

**CHENNAI PORT TRUST
No.1 Rajaji Salai
Chennai 600 001**

**REQUEST FOR PROPOSAL (RFP)
FOR SELECTION OF CONSULTANT**

**PREPARATION OF FEASIBILITY REPORT (FR)
FOR
DEVELOPMENT OF JD(East) & BD-II BERTHS AS COAL TERMINAL AT CHENNAI
PORT UNDER PPP MODE**

TENDER NO. T/NP1/5/2016/E

**CHIEF ENGINEER
CIVIL ENGINEERING DEPARTMENT**



**CHENNAI PORT TRUST
CIVIL ENGINEERING DEPARTMENT
No. 1, Rajaji Salai, Chennai – 1.**

TENDER NO. T / NP1 / 5 / 2016 / E

Invitation of RFP for appointment of Feasibility Report Consultant for the Development of JD(East) Berths and BD – II as Dust-Free Handling of Coal Terminals at Chennai Port through Special Limit Tender (SLT).

Invitation of RFP for appointing consultant for preparation of FR for the Development of JD(East) Berths and BD – II as Dust-Free Handling of Coal Terminals at Chennai Port Invitation of from the following firms.

(i) M/s.Vayam Technologies Ltd; (ii) M/s.Unison Project Management Pvt Ltd., (iii) M/s.Capital Fortunes in consortium with Portman India; (iv) M/s.HOWE India Pvt Ltd; (v) M/s.Grafix Engineering Consultants Pvt Ltd; (vi) M/s.Xplorer Cons.Ser Pvt Ltd., JV with PROS; (vii) M/s.Engineers India Ltd; (viii) M/s.WAPCOS Ltd; (ix) aXYKno Capital Services Ltd Consortium Partner – Pentacle Consultants (I) Pvt Ltd; (x)M/s.ALIA C S Pvt Ltd Consortium partner Beckett Rankine India Ltd; (xi)M/s.BMT Consultants (India) Ltd; (xii)M/s.Inros Lackner AG; (xiii) M/s.Aarvee Associates; xiv) M/s.HATCH Associates (I) Pvt Ltd; (xv) JACOBS Engineering Pvt Ltd.,

The sale of RFP document from **11.01.16 to 27.01.16** on any working day (except on Sundays, 2nd & 4th Saturdays and Trust holidays) between 1000 Hrs. and 1600 Hrs. IST from the Accounts Officer (Cash), Finance Department, ChPT at the First Floor of the Old Administrative Office Building on submission of a Demand Draft / Pay order (non-refundable) of INR 1,000/- (Indian Rupees One Thousand only) + 5% VAT drawn on any Nationalised Bank in favour of "The Chairman, Chennai Port Trust" payable at Chennai towards the cost of Bid Document. The Bid Document can also be downloaded from the ChPT website www.chennaiport.gov.in/ppp/projects. Applicants downloading the document from the website shall remit the cost of the document in the manner specified in the document.

Last Date for receiving queries from prospective bidders is **18.01.16**.

The completed Application in the required format incorporating all the information requested in the Bid Document should be submitted latest by **28.01.16** at the office of the Superintending Engineer (Major Projects) in the 3rd floor of the Old Administrative office Building, Chennai Port Trust, No.1, Rajaji Salai, Chennai-600 001, Tamil Nadu, INDIA.

Contact Officials:

Chief Engineer,
Chennai Port Trust,
Tel No. +91 44 2536 0646
Fax No.+91-44-2536 0968

Superintending Engineer (Major Projects),
Chennai Port Trust,
Tel No. +91 44 2539 3412
Fax No.+91 44 2536 1849
Email : chptcenp@gmail.com

CHIEF ENGINEER

Glossary

Agreement	As defined in Schedule-2
Agreement Value	As defined in Clause 6.1.2 of Schedule-2
Applicable Laws	As defined in Schedule-2
Applicant	As defined in Clause 2.1.1
Associate	As defined in Clause 2.3.3
Authorized Representative	As defined in Clause 2.13.3
Authority	As defined in Clause 1.1.1
Bid Security	As defined in Clause 2.20.1
Concession Agreement	As defined in Clause 1.1.2
Concessionaire	As defined in Clause 1.1.2
Conditions of Eligibility	As defined in Clause 2.2.1
Conflict of Interest	As defined in Clause 2.3.1
Consultancy	As defined in Clause 1.2
Consultancy Team	As defined in [Clause 8] of Schedule-1
Consultant	As defined in Clause 1.2
DBFOT	Design, Build, Finance, Operate and Transfer
Deliverables	As defined in Clause 4 of Schedule-1
Draft Feasibility Report	As specified in [Clause 4(G)] of Schedule-1
Documents	As defined in Clause 2.12
Effective Date	As defined in Clause 2.1 of Schedule-2
Eligible Assignments	As defined in Clause 3.1.4
Expatriate Personnel	As defined in Clause 1.1.1(i) of Schedule-2
Financial Proposal	As defined in Clause 2.15.1
Form of Agreement	Form of Agreement as in Schedule-2
Generic Structure	Attachment B to the TOR
INR, Re, Rs.	Indian Rupee(s)
Inception Report	As specified in [Clause 4(A)] of Schedule-1
Key Date or KD	As defined in [Clause 6.2] of Schedule-1
Key Personnel	As defined in Clause 2.1.4
Lead Member	As defined in Clause 2.1.1
LOA	Letter of Award
MCA	As defined in Clause 1.1.3
Member	As defined in Clause 2.3.3(a)
Official Website	As defined in Clause 1.11.2
Personnel	As defined in Clause 1.1.1(m) of Schedule-2
PPP	Public Private Partnership
Professional Personnel	As defined in Clause 2.14.6
Prohibited Practices	As defined in Clause 4.1
Project	As defined in Clause 1.1.1
Project Manager	As defined in Clause 4.6 of Schedule-2
Proposal	As defined in Clause 1.2
Proposal Due Date or PDD	As defined in Clauses 1.5 and 1.8
Resident Personnel	As defined in Clause 1.1.1(n) of Schedule-2
RFP	As defined in Disclaimer
Selected Applicant	As defined in Clause 1.6
Selection Process	As defined in Clause 1.6

Services	As defined in Clause 1.1.1(p) of Schedule-2
Sole Firm	As defined in Clause 2.1.1
Statutory Auditor	An Auditor appointed under Applicable Laws
Sub-Consultant	As defined in Clause 1.1.1(q) of Schedule-2
Support Personnel	As defined in Clause 2.14.6
Team Leader	As defined in Clause 2.1.4
Technical Proposal	As defined in Clause 2.14.1
TOR	As defined in Clause 1.1.3
US\$	United States Dollar

The words and expressions beginning with capital letters and defined in this document shall, unless repugnant to the context, have the meaning ascribed thereto herein.

Invitation for Proposal

1. INTRODUCTION

1.1 Background

- 1.1.1 Chennai Port Trust (the “**Authority**”) is engaged in the development of Chennai Port and as part of this Endeavour, the Authority has decided to undertake Development of JD(East) & BD-II berths as coal Terminals at Chennai Port (through “**Project**”) through Public Private Partnership (the “**PPP**”) on Design, Build, Finance, Operate and Transfer (the “**DBFOT**”) basis.
- 1.1.2 The Authority has decided to conduct a feasibility study to prepare a Feasibility Report (FR) for determining the technical feasibility and financial viability of the Project. If found technically feasible and financially viable, the Project may be awarded on DBFOT basis to a private entity (the “**Concessionaire**”) selected through a competitive bidding process. The Project would be implemented in accordance with the terms and conditions stated in the concession agreement to be entered into between the Authority and the Concessionaire (the “**Concession Agreement**”).
- 1.1.3 In pursuance of the above, the Authority has decided to carry out the process for selection of a Consultant for preparing the Feasibility Report (FR). The Consultant will develop the methodology based on the earlier report furnished by the consultant appointed by authority and revenue model and assist the Authority in finalizing the financial model. The Consultant shall prepare the FR in accordance with the Terms of Reference specified in Schedule-1 (the “**TOR**”).

1.2 Request for Proposal

The Authority invites Proposals (the “**Proposals**”) for selection of a Consultant (the “**Consultant**”) who shall prepare a Feasibility Report (FR) for development of the Project. The FR shall include the suitable handling of Coal incorporating the methodology furnished in the earlier report submitted by the consultant in the Hon’ble Supreme Court, engineering surveys, plans and preliminary design of structures, safety devices, and project facilities in conformity with the TOR (collectively the Consultancy”).

The Authority intends to select the Consultant through the list of consultants empanelled by Indian ports Association for bidding process in accordance with the procedure set out herein.

