, Material, design or workmanship by the Authority's Engineer or its failure to convey its observations or to examine, inspect, measure or test shall relieve the Contractor of its obligations and liabilities under this Agreement in any manner nor shall the Authority be liable for the same in any manner.

11.13 Remedial work

- 11.13.1 Notwithstanding any previous test or certification, the Authority's Engineer may instruct the Contractor to:
- a) remove from the Site and replace any Plant or Materials which are not in accordance with the provisions of this Agreement;
 - b) remove and re-execute any work which is not in accordance with the provisions of this Agreement and the Specification and Standards; and
 - c) execute any work which is urgently required for the safety of the Project, whether because of an accident, unforeseeable event or otherwise; provided that in case of any work which is required on account of a Force Majeure Event, the provisions of Clause 19.6 shall apply.
- 11.13.2 If the Contractor fails to comply with the instructions issued by the Authority's Engineer under Clause 11.13.1, within the time specified in the Authority's Engineer's notice or as mutually agreed, the Authority's Engineer may advise the Authority to have the work executed by another agency. The cost so incurred by the Authority for undertaking such work shall, without prejudice to the rights of the Authority to recover Damages in

accordance with the provisions of this Agreement, be recoverable from the Contractor and may be deducted by the Authority from any monies due to be paid to the Contractor.

11.14 Delays during construction

Without prejudice to the provisions of Clause 10.3.2, in the event the Contractor does not achieve any of the Project Milestones within the time period stipulated in Schedule-12 or the Authority's Engineer shall have reasonably determined that the rate of progress of Works is such that Completion of the Project is not likely to be achieved by the end of the Scheduled Completion Date, it may notify the same to the Contractor, and the Contractor shall, within 15 (fifteen) days of such notice, by a communication inform the Authority's Engineer in reasonable detail about the steps it proposes to take to expedite progress and the period within which it shall achieve the Project Completion Date.

11.15 Quality control records and Documents

The Contractor shall hand over to the Authority's Engineer a copy of all its quality control records and documents before the Completion Certificate is issued pursuant to Clause 12.2.

11.16 Video recording

During the Construction Period, the Contractor shall provide to the Authority for every calendar quarter, a video recording, which will be compiled into a 3 (three)hour digital video disc or any substitute thereof, covering the status and progress of Works in that quarter. The video recording shall be provided to the Authority not later than 15 (fifteen) days after the close of each quarter from the Date of LoA.

11.17 Suspension of unsafe Construction Works

11.17.1 Upon recommendation of the Authority's Engineer to this effect, or on its own volition in cases of emergency or urgency, the Authority may by notice require the Contractor to suspend forthwith the whole or any part of the Works if, in the reasonable opinion of the Authority's Engineer or the Authority, as the case may be, such work threatens the safety of the Users and or other persons on or about the Project. Provided, however, that in case of an emergency, the Authority may *suomoto* issue the notice referred to hereinabove.

11.17.2 The Contractor shall, pursuant to the notice under Clause 11.17.1, suspend the Works or any part thereof for such time and in such manner as may be specified by the Authority and thereupon carry out remedial measures to secure the safety of suspended works, the Users, other persons and vehicles on or about the Project including pedestrians. The Contractor may by notice require the Authority's Engineer to inspect such remedial measures forthwith and make a report to the Authority recommending whether or not the suspension hereunder may be revoked. Upon receiving the recommendations of the Authority's Engineer, the Authority shall either revoke such suspension or instruct the Contractor to carry out such other and further remedial measures as may be necessary in the reasonable opinion of the Authority, and the

procedure set forth in this Clause 11.17 shall be repeated until the suspension hereunder is revoked.

- 11.17.3 Subject to the provisions of Clause 19.6, all reasonable costs incurred for maintaining and protecting the Works or part thereof during the period of suspension (the “Preservation Costs”), shall be borne by the Contractor; provided that if the suspension has occurred as a result of any breach of this Agreement by the Authority, the Preservation Costs shall be borne by the Authority.
- 11.17.4 If suspension of Works is for reasons not attributable to the Contractor, the Authority’s Engineer shall determine any Time Extension to which the Contractor is reasonably entitled in accordance with the provisions of Clause 10.4.

ARTICLE 12 COMPLETION CERTIFICATE

12.1 Tests on completion

- 12.1.1 Not later than 30 (thirty) days prior to the likely completion of the Project, or a Section thereof, the Contractor shall notify the Authority's Engineer of its intent to subject the Project or a Section thereof, to Tests. The date and time of each of the Tests shall be determined by the Authority's Engineer in consultation with the Contractor, and notified to the Authority who may designate its representative to witness the Tests. The Contractor shall either conduct the Tests as directed by the Authority's Engineer or provide such assistance as the Authority's Engineer may reasonably require for conducting the Tests. For the avoidance of doubt, the Parties agree that in the event of the Contractor and the Authority's Engineer failing to mutually agree on the dates for conducting the Tests, the Contractor shall fix the dates by giving not less than 10 (ten) days' notice to the Authority's Engineer, and in the event the Authority's Engineer delays the Tests hereunder, the Authority shall impose exemplary penalties on the Authority's Engineer and shall ensure that Tests are completed in time either by the Authority's Engineer or any substitute thereof.
- 12.1.2 All Tests shall be conducted in accordance with Schedule-13 at the cost and expense of the Contractor. The Authority's Engineer shall observe, monitor and review the results of the Tests to determine compliance of the Project or a Section thereof, with Specifications and Standards and if it is reasonably anticipated or determined by the Authority's Engineer during the course of any Test that the performance of the Project or Section or any part thereof, does not meet the Specifications and Standards, it shall have the right to suspend or delay such Test and require the Contractor to remedy and rectify any Defect or deficiency. Upon completion of each Test, the Authority's Engineer shall provide to the Contractor and the Authority copies of all Test data including detailed Test results. For the avoidance of doubt, the Parties expressly agree that the Authority's Engineer may require the Contractor to carry out or cause to be carried out additional Tests, in accordance with Good Industry Practice, for determining the compliance of the Project or Section thereof with the Specifications and Standards.

12.2 Provisional Certificate

- 12.2.1 Subject to the provisions of Clause 12.2.5, upon completion of all Works forming part of the Project, save and except the Works for which Time Extension has been granted under Clause 10.5, the Authority's Engineer shall, at the request of the Contractor, issue a provisional certificate of completion substantially in the form set forth in Schedule-14 (the "**Provisional Certificate**") if the Tests for and in respect of the completed Works are successful. The Provisional Certificate shall have appended thereto a list of outstanding items of work (the "**Punch List**") that need to be completed in accordance with the provisions of this Agreement. The Contractor undertakes to complete the minor outstanding items of works in respect of those Sections of the Project for which the Provisional Certificate has been issued, within a period of 30 (thirty) days of the date of Provisional Certificate, and those parts of the Works in respect of which Time Extension has been granted, within the extended period thereof. For the avoidance of doubt, the Parties agree that the Punch List shall include all Works for which Time Extension has

been granted and shall also include any minor outstanding items of work forming part of the completed Sections if such works do not materially affect the use of the completed Sections for their intended purpose. The Parties further agree that Provisional Certificate shall not be issued if the completed Works cannot be safely and reliably placed in service of the Users thereof.

12.2.2 Upon issue of Provisional Certificate, the provisions of Article 15 shall apply to the completed parts of the Project and the property and ownership of all such completed Works shall vest in the Authority.

12.2.3 If the Authority's Engineer determines that the Project or any completed part thereof does not conform to the provisions of this Agreement and cannot be safely and reliably placed in operation, it shall forthwith make a report in this behalf and send copies thereof to the Authority and the Contractor and withhold issuance of the Provisional Certificate until the Defects or deficiencies are rectified by the Contractor and Tests are successful in accordance with this Article 12.

12.2.4 Notwithstanding anything to the contrary contained in Clause 12.2.3, the Authority may, at any time after receiving a report from the Authority's Engineer under that Clause, direct the Authority's Engineer to issue a Provisional Certificate under Clause 12.2.1 and such direction shall be complied forthwith.

12.2.5 No Provisional Certificate shall be issued under the provisions of this Clause 12.2 until the Contractor has submitted valid claims for payment of at least 80% (eighty per cent) of the amount arrived at after reducing the lump sum price specified in Clause 17.1.1 by the amount attributable to works which have been withdrawn under the provisions of Clause 17.3.3. For the avoidance of doubt and by way of illustration, the Parties agree that if the Contract Price specified in Clause 17.1.1 is Rs.105 cr. (Rs. one hundred and five crore) and the works withdrawn under Clause 17.3.3 have a value of Rs.5 cr. (Rs. five crore), a Provisional Certificate shall not be issued until valid claims for payment of an amount of Rs.80 cr. (Rs. eighty crore) have been submitted by the Contractor in accordance with the provisions of this Agreement. It is further agreed that all price adjustments made in pursuance of Clause 17.10 shall not be reckoned for computation of the claims for payments referred to in this Clause 12.2.5. It is also agreed that any Change of Scope effected within 30 (thirty) days from the date of LoA shall be reckoned for the purposes of determining the Contract Price hereunder.

12.3 Completion of remaining Works

All items in the Punch List shall be completed by the Contractor in accordance with the provisions of this Agreement. For any delay in their completion other than for the reasons attributable to the Authority or due to Force Majeure, the Authority shall be entitled to recover Damages from the Contractor in accordance with the provisions of Clause 10.3.2 of this Agreement.

12.4 Completion Certificate

12.4.1 Upon completion of all Works, including the items specified in the Punch List, and the Authority's Engineer determining the Tests to be successful, it shall

forthwith issue to the Contractor and the Authority a certificate substantially in the form set forth in Schedule-14 (the "Completion Certificate").

- 12.4.2 Upon receiving the Completion Certificate, the Contractor shall remove its equipment, materials, debris and temporary works from the Site within a period of 30 (thirty) days thereof, failing which the Authority may remove or cause to be removed, such equipment, materials, debris and temporary works and recover from the Contractor an amount equal to 120% (one hundred and twenty per cent) of the actual cost of removal incurred by the Authority.
- 12.4.3 Without prejudice to the obligations of the Contractor specified in Article 15, the property and ownership of all the completed Works forming part of the Project shall vest in the Authority.

12.5 Rescheduling of Tests

If the Authority's Engineer certifies to the Authority and the Contractor that it is unable to issue the Completion Certificate or Provisional Certificate, as the case may be, because of events or circumstances on account of which the Tests could not be held or had to be suspended, the Contractor shall be entitled to re-schedule the Tests and hold the same as soon as reasonably practicable.

ARTICLE 13 CHANGE OF SCOPE

13.1 Change of Scope

13.1.1 The Authority may, notwithstanding anything to the contrary contained in this Agreement, require the Contractor to make modifications or alterations to the Works (“Change of Scope”) before the issue of the Completion Certificate either by giving an instruction or by requesting the Contractor to submit a proposal for Change of Scope involving additional cost or reduction in cost. Any such Change of Scope shall be made and valued in accordance with the provisions of this Article 13.

13.1.2 Change of Scope shall mean:

- a) change in specifications of any item of Works;
- b) omission of any work from the Scope of the Project except under Clause 17.3.3; provided that, subject to Clause 13.5, the Authority shall not omit any work under this Clause in order to get it executed by any other entity; or
- c) any additional work, Plant, Materials or services which are not included in the Scope of the Project, including any associated Tests on completion of construction.

13.1.3 If the Contractor determines at any time that a Change of Scope will, if adopted, (i) accelerate completion, (ii) reduce the cost to the Authority of executing, maintaining or operating the Project, (iii) improve the efficiency or value to the Authority of the completed Project, or (iv) otherwise be of benefit to the Authority, it shall prepare a proposal with relevant details at its own cost. The Contractor shall submit such proposal, supported with the relevant details including the amount of reduction in the Contract Price, if any, to the Authority to consider such Change of Scope. The Authority shall, within 15 (fifteen) days of receipt of such proposal, either accept such Change of Scope with modifications, if any, and initiate proceedings therefor in accordance with this Article 13 or reject the proposal and inform the Contractor of its decision. For the avoidance of doubt, the Parties agree that the Contractor shall not undertake any Change of Scope without a Change of Scope Order being issued by the Authority, save and except any Works necessary for meeting any Emergency.

13.2 Procedure for Change of Scope

13.2.1 In the event of the Authority determining that a Change of Scope is necessary, it may direct the Authority’s Engineer to issue to the Contractor a notice specifying in reasonable detail the works and services contemplated thereunder (the “Change of Scope Notice”).

13.2.2 Upon receipt of a Change of Scope Notice, the Contractor shall, with due diligence provide to the Authority and the Authority’s Engineer such information as is necessary, together with preliminary documentation in support of:

- a) the impact, if any, which the Change of Scope is likely to have on the Project Completion Schedule if the works or services are required to be carried out during the Construction Period; and
- b) the options for implementing the proposed Change of Scope and the effect, if any, each such option would have on the costs and time thereof, including the

following details:

- i. break down of the quantities, unit rates and cost for different items of work;
- ii. proposed design for the Change of Scope; and
- iii. proposed modifications, if any, to the Project Completion Schedule of the Project.

For the avoidance of doubt, the Parties expressly agree that, subject to the provisions of Clause 13.4.2, the Contract Price shall be increased or decreased, as the case may be, on account of Change of Scope.

13.2.3 The Contractor's quotation of costs for the Change of Scope shall be determined on the following principles:

- a) For works of similar nature compared to the Works being executed, the quotation shall be based on the rate for the work inclusive of all labour, Materials, equipment, incidentals, overheads and profit derived in accordance with the provisions of Clause 17.3; and the price adjustment in accordance with Clause 17.8 shall apply to the rates so worked out.
- b) For works not similar in nature to the Works being executed, the cost of work shall be derived on the basis of the applicable schedule of rates for the Kochi circle, as published by the CPWD rates. In case if the rate for a particular item not covered in CPWD rates, contractor shall refer to schedule of rates of Kerala State Government for similar works. Such rates shall be indexed with reference to the WPI once every year at the commencement of the financial year, with the base being the month and year of the publication of the said schedule of rates; provided, however, that for any item not included in the schedule of rates, the prevailing market rates as determined by the Authority's Engineer shall apply, and for any item in respect of which the said Schedule of Rates book does not provide the requisite details, the Authority's Engineer shall determine the rate in accordance with Good Industry Practice

13.2.4 Upon reaching an agreement, the Authority shall issue an order (the "Change of Scope Order") requiring the Contractor to proceed with the performance thereof. In the event that the Parties are unable to agree, the Authority may:

- a) issue a Change of Scope Order requiring the Contractor to proceed with the performance thereof at the rates and conditions approved by the Authority till the matter is resolved in accordance with Article 24; or
- b) proceed in accordance with Clause 13.5.

13.2.5 The provisions of this Agreement, insofar as they relate to Works and Tests, shall apply *mutatis mutandis* to the works undertaken by the Contractor under this Article 13.

13.3 Payment for Change of Scope

Payment for Change of Scope shall be made in accordance with the payment schedule specified in the Change of Scope Order.

13.4 Restrictions on Change of Scope

- 13.4.1 No Change of Scope shall be executed unless the Authority has issued the Change of Scope Order save and except any Works necessary for meeting any Emergency.
- 13.4.2 Unless the Parties mutually agree to the contrary, the total value of all Change of Scope Orders shall not exceed 10% (ten per cent) of the Contract Price.
- 13.4.3 Notwithstanding anything to the contrary in this Article 13, no change arising from any default of the Contractor in the performance of its obligations under this Agreement shall be deemed to be Change of Scope, and shall not result in any adjustment of the Contract Price or the Project Completion Schedule.

13.5 Power of the Authority to undertake works

- 13.5.1 In the event the Parties are unable to agree to the proposed Change of Scope Orders in accordance with Clause 13.2, the Authority may, after giving notice to the Contractor and considering its reply thereto, award such works or services to any person on the basis of open competitive bidding from amongst bidders who are pre-qualified for undertaking the additional work; provided that the Contractor shall have the option of matching the first ranked bid in terms of the selection criteria, subject to payment of 2% (two per cent) of the bid amount to the Authority, and thereupon securing the award of such works or services. For the avoidance of doubt, it is agreed that the Contractor shall be entitled to exercise such option only if it has participated in the bidding process and its bid does not exceed the first ranked bid by more than 10% (ten per cent) thereof. It is also agreed that the Contractor shall provide assistance and cooperation to the person who undertakes the works or services hereunder, but shall not be responsible for rectification of any Defects in works carried out by other agencies. For the avoidance of doubt, the Authority acknowledges and agrees that it shall not undertake any works or services under this Clause 13.5.1 if such works or services cause a Material Adverse Effect on the Contractor.
- 13.5.2 The works undertaken in accordance with this Clause 13.5 shall conform to the Specifications and Standards and shall be carried out in a manner that minimises disruption to the Project. The provisions of this Agreement, insofar as they relate to Works and Tests, shall apply mutatis mutandis to the works carried out under this Clause 13.5.

ARTICLE 14 TRAFFIC REGULATION

14.1 Traffic regulation by the Contractor

- 14.1.1 The Contractor shall take all the required measures and make arrangements for the safety of Authority during the construction of the Project or a Section thereof in accordance with Good Industry Practice. It shall provide, erect and maintain all such barricades, signs, markings, flags, and lights as may be required for the safety.
- 14.1.2 All works shall be carried out in a manner creating least interference to the traffic passing through the Project or a Section thereof. The Contractor shall take prior approval of the Authority's Engineer for any proposed arrangement for traffic regulation during the Construction Period, which approval shall not be unreasonably withheld.

ARTICLE 15 DEFECTS LIABILITY

15.1 Defects Liability Period

15.1.1 The Contractor shall be responsible for all the Defects and deficiencies, except usual wear and tear in the Project or any Section thereof, till the expiry of a period of 2 (two) years commencing from the date of Completion of Work (the "Defects Liability Period").

15.2 Remedy and rectification of Defects and deficiencies

Without prejudice, the Contractor shall repair or rectify all Defects and deficiencies observed by the Authority's Engineer during the Defects Liability Period within a period of 15 (fifteen) days from the date of notice issued by the Authority's Engineer in this behalf, or within such reasonable period as may be determined by the Authority's Engineer at the request of the Contractor, in accordance with Good Industry Practice.

15.3 Cost of remedying Defects

For the avoidance of doubt, any repair or rectification undertaken in accordance with the provisions of Clause 15.2, including any additional tests, shall be carried out by the Contractor at its own risk and cost, to the extent that such rectification or repair is attributable to:

- (a) the design of the Project;
- (b) Works, Plant, Materials or workmanship not being in accordance with this Agreement and the Specifications and Standards;
- (c) improper maintenance during construction of the Project by the Contractor;
or
- (d) failure by the Contractor to comply with any other obligation under this Agreement.

15.4 Contractor's failure to rectify Defects

In the event that the Contractor fails to repair or rectify such Defect or deficiency within the period specified in Clause 15.2, the Authority shall be entitled to get the same repaired, rectified or remedied at the Contractor's cost so as to make the Project conform to the Specifications and Standards and the provisions of this Agreement. All costs consequent thereon shall, after due consultation with the Authority and the Contractor, be determined by the Authority's Engineer. The cost so determined, and an amount equal to 20% (twenty per cent) of such cost as Damages, shall be recoverable by the Authority from the Contractor and may be deducted by the Authority from any monies due to the Contractor.

15.5 Contractor to search cause

- 15.5.1 The Authority's Engineer may instruct the Contractor to examine the cause of any Defect in the Works or part thereof before the expiry of the Defects Liability Period.
- 15.5.2 In the event any Defect identified under Clause 15.5.1 is attributable to the Contractor, the Contractor shall rectify such Defect within the period specified by the Authority's Engineer, and shall bear the cost of the examination and rectification of such Defect.
- 15.5.3 In the event such Defect is not attributable to the Contractor, the Authority's Engineer shall, after due consultation with the Authority and the Contractor, determine the costs incurred by the Contractor on such examination and notify the same to the Contractor, with a copy to the Authority, and the Contractor shall be entitled to payment of such costs by the Authority.

15.6 Extension of Defects Liability Period

- 15.6.1 The Defects Liability Period shall be deemed to be extended till the identified Defects under Clause 15.2 have been remedied.
- 15.6.2 Any Materials or Works with Defects identified under Clause 15.2 and replaced or repaired during the Defects Liability Period or the extended Defects Liability Period, as the case may be, would be further warranted for a period of twelve (12) months from the date of completion of such repair or replacement.

The Contractor shall upon termination or expiry of this Agreement, or upon expiry of the Defects Liability Period, assign any outstanding benefit in respect of any subcontract or any warranty from any subcontractor, to the Authority or to such other person as the Authority may direct.

ARTICLE 16 AUTHORITY'S ENGINEER

16.1 Appointment of the Authority's Engineer

16.1.1 The Authority at its discretion may appoint an Authorised entity or person, to be the engineer under this Agreement (the "Authority's Engineer").

16.2 Duties and functions of the Authority's Engineer

16.2.1 The Authority's Engineer shall perform its duties and discharge its functions in accordance with the provisions of this Agreement, but subject to obtaining prior written approval of the Authority before determining:

- a) any Time Extension;
- b) any additional cost to be paid by the Authority to the Contractor;
- c) the Termination Payment; or
- d) any other matter which is not specified in (a), (b) or (c) above and which creates an obligation or liability on either Party for a sum exceeding Rs. 5,000,000 (Rs. fifty lakh)

16.2.2 **[Deleted]**

16.2.3 The Authority's Engineer shall submit regular periodic reports, at least once every month, to the Authority in respect of its duties and functions under this Agreement. Such reports shall be submitted by the Authority's Engineer within 10 (ten) days of the beginning of every month. For the avoidance of doubt, the Authority's Engineer shall include in its report compliance of the recommendations of the Safety Consultant.

16.2.4 **[Deleted]**

16.2.5 A true copy of all communications sent by the Authority's Engineer to the Contractor and by the Contractor to the Authority's Engineer shall be sent forthwith by the Authority's Engineer to the Authority.

16.3 Authorised signatories

The Authority shall require the Authority's Engineer to designate and notify to the Authority and the Contractor up to 2 (two) persons employed in its firm to sign for and on behalf of the Authority's Engineer, and any communication or document required to be signed by the Authority's Engineer shall be valid and effective only if signed by any of the designated persons; provided that the Authority's Engineer may, by notice in writing, substitute any of the designated persons by any of its employees.

16.4 Instructions of the Authority's Engineer

16.4.1 The Authority's Engineer may issue to the Contractor instructions for remedying any Defect. The Contractor shall take such instructions from the Authority's Engineer only.

16.4.2 The instructions issued by the Authority's Engineer shall be in writing. However, if the Authority's Engineer issues any oral instructions to the Contractor, it shall confirm in writing the oral instructions within 2 (two) working days of issuing such oral instructions.

16.4.3 In case the Contractor does not receive the confirmation of the oral instructions within the time specified in Clause 16.4.2, the Contractor shall seek the written

confirmation of the oral instructions from the Authority's Engineer and shall obtain acknowledgement from the Authority's Engineer of the communication seeking written confirmation. In case of failure of the Authority's Engineer to reply to the Contractor within 2 (two) days of the receipt of the communication from the Contractor, the Contractor may not carry out the instruction.

16.5 Determination by the Authority's Engineer

16.5.1 The Authority's Engineer shall consult with each Party in an endeavour to reach agreement wherever this Agreement provides for the determination of any matter by the Authority's Engineer. If such agreement is not achieved, the Authority's Engineer shall make a fair determination in accordance with this Agreement having due regard to all relevant circumstances. The Authority's Engineer shall give notice to both the Parties of each such agreement or determination, with supporting particulars.

16.5.2 Each Party shall give effect to each agreement or determination made by the Authority's Engineer in accordance with the provisions of this Agreement. Provided, however, that if any Party disputes any instruction, decision, direction or determination of the Authority's Engineer, the Dispute shall be resolved in accordance with the Dispute Resolution Procedure.

16.6 Remuneration of the Authority's Engineer

The remuneration, cost and expenses of the Authority's Engineer shall be paid by the Authority.

16.7 Termination of appointment of the Authority's Engineer

16.7.1 The Authority may, in its discretion, replace the Authority's Engineer at any time, but only upon appointment of another Authority's Engineer in accordance with Clause 16.1.

16.7.2 If the Contractor has reasons to believe that the Authority's Engineer is not discharging its duties and functions in accordance with the provisions of this Agreement, it may make a written representation to the Authority and seek termination of the appointment of the Authority's Engineer. Upon receipt of such representation, the Authority shall hold a tripartite meeting with the Contractor and Authority's Engineer and make best efforts for an amicable resolution of the Dispute. In the event that the appointment of the Authority's Engineer is terminated hereunder, the Authority shall appoint forthwith another Authority's Engineer in accordance with Clause 16.1.

16.8 Interim Arrangement

In the event that the Authority has not appointed an Authority's Engineer, or the Authority's Engineer so appointed has relinquished its functions or defaulted in discharge thereof, the Authority may, in the interim, designate and authorise any person to discharge the functions of the Authority's Engineer in accordance with the provisions of this Agreement, save and except that such person shall not exercise any functions relating to review, comment, approval or inspection as specified in this Agreement for and in respect of the Authority's Engineer, and such functions shall be discharged as and when an Authority's Engineer is appointed in accordance with the provisions of this Agreement. Provided, however,

that nothing contained in this Clause 16.8 shall in any manner restrict the rights of the Authority to enforce compliance of the provisions of this Agreement.

Part IV

Financial Covenants

ARTICLE 17 PAYMENTS

17.1 Contract Price

17.1.1 The Authority shall make payments to the Contractor for the Works on the basis of the lump sum price accepted by the Authority in consideration of the obligations specified in this Agreement for an amount of Rs. ***** (Rs. *****)(the “Contract Price”), which shall be subject to adjustments in accordance with the provisions of this Agreement. The Parties further agree that save and except as provided in this Agreement, the Contract Price shall be valid and effective until issue of Completion Certificate.

17.1.2 The Contract Price includes all duties, taxes, royalty, and fees that may be levied in accordance with the laws and regulations in force as on the Base Date on the Contractor’s equipment, Plant, Materials and supplies acquired for the purpose of this Agreement and on the Works undertaken under this Agreement. Nothing in this Agreement shall relieve the Contractor from its responsibility to pay any tax including any tax that may be levied in India on profits made by it in respect of this Agreement.

17.1.3 The Contract Price shall not be adjusted for any change in duties, taxes etc. specified in Clause 17.1.2 above, save and except as specified in Clauses 17.8 and 17.13.

17.1.4 The Contract Price shall not be adjusted to take account of any unforeseen difficulties or costs, unless otherwise provided for in this Agreement.

17.1.5 Unless otherwise specified in this Agreement, the Contract Price covers all the Contractor’s obligations for the Works under this Agreement and all things necessary for the Construction thereof and for the rectification of any Defects in the Project.

17.1.6 All payments under this Agreement shall be made in Indian Rupees.

17.2 Advance Payment

17.2.1 The Authority shall make an advance payment (the “Advance Payment”), equal to 10% (ten per cent) of the Contract Price, for mobilisation expenses and for acquisition of equipment. The Advance Payment shall carry simple interest at the rate of one year SBI MCLR plus 2% (two per cent) per annum and shall be made in two equal instalments.

17.2.2 The Contractor may apply to the Authority for the 1st (first) instalment of the Advance Payment at any time after the issue of LoA, along with an irrevocable and unconditional guarantee issued by a Nationalised /Scheduled Indian bank having its branch at Kochi acceptable by Authority for an amount equivalent to 110% (one

- hundred and ten per cent) of such instalment, substantially in the form provided at Annex-III of Schedule-9, to remain effective till the complete and full repayment of such instalment and any interest thereon.
- 17.2.3 At any time, after 60 (sixty) days from the date of LoA, the Contractor may apply to the Authority for the 2nd (second) instalment of the Advance Payment along with an irrevocable and unconditional guarantee from a Bank for an amount equivalent to 110% (one hundred and ten per cent) of such instalment, substantially in the form provided at Annex-III of Schedule-9, to remain effective till the complete and full repayment of such instalment and any interest thereon.
- 17.2.4 The instalments of Advance Payment shall be paid by the Authority to the Contractor within 15 (fifteen) days of the receipt of its respective requests in accordance with the provisions of this Clause 17.2.
- 17.2.5 The Advance Payment shall be recovered through proportionate deductions to be made in the Interim Payments Certificates issued in accordance with the provisions of Clause 17.5.2. Deductions of Advance Payment shall commence from the Interim Payment Certificate in which the cumulative interim payments certified shall have reached 50% (fifty per cent) of the Contract Price. The total amount recovered in each Interim Payment Certificate shall not exceed 30% (thirty per cent) of the amount due and payable under such Interim Payment Certificate, which shall include interest on the amount being recovered hereunder. For the avoidance of doubt, the Parties agree that in the event the total payment specified in any Interim Payment Certificate exceeds the limit of 50% (fifty per cent) of the Contract Price, the proportion of recovery hereunder shall be restricted to the amount exceeding 50% (fifty per cent) of the Contract Price. By way of illustration, the Parties agree that if the first recovery of say, Rupees 'x' is made after 20 (twenty) months from the date of 1st (first) instalment of the Advance Payment, interest on Rupees 'x' shall be due and payable for a period of 20 (twenty) months; and when the next recovery is made in the following month for say, Rupees 'y', interest on Rupees 'y' shall be due and payable for a period of 21 (twenty one) months. The Parties further agree that no payments in excess of 90% (ninety per cent) of the Contract Price shall be released to the Contractor until the Advance Payment, including interest thereon, has been fully recovered.
- 17.2.6 If the Advance Payment has not been fully repaid prior to Termination under Clause 19.7 or Article 21, as the case may be, the whole of the balance then outstanding shall immediately become due and payable by the Contractor to the Authority. In the event of Termination for Contractor Default, the Advance Payment shall be deemed to carry interest at an annual rate of 3% (three per cent) above the Bank Rate from the date of Advance Payment to the date of recovery thereof. For the avoidance of doubt, the aforesaid interest shall be payable on each instalment of the Advance Payment, regardless of whether the instalment or any part thereof has been repaid to the Authority prior to Termination.