1.3 Due diligence by Applicants

Applicants are encouraged to inform themselves fully about the assignment and the local conditions before submitting the Proposal by paying a visit to the Authority and the Project site, sending written queries to the Authority.

1.4 Sale of RFP Document

RFP document can be obtained between 1100 hrs and 1600 hrs on all working days on payment of a fee of Rs. 1,000/- (Rupees one thousand only) plus VAT 5% in the form of cash or demand draft or banker’s cheque drawn on any Scheduled Bank in India in favour of “**The Chairman, Chennai Port Trust**” and payable at Chennai. The document can also be downloaded from the Official

Website of the Authority. In case the Applicant downloads the RFP, they shall enclose the cost of document Rs.1,000/- (Rupees one thousand only) plus VAT 5% in the form of demand draft .

1.5 Validity of the Proposal

The Proposal shall be valid for a period of not less than 120 days from the Proposal Due Date (the “PDD”). However, the offer submitted by L1 and L2 bidders shall be periodically validated till the recommendation of Empowered Committee on dust free handling of coal.

1.6 Brief description of the Selection Process

The Authority intends to select the Consultant through the list of consultants indicated in the NIT for bidding process. The Bidder who quote the lowest amount will be the Selected Applicant. The second ranked Applicant will be kept in reserve.

1.7 Currency in Bidding and payment

1.7.1 The Bidder has to quote the rate in INR only.

1.7.2 All payments to the Consultant shall be made in INR in accordance with the provisions of this RFP.

1.8 Schedule of Selection Process

The Authority would endeavor to adhere to the following schedule:

	Event Description	Estimated Date
1	Last date for receiving queries/clarifications	18.01.2016
2	Authority response to queries	21.01.2016
3	Proposal Due Date or PDD	28.01.2016
4	Opening of Proposals	28.01.2016
5	Validity of Applications	120 days from PDD

1.9 Visit to the Site and inspection of data

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

**The Superintending Engineer(MP),
Chennai Port Trust,
No.1 Rajaji Salai,
Chennai – 600 001.
Telephone : 044 – 2539 3412
Fax : 044 - 2536 1849**

1.10 Communications

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

**The Superintending Engineer(Major Project),
Civil Engineering Department, 3rd Floor, Old Administrative Building,
Chennai Port Trust, No.1 Rajaji Salai,
Chennai – 600 001.**

Telephone : 044 – 2539 3412

Fax : 044 - 2536 1849

1.10.2 The **Official Website** of the Authority is: <http://www.chennaiport.gov.in>

Note: Please open the page 'PPP projects' and then page 'Development Of JD(East) and BD-II berths as coal terminal to access all the posted and uploaded documents related to this RFP.

1.10 .3 All communications, including the envelopes, should contain the following information, to be marked at the top in bold letters:

RFP Notice No.T/NP1/5/2016/E for “PREPARATION OF FEASIBILITY REPORT (FR) FOR DEVELOPMENT OF JD(East) & BD-II BERTHS AS COAL TERMINAL AT CHENNAI PORT UNDER PPP MODE.

2. INSTRUCTIONS TO APPLICANTS

A. GENERAL

2.1 Scope of Proposal

- 2.1.1 Detailed description of the objectives, scope of services, Deliverables and other requirements relating to this Consultancy are specified in this RFP. In case an applicant firm undertaking the Consultancy, it has to participate in the Bidding as such empanelled in IPA (ie. along with consortium if any as approved and empanelled in IPA).The manner in which the Proposal is required to be submitted, evaluated and accepted is explained in this RFP.
- 2.1.2 Applicants are advised that the selection of Consultant shall be on the basis of an evaluation by the Authority as specified in this RFP. Applicants shall be deemed to have understood and agreed that no explanation or justification for any aspect of the Selection Process will be given and that the Authority's decisions are without any right of appeal whatsoever.
- 2.1.3 The Applicant shall submit its Proposal in the form and manner specified in this **Part-2** of the RFP. The Proposal shall be submitted in the form at **Appendix**. Upon selection, the Applicant shall be required to enter into an agreement with the Authority in the form specified at **Schedule-2**.

2.2 Conditions of Eligibility of Applicants

To be qualified for award of contract, Bidders shall:

- 2.2.1 The RFP containing any conditions even Bidders clarification in any form treated as non-responsive and liable for rejection.
- 2.2.2 The Applicant should submit a Power of Attorney as per the format at **Form-3 of Appendix** provided, however, that such Power of Attorney would not be required if the Application is signed by a partner of the Applicant, in case the Applicant is a partnership firm or limited liability partnership.
- 2.2.3 An Applicant or its Associate should have, during the last three years, neither failed to perform on any agreement, as evidenced by imposition of a penalty by an arbitral or judicial authority or a judicial pronouncement or arbitration award against the Applicant or its Associate, nor been expelled from any project or agreement nor have had any agreement terminated for breach by such Applicant or its Associate.

2.3 Conflict of Interest

- 2.3.1 An Applicant shall not have a conflict of interest that may affect the Selection Process or the Consultancy (the "**Conflict of Interest**"). Any Applicant found to have a Conflict of Interest shall be disqualified. In the event of disqualification, the Authority shall forfeit and appropriate the Bid Security as mutually agreed genuine pre-estimated compensation and damages payable to the Authority for, *inter alia*, the time, cost and effort of the Authority including consideration of such Applicant's Proposal, without prejudice to any other right or remedy that may be available to the Authority hereunder or otherwise.

- 2.3.2 The Authority requires that the Consultant provides professional, objective, and impartial advice and at all times hold the Authority's interests paramount, avoid conflicts with other assignments or its own interests, and act without any consideration for future work. The Consultant shall not accept or engage in any assignment that would be in conflict with its prior or current obligations to other clients, or that may place it in a position of not being able to carry out the assignment in the best interests of the Authority.
- 2.3.3 Some guiding principles for identifying and addressing Conflicts of Interest have been illustrated in the Guidance Note at Schedule-3. Without limiting the generality of the above, an Applicant shall be deemed to have a Conflict of Interest affecting the Selection Process, if:
- (a) the Applicant, its consortium member (the "**Member**") or Associate (or any constituent thereof) and any other Applicant, its consortium member or Associate (or any constituent thereof) have common controlling shareholders or other ownership interest; provided that this disqualification shall not apply in cases where the direct or indirect shareholding or ownership interest of an Applicant, its Member or Associate (or any shareholder thereof having a shareholding of more than 5 per cent of the paid up and subscribed share capital of such Applicant, Member or Associate, as the case may be) in the other Applicant, its consortium member or Associate is less than 5% (five per cent) of the subscribed and paid up equity share capital thereof; 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 2.3.3(a), indirect shareholding held through one or more intermediate persons shall be computed as follows: (aa) where any intermediary is controlled by a person through management control or otherwise, the entire shareholding held by such controlled intermediary in any other person (the "**Subject Person**") shall be taken into account for computing the shareholding of such controlling person in the Subject Person; and (bb) subject always to sub-clause (aa) above, where a person does not exercise control over an intermediary, which has shareholding in the Subject Person, the computation of indirect shareholding of such person in the Subject Person shall be undertaken on a proportionate basis; provided, however, that no such shareholding shall be reckoned under this sub-clause (bb) if the shareholding of such person in the intermediary is less than 26% (twenty six per cent) of the subscribed and paid up equity shareholding of such intermediary; or
 - (b) a constituent of such Applicant is also a constituent of another Applicant; or
 - (c) such Applicant or its Associate receives or has received any direct or indirect subsidy or grant from any other Applicant or its Associate; or
 - (d) such Applicant has the same legal representative for purposes of this Application as any other Applicant; or
 - (e) such Applicant has a relationship with another Applicant, directly or

through common third parties, that puts them in a position to have access to each others' information about, or to influence the Application of either or each of the other Applicant; or

- (f) There is a conflict among this and other consulting assignments of the Applicant (including its personnel and Sub-consultant) and any subsidiaries or entities controlled by such Applicant or having common controlling shareholders. The duties of the Consultant will depend on the circumstances of each case. While providing consultancy services to the Authority for this particular assignment, the Consultant shall not take up any assignment that by its nature will result in conflict with the present assignment; or
- (g) a firm which has been engaged by the Authority to provide goods or works or services for a project, and its Associates, will be disqualified from providing consulting services for the same project save and except as provided in Clause 2.3.4; conversely, a firm hired to provide consulting services for the preparation or implementation of a project, and its Members or Associates, will be disqualified from subsequently providing goods or works or services related to the same project; or
- (h) the Applicant, its Member or Associate (or any constituent thereof), and the bidder or Concessionaire, if any, for the Project, its contractor(s) or sub-contractor(s) (or any constituent thereof) have common controlling shareholders or other ownership interest; provided that this disqualification shall not apply in cases where the direct or indirect shareholding or ownership interest of an Applicant, its Member or Associate (or any shareholder thereof having a shareholding of more than 5% (five per cent) of the paid up and subscribed share capital of such Applicant, Member or Associate, as the case may be,) in the bidder or Concessionaire, if any, or its contractor(s) or sub-contractor(s) is less than 5% (five per cent) of the paid up and subscribed share capital of such Concessionaire or its contractor(s) or sub-contractor(s); provided further that this disqualification shall not apply to ownership by a bank, insurance company, pension fund or a Public Financial Institution referred to in section 4A of the Companies Act, 1956. For the purposes of this sub-clause (h), indirect shareholding shall be computed in accordance with the provisions of sub-clause (a) above.

For purposes of this RFP, Associate means, in relation to the Applicant, a person who controls, is controlled by, or is under the common control with such Applicant (the "**Associate**"). As used in this definition, the expression "control" means, with respect to a person which is a company or corporation, the ownership, directly or indirectly, of more than 50% (fifty per cent) of the voting shares of such person, and with respect to a person which is not a company or corporation, the power to direct the management and policies of such person by operation of law or by contract.

- 2.3.4 An Applicant eventually appointed to provide Consultancy for this Project, and its Associates, shall be disqualified from subsequently providing goods or works or services related to the construction and operation of the same Project and

any breach of this obligation shall be construed as Conflict of Interest; provided that the restriction herein shall not apply after a period of 5 (five) years from the completion of this assignment or to consulting assignments granted by banks/ lenders at any time; provided further that this restriction shall not apply to consultancy/ advisory services performed for the Authority in continuation of this Consultancy or to any subsequent consultancy/ advisory services performed for the Authority in accordance with the rules of the Authority. For the avoidance of doubt, an entity affiliated with the Consultant shall include a partner in the Consultant's firm or a person who holds more than 5% (five per cent) of the subscribed and paid up share capital of the Consultant, as the case may be, and any Associate thereof.

2.4 Number of Proposals

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

2.5 Cost of Proposal

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

2.6 Site visit and verification of information

Applicants are encouraged to submit their respective Proposals after visiting the Project site and ascertaining for themselves the site conditions, traffic, location, surroundings, climate, access to the site, availability of drawings and other data with the Authority, Applicable Laws and regulations or any other matter considered relevant by them. Visits shall be organized for the benefit of prospective Applicants on request of the applicant.

2.7 Acknowledgement by Applicant

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

- (a) made a complete and careful examination of the RFP;
- (b) received all relevant information requested from the Authority;
- (c) acknowledged and accepted the risk of inadequacy, error or mistake in the information provided in the RFP or furnished by or on behalf of the Authority or relating to any of the matters referred to in **Clause 2.6** above;
- (d) satisfied itself about all matters, things and information, including matters referred to in Clause 2.6 herein above, necessary and required for submitting an informed Application and performance of all of its

obligations there under;

- (e) acknowledged that it does not have a Conflict of Interest; and
- (f) agreed to be bound by the undertaking provided by it under and in terms hereof.

2.7.2 The Authority shall not be liable for any omission, mistake or error on the part of the Applicant in respect of any of the above or on account of any matter or thing arising out of or concerning or relating to RFP or the Selection Process, including any error or mistake therein or in any information or data given by the Authority.

2.8 Right to reject any or all Proposals

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

2.8.2 Without prejudice to the generality of **Clause 2.8.1**, the Authority reserves the right to reject any Proposal if at any time; a material misrepresentation is made or discovered.

B. DOCUMENTS

2.9 Contents of the RFP

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

Request for Proposal

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

Schedules

1 Terms of Reference

2 Form of Agreement

Annex-1: Terms of Reference

Annex-2: Cost of Services

Annex-3: Payment Schedule

Annex-4: Bank Guarantee for Performance Security

3 Guidance Note on Conflict of Interest**4 Appendices**

- Form 1: Letter of Proposal
- Form 2: Statement of Legal Capacity
- Form 3: Power of Attorney
- Form 4: Financial Proposal

2.10 Clarifications

2.10.1 Applicants requiring any clarification on the RFP may send their queries to the Authority in writing before the date mentioned in the Schedule of Selection Process at **Clause 1.8**. The envelopes shall clearly bear the following identification:

“Queries/Request for Additional Information concerning RFP”

The Authority shall endeavor to respond to the queries within the period specified therein but not later than **3 (three) days** prior to the Proposal Due Date. The responses will be sent by fax or e-mail. The Authority will post the reply to all such queries on the Official Website and copies thereof will also be circulated to all Applicants who have purchased the RFP document without identifying the source of queries.

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

2.11 Amendment of RFP

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

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

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

C. PREPARATION AND SUBMISSION OF PROPOSAL**2.12 Language**

The Proposal with all accompanying documents (the “**Documents**”) and all

communications shall be in English language and strictly on the forms provided in this RFP. No supporting document or printed literature shall be submitted with the Proposal.

2.13 Format and signing of Proposal

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

2.13.2 The Proposal shall be typed or written in indelible ink and signed by the authorized signatory of the Applicant who shall initial each page, in blue ink. In case of printed and published Documents, only the cover shall be initialed. All the alterations, omissions, additions, or any other amendments made to the Proposal shall be initialed by the person(s) signing the Proposal. The Proposals must be properly signed by the authorized representative (the “**Authorized Representative**”) as detailed below:

- (a) by the proprietor, in case of a proprietary firm; or
- (b) by a partner, in case of a partnership firm and/or a limited liability partnership; or
- (c) by a duly authorized person holding the Power of Attorney, in case of a Limited Company or a corporation; or
- (d) by the authorized representative of the firms, in case of consortium.

A copy of the Power of Attorney certified under the hands of a partner or director of the Applicant and notarized by a notary public in the form specified in **Appendix (Form3)** shall accompany the Proposal.

2.13.3 Applicants should note the Proposal Due Date, as specified in **Clause 1.8**, for submission of Proposals. Except as specifically provided in this RFP, no supplementary material will be entertained by the Authority. The Authority reserves the right to seek clarifications under and in accordance with the provisions of Clause 2.23.

2.14 The Proposal

2.14.1 Applicants shall submit the proposal in the formats at Appendix

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

- (a) The Bid Security is provided;
- (b) all forms are submitted in the prescribed formats and signed by the prescribed signatories;
- (c) Power of Attorney, if applicable, is executed as per Applicable Laws;
- (d) Financial bid
- (e) Professional Personnel have good working knowledge of English language;

- (f) no Key Personnel should have attained the age of 75 (seventy five) years at the time of submitting the proposal; and
 - (g) the proposal is responsive in terms of Clause **2.21.3**.
- 2.14.3 Failure to comply with the requirements spelt out in this Clause **2.14** shall make the Proposal liable to be rejected.
- 2.14.4 If an individual Key Personnel makes a false averment regarding his qualification, experience or other particulars, or his commitment regarding availability for the Project is not fulfilled at any stage after signing of the Agreement, he shall be liable to be debarred for any future assignment of the Authority for a period of 5 (five) years. The award of this Consultancy to the Applicant may also be liable to cancellation in such an event.
- 2.14.5 The proposed team shall be composed of experts and specialists (the “**Professional Personnel**”) in their respective areas of expertise and managerial/support staff (the “**Support Personnel**”) such that the Consultant should be able to complete the Consultancy within the specified time schedule. The Key Personnel as mentioned in this RFP shall be included in the proposed team of Professional Personnel. Other competent and experienced Professional Personnel in the relevant areas of expertise must be added as required for successful completion of this Consultancy.
- 2.14.6 The Authority reserves the right to verify all statements, information and documents, submitted by the Applicant in response to the RFP. Any such verification or the lack of such verification by the Authority to undertake such verification shall not relieve the Applicant of its obligations or liabilities hereunder nor will it affect any rights of the Authority thereunder.
- In such an event, the Authority shall forfeit and appropriate the Bid Security as mutually agreed pre-estimated compensation and damages payable to the Authority for, *inter alia*, time, cost and effort of the Authority, without prejudice to any other right or remedy that may be available to the Authority.