17.3 Procedure for estimating the payment for the Works

- 17.3.1 The Authority shall make interim payments to the Contractor, as certified by the Authority's Engineer on completion of a stage, for a length, cubic meter, Tonnage

or any other unit as specified, and valued in accordance with the proportion of the Contract Price assigned to each item and its stage and payment procedure in Payment Milestone provided in Volume-II (Part-I-Employer's Requirement).

17.3.2 The Contractor shall make its claim for interim payment for the stages completed till the end of the month for which the payment is claimed, valued in accordance with Clause 17.3.1, and supported with necessary particulars and documents in accordance with this Agreement.

17.3.3 Any reduction in the Contract Price arising out of Change of Scope or the Works withdrawn under Clause 8.3, as the case may be, shall not affect the amounts payable for the items or stage payments thereof which are not affected by such Change of Scope or withdrawal. The Parties further agree that the adjustments arising out of the aforesaid modifications shall be carried out in a manner that the impact of such modifications is restricted to the said Change of Scope or withdrawal, as the case may be, and does not alter the payments due for and in respect of items or stage payments which do not form part of such Change of Scope or withdrawal.

17.4 Stage Payment Statement for Works

The Contractor shall submit a statement (the “**Stage Payment Statement**”), in 3 copies, by the 7th (seventh) day of a month to the Authority's Engineer in the form set forth in Schedule-16, showing the amount calculated in accordance with Clause 17.3 to which the Contractor considers itself entitled for the completed stage(s) of Works. The Stage Payment Statement shall be accompanied with the progress reports and any other supporting documents. The Contractor shall not submit any claim for payment of incomplete stages of work. In the event that there is no claim for a month in accordance with the provisions of this Clause 17.4, the Contractor shall submit a 'Nil' claim to the Authority's Engineer.

The Contractor shall also submit to the department, separately his computerized Abstract of Cost and the Bill based on these measurements, duly bound, and its pages machine numbered along with three spare copies of the Bill. Thereafter, this Bill will be processed by the Division Office and allotted a number as per the computerized record in the same way as done for the measurement book meant for measurements

'Computerised Measurement Book', measurement of the Work can also be done as detailed below.

- i. Authority's Engineer shall, except as otherwise provided, ascertain and determine by measurement, the value in accordance with the Contract, of Work done.
- ii. All measurement of all items having financial value shall be entered in Measurement Book and/or level field book so that a complete record is obtained of all works performed under the Contract.
- iii. All measurements and levels shall be taken jointly by the Authority's Engineer and by the Contractor or his authorized representative from time to time during the progress of the Work and such measurements shall be signed and dated by the Engineer's Nominee and the Contractor or their

- representatives in token of their acceptance. If the Contractor objects to any of the measurements recorded, a note shall be made to that effect with reason and signed by both the Parties.
- iv. Authority shall not entertain any claim from the Contractor for any loss or damages on recording measurements. If the Contractor or his authorized representative does not remain present at the time of such measurements after the Contractor or his authorized representative has been given a notice in writing 3 (three) days in advance or fails to countersign or to record objection within a week from the date of the measurement, then such measurements recorded in his absence by the Engineer's Nominee or his representative shall be deemed to be accepted by the Contractor.
 - v. The Contractor shall, without extra charge, provide all assistance with every appliance, labour and other things necessary for taking measurements and recording.
 - vi. Except where any general or detailed description of the Work expressly shows to the contrary, measurements shall be taken in accordance with the procedure set forth in the specifications notwithstanding any provision in the relevant Standard Method of Measurement or any general or local custom. In the case of items which are not covered by Specifications, measurements shall be taken in accordance with the relevant Standard Method of Measurement issued by the Bureau of Indian Standards and if for any item no such standard is available, then a mutually agreed method shall be followed.
 - vii. The Contractor shall give not less than seven days' notice to the Engineer's Nominee or his authorized representative in charge of the Work before covering up or otherwise placing beyond the reach of measurement, any work in order that the same may be measured and correct dimensions thereof be taken before the same is covered up or placed beyond the reach of measurement and shall not cover up and place beyond reach of measurement any work without consent in writing of the Authority's Engineer or his authorized representative in charge of the Work who shall within the aforesaid period of seven days inspect the work, and if any work shall be covered up or placed beyond the reach of measurements without such notice having been given or the Authority's Engineer consent being obtained in writing, the same shall be uncovered at the Contractor's expense, or in default thereof, no payment or allowance shall be made for such work or the materials with which the same was executed.
 - viii. Authority's Engineer or his authorized representative may cause either themselves or through another officer of the department to check the measurements recorded jointly or otherwise as aforesaid and all provisions stipulated herein above shall be applicable to such checking of measurements or levels.
 - ix. It is also a term of this Contract that recording of measurements of any item of work in the measurement book and/or its payment in the interim, on account or final bill shall not be considered as conclusive evidence as to the sufficiency of any work or material to which it relates nor shall it relieve

the Contractor from liabilities from any over measurement or defects noticed till completion of the Defects Liability Period

17.5 Stage Payment for Works

- 17.5.1 Within 10 (ten) days of receipt of the Stage Payment Statement from the Contractor pursuant to Clause 17.4, the Authority's Engineer shall broadly determine the amount due to the Contractor and recommend the release of 90% (ninety per cent) of the amount so determined as part payment against the Stage Payment Statement, pending issue of the Interim Payment Certificate by the Authority's Engineer. Within 10 (ten) days of the receipt of recommendation of the Authority's Engineer, the Authority shall make an electronic payment thereof directly to the Contractor's bank account.
- 17.5.2 Within 15 (fifteen) days of the receipt of the Stage Payment Statement referred to in Clause 17.4, the Authority's Engineer shall determine and shall deliver to the Authority and the Contractor an IPC certifying the amount due and payable to the Contractor, after adjusting the payments already released to the Contractor against the said statement. For the avoidance of doubt, the Parties agree that the IPC shall specify all the amounts that have been deducted from the Stage Payment Statement and the reasons therefor.
- 17.5.3 In cases where there is a difference of opinion as to the value of any stage, the opinion of the Authority's Engineer shall prevail and interim payments shall be made to the Contractor on that basis; provided that the foregoing shall be without prejudice to the Contractor's right to raise a Dispute.
- 17.5.4 The Authority's Engineer may, for reasons to be recorded, withhold from payment:
- a) the estimated value of work or obligation that the Contractor has failed to perform in accordance with this Agreement and in respect of which the Authority's Engineer had notified the Contractor; and
 - b) the estimated cost of rectification of any Works which have not been constructed in accordance with this Agreement.
- 17.5.5 Payment by the Authority hereunder shall be deemed to be provisional and shall not be construed as the Authority's acceptance, approval, consent or satisfaction with the work done.
- 17.5.6 In the event the amounts released by the Authority under Clause 17.5.1 exceed the amount finally determined by the Authority's Engineer pursuant to Clauses 17.5.2 to 17.5.4, the difference thereof shall be accounted for in the next IPC.

17.6 Payment of Damages

- 17.6.1 The Contractor may claim Damages due and payable to it in accordance with the provisions of this Agreement.
- 17.6.2 The Authority's Engineer shall issue the IPC within 15 (fifteen) days of the receipt of the claim under Clause 17.6.1, after making adjustments in accordance with the

provisions of this Agreement. The Authority shall pay to the Contractor the amount due under such IPC within a period of 30 (thirty) days from the date of the submission of the claim under this Clause 17.6.

17.7 Time of payment and interest

17.7.1 The Authority shall pay to the Contractor any amount due under any payment certificate issued by the Authority's Engineer in accordance with the provisions of this Agreement as follows:

- a) Payment shall be made not later than 30 (thirty) days from the date of submission of the Stage Payment Statement by the Contractor to the Authority's Engineer for certification in accordance with the provisions of Clause 17.4 for an IPC; provided, however, that in the event the IPC is not issued by the Authority's Engineer within the aforesaid period of 30 (thirty) days, the Authority shall pay the amount shown in the Contractor's Stage Payment Statement and any discrepancy therein shall be adjusted in the next payment certificate; and
- b) payment shall be made not later than 30 (thirty) days from the date of submission of the Final Payment Certificate for Works along with the discharge submitted to the Authority's Engineer for certification in accordance with the provisions of Clause 17.12.

17.8 Price adjustment for Works

17.8.1 The amounts payable to the Contractor for Works shall be adjusted in accordance with the provisions of this Clause 17.8.

17.8.2 Subject to the provisions of Clause 17.8.3, the amounts payable to the Contractor for and in respect of Works shall be adjusted for any increase or decrease in the index cost of inputs, by the addition or subtraction of the amounts determined in accordance with the formulae specified in Clause 17.8.4.

17.8.3 To the extent that any compensation or reimbursement for increase or decrease in costs is not covered by the provisions of this Agreement, the costs and prices payable under this Agreement shall be deemed to include the contingency of such increase or decrease in costs.

17.8.4 The Contract Price shall be adjusted for increase or decrease in rates and prices of labour, cement, steel, fuel and lubricants in accordance with the principles, procedures and formulae specified below:

- a) Price adjustment shall be applied on completion of the specified stage of the respective item of work in accordance with Schedule-10;
- b) Adjustment for each item of work/stage shall be made separately.
- c) Price adjustment for change in costs shall be paid in accordance with the following formulae:
 - i) $VBR = 0.85 BR \times [PL \times (LI - LO)/LO + PF \times (FI - FO)/FO + PC \times (CI - CO)/CO + PS \times (SI - SO)/SO]$;

Where

VBR = Increase or decrease in the cost of Major Bridges and Structures .during the period under consideration due to changes in the rates for relevant components

PC, PL, PS and PF are the percentages of cement, labour, steel/components (including strands and cables),fuel and lubricants respectively for the relevant item as below;

PC- 0.05

PL- 0.20

PS- 0.15

PF- 0.10

PF is the percentage of fuel and lubricants for the relevant items for which a factor of 0.10 shall be considered;

CO = The WPI for cement for the month of the Base Date;

CI = The WPI for cement for the month which is three months prior to the month to which the IPC relates;

FO = The official retail price of high speed diesel (HSD) oil at the existing consumer pumps of Indian Oil Corporation (“IOC”) in the State of [Haryana] on the Base Date;

FI = The official retail price of HSD at the existing consumer pumps of IOC in the State of [Haryana] on the first day of the month which is three months prior to the month to which the IPC relates;

LO = The consumer price index for industrial workers for the [circle **** in the State of Haryana], published by Labour Bureau, Ministry of Labour, Government of India, (hereinafter called “CPI”) for the month of the Base Date;

LI = The CPI for the month which is three months prior to the month to which the IPC relates;

SO = The WPI for steel (rods) for the month of the Base Date; and

SI = The WPI for steel (rods) for the month which is three months prior to the month to which the IPC relates.

17.9 Restrictions on price adjustment

Price adjustment shall be due and payable only in respect of the stages of Works for which the Stage Payment Statement has been submitted by the Contractor not later than 30 (thirty) days from the date of the applicable Project Milestone or the Scheduled Completion Date, as the case may be, including any Time Extension granted therefor in accordance with the provisions of this Agreement. For the avoidance of doubt, in the event of submission of any Stage Payment Statement after the period specified herein, price adjustment shall be applicable only until the date of the

respective Project Milestone or the Scheduled Completion Date, as the case may be.

17.10 Final Payment Statement

17.10.1 Within 60 (sixty) days of receiving the Completion Certificate under Clause 12.4, the Contractor shall submit to the Authority's Engineer six copies of a final payment statement (the "Final Payment Statement"), with supporting documents, in the form prescribed by the Authority's Engineer in respect of:

- a) the summary of Contractor's Stage Payment Statements for Works as submitted in accordance with Clause 17.4;
- b) the amounts received from the Authority against each claim; and
- c) any further sums which the Contractor considers due to it from the Authority.

17.10.2 If the Authority's Engineer disagrees with or cannot verify any part of the Final Payment Statement, the Contractor shall submit such further information as the Authority's Engineer may reasonably require.

17.10.3 The Authority's Engineer shall deliver to the Authority:

- a) an IPC for those parts of the Final Payment Statement which are not in dispute, along with a list of disputed items which shall then be settled in accordance with the provisions of Article 24; or
- b) a Final Payment Certificate in accordance with Clause 17.15, if there are no disputed items.

17.10.4 The Authority's Engineer does not prescribe the form referred to in Clause 17.10.1 within 15 (fifteen) days of the date of issue of the Completion Certificate, the Contractor shall submit the statement in such form as it deems fit.

17.11 Discharge

Upon submission of the Final Payment Statement under Clause 17.10, the Contractor shall give to the Authority, with a copy to the Authority's Engineer, a written discharge confirming that the total of the Final Payment Statement represents full and final settlement of all monies due to the Contractor in respect of this Agreement for all the Works arising out of this Agreement, except for any monies due to either Party on account of any Defect. Provided that such discharge shall become effective only after the payment due has been made in accordance with the Final Payment Certificate issued pursuant to Clause 17.12.

17.12 Final Payment Certificate

17.12.1 Within 30 (thirty) days after receipt of the Final Payment Statement under Clause 17.10, and the written discharge under Clause 17.11, and there being no disputed items of claim, the Authority's Engineer shall deliver to the Authority with a copy to the Contractor, a final payment certificate (the "Final Payment Certificate") stating the amount which, in the opinion of the Authority's Engineer, is finally due under this Agreement or otherwise. For the avoidance of doubt,

before issuing the Final Payment Certificate, the Authority's Engineer shall ascertain from the Authority all amounts previously paid by the Authority, all sums due to the Authority, and the balance, if any, due from the Authority to the Contractor or from the Contractor to the Authority, as the case may be.

17.12.2 The Authority shall, in accordance with the provisions of Clause 17.7, pay to the Contractor the amount which is specified as being finally due in the Final Payment Certificate.

17.13 Change in law

17.13.1 If as a result of Change in Law, the Contractor suffers any additional costs in the execution of the Works or in relation to the performance of its other obligations under this Contract / Agreement, the Contractor shall, within 15 (fifteen) days from the date it becomes reasonably aware of such addition in costs, notify the Authority with a copy to the Authority's Engineer of such additional costs due to Change in Law.

17.13.2 If as a result of Change in Law, the Contractor benefits from any reduction in costs for the execution of this Agreement or in accordance with the provisions of this Agreement, either Party shall, within 15 (fifteen) days from the date it becomes reasonably aware of such reduction in costs, notify the other Party with a copy to the Authority's Engineer of such reduction in costs due to Change in Law.

17.13.3 The Authority's Engineer shall, within 15 (fifteen) days from the date of receipt of notice from the Contractor or the Authority, as the case may be, determine any addition or reduction to the Contract Price, as the case may be, due to the Change in Law.

17.14 Correction of Interim Payment Certificates

The Authority's Engineer may by an Interim Payment Certificate make any correction or modification in any previous Interim Payment Certificate issued by the Authority's Engineer.

17.15 Authority's claims

If the Authority considers itself to be entitled to any payment from the Contractor under any Clause of this Agreement, it shall give notice and particulars to the Contractor 20 (twenty) days before making the recovery from any amount due to the Contractor, and shall take into consideration the representation, if any, made by the Contractor in this behalf, before making such recovery.

17.16 Bonus for early completion

In the event that the Project Completion Date occurs prior to the Scheduled Completion Date, the Contractor shall be entitled to receive a payment of bonus equivalent to 0.03% (zero point zero three per cent) of the Contract Price for each day by which the Project Completion Date precedes the Scheduled Completion Date, but subject to a maximum of 3% (three per cent) of the Contract Price. Provided, however, that the payment of bonus, if any, shall be

made only after the issue of the Completion Certificate. For the avoidance of doubt, the Parties agree that for the purpose of determining the bonus payable hereunder, the Contract Price shall always be deemed to be the amount specified in Clause 17.1.1 and shall exclude any revision there off or any reason.

ARTICLE 18 INSURANCE

18.1 Insurance for Works

- 18.1.1 The Contractor shall effect and maintain at its own cost the insurances specified in Schedule-17 and as per the requirements under Applicable Laws.
- 18.1.2 Subject to the provisions of Clause 19.6, the Contractor shall, in accordance with the provisions of this Agreement, be liable to bear the cost of any loss or damage that does not fall within the scope of this Article 18 or cannot be recovered from the insurers.
- 18.1.3 Save and except as provided in Clause 18.1.4, the Contractor shall fully indemnify, hold harmless and defend the Authority from and against any and all losses, damages, costs, charges and/or claims with respect to:
- a) the death of or injury to any person; or
 - b) the loss of or damage to any property,
- 18.1.4 that may arise out of or in consequence of any breach by the Contractor of this Agreement during the execution of the Works or the remedying of any Defects therein.
- 18.1.5 Notwithstanding anything in Clause 18.1.3, the Authority shall fully indemnify the Contractor from and against any and all losses, damages, costs, charges, proceedings and/or claims arising out of or with respect to
- a) the use or occupation of land or any part thereof by the Authority;
 - b) the damage to property which is the unavoidable result of the execution and completion of the Works, or the remedying of any Defects therein, in accordance with this Agreement; and
 - c) the death of or injury to persons or loss of or damage to property resulting from any act or neglect of the Authority, its agents, servants or other contractors, not being employed by the Contractor.
- Provided, however, that in the event of any injury or damage as a result of the contributory negligence of the Contractor, the Authority shall not be liable to indemnify the Contractor from and against any and all losses, damages, costs, charges, proceedings and/or claims to the extent as proportionate to the liability of the Authority, its servants or agents or other contractors not associated with the Contractor in such injury or damage.
- 18.1.6 Without prejudice to the provisions of Clauses 18.1.3 and 18.1.4, the Contractor shall maintain or affect such third party insurances as may be required under Applicable Laws.
- 18.1.7 The Contractor shall provide to the Authority, within 30 days from the date of LoA, evidence of professional liability insurance maintained by its Design Director and/or consultants to cover the risk of professional negligence in the design of Works. The professional liability cover shall be for a sum of not

less than 3% (three per cent) of the Contract Price and shall be maintained until the end of the Defects Liability Period.

18.1.8 Professional Indemnity Insurance

Professional Indemnity Insurance with a minimum coverage equal to value of contract price shall be submitted by the Consultant within 30 days of LoA and before signing of the Agreement. Professional Indemnity Insurance shall cover the claim arising out of losses and/or damages during the period of insurance first made in writing against the insured during the policy period and insures shall be indemnified in accordance with Operation Clause for any breach of Professional duty by reason of any neglect act, error or omission, whenever and wherever committed or alleged to have been committed during period of insurance and the deliberate non-compliance with technical standards commonly observed in professional practice laid down by law, or regulated by official bodies. The insurance shall be effective till the completion of 5 (five) years after issue of Taking Over Certificate by the Authority

18.2 Notice to the Authority

Not later than 15 (fifteen) days after the date of LoA, the Contractor shall by notice furnish to the Authority, in reasonable detail, information in respect of the insurances that it proposes to effect and maintain in accordance with this Article 18. Within 15 (fifteen) days of receipt of such notice, the Authority may require the Contractor to effect and maintain such other insurances as may be necessary pursuant hereto, and in the event of any difference or disagreement relating to any such insurance, the Dispute Resolution Procedure shall apply.

18.3 Evidence of Insurance Cover

18.3.1 All insurances obtained by the Contractor in accordance with this Article 18 shall be maintained with insurers on terms consistent with Good Industry Practice. Within 10 (ten) days from the Appointed Date, the Contractor shall furnish to the Authority notarised true copies of the certificate(s) of insurance, copies of insurance policies and premia payment receipts in respect of such insurance, and no such insurance shall be cancelled, modified, or allowed to expire or lapse until the expiration of at least 45 (forty-five) days after notice of such proposed cancellation, modification or non-renewal has been delivered by the Contractor to the Authority.

18.3.2 The Contractor shall procure and ensure the adequacy of the insurances at all times in accordance with the provisions of this Agreement.

18.4 Remedy for failure to insure

If the Contractor shall fail to effect and keep in force all insurances for which it is responsible pursuant hereto, the Authority shall have the option to either keep in force any such insurances, and pay such premia and recover the costs thereof from the Contractor, or in the event of computation of a Termination Payment, treat an amount equal to the Insurance Cover as deemed to have been received by the Contractor.

18.5 Waiver of subrogation

All insurance policies in respect of the insurance obtained by the Contractor pursuant to this Article 18 shall include a waiver of any and all rights of subrogation or recovery of the insurers thereunder against, inter alia, the Authority, and its assigns, successors, undertakings and their subsidiaries, Affiliates, employees, insurers and underwriters, and of any right of the insurers to any set-off or counterclaim or any other deduction, whether by attachment or otherwise, in respect of any liability of any such person insured under any such policy or in any way connected with any loss, liability or obligation covered by such policies of insurance.

18.6 Contractor's waiver

The Contractor hereby further releases, assigns and waives any and all rights of subrogation or recovery against, inter alia, the Authority and its assigns, undertakings and their subsidiaries, Affiliates, employees, successors, insurers and underwriters, which the Contractor may otherwise have or acquire in or from or in any way connected with any loss, liability or obligation covered by policies of insurance maintained or required to be maintained by the Contractor pursuant to this Agreement (other than third party liability insurance policies) or because of deductible clauses in or inadequacy of limits of any such policies of insurance.

18.7 Cross liabilities

Any such insurance maintained or effected in pursuance of this Article 18 shall include a cross liability clause such that the insurance shall apply to the Contractor and to the Authority as separately insured.

18.8 Accident or injury to workmen

Notwithstanding anything contained in this Agreement, it is hereby expressly agreed between the Parties that the Authority shall not be liable for or in respect of any damages or compensation payable to any workman or other person in the employment of the Contractor or Sub-contractor, save and except as for death or injury resulting from any act, omission or default of the Authority, its agents or servants. The Contractor shall indemnify and keep indemnified the Authority from and against all such claims, proceedings, damages, costs, charges, and expenses whatsoever in respect of the above save and except for those acts, omissions or defaults for which the Authority shall be liable.

18.9 Insurance against accident to workmen

The Contractor shall effect and maintain during the Agreement such insurances as may be required to insure the Contractor's personnel and any other persons employed by it on the Project from and against any liability incurred in pursuance of this Article 18 Provided that for the purposes of this Clause 18.9, the Contractor's personnel/any person employed by the Contractor shall include the Sub-contractor and its personnel. Provided further that in respect of any persons employed by any Sub-contractor, the Contractor's obligations to insure as aforesaid under this Clause 18.9 shall be discharged if the Sub-contractor shall have insured against any liability in

respect of such persons in such manner that the Authority is indemnified under the policy. The Contractor shall require such Sub-contractor to produce before the Authority, when required, such policy of insurance and the receipt for payment of the current premium within 10 (ten) days of such demand being made by the Authority.

18.10 Application of insurance proceeds

The proceeds from all insurance claims, except for life and injury, shall be applied for any necessary repair, reconstruction, reinstatement, replacement, improvement, delivery or installation of the Project and the provisions of this Agreement in respect of construction of Works shall apply *mutatis mutandis* to the Works undertaken out of the proceeds of insurance.

18.11 Compliance with policy conditions

The Contractor hereby expressly agrees to fully indemnify the Authority from and against all losses and claims arising from the Contractor's failure to comply with conditions imposed by the insurance policies effected in accordance with this Agreement.

Part V

Force Majeure and Termination

ARTICLE 19 FORCE MAJEURE

19.1 Force Majeure

As used in this Agreement, the expression “**Force Majeure**” or “**Force Majeure Event**” shall mean occurrence in India of any or all of Non-Political Event, Indirect Political Event and Political Event, as defined in Clauses 19.2, 19.3 and 19.4 respectively, if it affects the performance by the Party claiming the benefit of Force Majeure (the “**Affected Party**”) of its obligations under this Agreement and which act or event (a) is beyond the reasonable control of the Affected Party, and (b) the Affected Party could not have prevented or overcome by exercise of due diligence and following Good Industry Practice, and (c) has Material Adverse Effect on the Affected Party.

19.2 Non-Political Event

A Non-Political Event shall mean one or more of the following acts or events:

- a) act of God, epidemic, extremely adverse weather conditions, lightning, earthquake, landslide, cyclone, flood, volcanic eruption, chemical or radioactive contamination or ionizing radiation, fire or explosion (to the extent of contamination or radiation or fire or explosion originating from a source external to the Site);
- b) strikes or boycotts (other than those involving the Contractor, Subcontractors or their respective employees/representatives, or attributable to any act or omission of any of them) interrupting supplies and services to the Project for a continuous period of 24 (twenty-four) hours and an aggregate period exceeding 10 (ten) days in an Accounting Year, and not being an Indirect Political Event set forth in Clause 19.3;
- c) any failure or delay of a Sub-contractor but only to the extent caused by another Non-Political Event;
- d) any judgment or order of any court of competent jurisdiction or statutory authority made against the Contractor in any proceedings for reasons other than (i) failure of the Contractor to comply with any Applicable Law or Applicable Permit, or (ii) on account of breach of any Applicable Law or Applicable Permit or of any contract, or (iii) enforcement of this Agreement, or (iv) exercise of any of its rights under this Agreement by the Authority; or (v) breach of its obligations by the Contractor under its sub-contracts;
- e) the discovery of geological conditions, toxic contamination or archaeological remains on the Site that could not reasonably have been expected to be discovered through a site inspection; or
- f) any event or circumstances of a nature analogous to any of the foregoing.

19.3 Indirect Political Event

An Indirect Political Event shall mean one or more of the following acts or events:

- a) an act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo, riot, insurrection, terrorist or military action, civil commotion or politically motivated sabotage;
- b) industry-wide or State-wide strikes or industrial action for a continuous period of 24 (twenty-four) hours and exceeding an aggregate period of 10 (ten) days in an Accounting Year;
- c) any civil commotion, boycott or political agitation which prevents construction of the Project by the Contractor for an aggregate period exceeding 10 (ten) days in an Accounting Year;
- d) failure of the Authority to permit the Contractor to continue with its Construction Works, with or without modifications, in the event of stoppage of such work after discovery of any geological or archaeological finds;
- e) any failure or delay of a Sub-contractor to the extent caused by any Indirect Political Event;
- f) any Indirect Political Event that causes a Non-Political Event; or
- g) any event or circumstances of a nature analogous to any of the foregoing.

19.4 Political Event

A Political Event shall mean one or more of the following acts or events by or on account of any Government Instrumentality:

- a) Change in Law, only if consequences thereof cannot be dealt with under and in accordance with the provisions of Clause 17.13;
- b) compulsory acquisition in national interest or expropriation of any Project Assets or rights of the Contractor or of the Sub-contractors;
- c) unlawful or unauthorized or without jurisdiction revocation of, or refusal to renew or grant without valid cause, any clearance, license, permit, authorization, no objection certificate, consent, approval or exemption required by the Contractor or any of the Sub-contractors to perform their respective obligations under this Agreement; provided that such delay, modification, denial, refusal or revocation did not result from the Contractor's or any Sub-contractor's inability or failure to comply with any condition relating to grant, maintenance or renewal of such clearance, license, authorization, no objection certificate, exemption, consent, approval or permit;
- d) any failure or delay of a Sub-contractor but only to the extent caused by another Political Event; or
- e) any event or circumstances of a nature analogous to any of the foregoing.

19.5 Duty to report Force Majeure Event

19.5.1 Upon occurrence of a Force Majeure Event, the Affected Party shall by notice report such occurrence to the other Party forthwith. Any notice pursuant hereto shall include full particulars of:

- a) the nature and extent of each Force Majeure Event which is the subject of any

- claim for relief under this Article 19 with evidence in support thereof;
- b) the estimated duration and the effect or probable effect which such Force Majeure Event is having or will have on the Affected Party's performance of its obligations under this Agreement;
 - c) the measures which the Affected Party is taking or proposes to take for alleviating the impact of such Force Majeure Event; and
 - d) any other information relevant to the Affected Party's claim.
- 19.5.2 The Affected Party shall not be entitled to any relief for or in respect of a Force Majeure Event unless it shall have notified the other Party of the occurrence of the Force Majeure Event as soon as reasonably practicable, and in any event no later than 10 (ten) days after the Affected Party knew, or ought reasonably to have known, of its occurrence, and shall have given particulars of the probable material effect that the Force Majeure Event is likely to have on the performance of its obligations under this Agreement.
- 19.5.3 For so long as the Affected Party continues to claim to be affected by such Force Majeure Event, it shall provide the other Party with regular (and not less than weekly) reports containing information as required by Clause 19.5.1, and such other information as the other Party may reasonably request the Affected Party to provide.