2.15 Financial Proposal

- 2.15.1 Applicants shall submit the financial proposal in the formats at Appendix (the “**Financial Proposal**”) clearly indicating the basic cost of the Consultancy **excluding service tax** (Form-4 of Appendix) in both figures and words, in Indian Rupees, and signed by the Applicant’s Authorised Representative. In the event of any difference between figures and words, the amount indicated in words shall prevail.
- 2.15.2 While submitting the Financial Proposal, the Applicant shall ensure the following:
- (i) All the costs associated with the assignment shall be included in the Financial Proposal. These shall normally cover remuneration for all the Personnel (Expatriate and Resident, in the field, office etc), transportation, accommodation, air fare, equipment, printing of documents, surveys, investigations etc. The amount indicated in the Financial Proposal shall be without any condition attached or subject to any assumption, and shall be final and binding. In case any assumption or condition is indicated in the

Financial Proposal, it shall be considered non-responsive and liable to be rejected.

- (ii) The Financial Proposal shall take into account all expenses and tax liabilities. For the avoidance of doubt, it is clarified that all taxes except service tax shall be deemed to be included in the basic cost of the service shown under the Financial Proposal. Further, all payments shall be subject to deduction of taxes at source as per Applicable Laws.
- (iii) Cost shall be expressed in INR.

2.16 Submission of Proposal

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

2.16.2 The Proposal will be sealed in an outer envelope which will bear the address of the Authority, RFP Notice number, Consultancy name as indicated at Clauses 1.10.1 and 1.10.3 and the name and address of the Applicant. It shall bear on top, the following:

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

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

2.16.3 The aforesaid envelope will contain the followings:

- (i) The RFP document each pages signed by the Authorized signatory
- (ii) Application in the prescribed format (Forms-1 to 4 of Appendix)
- (iii) Bid security as specified in Clause 2.20.1

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

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

2.16.6 The Proposal shall be made in the Forms specified in this RFP.

2.16.7 The amount quoted shall be firm throughout the period of performance of the assignment up to and including acceptance of the Feasibility Report by the Authority and discharge of all obligations of the Consultant under the Agreement.

2.17 Proposal Due Date

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

2.17.2 The Authority may, in its sole discretion, extend the Proposal Due Date by issuing an Addendum in accordance with Clause 2.11 uniformly for all Applicants.

2.18 Late Proposals

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

2.19 Modification/ substitution/ withdrawal of Proposals

2.19.1 The Applicant may modify, substitute, or withdraw its Proposal after submission, provided that written notice of the modification, substitution, or withdrawal is received by the Authority prior to Proposal Due Date. No Proposal shall be modified, substituted, or withdrawn by the Applicant on or after the Proposal Due Date.

2.19.2 The modification, substitution, or withdrawal notice shall be prepared, sealed, marked, and delivered in accordance with Clause 2.16, with the envelopes being additionally marked "MODIFICATION", "SUBSTITUTION" or "WITHDRAWAL", as appropriate.

2.19.3 Any alteration / modification in the Proposal or additional information or material supplied subsequent to the Proposal Due Date, unless the same has been expressly sought for by the Authority, shall be disregarded.

2.20 Bid Security

2.20.1 The Applicant shall furnish as part of its Proposal, a bid security of **Rs. 25,000/- (Rupees twenty Five Thousand only)** in the form of a Demand Draft issued by one of the Nationalised / Scheduled Banks in India in favour of the "Chairman, Chennai Port Trust" payable at Chennai (the "**Bid Security**"), returnable not later than 30 (thirty) days from PDD except in case of the two highest ranked Applicants as required in Clause 2.24. In the event that the first ranked Applicant commences the assignment as required in Clause 2.29, the second ranked Applicant, who has been kept in reserve, shall be returned its Bid Security forthwith, but in no case not later than 120 (one hundred and twenty) days from PDD. The Selected Applicant's Bid Security shall be returned upon the Applicant signing the Agreement.

2.20.2 Any Bid not accompanied by the Bid Security shall be rejected by the Authority

as non-responsive.

2.20.3 The Authority shall not be liable to pay any interest on the Bid Security and the same shall be interest free.

2.20.4 The Applicant, by submitting its Application pursuant to this RFP, shall be deemed to have acknowledged that without prejudice to the Authority's any other right or remedy hereunder or in law or otherwise, the Bid Security shall be forfeited and appropriated by the Authority as the mutually agreed pre-estimated compensation and damage payable to the Authority for, *inter alia*, the time, cost and effort of the Authority in regard to the RFP including the consideration and evaluation of the Proposal under the following conditions:

- (a) If an Applicant submits a non-responsive Proposal;
- (b) If an Applicant engages in any of the Prohibited Practices specified in Section 4 of this RFP;
- (c) If an Applicant withdraws its Proposal during the period of its validity as specified in this RFP and as extended by the Applicant from time to time;
- (d) In the case of the Selected Applicant, if the Applicant fails to reconfirm its commitments during negotiations as required vide Clause 2.24;
- (e) In the case of a Selected Applicant, if the Applicant fails to sign the Agreement or commence the assignment as specified in Clauses 2.28 and 2.29 respectively; or
- (f) If the Applicant is found to have a Conflict of Interest as specified in Clause 2.3.

D. EVALUATION PROCESS

2.21 Evaluation of Proposals

2.21.1 The Authority shall open the Proposals at 1530 hours on the Proposal Due Date, at the place specified in Clause 1.10.1 and in the presence of the Applicants who choose to attend.

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

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

- (a) the Proposal is received in the form specified at Appendix
- (b) it is received by the Proposal Due Date including any extension thereof pursuant to Clause 2.17;
- (c) it is accompanied by the Bid Security as specified in Clause 2.20.1.
- (d) it is signed, sealed, bound together in hard cover and marked as

stipulated in Clauses 2.13 and 2.16;

- (e) it is accompanied by the Power of Attorney as specified in Clause 2.2.3;
- (f) it contains all the information (complete in all respects) as requested in the RFP;
- (g) it does not contain any condition or qualification; and
- (h) it is not non-responsive in terms hereof.

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

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

2.21.7 Applicants are advised that Selection will be entirely at the discretion of the Authority. Applicants will be deemed to have understood and agreed that no explanation or justification on any aspect of the Selection Process or Selection will be given.

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

2.22 Confidentiality

Information relating to the clarification, evaluation, and recommendation for the selection of Applicants shall not be disclosed to any person who is not officially concerned with the process or is not a retained professional adviser advising the Authority in relation to matters arising out of, or concerning the Selection Process.

2.23 Clarifications

2.23.1 To facilitate evaluation of Proposals, the Authority may, at its sole discretion, seek clarifications from any Applicant regarding its Proposal. Such clarification(s) shall be provided within the time specified by the Authority for this purpose. Any request for clarification(s) and all clarification(s) in response thereto shall be in writing.

2.23.2 If an Applicant does not provide clarifications sought under Clause 2.23.1 above within the specified time, its Proposal shall be liable to be rejected. In case the Proposal is not rejected, the Authority may proceed to evaluate the Proposal by construing the particulars requiring clarification to the best of its understanding, and the Applicant shall be barred from subsequently questioning such interpretation of the Authority.

E. APPOINTMENT OF CONSULTANT

2.24 Negotiations

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

2.25 Substitution of Key Personnel

2.25.1 The Authority expects all the Key Personnel to be available during implementation of the Agreement. The Authority will not consider substitution of Key Personnel except for reasons of any incapacity or due to health. Such substitution shall ordinarily be limited to one Key Person subject to equally or better qualified and experienced person being provided to the satisfaction of the Authority. As a condition to such substitution, a sum equal to **2%** (two per cent) of the **accepted basic cost of the assignment shall** be deducted from the payments due to the Consultant. In the case of a second substitution hereunder, such deduction shall be **5%** (five per cent) of the **accepted basic cost of the assignment**. Any further substitution may lead to disqualification of the Applicant or termination of the Agreement.

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

2.26 Indemnity

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

2.27 Award of Consultancy

After selection, a Letter of Award (the "**LOA**") shall be issued, in duplicate, by the Authority to the Selected Applicant and the Selected Applicant shall, within 7 (seven) days of the receipt of the LOA, sign and return the duplicate copy of the LOA in acknowledgement thereof. In the event the duplicate copy of the LOA duly signed by the Selected Applicant is not received by the stipulated date, the Authority may, unless it consents to extension of time for submission thereof, appropriate the Bid Security of such Applicant as mutually agreed genuine pre-estimated loss and damage suffered by the Authority on account of failure of the Selected Applicant to acknowledge the LOA, and the next highest ranking Applicant may be considered.

2.28 Execution of Agreement

After acknowledgement of the LOA as aforesaid by the Selected Applicant, it

shall execute the Agreement within 10 days of LoA. The Selected Applicant shall not be entitled to seek any deviation in the Agreement.

2.29 Commencement of assignment

The Consultant shall commence the Services within 7 (seven) days of the date of issue of LOA, or such other date as may be mutually agreed. If the Consultant fails to either sign the Agreement as specified in Clause 2.28 or commence the assignment as specified herein, the Authority may invite the second ranked Applicant for negotiations. In such an event, the Bid Security of the first ranked Applicant shall be forfeited and appropriated in accordance with the provisions of Clause 2.20.4.