19.6 Effect of Force Majeure Event on the Agreement

- 19.6.1 Upon the occurrence of any Force Majeure
- a) prior to the Appointed Date, both Parties shall bear their respective Force Majeure costs.
 - b) after the Appointed Date, the costs incurred and attributable to such event and directly relating to this Agreement (the "**Force Majeure costs**") shall be allocated and paid as follows:
 - i. upon occurrence of a Non-Political Event, the Parties shall bear their respective Force Majeure costs and neither Party shall be required to pay to the other Party any costs thereof;
 - ii. upon occurrence of an Indirect Political Event, all Force Majeure costs attributable to such Indirect Political Event, and not exceeding the Insurance Cover for such Indirect Political Event, shall be borne by the Contractor, and to the extent Force Majeure costs exceed such Insurance Cover, one half of such excess amount shall be reimbursed by the Authority to the Contractor for the Force Majeure events; and
 - iii. Upon occurrence of a Political Event, all Force Majeure costs attributable to such Political Event shall be reimbursed by the Authority to the Contractor.

For the avoidance of doubt, Force Majeure costs may include costs directly attributable to the Force Majeure Event, but shall not include debt repayment obligations, if any, of the Contractor.

- 19.6.2 Save and except as expressly provided in this Article 19, neither Party shall be liable in any manner whatsoever to the other Party in respect of any loss, damage, cost, expense, claims, demands and proceedings relating to or arising out of occurrence or existence of any Force Majeure Event or exercise of any right pursuant hereto.
- 19.6.3 Upon the occurrence of any Force Majeure Event during the Construction Period, the Project Completion Schedule for and in respect of the affected Works shall be extended on a day for day basis for such period as performance of the Contractor's obligations is affected on account of the Force Majeure Event or its subsisting effects, as may be determined by the Authority's Engineer.
- 19.6.4 Force Majeure costs for any event which results in any offsetting compensation being payable to the Contractor by or on behalf of its Sub-contractors shall be reduced by such amounts that are payable to the Contractor by its Sub-contractors.

19.7 Termination Notice for Force Majeure Event

If a Force Majeure Event subsists for a period of 60 (sixty) days or more within a continuous period of 120 (one hundred and twenty) days, either Party may in its discretion terminate this Agreement by issuing a Termination Notice to the other Party without being liable in any manner whatsoever, save as provided in this Article 19, and upon issue of such Termination Notice, this Agreement shall, notwithstanding anything to the contrary contained herein, stand terminated forthwith; provided that before issuing such Termination Notice, the Party intending to issue the Termination Notice shall inform the other Party of such intention and grant 15 (fifteen) day's time to make a representation, and may after the expiry of such 15 (fifteen) days period, whether or not it is in receipt of such representation, in its sole discretion issue the Termination Notice.

19.8 Termination Payment for Force Majeure Event

- 19.8.1 In the event of this Agreement being terminated on account of a Non-Political Event, the Termination Payment shall be an amount equal to the sum payable under Clause 21.5.
- 19.8.2 If Termination is on account of an Indirect Political Event, the Termination Payment shall include:
- a) any sums due and payable under Clause 21.5; and
 - b) the reasonable cost, as determined by the Authority's Engineer, of the Plant and Materials procured by the Contractor and transferred to the Authority for use in Construction, only if such Plant and Materials are in conformity with the Specifications and Standards;
- 19.8.3 If Termination is on account of a Political Event, the Authority shall make a Termination Payment to the Contractor in an amount that would be payable under Clause 21.6.2 as if it were an Authority Default.

19.9 Dispute resolution

In the event that the Parties are unable to agree in good faith about the occurrence or existence of a Force Majeure Event, such Dispute shall be finally settled in accordance with the Dispute Resolution Procedure; provided that the burden of proof as to the occurrence or existence of such Force Majeure Event shall be upon the Party claiming relief and/or excuse on account of such Force Majeure Event.

19.10 Excuse from performance of obligations

If the Affected Party is rendered wholly or partially unable to perform its obligations under this Agreement because of a Force Majeure Event, it shall be excused from performance of such of its obligations to the extent it is unable to perform on account of such Force Majeure Event; provided that:

- (a) the suspension of performance shall be of no greater scope and of no longer duration than is reasonably required by the Force Majeure Event;
- (b) the Affected Party shall make all reasonable efforts to mitigate or limit damage to the other Party arising out of or as a result of the existence or occurrence of such Force Majeure Event and to cure the same with due diligence; and
- (c) when the Affected Party is able to resume performance of its obligations under this Agreement, it shall give to the other Party notice to that effect and shall promptly resume performance of its obligations hereunder.

ARTICLE 20 SUSPENSION OF CONTRACTOR'S RIGHTS

20.1 Suspension upon Contractor Default

Upon occurrence of a Contractor Default, the Authority shall be entitled, without prejudice to its other rights and remedies under this Agreement including its rights of Termination hereunder, to (a) suspend carrying out of the Works or any part thereof, and (b) carry out such Works itself or authorise any other person to exercise or perform the same on its behalf during such suspension (the "**Suspension**"). Suspension hereunder shall be effective forthwith upon issue of notice by the Authority to the Contractor and may extend up to a period not exceeding 90 (ninety) days from the date of issue of such notice.

20.2 Authority to act on behalf of Contractor

During the period of Suspension hereunder, all rights and liabilities vested in the Contractor in accordance with the provisions of this Agreement shall continue to vest in the Contractor and all things done or actions taken, including expenditure incurred by the Authority for discharging the obligations of the Contractor under and in accordance with this Agreement shall be deemed to have been done or taken for and on behalf of the Contractor and the Contractor undertakes to indemnify the Authority for all costs incurred during such period. The Contractor hereby licences and sub-licences respectively, the Authority or any other person authorised by it under Clause 20.1 to use during Suspension, all Intellectual Property belonging to or licenced to the Contractor with respect to the Project and its design, engineering, construction, and which is used or created by the Contractor in performing its obligations under the Agreement.

20.3 Revocation of Suspension

20.3.1 In the event that the Authority shall have rectified or removed the cause of Suspension within a period not exceeding 60 (sixty) days from the date of Suspension, it shall revoke the Suspension forthwith and restore all rights of the Contractor under this Agreement. For the avoidance of doubt, the Parties expressly agree that the Authority may, in its discretion, revoke the Suspension at any time, whether or not the cause of Suspension has been rectified or removed hereunder.

20.3.2 Upon the Contractor having cured the Contractor Default within a period not exceeding 60 (sixty) days from the date of Suspension, the Authority shall revoke the Suspension forthwith and restore all rights of the Contractor under this Agreement.

20.4 Termination

20.4.1 At any time during the period of Suspension under this Article 20, the Contractor may by notice require the Authority to revoke the Suspension and issue a Termination Notice. The Authority shall, within 15 (fifteen) days of receipt of such

notice, terminate this Agreement under and in accordance with Article 21 as if it is a Contractor Default under Clause 21.1.

20.4.2 Notwithstanding anything to the contrary contained in this Agreement, in the event that Suspension is not revoked within 90 (ninety) days from the date of Suspension hereunder, the Agreement shall, upon expiry of the aforesaid period, be deemed to have been terminated by mutual agreement of the Parties and all the provisions of this Agreement shall apply, *mutatis mutandis*, to such Termination as if a Termination Notice had been issued by the Authority upon occurrence of a Contractor Default.

ARTICLE 21 TERMINATION

21.1 Termination for Contractor Default

21.1.1 Save as otherwise provided in this Agreement, in the event that any of the defaults specified below shall have occurred, and the Contractor fails to cure the default within the Cure Period set forth below, or where no Cure Period is specified, then within a Cure Period of 60 (sixty) days, the Contractor shall be deemed to be in default of this Agreement (the “Contractor Default”), unless the default has occurred as a result of any breach of this Agreement by the Authority or due to Force Majeure. The defaults referred to herein shall include the following:

- (a) The Contractor fails to provide, extend or replenish, as the case may be, the Performance Security in accordance with this Agreement;
- (b) subsequent to the replenishment or furnishing of fresh Performance Security in accordance with Clause 7.3, the Contractor fails to cure, within a Cure Period of 30 (thirty) days, the Contractor Default for which the whole or part of the Performance Security was appropriated;
- (c) the Contractor does not achieve the latest outstanding Project Milestone due in accordance with the provisions of Schedule-I, subject to any Time Extension, and continues to be in default for 45 (forty five) days;
- (d) the Contractor abandons or manifests intention to abandon the construction of the Project without the prior written consent of the Authority;
- (e) the Contractor fails to proceed with the Works in accordance with the provisions of Clause 10.1 or stops Works for 30 (thirty) days without reflecting the same in the current programme and such stoppage has not been authorized by the Authority’s Engineer;
- (f) the Project Completion Date does not occur within the period specified in Schedule-12 for the Scheduled Completion Date, or any extension thereof;
- (g) failure to complete the Punch List items within the periods stipulated therefor in Clause 12.3;
- (h) the Contractor fails to rectify any Defect, the non-rectification of which shall have a Material Adverse Effect on the Project, within the time specified in this Agreement or as directed by the Authority’s Engineer;
- (i) the Contractor subcontracts the Works or any part thereof in violation of this Agreement or assigns any part of the Works without the prior approval of the Authority;
- (j) the Contractor creates any Encumbrance in breach of this Agreement;
- (k) an execution levied on any of the assets of the Contractor has caused a Material Adverse Effect;
- (l) the Contractor is adjudged bankrupt or insolvent, or if a trustee or receiver is appointed for the Contractor or for the whole or material part of its assets that has a material bearing on the Project;
- (m) the Contractor has been, or is in the process of being liquidated, dissolved, wound-up, amalgamated or reconstituted in a manner that would cause, in the reasonable opinion of the Authority, a Material Adverse Effect;
- (n) a resolution for winding up of the Contractor is passed, or any petition for winding up of the Contractor is admitted by a court of competent jurisdiction

and a provisional liquidator or receiver is appointed and such order has not been set aside within 90 (ninety) days of the date thereof or the Contractor is ordered to be wound up by a court except for the purpose of amalgamation or reconstruction; provided that, as part of such amalgamation or reconstruction, the entire property, assets and undertaking of the Contractor are transferred to the amalgamated or reconstructed entity and that the amalgamated or reconstructed entity has unconditionally assumed the obligations of the Contractor under this Agreement; and provided that:

- (i) the amalgamated or reconstructed entity has the capability and experience necessary for the performance of its obligations under this Agreement; and
- (ii) the amalgamated or reconstructed entity has the financial standing to perform its obligations under this Agreement and has a credit worthiness at least as good as that of the Contractor as at the Appointed Date;
- (o) any representation or warranty of the Contractor herein contained which is, as of the date hereof, found to be materially false or the Contractor is at any time hereafter found to be in breach thereof;
- (p) the Contractor submits to the Authority any statement, notice or other document, in written or electronic form, which has a material effect on the Authority's rights, obligations or interests and which is false in material particulars;
- (q) the Contractor has failed to fulfill any obligation, for which failure Termination has been specified in this Agreement; or
- (r) the Contractor has failed to make any payment to the Authority within the period specified in this Agreement;
- (s) the Concessionaire issues a Termination Notice in violation of this Agreement; or
- (t) the Contractor commits a default in complying with any other provision of this Agreement if such a default causes a Material Adverse Effect on the Project or on the Authority.

21.1.2 Without prejudice to any other rights or remedies which the Authority may have under this Agreement, upon occurrence of a Contractor Default, the Authority shall be entitled to terminate this Agreement by issuing a Termination Notice to the Contractor; provided that before issuing the Termination Notice, the Authority shall by a notice inform the Contractor of its intention to issue such Termination Notice and grant 15 (fifteen) days to the Contractor to make a representation, and may after the expiry of such 15 (fifteen) days, whether or not it is in receipt of such representation, issue the Termination Notice.

21.1.3 After termination of this Agreement for Contractor Default, the Authority may complete the Works and/or procure its completion through any other entity. The Authority and such entity may, for this purpose, use any Materials, Plant and equipment, Contractor's documents and other design documents made by or on behalf of the Contractor.

21.2 Termination for Authority Default

21.2.1 In the event that any of the defaults specified below shall have occurred, and the Authority fails to cure such default within a Cure Period of 90 (ninety) days or such longer period as has been expressly provided in this Agreement, the Authority shall be deemed to be in default of this Agreement (the “Authority Default”) unless the default has occurred as a result of any breach of this Agreement by the Contractor or due to Force Majeure. The defaults referred to herein shall include the following:

- a) The Authority commits a material default in complying with any of the provisions of this Agreement and such default has a Material Adverse Effect on the Contractor;
- b) the Authority has failed to make payment of any amount due and payable to the Contractor within the period specified in this Agreement;
- c) the Authority has failed to provide, within a period of 180 (one hundred and eighty) days from the Appointed Date, the environmental clearances and project clearances required for construction of the Project;
- d) the Authority repudiates this Agreement or otherwise takes any action that amounts to or manifests an irrevocable intention not to be bound by this Agreement; or
- e) the Authority’s Engineer fails to issue the relevant Interim Payment Certificate within 60 (sixty) days after receiving a statement and supporting documents.

21.2.2 Without prejudice to any other right or remedy which the Contractor may have under this Agreement, upon occurrence of an Authority Default, the Contractor shall be entitled to terminate this Agreement by issuing a Termination Notice to the Authority; provided that before issuing the Termination Notice, the Contractor shall by a notice inform the Authority of its intention to issue the Termination Notice and grant 15 (fifteen) days to the Authority to make a representation, and may after the expiry of such 15 (fifteen) days, whether or not it is in receipt of such representation, issue the Termination Notice.

21.3 Termination for Authority’s convenience

Notwithstanding anything hereinabove, the Authority may terminate this Agreement for its own convenience. The termination shall take effect 30 (thirty) days from the date of notice hereunder and shall be deemed to be termination on account of Authority Default.

21.4 Requirements after Termination

Upon Termination of this Agreement in accordance with the provisions of this Article 21, the Contractor shall comply with and conform to the following:

- a) deliver to the Authority all Plant and Materials which shall have become the property of the Authority under this Article 21;
- b) deliver all relevant records, reports, Intellectual Property and other licenses pertaining to the Works, other design documents and in case of Termination occurring after the Provisional Certificate has been issued, the “as built”

Drawings for the Works;

- c) transfer and/or deliver all Applicable Permits to the Authority to the extent permissible under Applicable Laws; and
- d) vacate the Site within 15 (fifteen) days.

21.5 Valuation of Unpaid Works

21.5.1 Within a period of 45 (forty-five) days after Termination under Clause 21.1, 21.2 or 21.3, as the case may be, has taken effect, the Authority's Engineer shall proceed in accordance with Clause 16.5 to determine as follows the valuation of unpaid Works (the "Valuation of Unpaid Works"):

- a) value of the completed stage of the Works, less payments already made;
and
- b) reasonable value of the partially completed stages of works as on the date of Termination, only if such works conform with the Specifications and Standards.

and shall adjust from the sum thereof (i) any other amounts payable or recoverable, as the case may be, in accordance with the provisions of this Agreement; and (ii) all taxes due to be deducted at source.

21.5.2 The Valuation of Unpaid Works shall be communicated to the Authority, with a copy to the Contractor, within a period of 45 (forty five) days from the date of Termination.

21.6 Termination Payment

21.6.1 Upon Termination on account of Contractor Default under Clause 21.1, the Authority shall:

- a) encash and appropriate the Performance Security or Retention Money, whichever is more, and in the event the Contractor has failed to replenish or extend the Performance Security, claim the amount stipulated in Clause 7.1.1, as agreed pre-determined Damages, if any;
- b) encash and appropriate the bank guarantee, if any, to the extent of the outstanding Advance Payment and interest thereon; and
- c) pay to the Contractor, by way of Termination Payment, an amount equivalent to the Valuation of Unpaid Works after adjusting any other sums payable or recoverable, as the case may be, in accordance with the provisions of this Agreement, and shall adjust from the sum thereof (i) any other amounts payable or recoverable, as the case may be, in accordance with the provisions of this Agreement, and (ii) all taxes due to be deducted at source.

21.6.2 Upon Termination on account of an Authority Default under Clause 21.2 or for Authority's convenience under Clause 21.3, the Authority shall:

- a) return the Performance Security and Retention Money forthwith;
- b) encash and appropriate the bank guarantee, if any, to the extent of the outstanding Advance Payment, including interest thereon; and

- c) pay to the Contractor, by way of Termination Payment, an amount equal to:
 - (i) Valuation of Unpaid Works;
 - (ii) the reasonable cost, as determined by the Authority's Engineer, of the Plant and Materials procured by the Contractor and transferred to the Authority for its use, only if such Plant and Materials are in conformity with the Specifications and Standards;
 - (iii) the reasonable cost of temporary works, as determined by the Authority's Engineer; and
 - (iv) 10% (ten per cent) of the cost of the Works that are not commenced or not completed,

and shall adjust from the sum thereof (i) any other amounts payable or recoverable, as the case may be, in accordance with the provisions of this Agreement, and (ii) all taxes due to be deducted at source.

21.6.3 Termination Payment shall become due and payable to the Contractor within 30 (thirty) days of a demand being made by the Contractor to the Authority with the necessary particulars, after the Valuation of Unpaid Works has been communicated by the Authority's Engineer, and in the event of any delay, the Authority shall pay interest at the Bank Rate plus 3% (three percent), calculated at quarterly rests, on the amount of Termination Payment remaining unpaid; provided that such delay shall not exceed 90 (ninety) days. For the avoidance of doubt, it is expressly agreed that Termination Payment shall constitute full discharge by the Authority of its payment obligations in respect thereof hereunder.

21.6.4 The Contractor expressly agrees that Termination Payment under this Article 21 shall constitute a full and final settlement of all claims of the Contractor on account of Termination of this Agreement and that it shall not have any further right or claim under any law, treaty, convention, contract or otherwise.

21.7 Other rights and obligations of the Parties

Upon Termination for any reason whatsoever

- a) the property and ownership in all Materials, Plant and Works and the Project shall, as between the Contractor and the Authority, vest in the Authority in whole, free from any and all Encumbrances; provided that the foregoing shall be without prejudice to Clause 21.6;
- b) the risk of loss or damage to any Materials, Plant or Works and the care and custody thereof shall pass from the Contractor to the Authority; and
- c) the Authority shall be entitled to restrain the Contractor and any person claiming through or under the Agreement from entering upon the Site or any part of the Project except for taking possession of materials, stores, implements, construction plants and equipment of the Contractor, which have not been vested in the Authority in accordance with the provisions of this Agreement.

21.8 Survival of rights

Notwithstanding anything to the contrary contained in this Agreement any Termination pursuant to the provisions of this Agreement shall be without prejudice to the accrued rights of either Party including its right to claim and recover money damages, insurance proceeds, security deposits, and other rights and remedies, which it may have in law or Agreement. All rights and obligations of either Party under this Agreement, including Termination Payments, shall survive the Termination to the extent such survival is necessary for giving effect to such rights and obligations.

PART VI

OTHER PROVISIONS

ARTICLE 22 ASSIGNMENT AND CHARGES

22.1 Restrictions on assignment and charges

This Agreement shall not be assigned by the Contractor to any person, save and except with the prior consent in writing of the Authority, which consent the Authority shall be entitled to decline without assigning any reason.

22.2 Hypothecation of Materials or Plant

Notwithstanding the provisions of Clause 22.1, the Contractor may pledge or hypothecate to its lenders, any Materials or Plant prior to their incorporation in the Works. Further, the Contractor may, by written notice to the Authority, assign its right to receive payments under this Agreement either absolutely or by way of charge, to any person providing financing to the Contractor in connection with the performance of the Contractor's obligations under this Agreement. The Contractor acknowledges that any such assignment by the Contractor shall not relieve the Contractor from any obligations, duty or responsibility under this Agreement. For the avoidance of doubt, all Materials and Plants shall, upon their incorporation into Works, be free from any and all Encumbrances without the Authority being required to make any payment to any person on account of any costs, compensation, expenses and charges for such Materials, Plants and Works.

ARTICLE 23 LIABILITY AND INDEMNITY

23.1 General indemnity

The Contractor shall indemnify, defend, save and hold harmless the Authority and its officers, servants, agents, Government Instrumentalities and Government owned and/or controlled entities/enterprises, (the “**Authority Indemnified Persons**”) against any and all suits, proceedings, actions, demands and third party claims for any loss, damage, cost and expense of whatever kind and nature, whether arising out of any breach by the Contractor of any of its obligations under this Agreement or from any negligence under the Agreement, including any errors or deficiencies in the design documents, or tort or on any other ground whatsoever, except to the extent that any such suits, proceedings, actions, demands and claims have arisen due to any negligent act or omission, or breach or default of this Agreement on the part of the Authority Indemnified Persons.

23.2 Indemnity by the Contractor

23.2.1 Without limiting the generality of Clause 23.1, the Contractor shall fully indemnify, hold harmless and defend the Authority and the Authority Indemnified Persons from and against any and all loss and/or damages arising out of or with respect to:

- a) failure of the Contractor to comply with Applicable Laws and Applicable Permits;
- b) payment of taxes required to be made by the Contractor in respect of the income or other taxes of the Sub-contractors, suppliers and representatives; or
- c) Non-payment of amounts due as a result of Materials or services furnished to the Contractor or any of its Sub-contractors which are payable by the Contractor or any of its Sub-contractors.

23.2.2 Without limiting the generality of the provisions of this Article 23, the Contractor shall fully indemnify, hold harmless and defend the Authority Indemnified Persons from and against any and all suits, proceedings, actions, claims, demands, liabilities and damages which the Authority Indemnified Persons may hereafter suffer, or pay by reason of any demands, claims, suits or proceedings arising out of claims of infringement of any domestic or foreign patent rights, copyrights or other Intellectual Property, proprietary or confidentiality rights with respect to any materials, information, design or process used by the Contractor or by the Sub-contractors in performing the Contractor’s obligations or in any way incorporated in or related to the Project. If in any such suit, action, claim or proceedings, a temporary restraint order or preliminary injunction is granted, the Contractor shall make every reasonable effort, by giving a satisfactory bond or otherwise, to secure the revocation or suspension of the injunction or restraint order. If, in any such suit, action, claim or proceedings, the Project, or any part thereof or comprised therein, is held to constitute an infringement and its use is permanently enjoined, the Contractor shall promptly make every reasonable effort to secure for the Authority a licence, at no cost to the Authority, authorising continued use of the infringing work. If the Contractor is unable to secure such licence within a reasonable time, the Contractor shall, at its own expense, and without impairing the

Specifications and Standards, either replace the affected work, or part, or process thereof with non-infringing work or part or process, or modify the same so that it becomes non-infringing.

23.3 Notice and contest of claims

In the event that either Party receives a claim or demand from a third party in respect of which it is entitled to the benefit of an indemnity under this Agreement (the “**Indemnified Party**”) it shall notify the other Party (the “**Indemnifying Party**”) within 15 (fifteen) days of receipt of the claim or demand and shall not settle or pay the claim without the prior approval of the Indemnifying Party, which approval shall not be unreasonably withheld or delayed. In the event that the Indemnifying Party wishes to contest or dispute the claim or demand, it may conduct the proceedings in the name of the Indemnified Party, subject to the Indemnified Party being secured against any costs involved, to its reasonable satisfaction.

23.4 Defence of claims

23.4.1 The Indemnified Party shall have the right, but not the obligation, to contest, defend and litigate any claim, action, suit or proceeding by any third party alleged or asserted against such Party in respect of, resulting from, related to or arising out of any matter for which it is entitled to be indemnified hereunder, and reasonable costs and expenses thereof shall be indemnified by the Indemnifying Party. If the Indemnifying Party acknowledges in writing its obligation to indemnify the Indemnified Party in respect of loss to the full extent provided by this Agreement, the Indemnifying Party shall be entitled, at its option, to assume and control the defence of such claim, action, suit or proceeding, liabilities, payments and obligations at its expense and through the counsel of its choice; provided it gives prompt notice of its intention to do so to the Indemnified Party and reimburses the Indemnified Party for the reasonable cost and expenses incurred by the Indemnified Party prior to the assumption by the Indemnifying Party of such defence. The Indemnifying Party shall not be entitled to settle or compromise any claim, demand, action, suit or proceeding without the prior written consent of the Indemnified Party, unless the Indemnifying Party provides such security to the Indemnified Party as shall be reasonably required by the Indemnified Party to secure the loss to be indemnified hereunder to the extent so compromised or settled.

23.4.2 If the Indemnifying Party has exercised its rights under Clause 23.3, the Indemnified Party shall not be entitled to settle or compromise any claim, action, suit or proceeding without the prior written consent of the Indemnifying Party (which consent shall not be unreasonably withheld or delayed).

23.4.3 If the Indemnifying Party exercises its rights under Clause 23.3, the Indemnified Party shall nevertheless have the right to employ its own counsel, and such counsel may participate in such action, but the fees and expenses of such counsel shall be at the expense of the Indemnified Party, when and as incurred, unless:

- a) the employment of counsel by such party has been authorized in writing by the Indemnifying Party;
- b) the Indemnified Party shall have reasonably concluded that there may be a conflict

of interest between the Indemnifying Party and the Indemnified Party in the conduct of the defense of such action;

- c) the Indemnifying Party shall not, in fact, have employed independent counsel reasonably satisfactory to the Indemnified Party, to assume the defense of such action and shall have been so notified by the Indemnified Party; or
- d) the Indemnified Party shall have reasonably concluded and specifically notified the Indemnifying Party either:
 - (i) that there may be specific defenses available to it which are different from or additional to those available to the Indemnifying Party; or
 - (ii) that such claim, action, suit or proceeding involves or could have a material adverse effect upon it beyond the scope of this Agreement:

Provided that if Sub-clauses (b), (c) or (d) of this Clause 23.4.3 shall be applicable, the counsel for the Indemnified Party shall have the right to direct the defence of such claim, demand, action, suit or proceeding on behalf of the Indemnified Party, and the reasonable fees and disbursements of such counsel shall constitute legal or other expenses hereunder.

23.5 No consequential claims

Notwithstanding anything to the contrary contained in this Article 23, the indemnities herein provided shall not include any claim or recovery in respect of any cost, expense, loss or damage of an indirect, incidental or consequential nature, including loss of profit, except as expressly provided in this Agreement.

23.6 Survival on Termination

The provisions of this Article 23 shall survive Termination.

ARTICLE 24 DISPUTE RESOLUTION

The Parties agree to use their best efforts for amicably resolving all Disputes arising under or in respect of this Agreement by mutual discussions.

Except where otherwise provided in the contract all questions and disputes relating to the meaning of the specifications, design, drawings and instructions here-in before mentioned and as to the quality of workmanship or materials used on the work or as to any other question, claim, right, matter or thing whatsoever in any way arising out of or relating to the contract, designs, drawings, specifications, estimates, instructions, orders or these conditions or otherwise concerning the works or the execution or failure to execute the same whether arising during the progress of the work or after the cancellation, termination, completion or abandonment thereof shall be dealt with as mentioned hereinafter:-

If the Contractor considers any work demanded of him to be outside the requirements of the contract, or disputes any drawings, record or decision given in writing by the Engineer-in-charge on any matter in connection with or arising out of the contract or carrying out of the work, to be unacceptable, he shall promptly within 15 days request the Engineer in writing for written instruction or decision. Thereupon, the Engineer shall give his written instructions or decision within a period of one month from the receipt of the Contractor's letter.

If the Engineer fails to give his instructions or decision in writing within the aforesaid period or if the Contractor is dissatisfied with the instructions or decision of the Engineer, the Contractor may, within 15 days of the receipt of Engineer's decision, appeal to the Chairperson who shall afford an opportunity to the Contractor to be heard, if the latter so desires, and to offer evidence in support of his appeal. The Chairperson shall give his decision within 30 days of receipt of Contractor's appeal.

If the Contractor is dissatisfied with this decision, the Contractor shall within a period of 30 days from receipt of the said decision, shall take further action in accordance with the conciliation procedure set forth in Clause 24.1.

24.1 Conciliation

In the event of any dispute or differences between the parties which could not be resolved amicably by mutual consultations, then the Chairman of Cochin Port Authority may refer such unresolved disputes or differences to a Conciliation Committee / Council comprising of independent subject experts, set up by the Port Authority to enable speedy disposal of pending / new cases. Recourse to such Conciliation shall also be open before, during or after the arbitration or litigation proceedings. The award of the Conciliation Committee, if agreed by both the Parties, shall then be placed for consideration of the Board of Major Port Authority for Cochin Port subject to the Delegation of Powers.

24.2 Arbitration

- (i) Disputes with a value less than Rs. 10 crore shall be resolved through arbitration by a Sole Arbitrator appointed jointly by the employer and the contractor.
- (ii) The either party shall within a period of 30 days from termination of conciliation proceedings, give notice to other party for appointment of arbitrator.
- (iii) If the arbitrator appointed is unable or unwilling to act or resigns his appointment or vacates his office due to any reason whatsoever another sole arbitrator shall be appointed jointly by both parties. Such person shall be entitled to proceed with the reference from the stage at which it was left by his predecessor.
- (iv) It is a term of this contract that the party invoking arbitration shall give a list of disputes with amounts claimed in respect of each such dispute along with the notice for appointment of arbitrator and giving reference to the rejection by the Chairperson of the appeal.
- (v) It is also a term of this contract that if the Contractor does not make any demand for appointment of arbitrator in respect of any claims in writing as aforesaid within 120 days of receiving the intimation from the Engineer that the final bill is ready for payment, the claim of the Contractor shall be deemed to have been waived and absolutely barred and the Employer or his authorized representative shall be discharged and released of all liabilities under the contract in respect of these claims.
- (vi) The arbitration shall be conducted in accordance with the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) or any statutory modifications or reenactment thereof and the rules made there under and for the time being in force shall apply to the arbitration proceeding under this clause.
- (vii) It is also a term of this contract that the Arbitrator / Arbitral Tribunal shall adjudicate only on such disputes as are referred to him/them and give separate award against each dispute and claim referred and in all cases where the total amount of the claims by any party exceeds Rs. 1,00,000/- the arbitrator shall give reasons for the award.
- (viii) It is also a term of the contract that if any fees are payable to the arbitrator these shall be paid equally by both the parties.
- (ix) It is also a term of the contract that the arbitrator/arbitrators shall be deemed to have entered on the reference on the date he / they issues notice to both the parties calling them to submit their statement of claims and counter statement of claims.
- (x) The seat and venue of the arbitration shall be at Cochin.
- (xi) The fees, if any, of the arbitrator shall, if required to be paid before the award is made and published, be paid half and half by each of the parties. The cost of the reference and of the award (including the fees, if any, of the arbitrator) shall be in the discretion of the arbitrator who may direct to any party by whom and in what manner, such costs or any part thereof shall be paid.

24.3 Litigation

- (i) Disputes of value above Rs. 10 crore are not covered in an arbitration clause and should be adjudicated by the courts.
- (ii) Only Courts in Cochin shall alone have jurisdiction to adjudicate any disputes between the parties.

24.4 Administrative Mechanism for Resolution of CPSEs Disputes (AMRCD)

Notwithstanding anything contained above, in the event of any dispute or difference relating to the interpretation and application of the provisions of commercial contract(s) between Central Public Sector Enterprises (CPSEs/Port Authorities inter se and also between CPSEs and Government Departments/ Organizations (excluding disputes relating to Railways, Income Tax, Customs & Excise Departments), such dispute or difference shall be taken up by either party for its resolution through AMRCD as mentioned in DPE OM No. 4(1)/2013-DPE(GM)/FTS-1835 dated 22.05.2018.

ARTICLE 25 MISCELLANEOUS

25.1 Governing law and jurisdiction

This Agreement shall be construed and interpreted in accordance with and governed by the Applicable laws of India and the seat and venue of the arbitration shall be at Cochin.

25.2 Waiver of immunity

Each Party unconditionally and irrevocably:

- a) agrees that the execution, delivery and performance by it of this Agreement constitute commercial acts done and performed for commercial purpose;
- b) agrees that, should any proceedings be brought against it or its assets, property or revenues in any jurisdiction in relation to this Agreement or any transaction contemplated by this Agreement, no immunity (whether by reason of sovereignty or otherwise) from such proceedings shall be claimed by or on behalf of the Party with respect to its assets;
- c) waives any right of immunity which it or its assets, property or revenues now has, may acquire in the future or which may be attributed to it in any jurisdiction; and
- d) consents generally in respect of the enforcement of any judgment or award against it in any such proceedings to the giving of any relief or the issue of any process in any jurisdiction in connection with such proceedings (including the making, enforcement or execution against it or in respect of any assets, property or revenues whatsoever irrespective of their use or intended use of any order or judgement that may be made or given in connection therewith).

25.3 Delayed payments

The Parties hereto agree that payments due from one Party to the other Party under the provisions of this Agreement shall be made within the period set forth therein, and if no such period is specified, within 30 (thirty) days of receiving a demand along with the necessary particulars complete in all respect.

25.3.1 Waiver, including partial or conditional waiver, by either Party of any default by the other Party in the observance and performance of any provision of or obligations under this Agreement:

- a) shall not operate or be construed as a waiver of any other or subsequent default hereof or of other provisions of or obligations under this Agreement;
- b) shall not be effective unless it is in writing and executed by a duly authorized representative of the Party; and
- c) shall not affect the validity or enforceability of this Agreement in any manner.

25.3.2 Neither the failure by either Party to insist on any occasion upon the performance of the terms, conditions and provisions of this Agreement or any obligation thereunder nor time or other indulgence granted by a Party to the other Party shall be treated or

deemed as waiver of such breach or acceptance of any variation or the relinquishment of any such right hereunder.

25.4 Liability for review of Documents and Drawings

Except to the extent expressly provided in this Agreement:

- a) no review, comment or approval by the Authority or the Authority's Engineer of any Document or Drawing submitted by the Contractor nor any observation or inspection of the construction of the Project nor the failure to review, approve, comment, observe or inspect hereunder shall relieve or absolve the Contractor from its obligations, duties and liabilities under this Agreement, Applicable Laws and Applicable Permits; and
- b) the Authority shall not be liable to the Contractor by reason of any review, comment, approval, observation or inspection referred to in Sub-clause (a) above.

25.5 Exclusion of implied warranties etc.

This Agreement expressly excludes any warranty, condition or other undertaking implied at law or by custom or otherwise arising out of any other agreement between the Parties or any representation by either Party not contained in a binding legal agreement executed by both Parties.

25.6 Survival

25.6.1 Termination shall:

- a) not relieve the Contractor or the Authority, as the case may be, of any obligations hereunder which expressly or by implication survive Termination hereof; and
- b) except as otherwise provided in any provision of this Agreement expressly limiting the liability of either Party, not relieve either Party of any obligations or liabilities for loss or damage to the other Party arising out of, or caused by, acts or omissions of such Party prior to the effectiveness of such Termination or arising out of such Termination.

25.6.2 All obligations surviving Termination shall only survive for a period of 3 (three) years following the date of such Termination.

25.7 Entire Agreement

This Agreement and the Schedules 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. For the avoidance of doubt, the Parties hereto agree that any obligations of the Contractor arising from the Request for Qualification or Request for Proposals and bid submissions, as the case may be, shall be deemed to form part of this Agreement and treated as such.

25.8 Severability

If for any reason whatsoever, any provision of this Agreement is or becomes invalid, illegal or unenforceable or is declared by any court of competent jurisdiction or any other instrumentality to be invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions shall not be affected in any manner, and the Parties will negotiate in good faith with a view to agreeing to one or more provisions which may be substituted for such invalid, unenforceable or illegal provisions, as nearly as is practicable to such invalid, illegal or unenforceable provision. Failure to agree upon any such provisions shall not be subject to the Dispute Resolution Procedure set forth under this Agreement or otherwise.

25.9 [Deleted]

25.10 Third parties

This Agreement is intended solely for the benefit of the Parties, and their respective successors and permitted assigns, and nothing in this Agreement shall be construed to create any duty to, standard of care with reference to, or any liability to, any person not a Party to this Agreement.

25.11 Successors and assigns

This Agreement shall be binding upon, and inure to the benefit of the Parties and their respective successors and permitted assigns.

25.12 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 Contractor, be given by e-mail and by letter delivered by hand to the address given and marked for attention of the person set out below or to such other person as the Contractor may from time to time designate by notice to the Authority; provided that notices or other communications to be given to an address outside the city specified in Sub-clause (b) below may, if they are subsequently confirmed by sending a copy thereof by registered acknowledgement due, air mail or by courier, be sent by e-mail to the person as the Contractor may from time to time designate by notice to the Authority;Cochin Port Authority
Attention: The Chief Engineer
Address: Willingdon Island, Cochin-682009
Email :ce@cochinport.gov.in; coptce@gmail.com
- b) in the case of the Authority, be given by e-mail and by letter delivered by hand and be addressed to the person named below with a copy delivered to the Authority Representative or such other person as the Authority may from time to time designate by notice to the Contractor; provided that if the Contractor does not have an office in the same city as the Authority, it may send such notice e-mail and by registered acknowledgement due, air mail or by courier;

Attention: The Chief Engineer
Address: Cochin Port Authority, Willingdon Island, Cochin-682009
Email : ce@cochinport.gov.in; coptce@gmail.com
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 e-mail, it shall be deemed to have been delivered on the working day following the date of its delivery.

25.13 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.

25.14 Counterparts

This Agreement may be executed in two counterparts, each of which, when executed and delivered, shall constitute an original of this Agreement.

25.15 Confidentiality

The Parties shall treat the details of this Agreement as private and confidential, except to the extent necessary to carry out obligations under it or to comply with Applicable Laws. The Contractor shall not publish, permit to be published, or disclose any particulars of the Works in any trade or technical paper or elsewhere without the previous consent of the Authority.

25.16 Copyright and Intellectual Property rights

25.16.1 As between the Parties, the Contractor shall retain the copyright and other Intellectual Property rights in the Contractor's Documents and other design documents made by (or on behalf of) the Contractor. The Contractor shall be deemed (by signing this Agreement) to give to the Authority a non-terminable transferable non-exclusive royalty-free licence to copy, use and communicate the Contractor's Documents, including making and using modifications of them. This licence shall:

- a) apply throughout the actual or intended working life (whichever is longer) of the relevant parts of the Works,
- b) entitle any person in proper possession of the relevant part of the Works to copy, use and communicate the Contractor's Documents for the purposes of completing, operating, maintaining, altering, adjusting, repairing and demolishing the Works, and
- c) in the case of Contractor's Documents which are in the form of computer programs and other software, permit their use on any computer on the Site and other places as envisaged by this Agreement, including replacements of any computers supplied by the Contractor:

25.16.2 The Contractor's Documents and other design documents made by (or on behalf of) the Contractor shall not, without the Contractor's consent, be used,

copied or communicated to a third party by (or on behalf of) the Authority for purposes other than those permitted under this Clause 25.17.

25.16.3 As between the Parties, the Authority shall retain the copyright and other Intellectual Property rights in this Agreement and other documents made by (or on behalf of) the Authority. The Contractor may, at its cost, copy, use, and obtain communication of these documents for the purposes of this Agreement. They shall not, without the Authority's consent, be copied, used or communicated to a third party by the Contractor, except as necessary for the purposes of the contract.

25.17 Limitation of Liability

25.17.1 Neither Party shall be liable to the other Party for loss of use of any Works, loss of profit, loss of any contract or for any indirect or consequential loss or damage which may be suffered by the other Party in connection with this Agreement.

25.17.2 The total liability of one Party to the other Party under and in accordance with the provisions of this Agreement, save and except as provided in Articles 21 and 23, shall not exceed the Contract Price. For the avoidance of doubt, this Clause shall not limit the liability in any case of fraud, deliberate default or reckless misconduct by the defaulting Party.

ARTICLE 26 DEFINITIONS

26.1 Definitions

In this Agreement, the following words and expressions shall, unless repugnant to the context or meaning thereof, have the meaning hereinafter respectively assigned to them:

“Accounting Year” means the financial year commencing from the first day of April of any calendar year and ending on the thirty-first day of March of the next calendar year;

“Advance Payment” shall have the meaning as set forth in Clause 17.2.1;

“Affected Party” shall have the meaning as set forth in Clause 19.1;

“Affiliate” means, in relation to either Party {and/or Members}, a person who controls, is controlled by, or is under the common control with such Party {or Member} (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, whether by operation of law or by contract or otherwise);

“Agreement” means this Agreement, its Recitals, the Schedules hereto and any amendments thereto made in accordance with the provisions contained in this Agreement;

“Applicable Laws” means Applicable Laws of India i.e., all laws, brought into force and effect by GOI or the State Government(s) including rules, regulations and notifications made thereunder, and judgements, decrees, injunctions, writs and orders of any court of record, applicable to this Agreement and the exercise, performance and discharge of the respective rights and obligations of the Parties hereunder, as may be in force and effect during the subsistence of this Agreement;

“Applicable Permits” means all clearances, licences, permits, authorisations, no objection certificates, consents, approvals and exemptions required to be obtained or maintained under Applicable Laws in connection with the construction of the Project during the subsistence of this Agreement;

“Authority” shall have the meaning attributed thereto in the array of Parties hereinabove as set forth in the Recitals;

“Authority Default” shall have the meaning as set forth in Clause 21.2.1;

“Authority’s Engineer” shall have the meaning as set forth in Clause 16.1.1;

“Authority Representative” means such person or persons as may be authorised in writing by the Authority to act on its behalf under this Agreement and shall include any person or persons having authority to exercise any rights or perform and fulfil any obligations of the Authority under this Agreement;

“Bank” means a bank incorporated in India and having a minimum net worth of Rs. 1,000 crore (Rupees one thousand crore) or any other bank acceptable to the Authority;

“Bank Rate” means the rate of interest specified by the Reserve Bank of India from time to time in pursuance of section 49 of the Reserve Bank of India Act, 1934 or any replacement of such Bank Rate for the time being in effect;

“Base Date” means the last date of that calendar month, which date precedes the Bid Due Date by at least 28 (twenty eight) days;

“Bid” means the documents in their entirety comprised in the bid submitted by the [selected bidder/Consortium] in response to the Request for Proposals in accordance with the provisions thereof and **“Bids”** shall mean the bids submitted by any and all pre-qualified bidders;

“Bid Security” means the bid security provided by the Contractor to the Authority in accordance with the Request for Proposals, and which is to remain in force until substituted by the Performance Security;

“CPI (IW)” means the Consumer Price Index for Industrial Workers as published by the Labour Bureau, Government of India and shall include any index which substitutes the CPI (IW), and any reference to CPI (IW) shall, unless the context otherwise requires, be construed as a reference to the CPI (IW) published for the period ending with the preceding month, save and except that for the purposes of annual revision of the Fixed Charge in accordance with the provisions of Clause 25.3, the revision due on April 1 of any year shall be computed with reference to CPI (IW) as on January 31 of that year;

“Change in Law” means the occurrence of any of the following after the Base Date:

- a) the enactment of any new Indian law;
- b) the repeal, modification or re-enactment of any existing Indian law;
- c) the commencement of any Indian law which has not entered into effect until the Base Date;
- d) a change in the interpretation or application of any Indian law by a judgement of a court of record which has become final, conclusive and binding, as compared to such interpretation or application by a court of record prior to the Base Date; or
- e) any change in the rates of any of the Taxes or royalties that have a direct effect on the Project;

“Change of Scope” shall have the meaning as set forth in Article 13;

“Change of Scope Notice” shall have the meaning as set forth in Clause 13.2.1;

“Change of Scope Order” shall have the meaning as set forth in Clause 13.2.4;

“Completion Certificate” shall have the meaning as set forth in Clause 12.4.1;

“Construction” shall have the meaning as set forth in Clause 1.2.1 (f);

“**Construction Period**” means the period commencing from the date of LoA and ending on the date of the Completion Certificate;

“**Contract Price**” means the amount as specified in Clause 17.1.1;

“**Contractor**” shall have the meaning attributed thereto in the array of Parties hereinabove as set forth in the Recitals;

“**Contractor Default**” shall have the meaning as set forth in Clause 21.1.1;

“**Cure Period**” means the period specified in this Agreement for curing any breach or default of any provision of this Agreement by the Party responsible for such breach or default and shall:

- a) commence from the date on which a notice is delivered by one Party to the other Party asking the latter to cure the breach or default specified in such notice;
- b) not relieve any Party from liability to pay Damages or compensation under the provisions of this Agreement; and
- c) not in any way be extended by any period of Suspension under this Agreement; provided that if the cure of any breach by the Contractor requires any reasonable action by the Contractor that must be approved by the Authority or the Authority’s Engineer hereunder, the applicable Cure Period shall be extended by the period taken by the Authority or the Authority’s Engineer to accord their approval;

“**Damages**” shall have the meaning as set forth in paragraph (w) of Clause 1.2.1;

“**Defect**” means any defect or deficiency in Construction of the Works or any part thereof, which does not conform with the Specifications and Standards;

“**Defects Liability Period**” shall have the meaning as set forth in Clause 15.1.1;

“**Dispute**” shall have the meaning as set forth in Clause 24.1.1;

“**Dispute Resolution Procedure**” means the procedure for resolution of Disputes as set forth in Article 24;

“**Drawings**” means all of the drawings, calculations and documents pertaining to the Project as set forth in Schedule-H, and shall include ‘as built’ drawings of the Project;

“**Document**” or “**Documentation**” means documentation in printed or written form, or in tapes, discs, drawings, computer programmes, writings, reports, photographs, films, cassettes, or expressed in any other written, electronic, audio or visual form;

“**Emergency**” means a condition or situation that is likely to endanger the safety or security of the individuals on or about the Project, including Users thereof, or which poses an immediate threat of material damage to the Works or any of the Project Assets;

“**Encumbrances**” means, in relation to the Project, any encumbrances such as mortgage, charge, pledge, lien, hypothecation, security interest, assignment,

privilege or priority of any kind having the effect of security or other such obligations, and shall include any designation of loss payees or beneficiaries or any similar arrangement under any insurance policy pertaining to the Project, where applicable herein but excluding utilities referred to in Clause 9.1;

“**EPC**” means engineering, procurement and construction;

“**Final Payment Certificate**” shall have the meaning as set forth in Clause 17.12.1;

“**Final Payment Statement**” shall have the meaning as set forth in Clause 17.10.1;

“**Force Majeure**” or “**Force Majeure Event**” shall have the meaning ascribed to it in Clause 19.1;

“**GAD**” or “**General Arrangement Drawings**” shall have the meaning as set forth in Clause 4.1.3 (b);

“**GOI**” or “**Government**” means the Government of India;

“**Good Industry Practice**” means the practices, methods, techniques, designs, standards, skills, diligence, efficiency, reliability and prudence which are generally and reasonably expected from a reasonably skilled and experienced contractor engaged in the same type of undertaking as envisaged under this Agreement and which would be expected to result in the performance of its obligations by the Contractor in accordance with this Agreement, Applicable Laws and Applicable Permits in reliable, safe, economical and efficient manner;

“**Government Instrumentality**” means any department, division or sub-division of the Government or the State Government and includes any commission, board, authority, agency or municipal and other local authority or statutory body, including panchayat, under the control of the Government or the State Government, as the case may be, and having jurisdiction over all or any part of the Project or the performance of all or any of the services or obligations of the Contractor under or pursuant to this Agreement;

“**IRC**” means the Indian Roads Congress;

“**Indemnified Party**” means the Party entitled to the benefit of an indemnity pursuant to Article 23;

“**Indemnifying Party**” means the Party obligated to indemnify the other Party pursuant to Article 23;

“**Indirect Political Event**” shall have the meaning as set forth in Clause 19.3;

“**Insurance Cover**” means the aggregate of the maximum sums insured under the insurances taken out by the Contractor pursuant to Article 18, and includes all insurances required to be taken out by the Contractor under Clauses 18.1 and 18.9 but not actually taken, and when used in the context of any act or event, it shall mean the aggregate of the maximum sums insured and payable or deemed to be insured and payable in relation to such act or event;

“**Intellectual Property**” means all patents, trademarks, service marks, logos, get-up, trade names, internet domain names, rights in designs, blue prints, programmes and manuals, drawings, copyright (including rights in computer software), database rights,

semi-conductor, topography rights, utility models, rights in know-how and other intellectual property rights, in each case whether registered or unregistered and including applications for registration, and all rights or forms of protection having equivalent or similar effect anywhere in the world;

“Interim Payment Certificate” or **“IPC”** means the interim payment certificate issued by the Authority’s Engineer for payment to the Contractor in respect of Contractor’s claims for payment raised in accordance with the provisions of this Agreement;

“LOA” or **“Letter of Acceptance”** means the letter of acceptance referred to in Recital (B) of Form of Agreement (Section 7);

“Manuals” shall mean the manuals as specified in Schedule D;

“Material Adverse Effect” means a material adverse effect of any act or event on the ability of either Party to perform any of its obligations under and in accordance with the provisions of this Agreement and which act or event causes a material financial burden or loss to either Party;

“Materials” are all the supplies used by the Contractor for incorporation in the Works of the Project;

“Non-Political Event” shall have the meaning as set forth in Clause 19.2;

“Parties” means the parties to this Agreement collectively and **“Party”** shall mean any of the parties to this Agreement individually;

“Performance Security” shall have the meaning as set forth in Clause 7.1.1;

“Plant” means the apparatus and machinery intended to form or forming part of the Works;

“Political Event” shall have the meaning as set forth in Clause 19.4;

“Programme” shall have the meaning as set forth in Clause 10.1.3;

“Project” means the construction of the Project in accordance with the provisions of this Agreement, and includes all works, services and equipment relating to or in respect of the Scope of the Project;

“Project Assets” means all physical and other assets relating to (a) tangible assets such as civil works and equipment including [foundations, embankments, pavements, road surface, interchanges, bridges, culverts, road over-bridges, drainage works, traffic signals, sign boards, kilometre-stones, electrical systems, communication systems, rest areas, relief centres, maintenance depots and administrative offices]; and (b) Project Facilities situated on the Site;

“Project Completion Date” means the date on which the last Provisional Certificate is issued;

“Project Completion Schedule” means the progressive Project Milestones set forth in Schedule-I for completion of the Project on or before the Scheduled Completion Date;

“**Project Facilities**” means all the amenities and facilities to be constructed on the Site, as described in Article - 2;

“**Project Milestone**” means the project milestone as set forth in Schedule-I and includes the Scheduled Completion Date;

“**Proof Consultant**” shall have the meaning as set forth in Clause 10.2.2;

“**Provisional Certificate**” shall have the meaning as set forth in Clause 12.2.1;

“**Punch List**” shall have the meaning as set forth in Clause 12.2.1;

“**Quality Assurance Plan**” or “**QAP**” shall have the meaning as set forth in Clause 11.2.1;

“**Re.**”, “**Rs.**” or “**Rupees**” or “**Indian Rupees**” means the lawful currency of the Republic of India;

“**Request for Proposals**” or “**RFP**” shall have the meaning as set forth in Recital (C);

“**Request for Qualification**” or “**RFQ**” shall have the meaning as set forth in Recital (B);

“**Retention Money**” shall have the meaning as set forth in Clause 7.5.1;

“**Right of Way**” means the constructive possession of the Site free from encroachments and encumbrances, together with all way leaves, easements, unrestricted access and other rights of way, howsoever described, necessary for construction of the Project in accordance with this Agreement;

“**Safety Consultant**” shall have the meaning as set forth in Clause 10.1.5;

“**Scheduled Completion Date**” shall be the date as set forth in Clause 10.3.1;

“**Scope of the Project**” shall have the meaning as set forth in Clause 2.1;

“**Section**” means a part of the Project;

“**Site**” shall have the meaning as set forth in Clause 8.1;

“**Specifications and Standards**” means the specifications and standards relating to the quality, quantity, capacity and other requirements for the Project, as set forth in Schedule-D, and any modifications thereof, or additions thereto, as included in the design and engineering for the Project submitted by the Contractor to, and expressly approved by, the Authority;

“**Stage Payment Statement**” shall have the meaning as set forth in Clause 17.4;

“**State**” means the State or the Union Territory, as the case may be, in which the headquarters of the Authority are situate and “**State Government**” means the government of that State or Union Territory;

“**Structures**” means an elevated [road or a flyover], as the case may be;

“**Sub-contractor**” means any person or persons to whom a part of the Works has been subcontracted by the Contractor and the permitted legal successors in title to such person, but not an assignee to such person;

“Suspension” shall have the meaning as set forth in Clause 20.1;

“Taxes” means any Indian taxes including excise duties, customs duties, value added tax, sales tax, local taxes, cess and any impost or surcharge of like nature (whether Central, State or local) on the goods, Materials, equipment and services incorporated in and forming part of the Project charged, levied or imposed by any Government Instrumentality, but excluding any interest, penalties and other sums in relation thereto imposed on any account whatsoever. For the avoidance of doubt, Taxes shall not include taxes on corporate income;

“Termination” means the expiry or termination of this Agreement;

“Termination Notice” means the communication issued in accordance with this Agreement by one Party to the other Party terminating this Agreement;

“Termination Payment” means the amount payable by either Party to the other upon Termination in accordance with Article 21;

“Terms of Reference” or **“TOR”** shall have the meaning as set forth in Clause 16.2.1;

“Tests” means the tests set forth in Schedule-J to determine the completion of Works in accordance with the provisions of this Agreement;

“Time Extension” shall have the meaning as set forth in Clause 10.4.1;

“User” means a person who uses or intends to use the Project or any part thereof in accordance with the provision of this Agreement and Applicable Laws;

“Valuation of Unpaid works” shall have the meaning as set forth in Clause 21.5.1;

“WPI” means the wholesale price index for various commodities as published by the Ministry of Commerce and Industry, GOI and shall include any index which substitutes the WPI, and any reference to WPI shall, unless the context otherwise requires, be construed as a reference to the WPI published for the period ending with the preceding month; and

“Works” means all works including survey and investigation, design, engineering, procurement, construction, Plant, Materials, temporary works and other things necessary to complete the Project in accordance with this Agreement.

26 VOL. I – (SECTION - 6): SPECIAL CONDITIONS OF CONTRACT (SCC)

<p>Clause 3.9 of Article 3, Section 5: GCC</p> <p>Specific Obligations (New Clause)</p>	<p>In addition the Contractor shall be required to provide the following facilities/assistance in connection with the Works:</p> <p>i) The Contractor shall provide sea worthy boat etc., at his own cost, as and when required by the Authority's personnel for survey and supervision of the Works, throughout the Contract Period.</p> <p>ii) The Contractor shall provide a seaworthy boat, at his own cost, exclusively for the use of Authority, Authority's Engineer and its Personnel for supervision, throughout the Contract Period. The supply shall commence not later than 15 days from the date of commencement of work. The boat shall be available round the clock on all days including Sundays and holidays. The boat and its operators shall have valid registration and insurance. All consumables and stores for the safe working of the boat and its operators as necessary should be provided by the contractor and nothing will be available from the Authority for the day-to-day operation of the boat. The Contractor shall be solely responsible for the consequences arising out of any loss or damage/accident etc. caused to the boat or any of its operators while on duty. If the Contractor fails to provide the boat as above, the Authority will be entitled to hire such a boat at the cost of the Contractor. Actual cost of hiring the boat or an amount of Rs.5,000/- per day, whichever is higher, will be deducted from the Contractor's running bills.</p> <p>iii) The Contractor will have to provide, within 15 days of commencement of Workfully equipped and furnished air-conditioned office accommodation(porta cabin) at site at two convenient locations, at eastern and western sides, measuring a minimum of 60sq.m complete with lighting, furniture, communication, 2 nos. laptops with 2 Net setters with fibre internet, wifi connectivity, One A3 laser Printer, office stationery and equipment, potable drinking water, pantry, wash-basin, toilet and other office facilities, near the Contractor's work area or at other location as directed and approved by the Authority for the use of Authority's and Authority's Engineer's Site staff. This Site Office facility will continue to be made available to the Authority and Authority's Engineer all throughout the Contract Period. No separate payment will be made for providing such office as above and the cost thereof shall be deemed to have been included by the Bidder in its Tender for the Works. In case the Contractor fails</p>
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	<p>to provide such office accommodation as above or fails to maintain such office accommodation during the Contract Period, the Contractor shall be liable to pay to the Authority an amount of Rs.50,000/- per month or proportionate part thereof, which shall be deducted from the Contractor's running bills for the period when such office accommodation has not been made available by the Contractor.</p> <p>iv) In addition, the contractor will, at his own cost and within 15 days of commencement of Work place at the disposal of the Authority and Authority's Engineer 2(two) (1 for Authority's representative and 1 for Authority's Engineer) chauffeur-driven air-conditioned car to seat minimum 4persons for the use of Authority's Engineer and its Personnel for supervision of the Works. These Motor Vehicles shall be available round the clock on all days including Sundays and holidays. The Motor Vehicles shall have valid registration and insurance throughout the Contract Period. All consumables and stores for the safe working of these Motor Vehicles, including the Drivers as necessary shall also be provided by the Contractor and nothing will be available from the Authority or the Authority's Engineer towards the running of these Motor Vehicles under this Contract. The Contractor shall be solely responsible for the upkeep and maintenance of such Motor Vehicles and also be liable for consequences arising out of any loss or damage/accident etc. caused to these Motor Vehicles or to any third person or any property while these Motor Vehicles are on or off duty. If the Contractor fails to provide these Motor Vehicle as above, the Authority is entitled to hire these Motor Vehicles at the cost of the Contractor and recover the actual cost thereof or an amount of Rs.3000/- per day, whichever is higher, from the Contractor's running bills.</p> <p>v) The Contractor shall also provide necessary arrangements and facilities to inspect the work by the Authority's Engineer for periodic inspection of Works at no extra cost to the Authority from date of the Commencement until the date of Completion of the Works.</p> <p>VI) During the complete period of construction, the Contractor shall provide CCTV cameras complete with all hardware, software, displays, connection, power backup, recording facilities, etc with suitable resolution and numbers for remotely monitoring the day-to-day activities at the construction site. The CCTV cameras shall be installed strategically covering the complete site area with minimum 6 (six) nos. (ie 2 (two) nos at each at Western Side, Eastern Side and Boat Landing area)</p>
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	<p>where the Construction Activity is undertaken. The CCTV system shall be provided with Night Vision camera so that the activities can be monitored even during night. The CCTV shall be provided with at least 1(one) month recording. The video shall be monitored live by Authority from TWO locations ie.,one at site office and another at designated location in Administrative Office of Cochin Port Authority in Willington Island, Kochi.</p>
<p>Clause 26.1 of Article 26, Section 5: GCC “Authority”</p>	<p>“Authority” means Cochin Port Authority, represented by The Chief Engineer Chief Engineer’s Office Cochin Port Authority, W/Island,Cochin-682009 and the legal successors thereto. Cochin Port Authority shall execute the project work.</p>
<p>Clause 26.1 of Article 26, Section 5: GCC “Authority`s Engineer”</p>	<p>“Authority`s Engineer” means the authorised person appointed by the Authority for this project.</p>

27 VOL. I – (SECTION - 7) : FORM OF AGREEMENT

[To be engrossed on non-judicial stamp paper of appropriate value in Kerala issued in the name of Cochin Port Authority in two Sets, prior to execution by the Parties]

THIS AGREEMENT made on this theday of 2025 at Kochi, Kerala State in India

BY AND BETWEEN

THE COCHIN PORT AUTHORITY having its registered office and address at the Office of Chief Engineer, Cochin Port Authority, W/Island, Cochin – 682009, Kerala, India, represented by *[Name & Designation of the signing authority]*, (hereinafter called the “**Authority**”, which expression shall, unless repugnant to the context or the meaning thereof, include its administrators, successors and assigns) of the One Part;

AND

..... *[name of the Contractor]*, a company incorporated under the laws of and having its registered office and address at

.....represented by..... *[Name & Designation of the signing authority]*, (hereinafter called the “**Contractor**” which expression shall, unless repugnant to the context or the meaning thereof, include its, successors and permitted assigns) of the Other Part.