2.30 Proprietary data

Subject to the provisions of Clause 2.22, all documents and other information provided by the Authority or submitted by an Applicant to the Authority shall remain or become the property of the Authority. Applicants and the Consultant, as the case may be, are to treat all information as strictly confidential. The Authority will not return any Proposal or any information related thereto. All information collected, analyzed, processed or in whatever manner provided by the Consultant to the Authority in relation to the Consultancy shall be the property of the Authority.

3. CRITERIA FOR EVALUATION

1. The RFP is invited from the short listed bidders for preparation of Feasibility report.
2. The successful bidder will be the one who quotes the lowest price (Highest Rank)

4. FRAUD AND CORRUPT PRACTICES

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

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

5. MISCELLANEOUS

- 5.1 The Selection Process shall be governed by, and construed in accordance with, the laws of India and the Courts at Chennai shall have exclusive jurisdiction over all disputes arising under, pursuant to and/or in connection with the Selection Process.
- 5.2 The Authority, in its sole discretion and without incurring any obligation or liability, reserves the right, at any time, to:
- (a) suspend and/or cancel the Selection Process and/or amend and/or supplement the Selection Process or modify the dates or other terms and conditions relating thereto;
 - (b) consult with any Applicant in order to receive clarification or further information;
 - (c) retain any information and/or evidence submitted to the Authority by, on behalf of and/or in relation to any Applicant; and/or
 - (d) independently verify, disqualify, reject and/or accept any and all submissions or other information and/or evidence submitted by or on behalf of any Applicant.
- 5.3 It shall be deemed that by submitting the Proposal, the Applicant agrees and releases the Authority, its employees, agents and advisers, irrevocably, unconditionally, fully and finally from any and all liability for claims, losses, damages, costs, expenses or liabilities in any way related to or arising from the exercise of any rights and/or performance of any obligations hereunder, pursuant hereto and/or in connection herewith and waives any and all rights and/or claims it may have in this respect, whether actual or contingent, whether present or future.
- 5.4 All documents and other information supplied by the Authority or submitted by an Applicant shall remain or become, as the case may be, the property of the Authority. The Authority will not return any submissions made hereunder. Applicants are required to treat all such documents and information as strictly confidential.
- 5.5 The Authority reserves the right to make inquiries with any of the clients listed by the Applicants in their previous experience record.

Schedules

SCHEDULE-1
(See Clause 1.1.3)

**CONSULTANCY FOR PREPARATION OF FEASIBILITY REPORT FOR
DEVELOPMENT OF JD (East) & BD-II BERTH AS COAL TERMINAL AT CHENNAI
PORT UNDER PPP MODE**

TERMS OF REFERENCE (TOR)

FOR TECHNICAL CONSULTANT

Contents

- 1. General**
- 2. Objective**
- 3. Scope of Services**
 - 3.1 Scope of Services
 - 3.11 Engineering surveys and investigations
 - 3.12 Initial Environment Examination (IEE)
 - 3.13 Preliminary designs
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 - 3.15 Financial analysis and bid process
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- 4. Deliverables**
 - A. Inception Report
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 - D. Initial Environmental Examination & Draft TOR in the prescribed proforma
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 - F. Draft Feasibility Report
 - G. Financial analysis
 - H. Final Feasibility Report
- 5 Specific requirements for the Project**
- 6 Time and Payment Schedule**
- 7 Meetings**
- 8 Consultancy Team**
- 9 Reporting**
- 10 Data to be made available by the Authority**
- 11 Completion of Services**

ATTACHMENTS

Attachment A: Chennai Port Plan indicating the proposed project site.

Terms of Reference (TOR)

1. GENERAL

- 1.1 The Authority seeks the services of qualified firms for preparing a Feasibility Report (FR) “Preparation of Feasibility Report (FR) for Development of JD(East) & BD-II berths as coal Terminal at Chennai port under PPP mode”. The Terms of Reference (the “TOR”) for this assignment are specified below.
- 1.2 The Consultant shall be guided in its assignment by the Model Concession Agreement.

2. OBJECTIVE

The objective of this consultancy is to undertake feasibility studies to prepare a bankable Feasibility Report (FR) of the Project for the purpose of firming up the Authority’s requirements in respect of development of JD (East) & BD-II berths as coal Terminal, detailing of the Project and Project Facilities (“Preparation of Feasibility Report (FR) at Chennai Port under PPP mode”) and enabling the prospective bidders to assess the Authority’s requirements in a clear and predictable manner.

3. SCOPE OF SERVICES

3.1 Scope of Services

The scope of services shall comprise the following, but not limited to:

Need for the project

Engineering surveys and investigations (It is only a desk study with available records)

Traffic surveys and demand assessment**

Finalizing layout of the Project facility and services

Initial Environment Examination (IEE)

Environmental Management Plan prepared by earlier consultant may be reviewed and incorporated

Preliminary designs of project facility and services

Preparation of Schedules for Modification and / or Utility Relocation Plans

Preparation of indicative BOQ and rough Cost Estimates

Establishing the Technical feasibility and Financial Viability of the Proposal (Separate reports to be provided for BD II & JD (East) Berths) and conduct study to list out pros and cons vis-à-vis to JD(East) and BD II to identify the best technical feasibility and on all other aspects including CCTPL issue on BD II (please refer clause 3.7) for the successful

implementation of the project.

Assisting the Authority in clarifying the queries raised on the FR.

3.2 Engineering surveys and investigations

- (i) Identify the suitable location of the proposed project facility
- (ii) Optimize the Land requirement for the Project taking into account the availability
- (iii) A set of cross sections of the existing and proposed facility.
- (iv) These cross-sections along with land requirement plan and preliminary design shall form the basis of preparation of indicative BOQ for the Project facility.

Based on the Topographic Survey available with ChPT the Consultant shall identify geometric improvements required, new facility and other structures and finalize the proposed location and size of the proposed project facilities and services. The Consultant shall finalize the location and other particulars after taking into account the comments of the Authority on the type/location and size. The work of preparing cross-sections and Land Plans, etc. shall be undertaken based on the finalized Layout.

3.3 Initial Environment Examination (IEE)

(Also review the available report prepared by earlier Consultant and may be incorporated).

The indicative outline of the IEE report is as follows:

- A. Introduction
- B. Description of the Project
- C. Description of the Environment
- D. Screening of Potential Environmental Impacts and Mitigation Measures
- E. Institutional Requirements and Environmental Monitoring Plan
- F. Findings and Recommendation
- G. Conclusion
- H. Draft TOR on EIA

3.4 Preliminary designs

The Consultant shall arrive at the preliminary designs of various components of the Project keeping in view the requirements of the Authority and Generic structure of the DPR as published by Ministry of Finance and the scope of services described in this TOR. It shall be responsible for the accuracy of the physical details such as alignment, including safety devices, utilities, service lines, structures, etc. The layout and preliminary designs shall be supplemented with explanatory drawings, statements, charts, notes as necessary. It forms the basis for cost estimation.

3.5 Project cost

The Consultant shall work out indicative BOQ of various components and prepare rough cost estimates of the Project with a break up of cost for each

component separately. To the construction cost so arrived at, the Consultant may add appropriate percentage thereof as a lump sum provision for physical and price contingencies, interest during construction and other financing costs, pre-construction expenses etc.

3.6 Financial analysis and bid process

Detailed financial analysis is required to be undertaken by the Consultant. However, the Consultant shall provide the estimated construction costs, operation and maintenance costs, traffic forecast, revenues etc. as part of its financial analysis and appraisal of the Project. The Consultant shall, also provide a assessment of the financial viability of the Project with a view to estimating the likely IRR over a concession period of 10 (ten) years, 15 (Fifteen) years, 20 (twenty) years, 25 (twenty five) years and 30 (thirty) years respectively.

While undertaking the financial analysis and projecting the IRR, the following assumptions shall be adopted:

- (a) Capital cost shall be adopted as per estimates of construction cost to which appropriate per cent shall be added for physical and price contingencies, interest during construction, other financing costs etc;
- (b) debt equity ratio may be assumed as 70:30;
- (c) O&M costs may be assumed as per norms of the Authority;
- (d) appropriate growth rate of traffic may be assumed per annum.

The Consultant shall:

- (a) calculate the NPV and IRR (project and equity) for the Authority and the selected Concessionaire for the Project. It will undertake sensitivity analysis by identifying the most critical factors and determine their impact on the IRR, including varying project costs and benefits, implementation period, and combinations of these factors; and
- (b) conduct a risk analysis (using the Monte Carlo method) by considering the possible values for key variables based on records, and their occurrence probability.