Each of the “Authority” and the “Contractor” individually called a "Party" and collectively the "Parties".

RECITALS

WHEREAS:

- (A) The Authority invited Bids for Proposal Ref. _____ dated _____ for Construction of Jetties, Landside facilities and allied facilities at Eastern and Western sides in Kadmath Island of Lakshadweep on EPC Contract basis and remedying the defects therein (hereinafter called the “Works”) on EPC basis in terms of the Bid document;
- (B) After careful consideration and evaluation of the Tenders received against the said Bid document, the Authority has accepted the Bidder’s Offer Ref. _____ dated _____ as the same was amended or deemed to have been amended subsequently during the tender opening and evaluation, and issued **Letter of Acceptance** (of the Tender) or **LoA**, Ref. _____ dated _____ for execution and completion of the Works for the Project on EPC basis according to the terms & conditions of the Tender and this Contract; at the contract price specified in LoA requiring the selected Bidder to inter alia:

- (i) deliver to the Authority a legal opinion from the legal counsel of the selected bidder with respect to the authority of the selected bidder to enter into this Agreement and the enforceability of the provisions thereof, within 10 (ten) days of the date of issue of LOA; and
 - (ii) execute this Agreement within 30 (Thirty) days of the date of issue of LOA.
- (C) The Parties now wishes to enter into this Contract for the Works on the terms and conditions of this Contract which have been fully negotiated between the Authority and the Contractor as parties of competent capacity and equal standing.

NOW, THEREFORE, IN CONSIDERATION OF MUTUAL PROMISES, COVENANTS AND AGREEMENTS CONTAINED HEREIN AND FOR GOOD AND VALID CONSIDERATION, THE ADEQUACY OF WHICH HAS BEEN ACKNOWLEDGED BY THE PARTIES, THE PARTIES, INTENDING TO BE LEGALLY BOUND, HEREBY AGREE AS FOLLOWS

- 1) In this Agreement words and expressions shall have the same meanings as are respectively assigned to them in the Modified General Conditions of Contract hereinafter referred to.
- 2) In consideration of the payments to be made by the Authority to the Contractor under the Contract, the Contractor shall carry out and complete the construction of the Works on EPC/ basis and discharge all the relevant obligations on its part specified in, or to be inferred from, and in all respects in accordance with this Agreement.
- 3) **Contract Documents:**
 - 3.1) The following documents shall be deemed to form and be read and construed as part of this Agreement viz.:
 - a) Letter of Acceptance (“LoA”) Ref. _____ dated _____
 - b) “*Schedule of Prices*” and “*Schedule of payments on Milestone Completion*” as submitted by Bidder.
 - c) Bid Documents in its entirety including all Addendum, Corrigendum and Clarifications duly signed and submitted by the Bidder.
 - d) *All communications exchanged between Authority and Contractor during tender process till issue of LoA.*
 - 3.2) The Contractor hereby declares to have full knowledge and understanding of the contents of all the foregoing documents whether contained in or incorporated by reference therein and accepts all the terms and conditions contained therein. In the event of any ambiguity or conflict between any of the foregoing Contract Documents, or any of the terms & conditions contained therein, the Contractor shall, prior to commencement of the Works, be deemed to have obtained from the Authority or Authority’s Engineer, as the case may be, all necessary clarifications in order to get such ambiguity or conflicts resolved satisfactorily. The order of precedence of the foregoing documents shall be the same as listed herein above.

4) **Scope of Work, Price Schedule, Milestone Completion & Payment**

- 4.1) The Contractor shall carry out and complete the Scope of Work covering *inter alia* (i) design & engineering of the Works, (ii) provision of construction material such as aggregate, concrete, etc.(ii) provision of labour and supervision; and (iv) obtaining and maintaining of all Contractor's Permits, according to the terms & conditions of the Contract.
- 4.2) The Contractor hereby warrants and undertakes that the Works shall be executed according to the applicable Codes, quality standards and statutory requirements to the complete satisfaction of Authority and the Authority's Engineer and when completed shall be fit for the purpose set out in the Contract Documents.
- 4.3) In consideration of full and complete discharge of the Contractor's obligations under this Contract, the Authority shall pay to the Contractor Contract Price denominated in Indian Rupees as set out in the Schedule of Prices and Schedule of payments on Milestone Completion".
- 4.4) Any failure by the Contractor to complete or cause to be completed the whole of the Works within the Contract Completion Date including the respectively identified Milestones as per **Milestone Completion & Payment Schedule** or any permitted extensions hereto for any of them for reasons attributable to the Contractor as may be determined by the Authority and the Authority's Engineer, will entail payment by way of Liquidated Damages for Delay by the Contractor to the Authority as set out in the Contract.

5) Notices

- 5.1) Any notice to be given under the Contract shall be sent to the Authority or the Contractor, as the case may be, at the address set forth below:

Authority

COCHIN PORT AUTHORITY
Address:
Chief Engineer's Office
Cochin Port Authority
W/Island, Cochin– 682009, Kerala
Attn.:
Title: Chief Engineer
Tel.: + 91-0484-2666414
E-mail: ce@cochinport.gov.in

Contractor:

Address:

Attn.:
Title:
Tel.
E-mail:

- 5.2) Any notice to be given hereunder by one Party to the other Party may be sent by pre-paid registered post or by overnight courier or by facsimile or by e-mail to its address given herein above or to such other address as may have been communicated by such Party to the other Party and such notice shall be deemed to have been received if sent by pre-paid registered post or overnight courier on the date of its delivery as evidenced by the postal mark or receipted courier advice; if sent by facsimile on the date of its transmission stamped on it; and if sent by e-mail on the date of its transmission as evidenced by its properties.

6) General

- 6.1) This Agreement shall be deemed to have been effective from the date of issue of Letter of Acceptance to the Bidder by the Authority. The Milestone Schedule for completion of the Works shall be deemed to have commenced from date of LoA as defined in Article 26 of GCC. This Agreement which shall remain valid until all the obligations under this Agreement is satisfactorily discharged by the Parties hereto. However, all those provisions of the Agreement which are deemed to continue even after expiry of such validity shall continue to be in full force and effect as expressly provided in the Agreement. .
- 6.2) This Contract supersedes all prior negotiations, representations, warranties and agreements related hereto whether oral or written.
- 6.3) No amendments to this Agreement shall be effective, unless the same is evidenced in writing and duly signed by the authorized representatives respectively of the Authority and the Contractor.
- 6.4) This Agreement is executed in counter-parts, each of which shall be deemed to be original and retained by each of the Parties but together they shall constitute one and the same Agreement.

IN WITNESS WHEREOF the Authority and the Contractor have caused this Agreement to be duly executed by their duly authorized representatives as of the day, month and year herein above written.

for & on behalf of Authority
COCHIN PORT AUTHORITY

for & on behalf of Contractor

.....
Signature.....
Name:.....
Designation:

Signature.....
Name:.....
Designation:.....

In the presence of:

In the presence of:

Signature:.....
Name :.....
Designation:.....
Address:.....

Signature:.....
Name :.....
Designation:.....
Address:.....

(on behalf of the Authority)

(on behalf of the Contractor)

28 VOL. I – (SECTION - 8): FRAUD AND CORRUPT PRACTICES

- 8-1. The Bidder and their respective officers, employees, agents and advisers shall observe the highest standard of ethics during the Bidding Process. Notwithstanding anything to the contrary contained herein, the Authority may reject an Application without being liable in any manner whatsoever to the Bidder if it determines that the Bidder has, directly or indirectly or through an agent, engaged in corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice in the Bidding Process.
- 8-2. Without prejudice to the rights of the Authority under Clause 8-1 hereinabove, if an Bidder is found by the Authority to have directly or indirectly or through agent, engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice during the Bidding Process, such Bidder shall not be eligible to participate in any tender or Bid issued by the Authority during a period of 2 (two) years from the date such Bidder 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, as the case may be.
- 8-3. For the purposes of this Section 28, the following terms shall have the meaning hereinafter respectively assigned to them:
- (a) **“corrupt practice”** means (i) the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence the actions of any person connected with the Bidding 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 Bidding Process or has dealt with matters concerning the EPC Contract 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 Bidding Process); or (ii) save and except as permitted under sub clause (c) of Clause 4.2.1, engaging in any manner whatsoever, whether during the Bidding Process or after the issue of the LOA or after the execution of the EPC Contract, as the case may be, any person in respect of any matter relating to the Project or the LOA or the EPC Contract, who at any time has been or is a legal, financial or technical adviser of 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 Bidding 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 Bidding 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 Bidding Process; or (ii) having a Conflict of Interest; and
- (e) **“restrictive practice”** means forming a cartel or arriving at any understanding or arrangement among Bidders with the objective of restricting or manipulating a full and fair competition in the Bidding Process.

29 VOL. I – (SECTION - 9) : ADDITIONAL INFORMATION

- 9-1. The Bidding Process shall be governed by, and construed in accordance with, the laws of India and only the competent Courts at Cochin shall have exclusive jurisdiction over all matters arising under, pursuant to and/ or in connection with the Bidding Process.
- 9-2. The Authority, in its sole discretion and without incurring any obligation or liability, reserves the right, at any time, to;
- (a) suspend and/ or cancel the Bidding Process and/ or amend and/ or supplement the Bidding Process or modify the dates or other terms and conditions relating thereto;
 - (b) consult with any Bidder in order to receive clarification or further information;
 - (c) retain any information and/ or evidence submitted to the Authority by, on behalf of, and/ or in relation to any Bidder; and/ or
 - (d) independently verify, disqualify, reject and/ or accept any and all submissions or other information and/ or evidence submitted by or on behalf of any Bidder.
- 9-3. It shall be deemed that by submitting the Tender, the Bidder agrees and releases the Authority, its employees, agents and advisers, irrevocably, unconditionally, fully and finally from any and all liability for claims, losses, damages, costs, expenses or liabilities in any way related to or arising from the exercise of any rights and/ or performance of any obligations hereunder and the Bidding Documents, pursuant hereto, and/ or in connection with the Bidding Process to the fullest extent permitted by applicable law, and waives any and all rights and/ or claims it may have in this respect, whether actual or contingent, whether present or in future.

30 VOL. I – (SECTION - 10) : APPENDIX TO TENDER

Descriptions	Clause No.	Remarks
Amount of Performance Security (if any)	7.1 of GCC	5% of the Contract Price rounded off to the nearest 1000/-
Minimum amount of Third Party Insurance	18.1 of GCC and Schedule-17	Minimum amount of Third Party Insurance – Rs. 15,00,000/- per occurrence, with Number of Occurrences unlimited
Time to commence Works		30 days from the date of LoA
Time for Project completion	10.3.1 of GCC	<p>30.1.1The Project as a whole has been divided into different Sections for sequential completion within the (“Construction Period”) as under:</p> <p>Section – 1: Detailed Engineering including Completion of Design Documents, Technical Specification, Operation Manuals, GFC Drawings, etc required for construction of the various facilities. To be completed within 12 (Twelve) months from Date of commencement of work.</p> <p>Section – 2: Construction of marine and landside facilities on eastern side including jetty and the approach trestle. To be completed within 36months from Date of Commencement of work.</p> <p>Section – 3: Construction of marine and landside facilities including jetty and approach trestle on western side. To be completed within 18months from Date of Commencement of work.</p> <p>Section – 4: Construction of Boat Landing facility including marine works and other ancillary works on Western Side and Allied On-shore facilities including road network, drainage facilities etc. on both eastern and western sides. To be completed within 36months from Date of Commencement of work</p>

		<p>The whole of the Works for the project including essential punch list items, if any, shall be completed within 36 months from the date of Commencement of Work.</p> <p>Delay in meeting the above timelines will attract Liquidated Damage as per clause 10.3.2 of GCC</p> <p>In addition to Liquidated Damages, if the Section-1 is not completed within 15 (fifteen) months from date of commencement, of work, a recovery of Rs. 2,03,000 (Rupees Two Lakh Three Thousand only) plus GST per month shall be effected from the Contractor's Interim Bills towards the additional payment to be made to the PMC Consultant of Authority;</p>
Amount of Liquidated Damages	10.3.2 of GCC	0.5% of Contract Price for every week of Delay plus applicable GST
Limit of Liquidated Damages	10.3.3 of GCC	10% of Contract Price plus applicable GST
Bonus	17.16 of GCC	0.03% per day
Limit of Bonus	17.16 of GCC	3% of Contract Price
Defects Liability Period	15.1.1 of GCC	24 months from the date of Completion of Work
Percentage of Retention Money	7.5 of GCC	5 % of each interim payment
Limit of Retention Money	7.5 of GCC	5% of Contract Price

SIGNATURE _____

FOR AND ON BEHALF OF _____

DATE _____

VOL.I – PART – I: QUALIFICATION REQUIREMENTS (QR)

1. Evaluation Parameters

- 1.1 Only those Bidders who meet the eligibility criteria specified in Clause 4.2 of Volume-I shall qualify for evaluation under this Part-I of the Bid Document. Bids from Bidders who do not meet these criteria shall be rejected.
- 1.2 The Bidder's competence and capability is proposed to be established by the following parameters:
 - 1.2.1 Technical Capacity; and
 - 1.2.2 Financial Capacity

2 Technical & Financial Criteria for the purpose of Evaluation

- 2.1 All Bidders who possess the eligibility requirements as per Clause 4.2 of Volume-I are considered to be technically qualified.
- 2.2 The Bidder should furnish the required Project-specific information and evidence in support of its claim of Technical Capacity, as per format given in **Annex-III of Appendix-I** along with Notarized copy or original of the Completion Certificates issued by the Authority evidencing successful completion of the Project or the Works for the Project, which shall invariably contain completion cost, date of commencement, date of completion, Scope of works executed. Also write-ups on, Project Management System practiced by the Bidder and CVs of Supervisory, Managerial & Specialist personnel.
- 2.3 **[Deleted]**
- 2.4 The Bidder must provide the necessary information relating to Financial Capacity as per format given in **Annex-II of Appendix-I**.
- 2.5 The Bids shall be accompanied by the Audited Annual Reports of the Bidder for the last 3 (three) financial years (year 2021-22, 2022-23, 2023-24), preceding the year in which the Bid is submitted.
- 2.6 **The Bidder must establish the Minimum Average Annual Turnover of 30% of estimated cost as specified in Clause 4.2.2 , and provide details as per format given in Annex-II of Appendix-I.**

3 Details of Experience

- 3.1 The Bidder should furnish the details of Eligible Experience for the last 7 (seven) years ending on 30th November 2024.
- 3.2 The experience certificate of Works executed in private sector organizations shall be considered for qualification, only on submission of necessary TDS certificates along with notarized copies of Contract/Work Order and Completion Certificate issued by the Authority

4 Documents to be submitted online with Part-I

- 4.1 The bidder shall submit the following documents as part of Part-I
- a) Duly Signed Integrity Pact as per format given in **Annex-V of Appendix-I [Integrity Pact]**
 - b) Insurance Security Bond, fixed deposit receipt in the name of FA&CAO, CoPA, Demand Draft / Pay Order / Banker's Cheque / BG as per format given in Appendix V [Format for Bid Bond in the Form of Bank Guarantee] towards cost of Bid Bond or duly notarised scanned copy of Exemption Certificate.
 - c) Demand Draft/ Pay Order / Banker's Cheque towards cost of Bid Document or duly notarised scanned copy of Exemption Certificate. . Payment can also be made online mode [NEFT / RTGS]
 - d) **Forwarding Letter** addressed to the Authority as per the format given in **Appendix-I**
 - e) **Duly filled** and signed by the following **Annexes of Appendix-I:**

Annex – I	Details of Bidder
Annex – II	Financial Capacity of Bidder
Annex – III	Details of Eligible Projects
Annex – IV	Statement of Legal Capacity
Annex – V	Integrity Pact
 - f) A Notarised Copy of the **Power of Attorney** issued by the Bidder to the **authorised signatory** of the Bid as per format given in **Appendix II [Format for Power of Attorney for signing the Bid]**, as the case may be.
 - g) **[Deleted]**
 - h) **[Deleted]**
 - i) The **Original set of Bid Documents** downloaded from Authority's website together with all Addenda duly signed on the first and last pages and initiated on all other pages by the Bidder.
 - j) **An Undertaking that no changes** have been made in the Tender Documents downloaded by the Bidder or issued to the Bidder by the Authority in the Proforma given in **Appendix VIII**
 - k) **An Undertaking that Part II : Commercial & Price Bid is unconditional** as per Proforma given in **Appendix IX**
 - l) **An Undertaking** that no illegal methods have been used for influencing the Bid Process as per Proforma given in **Appendix X**
 - m) **An Undertaking for disclosure of payments** made/proposed to be made to Intermediaries in connection with the Tender as per Proforma given in **Appendix XI**

- n) **An Undertaking that the Bidder has visited the site and collected all necessary details required to submit their offer as per Appendix - XIV**
- o) **Any other document or literature** which the Bidder thinks is necessary for proper evaluation of its Bid. The Bidder shall draw special attention of the Authority to such document or literature in its forwarding letter as per **Appendix-I**
- p) **SCHEDULES1 to 17 issued as part of Vol.1 : Qualification Requirement (QR) Documents** duly completed and signed by the Bidder
- q) Copies of:
 - (iii) GST and PAN registrations;
 - (iv) EPF and ESI Registration as per EPF/ESI acts.

4.2 Any failure by the Bidder to submit the foregoing documents in **Cover -1** will render the Bidder ineligible for participation in the Bidding process.

5 **Documents to be submitted as hard copy**

The originals of the following shall be submitted within 3 days from the Bid Due Date to the Chief Engineer, Chief Engineer's Office, Cochin Port Authority, W/Island – 682009.

- (i) Duly Signed Integrity Pact as per format given in **Annex-V of Appendix-I [Integrity Pact]**
- (ii) b) Insurance Security Bond, fixed deposit receipt in the name of FA&CAO, CoPA, Demand Draft / Pay Order / Banker's Cheque / BG as per format given in Appendix V [Format for Bid Bond in the Form of Bank Guarantee] towards cost of Bid Bond or duly notarised scanned copy of Exemption Certificate.
- (iii) Demand Draft/ Pay Order / Banker's Cheque towards cost of Bid Document or documentary proof of online payment or duly notarised scanned copy of Exemption Certificate.
- (iv) A Notarised Copy of the **Power of Attorney** issued by the Bidder to the **authorised signatory** of the Bid as per format given in **Appendix II [Format for Power of Attorney for signing the Bid]**, as the case may be.
- (v) **Forwarding Letter** addressed to the Authority as per the format given in **Appendix-I**

VOL.I – PART – II : COMMERCIAL & PRICE BID

SCHEDULE OF PRICES

PREAMBLE

1 GENERAL

The following shall be read in conjunction with the Conditions of Contract. Authority's Requirements. Scope of Work. Specifications and drawings for Design & Construction of Jetties, Landside facilities and allied facilities at Eastern and Western sides in Kadmath Island of Lakshadweep including material and workmanship. All Lump Sum Prices quoted in the Schedule of Prices shall include the following instructions where applicable:

- a. This is an EPC Fixed Price Lumpsum Contract.
- b. For Items of work to be executed based on the design on the Bidder, no separate fee is payable and the same is deemed to have been included in the price quoted by the Bidder for the execution of the Works.
- c. The Schedule of Prices as quoted in **Appendix-VII** shall be the fixed contract price.
- d. It shall be clearly understood that there shall not be any claim whatsoever by the Bidder on the ground that there are inadequate items of work (work based on quantity and work based on specified items) provided in the Schedule of Prices for pricing by the Bidder.
- e. The whole cost of complying with the provisions of the Bid Document shall be included in the items provided in the priced Schedule of Prices and where no items are provided. The cost shall be deemed to have been distributed among the rates and prices entered for the available items of work. The price quoted shall include all costs up to successful completion of Defects Liability Obligations by the Contractor.
- f. The rates and prices tendered by the Bidder in the Schedule of Prices shall, except insofar as it is otherwise provided under the Contract, including but not limited to all Bidder's equipment, labour, supervision, materials, plant, wastage, fuel, erection, maintenance, insurance, profit, overheads, together with all general risks, liabilities and obligations set out or implied in the Tender Document including all taxes, duties, fees, royalty and other statutory deductions.

General requirements, directions and descriptions of work and materials, given in the Specifications or Drawings or Conditions of Tender / Contract are not necessarily repeated nor summarised in the Schedule of Prices. Bidder is specifically advised to check and include any other item required for completeness of the total work as per the scope of work and specification and satisfactory performance of the total system

VOL. I – APPENDICES

Appendix-I

Letter Comprising the Bid

(Refer Clause 4.2.3)

[To be made in Bidder's Letter Head]

Ref. No.....

Date:.....

To,

Chief Engineer,
Chief Engineer's Office,
Cochin Port Authority,
W/Island,
Cochin 682009,
Kerala.

Sub: Tender for The Construction of Jetties, Landside facilities and allied facilities at Eastern and Western sides in Kadmath Island of Lakshadweep on EPC contract basis("Project")

Dear Sir

1. With reference to your bid document dated¹, we, having examined the bid document and understood its contents, hereby submit our Application for the aforesaid Project. The Application is unconditional and unqualified.
2. We acknowledge that the Authority will be relying on the information provided in the Bid and the documents accompanying such Bid of the Bidders for the aforesaid project, and we certify that all information provided in the Bid and in Appendices, **Annexes and Schedules** is true and correct; nothing has been omitted which renders such information misleading; and all documents accompanying such Bid are true copies of their respective originals.
3. This statement is made for the express purpose of qualifying as a Bidder for the construction of the aforesaid Project including repairs and rectifications during the Defects Liability Period as have been specified in the Bid Documents.
4. We shall make available to the Authority any additional information it may find necessary or require to supplement or authenticate the Qualification statement.

¹All blank spaces shall be suitably filled up by the Applicant to reflect the particulars relating to such Applicant

5. We acknowledge the right of the Authority to reject our Bid without assigning any reason or otherwise and hereby waive, to the fullest extent permitted by applicable law, our right to challenge the same on any account whatsoever.
6. We certify that in the last 3(three) years, we or our Associates have neither failed to perform on any contract, as evidenced by imposition of a penalty by an arbitral or judicial authority or a judicial pronouncement or arbitration award, nor been expelled from any project or contract by any public authority nor have had any contract terminated by any public authority for breach on our part.
7. We declare that:
 - (a) We have examined and have no reservations to the bid document, including any Addendum issued by the Authority.
 - (b) We do not have any conflict of interest in accordance with Clauses 4.2.1 (c) of Volume-I of the bid document; and
 - (c) We have not directly or indirectly or through an agent engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice, as defined in Volume-I - Section-28 of the bid document, in respect of any tender or request for proposal issued by or any agreement entered into with the Authority or any other public sector enterprise or any government, Central or State and have submitted necessary Undertakings in the prescribed formats as per Clause 4.11.2; and
 - (d) We hereby certify that we have taken steps to ensure that in conformity with the provisions of Volume-I -Section-28 of the Bid document, no person acting for us or on our behalf has engaged or will engage in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice.
8. We understand that you may cancel the Bidding Process at any time and that you are neither bound to accept any Application that you may receive nor to invite the Bidders to Bid for the Project, without incurring any liability to the Bidders, in accordance with Volume-I -clause4.27 of the Bid document.
9. We believe that we satisfy the Financial Capacity criteria and meet(s) all the requirements as specified in the Bid document and are qualified to submit a Bid.
10. We certify that in regard to matters other than security and integrity of the country, we or any of our Associates have not been convicted by a Court of Law or indicted or adverse orders passed by a regulatory authority which could cast a doubt on our ability to undertake the Project or which relates to a grave offence that outrages the moral sense of the community.
11. We further certify that in regard to matters relating to security and integrity of the country, we or any of our Associates have not been charge-sheeted by any agency of the Government or convicted by a Court of Law.

12. We further certify that no investigation by a regulatory authority is pending either against us or against our Associates or against our CEO or any of our directors/managers/ employees².
13. We undertake that in case due to any change in facts or circumstances during the Bidding Process, we are attracted by the provisions of disqualification in terms of the provisions of this Bid; we shall intimate the Authority of the same immediately.
14. We hereby irrevocably waive any right or remedy which we may have at any stage at law or howsoever otherwise arising to challenge or question any decision taken by the Authority in connection with the selection of Bidder's, selection of the Bidder, or in connection with the selection/ Bidding Process itself, in respect of the above mentioned Project and the terms and implementation thereof.
15. As required by the Bid, we are submitting herewith the following Attachments which shall form part of this Letter:
 - i) Annex-I Details of the Bidder
 - ii) Annex-II Financial Capacity of the Bidder
 - iii) Annex-III Details of Eligible Projects
 - iv) Annex-IV Statement of Legal Capacity
 - v) Annex-V Integrity Pact
16. The **Power of Attorney for signing of Bid** are also attached herewith in the prescribed format respectively as per Appendix **II**.

We are submitting our Bid enclosing the following, with the details as per the requirements of the Bid Document, for your evaluation:

- (i) Cost of Bid Document in the form of DD / Pay Order / Banker's Cheque / bearing No ----- dated -----, for Rs11800/- issued by Bank
- (ii) Bid Bond in the form of Insurance Security Bond, Fixed Deposit Receipt/ DD / Pay Order / Banker's Cheque bearing No -----dated ----- or BG for Rs.3.23crore issued byBank.
- (iii) Power-of-Attorney (....) (If applicable)
- (iv) **Integrity Pact**

We have also uploaded the following documents for online submission of Technical Bid:

- a) Duly Signed Integrity Pact as per format given in **Annex-V of Appendix-I [Integrity Pact]**

²In case the Applicant is unable to provide the certification specified in para 13, it may precede the paragraph by the words viz. "Except as specified in Schedule **** hereto". The exceptions to certification or any disclosures relating thereto may be clearly stated in a Schedule to be attached to the Application. The Authority will consider the contents of such Schedule and determine whether or not the exceptions/disclosures are material to the suitability of the Applicant for Bid Proposal hereunder

- b) Insurance Security Bond, fixed deposit receipt in the name of FA&CAO, CoPA, Demand Draft / Pay Order / Banker's Cheque / BGas per format given in Appendix V [Format for Bid Bond in the Form of Bank Guarantee] towards cost of Bid Bond or duly notarised scanned copy of Exemption Certificate.
- c) Demand Draft/ Pay Order / Banker's Cheque towards cost of Bid Document or duly notarised scanned copy of Exemption Certificate. . Payment can also be made online mode [NEFT / RTGS]**Forwarding Letter** addressed to the Authority as per the format given in **Appendix-I**
- d) **Duly filled** and signed by the following **Annexes of Appendix-I:**
- | | |
|--------------------|-------------------------------------|
| Annex – I | Details of Bidder |
| Annex – II | Financial Capacity of Bidder |
| Annex – III | Details of Eligible Projects |
| Annex – IV | Statement of Legal Capacity |
| Annex – V | Integrity Pact |
- e) A Notarised Copy of the **Power of Attorney** issued by the Bidder to the **authorised signatory** of the Bid as per format given in **Appendix II [Format for Power of Attorney for signing the Bid]**, as the case may be.
- f) The **Original set of Bid Documents** downloaded from Authority's website together with all Addenda duly signed on the first and last pages and initiated on all other pages by the Bidder.
- g) **An Undertaking that no changes** have been made in the Tender Documents downloaded by the Bidder or issued to the Bidder by the Authority in the Proforma given in **Appendix VIII**
- h) **An Undertaking that Part II : Commercial & Price Bid is unconditional** as per Proforma given in **Appendix IX**
- i) **An Undertaking** that no illegal methods have been used for influencing the Bid Process as per Proforma given in **Appendix X**
- j) **An Undertaking for disclosure of payments** made/proposed to be made to Intermediaries in connection with the Tender as per Proforma given in **Appendix XI**
- k) **An Undertaking that the Bidder has visited the site and collected all necessary details required to submit their offer as per Appendix - XIV**
- l) **An Undertaking that the Bidder has not been debarred/ blacklisted as per Appendix-XVI**
- m) **Any other document or literature** which the Bidder thinks is necessary for proper evaluation of its Bid. The Bidder shall draw special attention of the Authority to such document or literature in its forwarding letter as per **Appendix-1**

- n) **SCHEDULES1 to 17 issued as part of Vol.1 : Qualification Requirement (QR) Documents** duly completed and signed by the Bidder
- o) Copies of:
 - (v) GST and PAN registrations;
 - (vi) EPF and ESI Registration as per EPF/ESI acts.