If the IRR of the Project, based on the aforesaid calculations is less than 12% (twelve percent), an effort should be made to reduce the capital costs in consultation with the Authority. This may be done either by omitting/ modifying some of the proposed structures or by phasing them after a suitable period, such that the IRR reaches a minimum of 12% (twelve percent). If the present proposal is not financially viable other business options may be suggested.

3.7 Demand assessment

- a) The Consultant shall make an assessment of the traffic demand for the Project for a period of 5 (five) years, 10 (ten) years, 15 (fifteen) years and 20 (twenty) years respectively based on analysis of traffic counts, trend growth and growth in the influence area of the Project. Normally, an annual growth rate of 5% (five per cent) shall be assumed. Any variation would have to be justified with reasons, including analysis of past trends.

(b) After making the above Traffic assessment, the Consultant shall conduct study to list out the pros and cons vis-à-vis to JD(East) and BDII to identify the best technical feasibility on all other aspects.

(c) ChPT has entered into a License Agreement on 09.08.2011 for a tenure of 30 years for Development and Management of Chennai Container Terminal at BD which is just South of existing BD II wherein under Article 2.04(g) it is indicted that "If the conversion of Iron ore Berth into Container Berth is approved by competent authority, the Licensor has the obligation to hand it over to the Licensee and in the same way Licensee is obligated to accept and convert it into a Container Berth at Licensor's cost".

(d) Based on the assessment of the volume of handling of coal expected to generate, the Consultant shall provide a broad assessment for the need of the project. The Consultant shall also provide sensitivity analysis due to change in assumption of traffic projections.

4. DELIVERABLES

In pursuance of this TOR, the Consultant shall undertake/deliver the following deliverables (the "Deliverables") during the course of this Consultancy. Each deliverable shall include an executive summary, analyses, assumptions, results of computations, tables, charts, recommendations, and such other contents that generally comprise deliverables for similar consultancy work by way of best practices. 5 hard copies and 3 soft copies of all the Reports mentioned herein below shall be submitted to the Authority. The deliverables shall include:

A. Inception Report

On commencement of the Consultancy, the Consultant shall submit the Inception Report (the "Inception Report"). The Inception Report shall be the elaboration of the Consultant's submissions towards understanding of the RFP, the methodology to be followed and Work Plan, etc. The Consultant shall submit a Supplementary Inception Report where it should clearly spell out the broad strategy of structuring the project.

B. Demand Assessments Clause 3.7

C. Engineering Surveys and investigations refer Clause 3.2

D. Initial Environmental Examination & Draft TOR in the prescribed Performa 3.3

E. Preliminary designs and Project cost refer Clause 3.4 & 3.5

F. Draft Feasibility Report

The FR of the Project shall include the following, but not limited to:

(1) Sets of drawings

- (a) A Plan of the Project facility
 - (b) Plans and typical cross-sections showing the existing structures with the proposed structures marked thereon.
- (2) Investigation Reports
Report on traffic survey and demand assessment, Engineering surveys and investigations, Initial Environment Examination and management plan
- (3) Preliminary designs
The Consultant shall arrive at the preliminary designs of various components of the Project keeping in view the requirements of the Manual and the scope of services described in this TOR. It shall be responsible for the accuracy of the physical details such as alignment, abutting land use, assets within the project site including safety devices, utilities, cross drainage, proposed structural details, etc. The layout and preliminary designs shall be supplemented with explanatory drawings, statements, charts, notes as necessary.
- (4) Preliminary costing
- (a) Indicative BOQ.
 - (b) Preliminary Cost Estimate for construction of Project Facility.
 - (c) Total Project Cost
- (5) Implementation Schedule
Construction Period and its Programme Schedule

G. Financial Analysis

Preliminary financial assessment of the Project including the likely IRR for a 10 (ten) year, 15 (fifteen) year, 20 (twenty) year and 25 (twenty five) year concession period respectively (Refer Para 3.6).

H. Final Feasibility Report (FFR)

Incorporating the financial viability and as directed by the Authority.

5. SPECIFIC REQUIREMENTS FOR THE PROJECT

Specifically bring out the requirements of any special structures related to the project such as conveyors, bubble structures, silos, machineries etc.,

6. TIME AND PAYMENT SCHEDULE

- 6.1 The total duration for preparation of the Feasibility Report shall be **8 (Eight)** weeks excluding the time taken by the Authority in conveying its comments on the Draft Report. The Consultant shall ensure deployment of the Personnel proposed in the Bid.
- 6.2 Time schedule for important Deliverables (the “**Key Dates**”) of the Consultancy and the payment schedule linked to the specified Deliverables is given below:

A. For Development of JD (East) berths as Coal terminal

Key Date No.	Description of Deliverables	Week No.**	Payment Out of Quoted rate	Stage Payment for KD Out of Quoted rate
KD1	Inception Report	1	Nil	Nil
KD2	Draft Feasibility report	6	50%	30%
KD3	Final Feasibility report	8		20%

B. For Development of BD-II berth as Coal terminal

Key Date No.	Description of Deliverables	Week No.**	Payment Out of Quoted rate	Stage payment for KD Out of Quoted rate
KD4	Inception Report	1	Nil	Nil
KD5	Draft Feasibility report	6	50%	30%
KD6	Final Feasibility report	8		20%

Note: ** Excludes time taken by the Authority in providing comments on Draft Reports.

7 MEETINGS

The Authority may review with the Consultant, any or all of the documents and advice forming part of the Consultancy, in meetings and conferences which will be held in Chennai at the Authority's office. The expenses towards attending such meetings during the period of Consultancy (i.e. before acceptance of the Final Report by the Authority), including travel costs **shall not be reimbursed**.

8. CONSULTANCY TEAM

8.1 The Consultant shall form a multi-disciplinary team (the "**Consultancy Team**") for undertaking this assignment. The following Key Personnel with experience and responsibilities briefly described shall be deployed and such details shall be furnished along with the Bid.

(a) Port Sector Expert -cum-Team Leader

Educational Qualifications	Graduate in Civil Engineering
Essential Experience	10 years in planning, project preparation and design of port projects.
Job responsibilities	He will lead, coordinate and supervise the multi-disciplinary team. It will be his responsibility to guide the team in arriving at solutions within the constraints specified in the TOR.

(b) Technical Expert

Educational Qualifications	Graduate in Civil/Mechanical Engineering
Essential Experience	7 years in analysis and design of major structures in particular port structures and analysis of condition of existing structures.
Job responsibilities	He will be responsible for planning, preliminary design of the structures of the project facilities and services , Arriving cost Estimate and prepare FR

(c) Traffic Expert

Educational Qualifications	Degree in Economics/ Statistics/MBA/PG Diploma in Management
Essential Experience	7 Years experience in Traffic Analysis to ascertain the traffic Potential.
Job responsibilities	He will be responsible for analysis of traffic for ascertaining the traffic potential.

(d) Financial Expert

Educational Qualifications	Chartered Accountant / ICWA / MBA in Financial Management Specialization or equivalent.
Essential Experience	7 years in financial analysis and modeling of infrastructure projects
Job responsibilities	He will be responsible for financial analysis and modeling of the Project.

(e) Environmental Expert

Educational Qualifications	Degree in Environmental Science / Engineering or equivalent
Essential Experience	7 years in environmental studies
Job responsibilities	He will conduct the Initial Environment Examination of the Project provide EMP

9. REPORTING

- 9.1 The Consultant will work closely with the Authority. A designated officer (Nodal Officer) of the Authority will be responsible for the overall coordination and project development. He will play a coordinating role in dissemination of the Consultant's outputs, facilitating discussions, and ensuring required reactions and responses to the Consultant.
- 9.2 The Consultant may prepare Issue Papers highlighting issues that could become critical for the timely completion of the Project and that require attention from the Authority.
- 9.3 The Consultant will make a presentation on the inception report for discussion with the Authority at a meeting, if required by the Authority. The Consultants' work on the TOR tasks should continue while the report is under consideration and is being discussed.
- 9.4 Regular communication with the Authority and its representative is required in addition to all key communications. This may take the form of telephone/teleconferencing, emails, faxes, and occasional meetings.
- 9.5 The Deliverables will be submitted as per schedule provided in this RFP.

10. DATA TO BE MADE AVAILABLE BY THE AUTHORITY

The Authority shall provide to the Consultant the following:

- (a) A report on Pollution free handling of Coal and Dusty cargo prepared by the consultant appointed by the Authority
- (b) Topographic survey (Map) conducted by the consultant and
- (c) A copy of the Model Concession Agreement.
- (d) Available documents like Soil investigation report / relevant to the project in Chennai Port Trust, if available.
- (e) A copy of the Model Documents viz. RFQ, RFP and Concession Agreement.

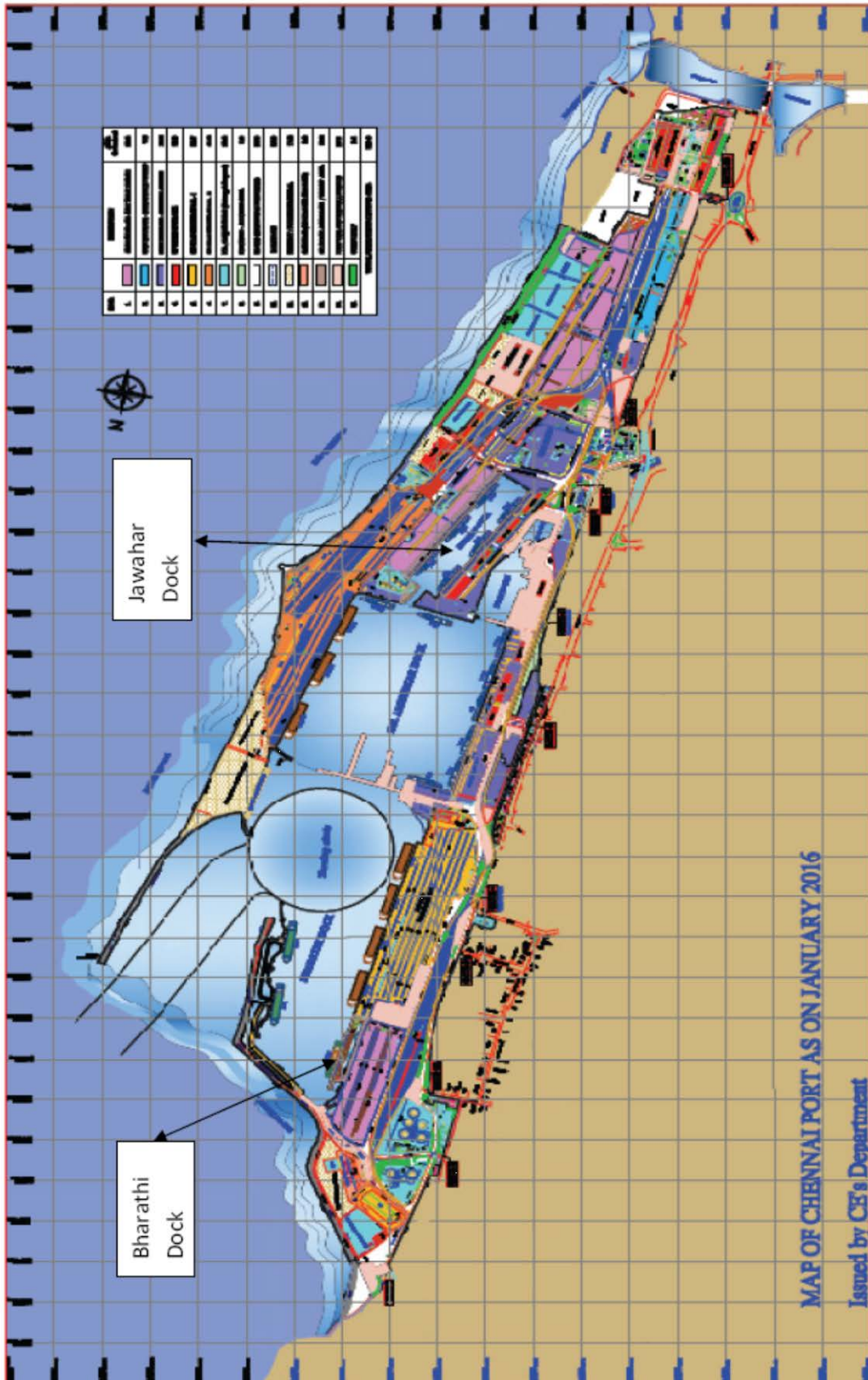
Available data as may be required by the Consultant will be provided by the Authority on request. The Nodal Officer designated by the Authority shall facilitate handing over of such information to the Consultant.

11. COMPLETION OF SERVICES

- 11.1 All the study outputs including primary data shall be compiled, classified and submitted by the Consultant to the Authority in soft form apart from the reports indicated in the Deliverables (Para 4). The study outputs shall remain the property of the Authority and shall not be used for any purpose other than that intended under these Terms of Reference without the permission of the Authority. The Consultancy shall stand completed on acceptance by the Authority of all the Deliverables of the Consultant and execution of the Concession Agreement or 52 (fifty two) weeks from the Effective Date,

whichever is earlier. The Authority shall issue a certificate to that effect. The Consultancy shall in any case be deemed to be completed upon expiry of 1 (one) year from the Effective Date, unless extended by mutual consent of the Authority and the Consultant.

CHENNAI PORT LAYOUT INDICATING THE PROJECT SITE



SCHEDULE-2
(See Clause 2.1.3)

AGREEMENT

FOR

**PROVIDING CONSULTANCY SERVICES FOR PREPARATION OF FEASIBILITY
REPORT FOR DEVELOPMENT OF JD(East) & BD-II BERTH AS COAL TERMINALS
AT CHENNAI PORT UNDER PPP MODE**

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AGREEMENT

Preparation of Feasibility Report for “Development of BD -II & JD (East) berths as coal terminal at Chennai Port “

AGREEMENT No. _____

This AGREEMENT (hereinafter called the “**Agreement**”) is made on the _____ day of the month of _____ 2***, between, on the one hand, the Chennai Port Trust (hereinafter called the “**Authority**” which expression shall include their respective successors and permitted assigns, unless the context otherwise requires) and, on the other hand, _____ (hereinafter called the “**Consultant**” which expression shall include their respective successors and permitted assigns).

WHEREAS

- (A) The Authority vide its Request for Proposal for Preparation of Feasibility Report (hereinafter called the “**Consultancy**”) for Development of JD(East) & BD -II berths as coal Terminal at Chennai Port (hereinafter called the “**Project**”);
- (B) the Consultant submitted its proposals for the aforesaid work, whereby the Consultant represented to the Authority that it had the required professional skills, and in the said proposals the Consultant also agreed to provide the Services to the Authority on the terms and conditions as set forth in the RFP and this Agreement; and
- (C) the Authority, on acceptance of the aforesaid proposals of the Consultant, awarded the Consultancy to the Consultant vide its Letter of Award dated _____ (the “**LOA**”); and
- (D) in pursuance of the LOA, the parties have agreed to enter into this Agreement.

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

1. GENERAL**1.1 Definitions and Interpretation**

- 1.1.1 The words and expressions beginning with capital letters and defined in this Agreement shall, unless the context otherwise requires, have the meaning hereinafter respectively assigned to them:
 - (a) “**Agreement**” means this Agreement, together with all the Annexes;
 - (b) “**Agreement Value**” shall have the meaning set forth in Clause 6.1.2;
 - (c) “**Applicable Laws**” means the laws and any other instruments having the force of law in India as they may be issued and in force from time to time;
 - (d) “**Confidential Information**” shall have the meaning set forth in Clause 3.3;

- (e) “**Conflict of Interest**” shall have the meaning set forth in Clause 3.2 read with the provisions of RFP;
- (f) “**Dispute**” shall have the meaning set forth in Clause 9.2.1;
- (g) “**Effective Date**” means the date on which this Agreement comes into force and effect pursuant to Clause 2.1;
- (h) “**Expatriate Personnel**” means such persons who at the time of being so hired had their domicile outside India;
- (i) “**Government**” means the Government of **INDIA / Tamil Nadu**;
- (j) “**INR, Re. or Rs.**” means Indian Rupees;
- (k) “**Member**”, in case the Consultant consists of a joint venture or consortium of more than one entity, means any of these entities, and “**Members**” means all of these entities;
- (l) “**Party**” means the Authority or the Consultant, as the case may be, and **Parties** means both of them;
- (m) “**Personnel**” means persons hired by the Consultant or by any Sub-Consultant as employees and assigned to the performance of the Services or any part thereof;
- (n) “**Resident Personnel**” means such persons who at the time of being so hired had their domicile inside India;
- (o) “**RFP**” means the Request for Proposal document in response to which the Consultant’s proposal for providing Services was accepted;
- (p) “**Services**” means the work to be performed by the Consultant pursuant to this Agreement, as described in the Terms of Reference hereto;
- (q) “**Sub-Consultant**” means any entity to which the Consultant subcontracts any part of the Services in accordance with the provisions of Clause 4.7; and
- (r) “**Third Party**” means any person or entity other than the Government, the Authority, the Consultant or a Sub-Consultant.