18. We agree and undertake to abide by all the terms and conditions of the Bid document.

We also certify that further Bid related communication can be sent to the following e-mail IDs byCoPA:

- (i) and contact Mobile No.
- (ii) and contact Mobile No.

(Furnish two nos. current active email addresses and their Mobile Nos.)

IN WITNESS WHEREOF, we submit this Bid under and in accordance with the terms of the Bid documents.

Yours faithfully,

For and on behalf of

.....

(Signature, name and designation of the Authorised Signatory)

Name and seal of the Bidder

Date:

Place:

Note: Paragraphs in square parenthesis may be omitted, if not applicable, or modified as necessary.

ANNEX-I

Details of Bidder

1. (a) Name :

- (b) Country of incorporation :

- (c) Address of the corporate headquarters and its branch office(s), if any, in India:

- (d) Date of incorporation and/ or commencement of business :

2. Brief description of the Company including details of its main lines of business and proposed role and responsibilities in this Project:

3. Details of individual(s) who will serve as the point of contact/ communication for the Authority:
 - (a) Name :
 - (b) Designation :
 - (c) Company :
 - (d) Address:
 - (e) Telephone No.:..... (Mobile).....
 - (f) E-Mail Address :
 - (g) Fax Number :

4. Particulars of the Authorized Signatory of the Bidder:
 - (a) Name :
 - (b) Designation :
 - (c) Address :
 - (d) Telephone No.....(Mobile).....
 - (e) Fax Number :

5.[Deleted]

6. A statement by the Bidder disclosing material non-performance or contractual non-compliance including black-listing by the employer in past projects, contractual disputes and litigation/ arbitration in the last 3 years is given below (Attach extra sheets, if necessary).

ANNEX-II

Financial Capacity of the Bidder

(Refer to Clauses 4.2.2 (B) and 4.2.3(ii) of the Bid Document)

(In Rs. crore[₹])

Bidder type \$\$	Annual Turnover			Average Annual Turnover £
	Year 1 (2023-2024)	Year 2 (2022-2023)	Year 3 (2021-2022)	
(1)	(2)	(3)	(4)	(5)
Single entity Bidder				
TOTAL				

Name and address of Bidder's Bankers:

- 1) The Bidder shall provide Financial Statements such as Balance Sheets and Profit & Loss account statements as required under this Bid Document duly certified by the Chartered Accountant. Chartered Accountant's membership number and UDIN will be mentioned therein.

Certified by

Chartered Accountant

\$ For the purposes of technical evaluation of Bidders, conversion of foreign currency to Indian rupee the rate prevailing as on 7 days before due date of submission of Bid application will be considered.

\$\$ In case credit is claimed for an Associate, necessary evidence to establish the relationship of the Bidder with such Associate, in terms of Clause 4.2.7, shall be provided.

£ The Bidder should provide details of its own Financial Capacity or of an Associate specified in Clause 4.2.7,

Instructions:

1. The Bidder shall attach copies of the balance sheets, financial statements and Annual Reports for 3 (three) years preceding the Bid Due Date. The financial statements shall:

- (a) *reflect the financial situation of the Bidder and its Associates where the Bidders relying on its Associate's financials;*
 - (b) *be audited by a statutory auditor;*
 - (c) *be complete, including all notes to the financial statements; and*
 - (d) *correspond to accounting periods already completed and audited (no statements for partial periods shall be requested or accepted).*
2. *The Bidder shall also provide the name and address of the Bankers to the Bidder.*

ANNEX-III

Details of Eligible Projects

(Refer to Clauses 4.2.2 of the Bid document)

Project Ref. No:

Individual/Associate:

Item	Particulars of the Project
Title and nature of the project	
Category	
Year-wise (a) payments received for construction, and/or (b) revenues appropriated for self-construction under EPC projects	
Entity for which the project was constructed	
Location	
Estimated Project cost	
Actual Project cost	
Date of commencement of project/ contract	
Scheduled completion date	
Date of actual completion/ commissioning	
Whether credit is being taken for the Eligible Experience of an Associate (Yes/ No)	

Instructions:

1. *Separate sheets should be filled for each Eligible Project.*
2. *In case the Eligible Project relates to an Associate, write "Associate".*

3. *Experience for any activity relating to an Eligible Project shall not be claimed twice. In other words, no double counting in respect of the same experience shall be permitted in any manner whatsoever.*
4. *Certificate in original/ notarized from the Authority/ owner must be furnished with the following details:*
 - a) *Project name*
 - b) *Construction Cost of Project*
 - c) *Date of Commencement of construction*
 - d) *Date of Completion of construction*
 - e) *Scope of works executed*
5. The experience certificate of works executed in private sector/ organization, shall be considered for qualification, only on submission of TDS certificate along with work order and completion certificate
6. It may be noted that in the absence of any detail in the above certificates, the information would be considered inadequate and could lead to exclusion of the relevant project from evaluation.

ANNEX-IV

Statement of Legal Capacity

(To be forwarded on the letterhead of the Bidder/)

Ref.

Date:

To,

The Chief Engineer
Chief Engineer's Office
Cochin Port Authority
W/Island
Cochin682009
Kerala

Dear Sir,

We hereby confirm that we (constitution of which has been described in the Bid) satisfy the terms and conditions laid out in the bid document.

We have agreed that (insert individual's name) will act as our representative and has been duly authorized to submit the Bid. Further, the authorized signatory is vested with requisite powers to furnish such letter and authenticate the same.

Thanking you,

Yours faithfully

for and on behalf of

.....

(Signature, name and designation
of the authorized signatory)

** Please strike out whichever is not applicable.*

ANNEX-V

[to be made in Bidder's Letter head]

PROFORMA OF INTEGRITY PACT

Bid No.....; Bid Title:

This Agreement (hereinafter called the Integrity Pact) is made on ____ day of the month of ____2024 at _____, India BETWEEN THE BOARD OF MAJOR PORT AUTHORITY FOR COCHIN PORT commonly known as COCHIN PORT AUTHORITY, a Body Corporate under the Major Port Authorities Act, 2021, with its Administrative Office at Willingdon Island, Cochin-682009, represented by its Chief Engineer, Smt., D/o Sri....., aged years residing at (address) (hereinafter called the "The Principal", which expression shall mean and include unless the context otherwise requires, his successors in office and assigns) of the First Part AND M/s. _____ represented by Shri.....Chief Executive Officer (hereinafter called the "BIDDER" which expression shall mean and include, unless the context otherwise requires, his successors and permitted assigns) of the Second Part.

PREAMBLE

"The Principal" intends to award, under laid down organizational procedures, contract/ s for _____, "The Principal" values full compliance with all relevant laws of the land, rules, regulations, economic use of resources and of fairness/ transparency in its relations with its Bidder(s) and/ or Contractor(s) / Consultant(s). In order to achieve these goals, the Principal shall appoint Independent External Monitors (IEMs) who shall monitor the tender process and the execution of the contract for compliance with the principles mentioned above.

Section 1 - Commitments of the "The Principal"

(1) "The Principal" commits itself to take all measures necessary to prevent corruption and to observe the following principles:

- a. No employee of the Principal, personally or through family members, shall in connection with the tender for, or the execution of a contract, demand, take a promise for or accept, for self or third person, any material or immaterial benefit which the person is not legally entitled to.
- b. The Principal shall, during the tender process, treat all Bidder(s) with equity and reason. The Principal shall in particular, before and during the tender process, provide to all Bidder(s) the same information and shall not provide to any Bidder(s) confidential/ additional information through which the Bidder(s) could obtain an advantage in relation to the tender process or the contract execution.
- c. The Principal shall exclude from the process all known prejudiced persons.

(2) If the Principal obtains information on the conduct of any of its employees, which is a criminal offence under the IPC/ PC Act, or if there be a substantive suspicion in this regard, the Principal shall inform the Chief Vigilance Officer and in addition, can initiate disciplinary actions.

Section 2 - Commitments of the “Bidder/ Contractor/ Consultant”

(1) The “Bidder/Contractor/Consultant” commit themselves to take all measures necessary to prevent corruption. The Bidder/ Contractor/ Consultant” commit themselves to observe the following principles during participation in the tender process and during the contract execution.

- a. The “Bidder/ Contractor/ Consultant” shall not, directly or through any other person or firm, offer, promise, or give to any of the Principal’s employees involved in the tender process or the execution of the contract, or to any third person any material or other benefit which he is not legally entitled to, in order to obtain in exchange any advantage of any kind whatsoever during the tender process or during the execution of the contract.
- b. The ‘Bidder/ Contractor/ Consultant’ shall not enter with other Bidders into any undisclosed agreement or understanding, whether formal or informal. This applies in particular to prices, specifications, certifications, subsidiary contracts, submission or non-submission of bids or any other actions to restrict competitiveness or to introduce cartelization in the tender process.
- c. The ‘Bidder/ Contractor/ Consultant’ shall not commit any offence under the relevant IPC/ PC Act; further, the ‘Bidder/ Contractor/ Consultant’ shall not use improperly, for purposes of competition or personal gain, or pass on to others, any information or document provided by the Principal as part of the business relationship, regarding plans, technical proposals, and business details, including information contained or transmitted electronically.
- d. The ‘Bidder/ Contractor/ Consultant’ of foreign origin shall disclose the name and address of the Agents/ representatives in India if any. Similarly, the ‘Bidder/ Contractor/ Consultant’ of Indian Nationality shall furnish the name and address of the foreign principals, if any. Further details as mentioned in the “Guidelines on Indian Agents of Foreign Suppliers” shall be disclosed by the Bidder/ Contractor/ Consultant. Further, as mentioned in the Guidelines, all the payments made to the Indian agent/ representative have to be in Indian Rupees only. Copy of the “Guidelines on Indian Agents of Foreign Suppliers” is placed in Appendix to this agreement.
- e. The ‘Bidder/ Contractor/ Consultant’ shall, when presenting their bid, disclose any and all payments made, is committed to, or intends to make to agents, brokers, or any other intermediaries in connection with the award of the contract.
- f. Bidder/ Contractor/ Consultant who have signed the Integrity Pact shall not approach the Courts while representing the matter to IEMs and shall wait for their decision in the matter.

(2) The ‘Bidder/ Contractor/ Consultant’ shall not instigate third persons to commit offences outlined above or be an accessory to such offences.

Section 3 - Disqualification from tender process and exclusion from future contracts

If the 'Bidder/ Contractor/ Consultant', before award or during execution, has committed a transgression through a violation of Section 2, above or in any other form such as to put their reliability or credibility in question, the Principal is entitled to disqualify the 'Bidder/ Contractor/ Consultant' from the tender process or take action as per the procedure mentioned in the "Guidelines on Banning of business dealings".

Section 4 - Compensation for Damages

(1) If the Principal has disqualified the „Bidder/ Contractor/ Consultant“ from the tender process prior to the award according to Section 3, the Principal is entitled to demand and recover from “Bidder/ Contractor/ Consultant” the damages equivalent to Earnest Money Deposit/ Bid Security.

(2) If the Principal has terminated the contract according to Section 3, or if the Principal is entitled to terminate the contract according to Section 3, the Principal shall be entitled to demand and recover from the contractor liquidated damages of the contract value or the amount equivalent to Performance Bank Guarantee.

Section 5 - Previous transgression

(1) Bidder declares that no previous transgressions occurred in the last three years with any other Company in any country conforming to the anti-corruption approach or with any Public Sector Enterprise in India that could justify his exclusion from the tender process.

(2) If Bidder makes an incorrect statement on this subject, he can be disqualified from the tender process, or action can be taken as per the procedure mentioned in "Guidelines on Banning of business dealings".

Section 6 - Equal treatment of all Bidders/ Contractors/ Consultants/Subcontractors

(1) In the case of Sub-contracting, the Principal Contractor/ Consultant shall take responsibility for the adoption of the Integrity Pact by the Sub-contractor.

(2) The Principal shall enter into agreements with identical conditions as this one with all Bidders and Contractors/ Consultants.

(3) The Principal shall disqualify from the tender process all bidders who do not sign this Pact or violate its provisions.

Section 7 - Criminal charges against violating Bidder(s)/ Contractor(s)/ Consultant(s)/Subcontractor(s)

If the Principal obtains knowledge of the conduct of a Bidder, Contractor/ Consultant or Subcontractor, or of an employee or a representative or an associate of a Bidder, Contractor/ Consultant or Subcontractor which constitutes corruption, or if the Principal has substantive suspicion in this regard, the Principal shall inform the same to the Chief Vigilance Officer.

Section 8 - Independent External Monitor

(1) The BUYER/ EMPLOYER has appointed the following panel of Independent Monitors (hereinafter referred to as Monitors) for this Pact in consultation with the Central Vigilance Commission:

1. Shri. M.J. Joseph, ICAS (Retd.)
37, Da Costa Square, 3rd cross, Cooke Town, Bangalore -560084
Email: joseph.iem@cochinport.gov.in
2. Shri. Punati Sridhar, IFoS (Retd.)
8C, Block-4, 14-C Cross, MCHS Colony,
HSR 6th Sector, Bangalore-560 102
E-mail id: sridhar.iem@cochinport.gov.in

The task of the Monitor is to review independently and objectively whether and to what extent the parties comply with the obligations under this agreement.

(2) The Monitor is not subject to instructions by the representatives of the parties and performs his functions neutrally and independently. The Monitor would have access to all Contract documents whenever required. It shall be obligatory for him/ her to treat the information and documents of the Bidders/ Contractors/ Consultants as confidential. He/ she reports to the Head of the Procuring Organization.

(3) The Bidder(s)/ Contractor(s)/ Consultant(s) accepts that the Monitor has the right to access without restriction to all Project documentation of the Principal, including that provided by the contractor. The contractor shall also grant the Monitor, upon his request and demonstration of a valid interest, unrestricted and unconditional access to their project documentation. The same is applicable to Sub-contractors project documentation. The same is applicable to Sub-contractors.

(4) The Monitor is under contractual obligation to treat the information and documents of the Bidder/ Contractor(s)/ Consultant(s)/ Sub-contractor(s) with confidentiality. The Monitor has also signed declarations on "Non-Disclosure of Confidential Information" and of "Absence of Conflict of Interest". In case of any conflict of interest arising at a later date, the IEM shall inform the Head of the Procuring Organisation and rescue himself/ herself from that case.

(5) The Principal shall provide to the Monitor sufficient information about all meetings among the parties related to the Project provided such meetings could have an impact on the contractual relations between the Principal and the Contractor/ Consultant. The parties offer the Monitor the option to participate in such meetings.

(6) As soon as the Monitor notices, or believes to have noticed, a violation of this agreement, he shall so inform the Management of the Principal and request the Management to discontinue or take corrective action, or to take other relevant action. The monitor can, in this regard, submit non-binding recommendations. Beyond this, the Monitor has no right to demand from the parties that they act in a specific manner, refrain from action, or tolerate action.

(7) The Monitor shall submit a written report to the Head of the Procuring Organization within 8 to 10 weeks from the date of reference or intimation to him by the Principal and, should the occasion arise, submit proposals for correcting problematic situations.

(8) If the Monitor has reported to Head of the Procuring Organization, a substantiated suspicion of an offence under relevant IPC/ PC Act, and Head of the Procuring Organization has not, within the reasonable time, taken visible action to proceed against such offence or reported it to the Chief Vigilance Officer, the Monitor may also transmit this information directly to the Central Vigilance Commissioner.

(9) The word 'Monitor' would include both singular and plural.

(10) In the event of any dispute between the Management and the Contractor/ Consultant, incase, both the parties are agreeable, dispute may be settled through mediation before the panel of IEMs in a time bound manner. If required, the organizations may adopt any mediation rules for this purpose.

(11) The fees/ expenses on dispute resolution shall be equally shared by both the parties.

(12) A person signing the IP shall not approach the Courts while representing the matters to IEMs and he/ she will await their decision in the matter.

(13) In case of Joint Ventures all the partners of the joint venture should sign the Integrity Pact. In case of sub-contracting, the Principal Contractor/ Consultant shall take the responsibility of the adoption of IP by the sub – contractor. It is to be ensured that all sub-contractors also sign the IP.

Section 9 - Pact Duration

This Pact begins when both parties have legally signed it. It expires for the Contractor / Consultant 12 months after the last payment under the contract and for all other Bidders 6 months after the contract has been awarded. Any violation of the same would entail disqualification of the Bidders and exclusion from future business dealings. If any claim is made/ lodged during this time, the same shall be binding and continue to be valid despite the lapse of this pact as specified above unless it is discharged/ determined by the Head of the Procuring Organization.

Section 10 - Other provisions

(1) This agreement is subject to Indian Law. The place of performance and jurisdiction is the Registered Office of the Principal, i.e., Cochin.

(2) Changes and supplements, as well as termination notices, need to be made in writing. Side agreements have not been made.

(3) If the Contractor/ Consultant is a partnership or a consortium, this agreement must be signed by all partners or consortium members.

(4) Should one or several provisions of this agreement turnout to be invalid, the remainder of this agreement remain valid. In this case, the parties shall strive to come to an agreement with their original intentions.

(5) Issues like Warranty/ Guarantee etc., shall be outside the purview of IEMs.

(6) In the event of any contradiction between the Integrity Pact and its Appendix, the Clause in the Integrity Pact shall prevail.

For and on behalf of the Principal
(Name of the Officer and Designation)
(Office Seal)

For and on behalf of 'Bidder/ Contractor/ Consultant'
(Name of the Officer and Designation)
(Office Seal)

For and on behalf of the Principal
Place
Date

Witness 1: (Name & Address)

Witness2 : (Name & Address)

APPENDIX II

[To be executed on non-judicial stamp paper of Rs.100/- in India to be purchased]

Power of Attorney for signing the Bid

Know all men by these presents, We (name of the firm and address of the registered office) do hereby irrevocably constitute, nominate, appoint and authorize Mr/Ms _____ (name), son/daughter/wife of _____ and presently residing at _____, who is presently employed with us and holding the position of _____, as our true and lawful attorney (hereinafter referred to as the "Attorney") to do in our name and on our behalf, all such acts, deeds and things as are necessary or required in connection with or incidental to submission of our Tender for Bid and submission of our bid for the "EPC contract for **Construction of Jetties, Landside facilities and allied facilities at Eastern and Western sides in Kadmath Island of Lakshadweep**" Project proposed or being developed by Cochin Port Authority (the "Authority") including but not limited to signing and submission of all Tenders, bids and other documents and writings, participate in Pre-Tenders and other conferences and providing information/ responses to the Authority, representing us in all matters before the Authority, signing and execution of all contracts including the Concession Agreement and undertakings consequent to acceptance of our bid, and generally dealing with the Authority in all matters in connection with or relating to or arising out of our bid for the said Project and/ or upon award thereof to us and/or till the entering into of the Concession Agreement with the Authority.

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

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

For _____

(Signature, name, designation and address)

Witnesses:

1.

2.

(Notarized)

Accepted

(Signature)

(Name, Title and Address of the Attorney)

Notes:

- The mode of execution of the Power of Attorney should be in accordance with the procedure, if any, laid down by the applicable law and the charter documents of the executant(s) and when it is so required, the same should be under common seal affixed in accordance with the required procedure.
- Wherever required, the Bidder should submit for verification the extract of the charter documents and documents such as a board or shareholders' resolution/power of attorney in favor of the person executing this Power of Attorney for the delegation of power hereunder on behalf of the Bidder.

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

APPENDIX III

[Deleted]

APPENDIX IV

[Deleted]

APPENDIX V

**PROFORMA OF IRREVOCABLE BANK GUARANTEE TOWARDS
BID BOND**

(To be submitted on Non-judicial Stamp Paper of appropriate value)

Bank Guarantee No..... Dated.....

Amount of Guarantee Rs.

Guarantee Cover Period fromto

THIS DEED OF GUARANTEE executed at.....by(Name of Bank) having its Head/Registered Office at _____ and Branch at (hereinafter called “the Bank or the Guarantor”) which expression shall, unless it be repugnant to the subject or context thereof, include its executors, administrators, successors and assigns;

In favor of

The Board of Trustees of Cochin Port Authority (hereinafter called “the Authority”), having its office at W/Island, Cochin – 682009, Kerala, India, which expression shall, unless it be repugnant to the subject or context thereof, include its executors, administrators, successors and assigns;

WHEREAS M/s.....a Company registered under the provisions of (state the law) having its registered office and principal place of business at(hereinafter called “the Bidder”, which expression shall, unless it be repugnant to the subject or context thereof include its executors administrators, successors and assigns) has tendered for Construction of Jetties, Landside facilities and allied facilities at Eastern and Western sides in KadmathIsland of Lakshadweep(hereinafter called the “Works”)

WHEREAS in terms of the Bid documentRef. No.....dated.....hereinafter referred to as (“Bid Document”) the Bidder is required to furnish to the Authority an unconditional and irrevocable Bank Guarantee for an amount of Rs.(Rupees only) as **Bid Bond** and the Guarantor has at the request of the Bidder agreed to provide such Bind Bond in the form of this Bank Guarantee.

NOW THIS DEED WITNESSETH that in consideration of the premises, the Guarantor hereby declares, undertakes and agree as follows:

- a) The Guarantor as primary obligor shall, without demur, pay to the Port Authority an amount not exceeding Rs. (Rupees only), within 5 (five) days of receipt of a written demand from the Authority stating that the Bid Bond has been forfeited in terms of the Bid Document. Any such demand made on us by the Authority shall be conclusive and absolute as regards the forfeiture of the Bid Bond and the amount due and payable under this Guarantee.
- b) The above payment shall be made by the Guarantor without any reference to the Bidder or any other person and irrespective of whether the claim of the Authority is disputed by the Bidder or not.
- c) This Guarantee shall remain in full force for a period of 180 days from(date)* or for such extended period corresponding to the extension of the validity of the Bid submitted by the Bidder and shall continue to be enforceable until the amount demanded by the Authority under this Guarantee are paid.
- d) In order to give full effect to this Guarantee, the Authority shall be entitled to treat the Guarantor as the principal debtor and the obligations of the Guarantor shall not be affected by any variations in the terms and conditions of the Bid Documents or other documents or by extension of time of performance of any obligations by the Bidder or any postponement for any time of the powers exercisable by the Authority against the Bidder or forebear or enforce any of the terms and conditions relating to non-compliance of the Bid Document by the Bidder and we shall not be relieved from our obligations by reason of any variation or extension being granted to the Bidder or forbearance or omission on the part of the Authority or any indulgence by the Authority to the Bidder to give such matter or thing whatsoever which under the law relating to sureties would but for this provision have effect of so relieving the Guarantor.
- e) This Guarantee shall be unconditional and irrevocable and shall remain in full force and effect until all our obligations under this Guarantee are duly discharged.
- f) The Guarantor has power to issue this Guarantee and the undersigned is duly authorized to execute this Guarantee pursuant to the powers granted to him or her.

IN WITNESS WHEREOF the Guarantor has set its hands hereunto on the day, month and year first hereinabove written.

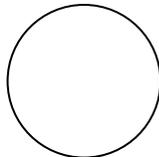
Signed and Delivered by the aforesaid Guarantor)

Bank by the hand of the Authorized Signatory ()

Mr./Ms.....[name])

.....[designation]) _____

Bank's
Seal



* Fill in the scheduled date of submission of Bid

APPENDIX VI

To be engrossed on Rs.200/- Indian Non-judicial stamp paper

PARENT COMPANY GUARANTEE @

THIS PARENT COMPANY GUARANTEE is executed at.....(place) on this.....day of2025 by , a Company incorporated as per the laws of.....(country) having its registered office and principal place of business at(complete address) (hereinafter referred to as the “Principal” or the “Guarantor” (as the case may be) which expression shall, unless it be contrary or repugnant to the context or the meaning thereof, include its legal representatives, successors and permitted assigns)

In favour of

The Chief Engineer, Cochin Port Authority, W/Island, Cochin, PIN 682009, Kerala State, India (hereinafter referred to as the “Authority” which expression shall, unless it be contrary or repugnant to the context or the meaning thereof, include its successors and assigns).

WHEREAS the Authority invited Proposals Ref. No..... dated for Construction of Jetties, Landside facilities and allied facilities at Eastern and Western sides in Kadmath Island of Lakshadweep and remedying defects therein (hereinafter referred to as the “Works”) on EPC/ basis in terms of the said Bid document;

WHEREAS a Company incorporated as per the laws of(country) having its registered office at (complete address), a Subsidiary/Associate (cancel as appropriate) of the Principal (hereinafter referred to as the “Company”) has, (hereinafter collectively referred to as the “Bidder” or the “Contractor” (as the case may be) have submitted their Tender Ref.....dated..... (hereinafter referred to as the “said Offer”) in response to the said Bid document; and

WHEREAS, after careful consideration and evaluation of the Bid/s received against the said Bid document, the Authority has chosen to accept the said Offer of the Bidder, as amended by the Bidder or deemed to have been amended by the Bidder subsequently

during the bid opening and evaluation, and issue a Letter of Acceptance to the Bidder (hereinafter referred to as the “LoA”).

NOW, In consideration of the Authority agreeing to issue the LoA to the Bidder and subsequently entering into a Contract with the Contractor for execution and completion of the Works on EPC basis according to the terms & conditions of the said Bid document (hereinafter referred to as the “Contract”), the Guarantor does hereby absolutely, unconditionally, and irrevocably guarantee, as a primary obligor, full, complete and punctual performance of the Works and all obligations of the Contractor under the Contract, the Contract Specifications, the Project Schedule, and all Change Orders for variation to the Works issued there under and amendments thereof which may subsequently be issued by the Authority to the Contractor..

The Guarantor hereby further guarantees and undertakes as follows:

1. Should the Contractor fail to perform the Works or any part thereof or any of the obligations under the Contract fully or partly, the Guarantor undertakes to and shall perform such Works or any part thereof or such obligations fully or partly, or arrange performance thereof, in accordance with the terms & conditions of the Contract.
2. If Guarantor fails at any time to perform or cause to be performed within a reasonable period any of the Works or obligations under this Guarantee after receipt of written demand from the Authority, the Authority may, without the need to give further notice to the Guarantor, itself perform, or have others perform such Works or such obligations.
3. The Guarantor shall indemnify and hold harmless the Authority from and against any and all losses, damages, costs and expenses which may be incurred by the Authority by reason of or in connection with any such failure by the Guarantor, including without limitation, any and all costs incurred by the Authority in performing or arranging for the performance of any of such Works or obligations.
4. The Authority shall not be required to proceed first or at all against Contractor or any other person before enforcing any of the terms&conditions of this Guarantee.
5. To the extent that the Contractor’s failure to perform any of the Works or its obligations wholly or partly under the Contract gives rise to monetary damages, the Guarantor shall promptly reimburse the Authority for such damages, including, without limitation, all sums due or to become due and reasonable attorney’s fees or expenses which may be paid, suffered, or incurred by the Authority in enforcing this Guarantee and in endeavouring to collect said sums (or any part thereof), without requiring the prosecution of the claim against the Guarantor.
6. The Guarantor hereby agrees to indemnify and hold harmless the Authority from and against all costs of obtaining performance from the Contractor or the Guarantor which arise out of or in connection with any failure or non-performance by the Contractor or the Guarantor. However, any provisions of the Contract which limit the liability of the Contractor under the Contract shall similarly limit the liabilities attaching to the Guarantor under this Guarantee, without prejudice to any other liabilities which may attach to the Guarantor in any other capacity.

7. Notwithstanding that the provisions of this Guarantee sets forth obligations of the Guarantor to compensate and indemnify the Authority such damages, costs and expenses incurred by the Authority in the foregoing paras, the Authority shall not make any claim for such damages, costs and expenses and the Guarantor shall not be obligated to compensate the Authority in a manner or in amounts that would result in the Authority recovering duplicate payments for the same claim. The Authority shall only be entitled to claim such damages, costs or expenses from the Guarantor which are not already paid for or remaining outstanding from or on account of Contractor and the Guarantor shall not be obligated to make any duplicate payments towards any such damages, costs and expenses.
8. Notwithstanding any termination of the Contract, this Guarantee shall continue to bind Guarantor and shall remain in full force and effect until all pre-termination and post-termination obligations of Contractor under the Contract have been performed. No delays on the part of Authority in the exercise of any right or remedy shall operate as a waiver thereof, and no single or partial exercise by Authority of any right or remedy shall preclude other or further exercise thereof or the exercise of any other right or remedy. No actions of the Authority permitted hereunder shall in any way impair or affect this Guarantee.
9. This Guarantee shall be binding upon Guarantor and its legal representatives, successors, and permitted assigns and shall be for the benefit of the Authority, its successors, and assigns.
10. If more than one party shall execute this Guarantee as Guarantor, Co-Guarantor or in any other capacity, the term "Guarantor" shall mean all such parties executing this Guarantee and all such parties shall be jointly, severally and unconditionally obligated hereunder.
11. This Guarantee shall be enforceable in, and construed in accordance with the laws of India and only Courts of competent jurisdiction at Kochi in India shall have jurisdiction on all matters covered under this Guarantee. The Guarantor hereby willingly agrees and does submit to the jurisdiction of the said Courts in India.

IN WITNESS WHEREOF, the Guarantor and the Company have executed this Guarantee by their duly authorized signatories as of the date, month and year hereinabove written.

For & on behalf of the Guarantor

ATTEST:

.....(name)

By _____

1. _____

Name:

Title:

2. _____

for& on behalf of the Company

ATTEST:

.....(name)

By _____

1. _____

Name:

Title:

2. _____

@ Notes:

1. This Guarantee shall be accompanied by a certified copy of the Board Resolution of the Guarantor and the Company authorizing the Executants to issue and execute such Guarantee
2. In respect of Guarantee executed and issued out of India, it shall be notarised in the jurisdiction where such Guarantee has been issued and executed and shall subsequently be legalized by the Indian Embassy/Consulate or the Indian High Commission, as the case may be.

**APPENDIX VII
SCHEDULE OF PRICES**

From

To

The Chief Engineer,
Chief Engineer's Office
Cochin Port Authority,
W/Island, Cochin
Kerala, India.
Pin –682009.

Sir,

Sub: Construction of Jetties, Landside facilities and allied facilities at Eastern and Western sides in Kadmath Island of Lakshadweep,

I/We have perused the Bid Documents for the project and other details and am/are willing to undertake and complete the project as per terms and conditions stipulated in the Bid Documents.

Our lump-sum price offer is inclusive of all incidentals and overheads as per clause 5.63 of Volume-I of Bid Document excluding GST for execution of this project work covering the scope of works as stipulated in the Bid Document and is as follows:

Sl.No	Description	Amount (in Rupees)
1	Construction of Jetties, Landside facilities and allied facilities at Eastern and Western sides in Kadmath Island of Lakshadweep	
	TOTAL CONTRACT PRICE	
Total Amount in Words Rupees.		

I/We agree to accept the stage-wise / percentage-wise payment schedule as detailed in Volume-II- Part-1-Employer's Requirement 'of the Bid Document

NOTE: All the payment under this Contract will be made only in Indian Rupees. The fees/price may be quoted in Indian Rupees only

Dated.....day of.....2025

Signature of Bidder

APPENDIX – VIII

**PROFORMA OF UNDERTAKING THAT NO CHANGES HAVE BEEN MADE IN
THE BID DOCUMENTS DOWNLOADED BY THE BIDDER**

To

The Chief Engineer,
Chief Engineer's Office
Cochin Port Authority,
W/Island, Cochin 682009.
Kerala, India.

Dear Sir

Sub: Bid document Ref.dated.....for Construction of
Jetties, Landside facilities and allied facilities at Eastern and Western sides in
Kadmath Island of Lakshadweep, on EPC Contract Basis (“**Project**”)

We..... * do hereby confirm
that no changes have been made by us in the Bid Document downloaded by us and that the
same has been submitted by us unchanged.

Yours faithfully

for.....

By _____ (signature)

Name & Designation :

* *Name of the Bidder*

**PROFORMA OF UNDERTAKING THAT PART II – COMMERCIAL & PRICE BID
UNDER IS UNCONDITIONAL**

To

The Chief Engineer,
Chief Engineer's Office
Cochin Port Authority,
W/Island, Cochin 682009.

Kerala, India.

Dear Sir

Sub: Bid document Ref.dated.....for Construction of
Jetties, Landside facilities and allied facilities at Eastern and Western sides in
Kadmath Island of Lakshadweep, on EPC Contract Basis ("**Project**")

Wedo hereby confirm
that Part II of the Bid document comprising the Commercial & Price Bid of the Bid submitted
by us against the above Bid Proposal is **unconditional**.

Yours faithfully
for.....

By _____(signature)
Name & Designation :

* *Name of the Bidder*

PROFORMA OF UNDERTAKING THAT NO ILLEGAL METHODS HAVE BEEN USED TO INFLUENCING BID PROCESS

To

The Chief Engineer,
Chief Engineer's Office
Cochin Port Authority,
W/Island, Cochin 682009.
Kerala, India.

Dear Sir,

Sub: Bid document Ref.dated.....for Construction of Jetties, Landside facilities and allied facilities at Eastern and Western sides in Kadmath Island of Lakshadweep, on EPC Contract Basis ("**Project**")

We * do hereby undertake that we have not made any payment or illegal gratification to any person/authority connected with the above bid document so as to influence the bid process and have not committed any offence under the Indian Penal Code in connection with the bid.

Yours faithfully

for.....

By _____(signature)

Name & Designation :

* *Name of the Bidder*

PROFORMA OF DISCLOSURE OF PAYMENT MADE/PROPOSED TO BE MADE TO THE INTERMEDIARIES IN CONNECTION WITH THE TENDER

To

The Chief Engineer,
Chief Engineer's Office
Cochin Port Authority,
W/Island, Cochin 682009.

Kerala, India

Dear Sir

Sub: Bid document Ref.dated.....for Construction of Jetties, Landside facilities and allied facilities at Eastern and Western sides in Kadmath Island of Lakshadweep, on EPC Contract Basis ("**Project**")

We* have made / have not made / proposed to make the following payments in connection with the above Bid document as under:

1. _____ to Mr./Ms./Messrs _____ (Name and Address)
2. _____ to Mr./Ms./Messrs _____ (Name and Address)
3. _____ to Mr./Ms./Messrs _____ (Name and Address)

Yours faithfully
for.....

By _____(signature)
Name & Designation : _____

* *Name of the Bidder*

Note:* - Strike off whichever is not applicable

In case no payment is made or proposed to be made a 'Nil' statement shall be enclosed

SPECIAL INSTRUCTIONS TO THE BIDDERS FOR THE E-SUBMISSION OF THE BIDS ONLINE THROUGH E-PROCUREMENT PORTAL

1. The Bidders need to obtain the one time User ID & Password for log-in to e-Tender system from the service provider M/s. KEONICS by paying registration amount of Rs.1,124/- by online payment using Credit/Debit Card/Net banking or DD in favour of “KSEDCL, Bangalore”.
2. The intending Bidder must have valid Class-II or III digital signature certificate to submit the Bid. For further details and to obtain the digital signature, please contact e-Tender Help Desk No. 080 – 40482000 / 9746118529 / 9605557738.
3. After downloading / getting the tender schedules, the Bidder should go through them carefully and then submit the documents as per the Bid document; otherwise, the bid will be rejected.
4. The BOQ template must not be modified/ replaced by the bidder and the same should be uploaded after filling the relevant columns, else the bidder is liable to be rejected for that tender. Bidders are allowed to enter the Bidder Name and Values only.
5. If there are any clarifications, this may be obtained through the contact details given in the tender document. Bidder should take into account of the addenda / corrigenda published before submitting the bids online on the portal or on www.tenderwizard.com/COPT Bidder, in advance, should prepare the bid documents to be submitted as indicated in the tender schedule and they should be in PDF formats.
6. Bidder should arrange for the Bid Bond and tender fee as specified in the Bid. The original should be posted/couriered/given in person to the Tender Inviting Authority, within three days of Bid Due date .
7. The bidder should read the terms and conditions and accepts the same to proceed further to submit the bids
8. The bidder has to submit the Bid document(s) online well in advance before the prescribed time to avoid any delay or problem during the bid submission process.
9. There is no limit on the size of the file uploaded at the server end. However, the upload is decided on the Memory available at the Client System as well as the Network bandwidth available at the client side at that point of time. In order to reduce the file size, bidders are suggested to scan the documents in 75-100 DPI so that the clarity is maintained and the size of file gets reduced. This will help in quick uploading even at very low bandwidth speeds.
10. The Tender Inviting Authority (TIA) will not be held responsible for any sort of delay or the difficulties faced during the submission of bids online by the bidders due to local issues.
11. The bidder may submit the bid documents online mode only, through this portal. Offline documents will not be handled through this system. .

12. Successful bid submission from the system means, the bids as uploaded by the bidder is received and stored in the system. System does not certify for its correctness.
13. The bidder should see that the bid documents submitted should be free from virus and if the documents could not be opened, due to virus, during tender opening, the bid is liable to be rejected.
14. The time that is displayed from the server clock at the top of the tender Portal, will be valid for all actions of requesting bid submission, bid opening etc., in the e-Procurement portal. The Time followed in this portal is as per Indian Standard Time (IST) which is GMT+5:30. The bidders should adhere to this time during bid submission.
15. The bidders are requested to submit the bids through online e-Procurement system to the Tender Inviting Authority (TIA) well before the bid submission end date and time (as per Server System Clock).
16. Tender form Fee and Bid Bond shall be submitted with the Part I- Technical BID. BID submitted without fees, as mentioned above will not be considered for evaluation and shall be rejected summarily.

MINIMUM KEY CONSTRUCTION EQUIPMENTS & PERSONNEL FOR COMPLETION OF PROJECT

LIST OF MINIMUM KEY EQUIPMENTS

Sl. No	Minimum Equipment Description	Minimum Equipment Capacity
1	Survey Equipment's	Total Station and Auto level with Tripod
2	Excavators (Regular Arm)	PC 300 or equivalent / Higher
3	Excavator (Long Arm)	EX 470 or equivalent/ Higher
4	Dumpers / Tippers	25 MT/ Higher
5	Piling Equipment	Jack up Barge or Piling Gantry
6	Cranes	Adequate capacity/ Higher
7	Boats	Tug Boats, Fiber Boats
8	Batching Plant	20 – 30 cum per hour/ Higher
9	Transit mixer	6 cum capacity/ Higher

LIST OF MINIMUM KEY PERSONNEL

SI.No	Category & Minimum number	Minimum Qualification & Experience requirement	
1	Design Director	Master's Degree in Civil Engineering with minimum following relevant experience in leading at least 3 (three) "Similar Works" of costing not less than Rs. 125.20crore each.	
		Experience	Minimum 20years
2	Project Manager – 1Nos (Civil)	Degree in Civil Engineering with minimum following relevant experience in Construction of Berth, Jetties for Marine projects	
		Experience	Above 15 years
3	Resident Construction Manager / Resident Engineer (Civil) – 2 Nos	Degree in Civil Engineering with minimum following relevant experience in Jetty Construction using Jack-Up Platform or Launching Girders for Piling experience in Construction	
		Experience	10 -15 yrs

4	Resident Construction Manager / Resident Engineer (Mech) – 1 Nos	Degree in Mechanical Engineering with minimum following relevant Jetty Construction using Jack-Up Platform or Launching Girders for Piling experience in Construction	
		Experience	10 -15 yrs
5	Project Engineer (Civil) – 2nos	Degree in Civil Engineering with minimum following relevant experience in Construction of Berth, Jetties for Marine projects	
		Experience	7-10 yrs
6	Project Engineer (Mech) – 1nos	Degree in Mechanical Engineering with minimum following relevant experience in Construction of Berth, Jetties for Marine projects	
		Experience	7-10 yrs
7	Project Engineer (Electrical) – 1nos	Degree in Electrical Engineering/Electronics communication with minimum following relevant experience in Construction of Berth, Jetties for Marine projects	
		Experience	7-10 yrs
8	Planning Engineer – 1 Nos	Degree in Civil Engineering with minimum following relevant experience in Planning & Scheduling of Berth, Jetties for Marine projects	
		Experience	10-12 yrs of Construction experience of which 5 years in Planning and Project scheduling
9	Quality Engineer –(Civil)(QA/QC)- 1 Nos	Degree in Civil Engineering with minimum following relevant experience in Construction of Berth, Jetties for Marine projects	
		Experience	7-10yrs construction experience of which 2 yrs in QA/QC.
10	Quality Engineer – (Mech)(QA/QC)- 1 Nos	Degree in Mechanical Engineering with minimum following relevant experience in Construction of Berth, Jetties for Marine projects	
		Experience	7-10yrs construction experience of which 2 yrs in QA/QC.
11	Quantity Surveyor – 2	Degree in Civil Engineering with minimum following experience in quantity estimation, field measurement, rate analysis, bill preparation etc. in Construction field involving berth and jetties	

	Nos	construction.	
		Experience	7 - 10yrs
12	Field Engineer – (Civil)- 4 Nos	Degree in Civil Engineering with minimum following relevant experience in Construction of Berth, Jetties for Marine projects	
		Experience	3 - 5yrs
13	Field Engineer – (Mech)- 1 Nos	Degree in Mechanical Engineering with minimum following relevant experience in Construction of Berth, Jetties for Marine projects	
		Experience	3 – 5 yrs
14	Field Engineer – (Electrical) - 1 Nos	Degree in Electrical Engineering with minimum following relevant experience in Construction of Berth, Jetties for Marine projects	
		Experience	3 – 5 yrs
14	Safety Officer / Safety Engineer – 2 No's	Degree in Civil Engineering/Environmental Engineering with minimum 10-12year's experience in HSE Management at Construction sites	

DECLARATION OF SITE VISIT BY BIDDER

From

To
The Chief Engineer,
Chief Engineer's Office
Cochin Port Authority,
W/Island, Cochin
Kerala, India.
Pin –682009.

Sir,

Sub: Construction of Jetties, Landside facilities and allied facilities at Eastern and
Western sides in Kadmath Island of Lakshadweep,

We hereby declare that we have visited the said site of work and have acquainted and
satisfied thoroughly with the existing site condition.

.....
Signature of Bidder

Bank Details of CoPA for Online Payment

National Electronic Fund Transfer(NEFT/RTGS)Mandate Form (Mandate for receiving payments through NEFT/RTGS from COCHINPORT AUTHORITY)		
1	Vendor Name/ Beneficiary Name	COCHINPORTAUTHORITY
2	Vendor code	
3	Permanent Account Number (PAN)	AAALC-1134F
4	TANNO	CHNC04095A
5	GSTNO:	32AAALC1134F1ZZ
6	Particulars of Bank Account	Savings Account
	A.Name of Bank	STATEBANKOFINDIA
	B.Name of Branch	Cochin Port Authority
	C.Branch Code	6367
	D. Address	Cochin Port Authority, Willingdon Island- 682009
	E.City Name	Cochin
	F.Telephone No	2582614
	G.NEFT/ IFSCCode	SBIN0006367
	H.SWIFT Code:	SBININBB
	I.9digitMICRcodeontheCheque Book.	682002021
	J. Type of Account	Savings Account
	K. Account No.	41401802288
5	Vendor Email-id	cash@cochinport.gov.in

We hereby declare that the particulars given above are correct and complete. If the transaction is delayed or lost because of incomplete or incorrect information, we would not hold the company responsible.

**SD/-
FINANCIAL ADVISER &
CHIEF ACCOUNTS OFFICER
COCHIN PORT AUTHORITY**

Bank Certificate

We certify that _____ has current
account No

_____ with us and we confirm that the details given above
are correct as per our records.

Date:

Place:

Authorised Official of Bank

**PROFORMA OF UNDERTAKING THAT BIDDER HAS NOT BEEN
DEBARRED/BLACKLISTED**

From

To
The Chief Engineer,
Chief Engineer's Office
Cochin Port Authority,
W/Island, Cochin
Kerala, India.
Pin –682009.

Sir,
Sub: Construction of Jetties, Landside facilities and allied facilities at Eastern and Western sides in Kadmath Island of Lakshadweep,

.....

We hereby undertake that we have not been debarred or black-listed by any Government of India Organisations/ PSU/ PSE/ Govt. Depts./ Reputed Private Sector companies, etc for breach of any applicable laws or violation of regulation or breach of contractual agreement or rendering unsatisfactory services during the last 3 (Three) years.

.....
Signature of Bidder

VOLUME-I - SCHEDULES

SCHEDULE 1

COMPOSITION OF BIDDER'S ORGANISATION

The Bidder shall give below details of the organization structure of the Bidder. These shall include but not be limited to the name and address of the entity Country of incorporation of the entity, its capital structure, nationality of Owners holding substantial part of the capital, names of Directors, Partners as the case may be, together with their qualifications and experience and particulars of key managerial personnel.

1.	Name of firm	
2.	Head office address	
3.	Details of Key Personnel: Telephone:	Telephone:
5.	Name of point of contact:	Mobile No.:
4.	Fax:	E-Mail:
5.	Place of incorporation / registration	Year of incorporation / registration
6.	Size:	Registered Capital: (in INR or Equivalent US Dollars)
Nationality of Owners ¹		
	Name	Nationality
1.		
2.		
3.		

Signature of Bidder

¹ **To be completed by all owners of partnerships or individually-owned firms**

SCHEDULE 2

GENERAL EXPERIENCE RECORD

Name of Bidding Entity

Each Bidding Entity are requested to provide information in this form. Particulars regarding the annual turnover of the Bidding Entity, in terms of the amounts billed to clients for each year for work completed or in progress duly converted to Indian Rupees at the rate of exchange prevailing at the end of the period under report.

Annual turnover data		
Year	Turnover in foreign currency	Indian equivalent Rupee
1.2023-24		
2.2022-23		
3.2021-22		

Signature of Bidder

SCHEDULE 3 A

STATEMENT OF SIMILAR EXPERIENCE

Bidder is requested to list out all contracts of a similar nature including EPC contracts and highlight the complex nature of contracts undertaken during the last 7 years.. The value should be based on the currencies of the contracts converted into Indian Rupees at the exchange rate prevailing on the date of substantial completion of such contracts. For the current contracts such value should be considered at the time of contract award. These details are to be summarized separately for each contract completed or under execution, by the Bidding Entity.

Where the Bidding entity proposes to use nominated subcontractors for critical components of the Works, the information is required to be furnished in respect of each such nominated subcontractor.

Signature of Bidder

15.	Specified Requirements ²
-----	-------------------------------------

Provide specific information for particular project components related to Open Piled Jetties / Berths / Wharfs in sea/ backwater and related onshore works including buildings / utilities.

Additional information on the project components viz. specifications, design, construction aspects etc. to be separately attached.

Relevant literatures / brochures / photographs pertaining to any particular project components may also please be attached.

Signature of Bidder

² *The Bidder should insert any specific contractual criteria required for particular operations*

SCHEDULE 4

SUMMARY SHEET: CURRENT CONTRACT COMMITMENTS / WORK IN PROGRESS

Name of Bidding Entity

Bidding Entity should provide information re: their current commitment on all marine construction works including Open Piled Jetties / Berths / Wharfs in sea/ backwater and related onshore works including buildings / utilities that they have been awarded, or for which a letter of intent or acceptance has been received by them. These will also such contracts which are approaching completion, but for which an unqualified completion certificate in full has not yet been issued.

(Open Piled Jetties / Berths / Wharfs in sea/ backwater and related onshore works including buildings / utilities)		
Name of contract	Value of outstanding work (Indian Rupees)	Indian Rupee equivalent
1.		
2.		
3.		
4.		
5.		
6.		

Signature of Bidder

SCHEDULE 5

DECLARATION OF SUB-CONTRACTORS

It is our intention to employ the following subcontractors whom we believe, after appropriate investigation, to be reliable and competent for the performance of that part of the work indicated below. All other work will be performed exclusively by us.

S.No.	Name and Address of Subcontractor	Scope of work to be performed by the Sub-Contractor:

It is agreed that we shall not subcontract any other work to any other subcontractors without the consent in writing from the Authority.

Signature of Bidder

SCHEDULE 6A

BIDDER'S PROPOSED SITE ORGANISATION

The Bidder shall indicate below his **Site Organization** to be employed in planning and supervising design, engineering, procurement & construction of the Works. This shall include but not be limited to the setup and size of the site organization together with the names, positions, qualifications, experience and authority of such personnel constitution such organization as per attached Form **6B** along with the **period of deployment** of such personnel in the form of a **Bar Chart** corresponding to the construction schedule.

Signature of Bidder

SCHEDULE 6B

DETAILS OF CONTRACTOR'S SUPERVISORY AND TECHNICAL STAFF WHO WILL PROPOSED TO BE EMPLOYED IN CARRYING OUT THE WORKS UNDER THIS CONTRACT

1. FULL NAME OF STAFF
2. NATIONALITY.....
3. EDUCATION

Institution	Address	From (year)	To (Year)	Degrees / Diplomas Received
a)				
b)				
c)				
d)				

4. WORK EXPERIENCE.....

Name of Project	Location	Name of Authority	Size of the Project Cost		Position Held
			Indian Rupees	US Dollar	
a)					
b)					
c)					
d)					

5. YEARS OF EXPERIENCE - Ports & Harbour
 (as applicable) -Construction/Marine Civil Construction

6. POSITION TO BE ASSIGNED TO HIM BY THE CONTRACTOR;

7. PERIOD OF DEPLOYMENT

Date:

Signature of Bidder

SCHEDULE 7

SCHEDULE OF PLANT AND EQUIPMENT PROPOSED FOR CONSTRUCTION OF JETTIES, LANDSIDE FACILITIES AND ALLIED FACILITIES AT EASTERN AND WESTERN SIDES IN KADMATH ISLAND OF LAKSHADWEEP ON EPC CONTRACT BASIS

The Bidder shall provide itemized description of major machinery & equipment, including year of manufacture, which he will mobilize and deploy at Site for execution of Works. Such schedule must be in agreement with the proposed construction program.

EQUIPMENT STATEMENT

Item of equipment		
Equipment Information	1. Name of Manufacturer	2. Model and Power Rating
	3. Size/Capacity	4. Year of Manufacture
	5. Quantity	
Current Status	6. Current Location	
	7. Details of Current Commitments	
Source	8. Indicate source of the equipment <input type="checkbox"/> Owned <input type="checkbox"/> Rented# <input type="checkbox"/> Leased# <input type="checkbox"/> Specially manufactured	

Omit the following information for equipment owned by the Bidder or partner.

Owner	9. Name of Owner	
	10. Address of owner	
	Telephone	Contact Name
	Fax	Telex
Agreements	Details of rental / lease / manufacture agreements specific to the Project	

Source	11. Indicate source of the equipment <input type="checkbox"/> Owned <input type="checkbox"/> Rented# <input type="checkbox"/> Leased# <input type="checkbox"/> Specially manufactured
--------	---

We, the undersigned, hereby declare that the above information forms part of the Bid.

The Bidder shall also furnish a letter from the agency / company to confirm availability of such machinery & equipment in accordance with the construction schedule.

Signature of Bidder

SCHEDULE 8

(See Clause 3.1.7(a))

APPLICABLE PERMITS

1 Applicable Permits

- 1.1 The Contractor shall obtain, as required under Applicable Laws, the following Applicable Permits:
- (a) Permission of the UT/State Government for extraction of boulders from quarry;
 - (b) Permission of Village Panchayats and Pollution Control Board for installation of temporary/permanent structures for the project ;
 - (c) Licence for use of explosives;
 - (d) Permission of the UT/State Government for drawing water from river/reservoir;
 - (e) Licence from inspector of factories or other competent Authority for setting up batching plant;
 - (f) Clearance of Pollution Control Board for setting up batching plant;
 - (g) Clearance of Village Panchayats and Pollution Control Board for setting up asphalt plant if needed;
 - (h) Permission of Village Panchayats and State Government/UT for borrow earth; and
 - (i) Any other permits or clearances required under Applicable Laws including erection of permanent / temporary structures for the project.
- 1.2 Applicable Permits, as required, relating to environmental protection and conservation shall have been procured by the Authority in accordance with the provisions of this Agreement.

SCHEDULE 9

(See Clauses 7.1.1, 7.5.3 and 19.2)

FORM OF BANK GUARANTEE

Annex-I (See Clause 7.1.1)

Form of Guarantee for Performance Security

.....,
.....,
.....,

WHEREAS:

(A)(insert name and address of the contractor) (hereinafter called the “**Contractor**”) and (insert name and address of the project authority), (hereinafter called the “**Authority**”) have entered into an agreement (hereinafter called the “**Agreement**”) for the Construction of Jetties, Landside facilities and allied facilities at Eastern and Western sides in Kadmath Island of Lakshadweep on Engineering, Procurement and Construction (the “**EPC**”) basis, subject to and in accordance with the provisions of the Agreement

(B) The Agreement requires the Contractor to furnish a Performance Security for due and faithful performance of its obligations, under and in accordance with the Agreement, during the Construction Period and Defects Liability Period (as defined in the Agreement) in a sum of Rs..... cr. (Rupees crore) (the “**Guarantee Amount**”).

(C) We,through our branch at (the “**Bank**”) have agreed to furnish this bank guarantee (*hereinafter called the “**Guarantee**”*) by way of Performance Security.

NOW, THEREFORE, the Bank hereby, unconditionally and irrevocably, guarantees and affirms as follows:

1. The Bank hereby unconditionally and irrevocably guarantees and undertakes to pay to the Authority upon occurrence of any failure or default in the due and faithful performance of all or any of the Contractor’s obligations, under and in accordance with the provisions of the Agreement during the {Construction Period/ Defects Liability Period} on its mere first written demand, and without any demur, reservation, recourse, contest or protest, and without any reference to the Contractor, such sum or sums up to an aggregate sum of the Guarantee Amount as the Authority shall claim, without the Authority being required to prove or to show grounds or reasons for its demand and/or for the sum specified therein.
2. A letter from the Authority, under the hand of an officer not below the rank of a Chief

- Engineer of the Authority that the Contractor has committed default in the due and faithful performance of all or any of its obligations under and in accordance with the Agreement shall be conclusive, final and binding on the Bank. The Bank further agrees that the Authority shall be the sole judge as to whether the Contractor is in default in due and faithful performance of its obligations during and under the Agreement and its decision that the Contractor is in default shall be final and binding on the Bank, notwithstanding any differences between the Authority and the Contractor, or any dispute between them pending before any court, tribunal, arbitrators or any other authority or body, or by the discharge of the Contractor for any reason whatsoever.
3. In order to give effect to this Guarantee, the Authority shall be entitled to act as if the Bank were the principal debtor and any change in the constitution of the Contractor and/or the Bank, whether by their absorption with any other body or corporation or otherwise, shall not in any way or manner affect the liability or obligation of the Bank under this Guarantee.
 4. It shall not be necessary, and the Bank hereby waives any necessity, for the Authority to proceed against the Contractor before presenting to the Bank its demand under this Guarantee.
 5. The Authority shall have the liberty, without affecting in any manner the liability of the Bank under this Guarantee, to vary at any time, the terms and conditions of the Agreement or to extend the time or period for the compliance with, fulfilment and/or performance of all or any of the obligations of the Contractor contained in the Agreement or to postpone for any time, and from time to time, any of the rights and powers exercisable by the Authority against the Contractor, and either to enforce or forbear from enforcing any of the terms and conditions contained in the Agreement and/or the securities available to the Authority, and the Bank shall not be released from its liability and obligation under these presents by any exercise by the Authority of the liberty with reference to the matters aforesaid or by reason of time being given to the Contractor or any other forbearance, indulgence, act or omission on the part of the Authority or of any other matter or thing whatsoever which under any law relating to sureties and guarantors would but for this provision have the effect of releasing the Bank from its liability and obligation under this Guarantee and the Bank hereby waives all of its rights under any such law.
 6. This Guarantee is in addition to and not in substitution of any other guarantee or security now or which may hereafter be held by the Authority in respect of or relating to the Agreement or for the fulfilment, compliance and/or performance of all or any of the obligations of the Contractor under the Agreement.
 7. Notwithstanding anything contained hereinbefore, the liability of the Bank under this Guarantee is restricted to the Guarantee Amount and this Guarantee will remain in force for the period specified in paragraph 8 below and unless a demand or claim in writing is made by the Authority on the Bank under this Guarantee all rights of the Authority under this Guarantee shall be forfeited and the Bank shall be relieved from its liabilities hereunder.

8. The Guarantee shall cease to be in force and effect on\$. Unless a demand or claim under this Guarantee is made in writing before expiry of the Guarantee, the Bank shall be discharged from its liabilities hereunder.
9. The Bank undertakes not to revoke this Guarantee during its currency, except with the previous express consent of the Authority in writing, and declares and warrants that it has the power to issue this Guarantee and the undersigned has full powers to do so on behalf of the Bank.
10. Any notice by way of request, demand or otherwise hereunder may be sent by post addressed to the Bank at its above referred branch, which shall be deemed to have been duly authorised to receive such notice and to effect payment thereof forthwith, and if sent by post it shall be deemed to have been given at the time when it ought to have been delivered in due course of post and in proving such notice, when given by post, it shall be sufficient to prove that the envelope containing the notice was posted and a certificate signed by an officer of the Authority that the envelope was so posted shall be conclusive
11. This Guarantee shall come into force with immediate effect and shall remain in force and effect for up to the date specified in paragraph 8 above or until it is released earlier by the Authority pursuant to the provisions of the Agreement

§ Insert date being 2 (two) years from the date of issuance of this Guarantee (in accordance with Clause 7.2 of the Agreement).

Signed and sealed this day of, 20..... at

SIGNED, SEALED AND DELIVERED

For and on behalf of the

Bank by:

(Signature)

(Name)

(Designation)

(Code Number)

(Address)

NOTES:

- (i) The bank guarantee should contain the name, designation and code number of the officer(s) signing the guarantee.

- (ii) The address, telephone number and other details of the head office of the Bank as well as of issuing branch should be mentioned on the covering letter of issuing branch
- (iii) The BG shall be valid upto 60 (sixty) days of the expiry of the Defects Liability Period

Annex – II

(SCHEDULE 9)

(See Clause 7.5.3)

Form of Guarantee for Withdrawal of Retention Money

.....,
.....,
.....,

WHEREAS:

(A)(insert name and address of the contractor) (hereinafter called the “**Contractor**”) has executed an agreement (hereinafter called the “**Agreement**”) with the (insert name and address of the project authority), (hereinafter called the “**Authority**”) for the Construction of Jetties, Landside facilities and allied facilities at Eastern and Western sides in Kadmath Island of Lakshadweep on Engineering, Procurement and Construction (the “**EPC**”) basis, subject to and in accordance with the provisions of the Agreement.

(B) In accordance with Clause 7.5.3 of the Agreement, the Contractor may withdraw the retention money (hereinafter called the “**Retention Money**”) after furnishing to the Authority a bank guarantee for an amount equal to the proposed withdrawal.

(C) We,through our branch at (the “**Bank**”) have agreed to furnish this bank guarantee (hereinafter called the “**Guarantee**”) for the amount of Rs.cr. (Rs.crore) (the “**Guarantee Amount**”).

NOW, THEREFORE, the Bank hereby unconditionally and irrevocably guarantees and affirms as follows:

1. The Bank hereby unconditionally and irrevocably undertakes to pay to the Authority, upon its mere first written demand, and without any demur, reservation, recourse, contest or protest, and without any reference to the Contractor, such sum or sums up to an aggregate sum of the Guarantee Amount as the Authority shall claim, without the Authority being required to prove or to show grounds or reasons for its demand and/or for the sum specified therein.

2. A letter from the Authority, under the hand of an officer not below the rank of a Chief Engineer of the Authority, that the Contractor has committed default in the due and faithful performance of all or any of its obligations for under and in accordance with the Agreement shall be conclusive, final and binding on the Bank. The Bank further agrees that the Authority shall be the sole judge as to whether the Contractor is in default in due and faithful performance of its obligations during and under the Agreement and its decision that the Contractor is in default shall be final, and binding on the Bank, notwithstanding any differences between the Authority and the Contractor, or any dispute between them pending before any court, tribunal, arbitrators or any other authority or body, or by the discharge of the Contractor for any reason whatsoever.
3. In order to give effect to this Guarantee, the Authority shall be entitled to act as if the Bank were the principal debtor and any change in the constitution of the Contractor and/or the Bank, whether by their absorption with any other body or corporation or otherwise, shall not in any way or manner affect the liability or obligation of the Bank under this Guarantee.
4. It shall not be necessary, and the Bank hereby waives any necessity, for the Authority to proceed against the Contractor before presenting to the Bank its demand under this Guarantee.
5. The Authority shall have the liberty, without affecting in any manner the liability of the Bank under this Guarantee, to vary at any time, the terms and conditions of the Retention Money and any of the rights and powers exercisable by the Authority against the Contractor, and either to enforce or forbear from enforcing any of the terms and conditions contained in the Agreement and/or the securities available to the Authority, and the Bank shall not be released from its liability and obligation under these presents by any exercise by the Authority of the liberty with reference to the matters aforesaid or by reason of time being given to the Contractor or any other forbearance, indulgence, act or omission on the part of the Authority or of any other matter or thing whatsoever which under any law relating to sureties and guarantors would but for this provision have the effect of releasing the Bank from its liability and obligation under this Guarantee and the Bank hereby waives all of its rights under any such law.
6. This Guarantee is in addition to and not in substitution of any other guarantee or security now or which may hereafter be held by the Authority in respect of or relating to the Retention Money.
7. Notwithstanding anything contained hereinbefore, the liability of the Bank under this Guarantee is restricted to the Guarantee Amount and this Guarantee will remain in force for the period specified in paragraph 8 below and unless a demand or claim in writing is made by the Authority on the Bank under this Guarantee all rights of the Authority under this Guarantee shall be forfeited and the Bank shall be relieved from its liabilities hereunder.
8. The Guarantee shall cease to be in force and effect 90 (ninety) days after the date of the Completion Certificate specified in Clause 12.4 of the Agreement.

9. The Bank undertakes not to revoke this Guarantee during its currency, except with the previous express consent of the Authority in writing, and declares and warrants that it has the power to issue this Guarantee and the undersigned has full powers to do so on behalf of the Bank.
10. Any notice by way of request, demand or otherwise hereunder may be sent by post addressed to the Bank at its above referred branch, which shall be deemed to have been duly authorised to receive such notice and to effect payment thereof forthwith, and if sent by post it shall be deemed to have been given at the time when it ought to have been delivered in due course of post and in proving such notice, when given by post, it shall be sufficient to prove that the envelope containing the notice was posted and a certificate signed by an officer of the Authority that the envelope was so posted shall be conclusive.
11. This Guarantee shall come into force with immediate effect and shall remain in force and effect up to the date specified in paragraph 8 above or until it is released earlier by the Authority pursuant to the provisions of the Agreement.

Signed and sealed this day of, 20..... at

SIGNED, SEALED AND DELIVERED

For and on behalf of the Bank by:

(Signature)

(Name)

(Designation)

(Code Number)

(Address)

NOTES:

- (i) The bank guarantee should contain the name, designation and code Number of the officer(s) signing the guarantee.
- (ii) The address, telephone number 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.

Annex - III
(SCHEDULE 9)
(See Clause
19.2)

Form of Guarantee for Advance Payment

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

WHEREAS:

- (A)(insert name and address of the contractor) (hereinafter called the “**Contractor**” has executed an agreement (hereinafter called the “**Agreement**”) with the (insert name and address of the project authority), (hereinafter called the “**Authority**”)for the Construction of Jetties, Landside facilities and allied facilities at Eastern and Western sides in Kadmath Island of Lakshadweep on Engineering, Procurement and Construction (the “**EPC**”) basis, subject to and in accordance with the provisions of the Agreement
- (B) In accordance with Clause 19.2 of the Agreement, the Authority shall make to the Contractor an interest free advance payment (herein after called “**Advance Payment**”) equal to 10% (ten per cent) of the Contract Price; and that the Advance Payment shall be made in three instalments subject to the Contractor furnishing an irrevocable and unconditional guarantee by a scheduled bank for an amount equivalent to 110% (one hundred and ten per cent) of such instalment to remain effective till the complete and full repayment of the instalment of the Advance Payment as security for compliance with its obligations in accordance with the Agreement. The amount of {first/second/third} instalment of the Advance Payment is Rs. cr. (Rupees crore) and the amount of this Guarantee is Rs. cr. (Rupees..... crore) (the “**Guarantee Amount**”)⁵.
- (C) We,through our branch at (the “**Bank**”) have agreed to furnish this bank guarantee (*hereinafter called the “**Guarantee**”*) for the Guarantee Amount.

⁵ The Guarantee Amount should be equivalent to 110% of the value of the applicable instalment.

NOW, THEREFORE, the Bank hereby, unconditionally and irrevocably, guarantees and affirms as follows:

1. The Bank hereby unconditionally and irrevocably guarantees the due and faithful repayment on time of the aforesaid instalment of the Advance Payment under and in accordance with the Agreement, and agrees and undertakes to pay to the Authority, upon its mere first written demand, and without any demur, reservation, recourse, contest or protest, and without any reference to the Contractor, such sum or sums up to an aggregate sum of the Guarantee Amount as the Authority shall claim, without the Authority being required to prove or to show grounds or reasons for its demand and/or for the sum specified therein.
2. A letter from the Authority, under the hand of an officer not below the rank of a Chief Engineer of the Authority, that the Contractor has committed default in the due and faithful performance of all or any of its obligations for the repayment of the instalment of the Advance Payment under and in accordance with the Agreement shall be conclusive, final and binding on the Bank. The Bank further agrees that the Authority shall be the sole judge as to whether the Contractor is in default in due and faithful performance of its obligations during and under the Agreement and its decision that the Contractor is in default shall be final and binding on the Bank, notwithstanding any differences between the Authority and the Contractor, or any dispute between them pending before any court, tribunal, arbitrators or any other authority or body, or by the discharge of the Contractor for any reason whatsoever.
3. In order to give effect to this Guarantee, the Authority shall be entitled to act as if the Bank were the principal debtor and any change in the constitution of the Contractor and/or the Bank, whether by their absorption with any other body or corporation or otherwise, shall not in any way or manner affect the liability or obligation of the Bank under this Guarantee.
4. It shall not be necessary, and the Bank hereby waives any necessity, for the Authority to proceed against the Contractor before presenting to the Bank its demand under this Guarantee.
5. The Authority shall have the liberty, without affecting in any manner the liability of the Bank under this Guarantee, to vary at any time, the terms and conditions of the Advance Payment or to extend the time or period of its repayment or to postpone for any time, and from time to time, any of the rights and powers exercisable by the Authority against the Contractor, and either to enforce or forbear from enforcing any of the terms and conditions contained in the Agreement and/or the securities available to the Authority, and the Bank shall not be released from its liability and obligation under these presents by any exercise by the Authority of the liberty with reference to the matters aforesaid or by reason of time being given to the Contractor or any other forbearance, indulgence, act or omission on the part of the Authority or of any other matter or thing whatsoever which under any law relating to sureties and guarantors would but for this provision have the effect of releasing the Bank from its liability and obligation under this Guarantee and the Bank hereby waives all of its rights under any such law.

6. This Guarantee is in addition to and not in substitution of any other guarantee or security now or which may hereafter be held by the Authority in respect of or relating to the Advance Payment.
7. Notwithstanding anything contained hereinbefore, the liability of the Bank under this Guarantee is restricted to the Guarantee Amount and this Guarantee will remain in force for the period specified in paragraph 8 below and unless a demand or claim in writing is made by the Authority on the Bank under this Guarantee all rights of the Authority under this Guarantee shall be forfeited and the Bank shall be relieved from its liabilities hereunder.
8. The Guarantee shall cease to be in force and effect on[§]Unless a demand or claim under this Guarantee is made in writing on or before the aforesaid date, the Bank shall be discharged from its liabilities hereunder.
9. The Bank undertakes not to revoke this Guarantee during its currency, except with the previous express consent of the Authority in writing, and declares and warrants that it has the power to issue this Guarantee and the undersigned has full powers to do so on behalf of the Bank.
10. Any notice by way of request, demand or otherwise hereunder may be sent by post addressed to the Bank at its above referred branch, which shall be deemed to have been duly authorised to receive such notice and to effect payment thereof forthwith, and if sent by post it shall be deemed to have been given at the time when it ought to have been delivered in due course of post and improving such notice, when given by post, it shall be sufficient to prove that the envelope containing the notice was posted and a certificate signed by an officer of the Authority that the envelope was so posted shall be conclusive.
11. This Guarantee shall come into force with immediate effect and shall remain in force and effect up to the date specified in paragraph 8 above or until it is released earlier by the Authority pursuant to the provisions of the Agreement.

[§] Insert a date being 90 (ninety) days after the end of one year from the date of payment of the Advance payment to the Contractor
(in accordance with Clause 19.2 of the Agreement).

Signed and sealed this day of, 20..... at

SIGNED, SEALED AND DELIVERED For
and on behalf of the Bank by:

(Signature)

(Name)

(Designation)

(Code Number)

(Address)

NOTES:

- (i) The bank guarantee should contain the name, designation and code number of the officer(s) signing the guarantee.
- (ii) The address, telephone number 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 10

DELETED

SCHEDULE 11

(See clause 10.2.4)

DRAWINGS

1 Drawings

In compliance of the obligations set forth in Clause 10.2 of this Agreement, the Contractor shall furnish to the Authority's Engineer, free of cost, all Drawings listed in Annex-I of this Schedule-11.

2 Additional Drawings

If the Authority's Engineer determines that for discharging its duties and functions under this Agreement, it requires any drawings other than those listed in Annex-I, it may by notice require the Contractor to prepare and furnish such drawings forthwith. Upon receiving a requisition to this effect, the

Contractor shall promptly prepare and furnish such drawings to the Authority's Engineer, as if such drawings formed part of Annex-I of this Schedule-11.

Annex - I
 (SCHEDULE 11)

List of Drawings

SL.No	Drawing No.	Drawing Name	Remarks
1	TDG101	Kadmath-Overall Layout of Proposed Developments in Kadmath Island	For Compliance
2	TDG102	Kadmath-Eastern Jetty-Development plan	For Compliance
3	TDG103	Kadmath-Western Jetty-Development plan	For Compliance
4	TDG104	Kadmath- Boat Landing Facility- Development Plan	For Compliance
5	TDG105	Kadmath Eastern Jetty-General arrangement- Plan, Elevation and sections (Sheet 1-2)	For Compliance
6	TDG106	Kadmath Eastern Jetty-General arrangement- Plan, Elevation and sections (Sheet 2-2)	For Compliance
7	TDG107	Kadmath-Eastern Jetty-Layout of Pile	For Information
8	TDG108	Kadmath-Eastern Jetty-Pile RC Details - P1 & P2	For Information
9	TDG109	Kadmath-Eastern Approach Trestle-General Arrangement (Sh 1 of 2)	For Compliance
10	TDG109	Kadmath-Eastern Approach Trestle-General Arrangement (Sh 2 of 2)	For Compliance
11	TDG110	Kadmath Western Jetty-General arrangement- Plan, Elevation and sections	For Compliance
12	TDG111	Kadmath- Western Jetty-Layout of piles	For Information
13	TDG112	Kadmath-Western Jetty -Pile RC Details - P1 & P2	For Information

14	TDG113	Kadmath Western Approach Trestle- General arrangement (Sh 1 of 2)	For Compliance
15	TDG113	Kadmath Western Approach Trestle- General arrangement (Sh 2 of 2)	For Compliance
16	TDG114	Kadmath Finger Jetty - General Arrangement – Plan, Elevation and Sections	For Compliance
17	TDG115	Kadmath Eastern Side - Passenger facilitation centre - Plan & View (Sh 1 of 2)	For Compliance
18	TDG115	Kadmath Eastern Side - Passenger facilitation centre – Section & Elevation (Sh 2 of 2)	For Compliance
19	TDG116	Kadmath Western Side - Passenger facilitation centre - Plan & View (Sh-1 of 3)	For Compliance
20	TDG116	Kadmath Western Side -Passenger facilitation centre - Section & Elevation (Sh-2 of 3)	For Compliance
21	TDG116	Kadmath Western Side - Passenger facilitation centre – Roof Ceiling Plan and View (Sh-3 of 3)	For Compliance
22	TDG117	Kadmath-Western Boat Repair Shed Plan, Elevation and Section	For Compliance
23	TDG118	Kadmath- Western ICE Plant Plan, Elevation and Section	For Compliance
24	TDG119	Kadmath-Western Fuel station Plan and Elevation	For Compliance
25	TDG120	Kadmath – Eastern Side - Warehouse Floor Plan and Section (Sh 1 of 2)	For Compliance
26	TDG120	Kadmath – Eastern Side - Warehouse Elevations (Sh 2 of 2)	For Compliance
27	TDG121	Kadmath-Eastern-Security Building-Plan and Elevation (Sh 1 of 2)	For Compliance

28	TDG121	Kadmath-Eastern-Security Building-Elevations and Sections (Sh 2 of 2)	For Compliance
29	TDG122	Kadmath-Borehole Profile	For Compliance
30	TDG123	Kadmath-Electrical Cabling Layout (Sh 1 of 2)	For Compliance
31	TDG123	Kadmath-Electrical Cabling Layout (Sh 2 of 2)	For Compliance
32	TDG124	Kadmath-Road Facility-Plan and Profile	For Compliance
33	TDG125	Kadmath-Layout of Compound Wall (Sh 1 of 2)	For Compliance
34	TDG125	Kadmath-Numeration and RC detail of Compound Wall (Sh 2 of 2)	For Information
35	TDG126	Kadmath-Boat Landing Facility-General Arrangement	For Compliance

Data for Bidders for Information

1. Bathymetry Data.
2. Topographic Survey Data

SCHEDULE 12

PROJECT COMPLETION SCHEDULE

1 Project Completion Schedule

During Construction period, the Contractor shall comply with the requirements set forth in this Schedule-12 for each of the Project Milestones and the Scheduled Completion Date. Within 30 (Thirty) days of the date of each Project Milestone, the Contractor shall notify the Authority of such compliance along with necessary particulars thereof.

SCHEDULE 13

(See Clause
12.1.2)

TESTS ON COMPLETION

1 Schedule for Tests

- 1.1 The Contractor shall, not later than 30 (thirty) days prior to the likely completion of construction, notify the Authority's Engineer and the Authority of its intent to subject the Project to Tests, and not later than 10 (ten) days prior to the actual date of Tests, furnish to the Authority's Engineer and the Authority detailed inventory and particulars of all works and equipment forming part of Works.
- 1.2 The Contractor shall notify the Authority's Engineer of its readiness to subject the Project to Tests at any time after 10 (ten) days from the date of such notice, and upon receipt of such notice, the Authority's Engineer shall, in consultation with the Contractor, determine the date and time for each Test and notify the same to the Authority who may designate its representative to witness the Tests. The Authority's Engineer shall thereupon conduct the Tests itself or cause any of the Tests to be conducted in accordance with Article 12 and this Schedule-13.

2 Tests

- 2.1 Visual and physical test: The Authority's Engineer shall conduct a visual and physical check of construction to determine that all works and equipment forming part thereof conform to the provisions of this Agreement. The physical tests shall be as per Technical Specifications and Standards captioned in Volume: 2A
- 2.4 Other tests: The Authority's Engineer may require the Contractor to carry out or cause to be carried additional tests, in accordance with Good Industry Practice, for determining the compliance of the Project with Specifications and Standards.
- 2.5 Environmental audit: The Authority's Engineer shall carry out a check to determine conformity of the Project with the environmental requirements set forth in Applicable Laws and Applicable Permits.
- 2.6 Safety Audit: The Authority's Engineer shall carry out, or cause to be carried out, a safety audit to determine conformity of the Project with the safety requirements and Good Industry Practice.

3 Agency for conducting Tests

All Tests set forth in this Schedule-13 shall be conducted by the Authority's Engineer or such other agency or person as it may specify in consultation with the Authority.

4 Completion Certificate

Upon successful completion of Tests, the Authority's Engineer shall issue the Completion Certificate in accordance with the provisions of Article 12.

SCHEDULE 14

(See Clause 12.2 and
12.4)

PROVISIONAL CERTIFICATE

- 1 I/We, (Name of the Authority's Engineer), acting as the Authority's Engineer, under and in accordance with the Agreement dated (the "Agreement"), for the Construction of Jetties, Landside facilities and allied facilities at Eastern and Western sides in Kadmath Island of Lakshadweep (the "Project") on Engineering, Procurement and Construction (EPC) basis through (Name of Contractor), hereby certify that the Tests in accordance with Article 12 of the Agreement have been undertaken to determine compliance of the Project with the provisions of the Agreement.

- 2 Works that are incomplete on account of Time Extension have been specified in the Punch List appended hereto, and the Contractor has agreed and accepted that it shall complete all such works in the time and manner set forth in the Agreement. In addition, certain minor works are incomplete and these are not likely to cause material inconvenience to the Authority for its use or affect their safety. The Contractor has agreed and accepted that as a condition of this Provisional Certificate, it shall complete such minor works within 30 (thirty) days hereof. These minor works have also been specified in the aforesaid Punch List.

- 3 In view of the foregoing, I/We am/are satisfied that the Project can be safely and reliably placed in service of the Authority thereof, and in terms of the Agreement, the Project is hereby provisionally declared fit for its use on this the day of 20.....

ACCEPTED, SIGNED, SEALED
AND DELIVERED

SIGNED, SEALED AND
DELIVERED

For and on behalf of

For and on behalf of

CONTRACTOR by:

AUTHORITY'S ENGINEER by:

(Signature)

(Signature)

(Name and Designation)

(Name and Designation)

(Address)

(Address)

COMPLETION CERTIFICATE

- 1 I/We, (Name of the Authority's Engineer), acting as the Authority's Engineer, under and in accordance with the Agreement dated(the "**Agreement**"), for the Construction of Jetties, Landside facilities and allied facilities at Eastern and Western sides in Kadmath Island of Lakshadweep(the "**Project**") on Engineering, Procurement and Construction (EPC) basis through (Name of Contractor), hereby certify that the Tests in accordance with Article 12 of the Agreement have been successfully undertaken to determine compliance of the Project with the provisions of the Agreement, and I/We am/are satisfied that the Project work can be safely and reliably placed in service of the Users thereof.

- 2 It is certified that, in terms of the aforesaid Agreement, all works forming part of work have been completed, and the Project work is hereby declared fit for entry into operation on this the day of 20.....

SIGNED, SEALED AND
DELIVERED For and on behalf of
the Authority's Engineer by:

(Signature)

(Name)

(Designation)

(Address)

SCHEDULE 15

DELETED

Annex - I
(Schedule - 15)
DELETED

SCHEDULE 16

(See Clauses 17.4.1, 17.6.1, and
17.8.1)

FORMS OF PAYMENT STATEMENTS

1. Stage Payment Statement for Works

The Stage Payment Statement for Works shall state:

- (a) the estimated amount for the Works executed in accordance with Clause 17.3.1 subsequent to the last claim;
- (b) amounts reflecting adjustments in price for the aforesaid claim;
- (c) the estimated amount of each Change of Scope Order executed subsequent to the last claim;
- (d) amounts reflecting adjustment in price, if any, for (c) above in accordance with the provisions of Clause 13.2.3 (a);
- (e) total of (a), (b), (c) and (d) above;
- (f) Deductions:
 - (i) Any amount to be deducted in accordance with the provisions of the Agreement except taxes;
 - (ii) Any amount towards deduction of taxes;
 - (iii) Any amount towards deduction of taxes at source under Applicable Laws
 - (iv) Total of (i) and (ii) above.
- (g) Net claim: (e) – (f) (iv);
- (h) The amounts received by the Contractor up to the last claim:
 - (i) For the Works executed (excluding Change of Scope orders);
 - (ii) For Change of Scope Orders, and
 - (iii) Taxes deducted

2. Contractor's claim for Damages

Note: The Contractor shall submit its claims in a form acceptable to the Authority.

SCHEDULE 17

(See Clause 18.1)

INSURANCE

1. Insurance during Construction Period

- 1.1 The Contractor shall effect and maintain at its own cost, from the Appointed Date till the date of issue of the Completion Certificate, the following insurances for any loss or damage occurring on account of Non Political Event of Force Majeure, malicious act, accidental damage, explosion, fire and terrorism:
- (a) insurance of Works, Plant and Materials and an additional sum of [15% (fifteen per cent)] of such replacement cost to cover any additional costs of and incidental to the rectification of loss or damage including professional fees and the cost of demolishing and removing any part of the Works and of removing debris of whatsoever nature; and
 - (b) insurance for the Contractor's equipment and Documents brought onto the Site by the Contractor, for a sum sufficient to provide for their replacement at the Site.
- 1.2 The insurance under paragraph 1.1 (a) and (b) above shall cover the Authority and the Contractor against all loss or damage from any cause arising under paragraph 1.1 other than risks which are not insurable at commercial terms.

2. Insurance for Contractor's Defects Liability

The Contractor shall effect and maintain insurance cover for the Works from the date of issue of the Completion Certificate until the end of the Defects Liability Period for any loss or damage for which the Contractor is liable and which arises from a cause occurring prior to the issue of the Completion Certificate. The Contractor shall also maintain other insurances for maximum sums as may be required under Applicable Laws and in accordance with Good Industry Practice.

3. Insurance against injury to persons and damage to property

- 3.1 The Contractor shall insure against its liability for any loss, damage, death or bodily injury, or damage to any property (except things insured under Paragraph 1 and 2 of this Schedule or to any person (except persons insured under Clause 20.9), which may arise out of the Contractor's performance of this Agreement. This insurance shall be for a limit per occurrence of not less than the amount specified below with no limit on the number of occurrences.

The insurance cover shall be not less than: Rs. 15,00,000 (Fifteen Lakhs) per occurrence, with Number of Occurrences unlimited.

- 3.3 The insurance shall be extended to cover liability for all loss and damage to the Authority's property arising out of the Contractor's performance of this Agreement excluding:
- (a) the Authority's right to have the construction works executed on, over, under, in or

through any land, and to occupy this land for the Works; and

- (b) damage which is an unavoidable result of the Contractor's obligations to execute the Works.

4. Professional Indemnity Insurance

Professional Indemnity Insurance with a minimum coverage equal to value of contract price shall be submitted by the Consultant within 30 days of LoA and before signing of the Agreement. Professional Indemnity Insurance shall cover the claim arising out of losses and/or damages during the period of insurance first made in writing against the insured during the policy period and insures shall be indemnified in accordance with Operation Clause for any breach of Professional duty by reason of any neglect act, error or omission, whenever and wherever committed or alleged to have been committed during period of insurance and the deliberate non-compliance with technical standards commonly observed in professional practice laid down by law, or regulated by official bodies. The insurance shall be effective till the completion of 5 (five) years after issue of Taking Over Certificate by the Authority.

5. Insurance to be in joint names

The insurance under paragraphs 1 to 3 above shall be in the joint names of the Contractor and the Authority.

CHECK-LIST FOR SUBMITTALS

This Bid Document is issued to a Bidder exclusively in his/its own name and is not transferable.

Sl. No.	Item	Tick -/✓
PART-I - Technical Bid		
1.	Duly filled and signed Integrity pact	
2.	Cost of Bid Document as indicated in the Table 1of the Notice Inviting Tender or duly notarised scanned copy of Exemption Certificate.	
3.	Forwarding Letter accompanying the Bid as per Appendix-I	
4.	Annex – I Details of Bidder	
5.	Annex – II Financial Capacity of Bidder	
6.	Annex – III Details of Eligible Projects	
7.	Annex – IV Statement of Legal Capacity	
8.	Annex – V Integrity Pact	
9.	Power of Attorney for signing the Bid duly authenticated by Notary Publicas per Appendix-II	
10.	Sole Proprietorship License, Partnership Deed or Memorandum & Articles of Association of the Company along with Registration Certificate of the Company, as the case may be.	
11.	Copies of preceding 3 (three) year's audited B/S & P/L A/c	
12.	Certificate from Statutory Auditors in the formats regarding financial capability and annual turnover as per Annex-II of Appendix-I	
13.	Certificates from Statutory Auditors'/Clients/Co. Secretary for Eligible Projects as part of Annex-III of Appendix-I	
14.	Notarised copy or original of the Completion Certificates issued by the Authority in respect of Eligible project as in Annex-III of Appendix-I	
15.	Bid Bond as indicated in the Table 1of the Notice Inviting Tender or duly notarised scanned copy of Exemption Certificate.	
16.	Undertaking that no changes have been made In the Bid Documents downloaded by the Bidder or issued to the Bidder by the Authority as per Appendix VIII	
17.	Undertaking that Part II: Commercial & Price Bid is unconditional as per Appendix IX	
18.	Undertaking that no illegal methods have been used to influence the Bid Process as per Appendix X	
19.	Undertaking for disclosure of payment made/proposed to be made to Intermediaries in connection with the Bid as per Appendix XI	
20.	An Undertaking that the Bidder has visited the site and collected all necessary details required to submit their offer as per Appendix - XIV	
21.	An Undertaking that Bidder has not been Debarred/ Blacklisted as per Appendix-XVI	
22.	Filled up Schedule-1 to 17	
23.	Bid Document including all Addenda/Corrigenda and Standard General Conditions of Contract.	
24.	Copies of GST and PAN registrations	

25.	Copies of EPF and ESI registration, if applicable as per EPF/ESI Acts	
26.	All Supporting Documents as listed in Clause 4.12.3 in the respective Envelopes.	
PART-II - Price Bid		
27.	Filled and signed Price Bid	