All terms and words not defined herein shall, unless the context otherwise requires, have the meaning assigned to them in the RFP.

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

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

1.2 Relation between the Parties

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

1.3 Rights and obligations

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

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

1.4 Governing law and jurisdiction

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

1.5 Language

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

1.6 Table of contents and headings

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

1.7 Notices

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

- (a) in the case of the Consultant, be given by facsimile or e-mail and by letter delivered by hand to the address given and marked for attention of the Consultant's Representative set out below in Clause 1.10 or to such other person as the Consultant may from time to time designate by notice to the Authority; provided that notices or other communications to be given to an address outside **Chennai** may, if they are subsequently confirmed by sending a copy thereof by registered acknowledgement due, air mail or by courier, be sent by facsimile or e-mail to the number as the Consultant may from time to time designate by notice to the Authority;

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

1.8 Location

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

1.9 Authority of Member-in-charge

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

1.10 Authorized Representatives

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

**The Superintending Engineer(MP),
Civil Engineering Department, Chennai Port Trust,
3rd Floor, Old Administrative Building, No.1 Rajaji Salai,
Chennai – 600 001.**

Telephone : 044 – 2539 3412

Fax : 044 - 2536 1849

Email: chptcnp@gmail.com.

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

Tel: _____

Mobile: _____

Fax: _____

Email: _____

1.11 Taxes and duties

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

2. COMMENCEMENT, COMPLETION AND TERMINATION OF AGREEMENT

2.1 Effectiveness of Agreement

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

2.2 Commencement of Services

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

2.3 Termination of Agreement for failure to commence Services

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

2.4 Expiration of Agreement

Unless terminated earlier pursuant to Clauses 2.3 or 2.9 hereof, this Agreement shall, unless extended by the Parties by mutual consent, expire upon the earlier of (i) expiry of a period of 90 (ninety) days after the delivery of the final deliverable to the Authority; and (ii) the expiry of [1 (one) year] from the Effective Date. Upon Termination, the Authority shall make payments of all amounts due to the Consultant hereunder.

2.5 Entire Agreement

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

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

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

2.6 Modification of Agreement

Modification of the terms and conditions of this Agreement, including any modification of the scope of the Services, may only be made by written agreement between the Parties. Pursuant to Clauses 4.2.3 and 6.1.3 hereof, however, each Party shall give due consideration to any proposals for modification made by the other Party.

2.7 Force Majeure

2.7.1 Definition

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

2.7.2 No breach of Agreement

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

2.7.3 Measures to be taken

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

2.7.4 Extension of time

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

2.7.5 Payments

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

2.7.6 Consultation

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

2.8 Suspension of Agreement

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

2.9 Termination of Agreement

2.9.1 By the Authority

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

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

2.9.2 By the Consultant

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

- (a) the Authority fails to pay any money due to the Consultant pursuant to this Agreement and not subject to dispute pursuant to Clause 9 hereof within 45 (forty five) days after receiving written notice from the Consultant that such payment is overdue;
- (b) the Authority is in material breach of its obligations pursuant to this Agreement and has not remedied the same within 45 (forty five) days (or such longer period as the Consultant may have subsequently granted in writing) following the receipt by the Authority of the Consultant's notice specifying such breach;
- (c) as the result of Force Majeure, the Consultant is unable to perform a material portion of the Services for a period of not less than 60 (sixty) days; or
- (d) the Authority fails to comply with any final decision reached as a result of arbitration pursuant to Clause 9 hereof.

2.9.3 Cessation of rights and obligations

Upon termination of this Agreement pursuant to Clauses 2.3 or 2.9 hereof, or upon expiration of this Agreement pursuant to Clause 2.4 hereof, all rights and

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

2.9.4 Cessation of Services

Upon termination of this Agreement by notice of either Party to the other pursuant to Clauses 2.9.1 or 2.9.2 hereof, the Consultant shall, immediately upon dispatch or receipt of such notice, take all necessary steps to bring the Services to a close in a prompt and orderly manner and shall make every reasonable effort to keep expenditures for this purpose to a minimum. With respect to documents prepared by the Consultant and equipment and materials furnished by the Authority, the Consultant shall proceed as provided respectively by Clauses 3.9 or 3.10 hereof.

2.9.5 Payment upon Termination

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

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

2.9.6 Disputes about Events of Termination

If either Party disputes whether an event specified in Clause 2.9.1 or in Clause 2.9.2 hereof has occurred, such Party may, within 30 (thirty) days after receipt of notice of termination from the other Party, refer the matter to arbitration pursuant to Clause 9 hereof, and this Agreement shall not be terminated on account of such event except in accordance with the terms of any resulting arbitral award.

3. OBLIGATIONS OF THE CONSULTANT

3.1 General

3.1.1 Standards of Performance

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

3.1.2 Terms of Reference

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

3.1.3 Applicable Laws

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

3.2 Conflict of Interest

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

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

The Consultant agrees that, during the term of this Agreement and after its termination, the Consultant or any Associate thereof and any entity affiliated with the Consultant, as well as any Sub-Consultant and any entity affiliated with such Sub-Consultant, shall be disqualified from providing goods, works, services, loans or equity for any project resulting from or closely related to the Services and any breach of this obligation shall amount to a Conflict of Interest; provided that the restriction herein shall not apply after a period of five years from the completion of this assignment or to consulting assignments granted by banks/ lenders at any time; provided further that this restriction shall not apply to consultancy/ advisory services provided to the Authority in continuation of this Consultancy or to any subsequent consultancy/ advisory services provided to the Authority in accordance with the rules of the Authority. For the avoidance of doubt, an entity affiliated with the Consultant shall include a partner in the Consultant's firm or a person who holds more than 5% (five per cent) of the subscribed and paid up share capital of the Consultant, as the case may be, and any Associate thereof.

3.2.3 Prohibition of conflicting activities

Neither the Consultant nor its Sub-Consultant nor the Personnel of either of them

shall engage, either directly or indirectly, in any of the following activities:

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

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

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

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

3.2.6 Without prejudice to the rights of the Authority under Clause 3.2.5 above and the other rights and remedies which the Authority may have under this Agreement, if the Consultant is found by the Authority to have directly or indirectly or through an agent, engaged or indulged in any Prohibited Practices, during the Selection Process or before or after the execution of this Agreement, the Consultant shall not be eligible to participate in any tender or RFP issued during a period of 2 (two) years from the date the Consultant is found by the Authority to have directly or indirectly or through an agent, engaged or indulged in any Prohibited Practices.

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

- (a) "**corrupt practice**" means the offering, giving, receiving or soliciting, directly

or indirectly, of anything of value to influence the actions of any person connected with the Selection Process (for removal of doubt, offering of employment or employing or engaging in any manner whatsoever, directly or indirectly, any official of the Authority who is or has been associated in any manner, directly or indirectly with Selection Process or LOA or dealing with matters concerning the Agreement before or after the execution thereof, at any time prior to the expiry of one year from the date such official resigns or retires from or otherwise ceases to be in the service of the Authority, shall be deemed to constitute influencing the actions of a person connected with the Selection Process); or (ii) engaging in any manner whatsoever, whether during the Selection Process or after the issue of LOA or after the execution of the Agreement, as the case may be, any person in respect of any matter relating to the Project or the LOA or the Agreement, who at any time has been or is a legal, financial or technical adviser the Authority in relation to any matter concerning the Project;

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

3.3 Confidentiality

The Consultant, its Sub-Consultants and the Personnel of either of them shall not, either during the term or within two years after the expiration or termination of this Agreement disclose any proprietary information, including information relating to reports, data, drawings, design software or other material, whether written or oral, in electronic or magnetic format, and the contents thereof; and any reports, digests or summaries created or derived from any of the foregoing that is provided by the Authority to the Consultant, its Sub-Consultants and the Personnel; any information provided by or relating to the Authority, its technology, technical processes, business affairs or finances or any information relating to the Authority’s employees, officers or other professionals or suppliers, customers, or contractors of the Authority; and any other information which the Consultant is under an obligation to keep confidential in relation to the Project, the Services or this Agreement (“**Confidential Information**”), without the prior written consent of the Authority.

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

that such Confidential Information:

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

3.4 Liability of the Consultant

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

3.4.2 Consultant's liability towards the Authority

The Consultant shall, subject to the limitation specified in Clause 3.4.3, be liable to the Authority for any direct loss or damage accrued or likely to accrue due to deficiency in Services rendered by it.

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

- (i) for any indirect or consequential loss or damage; and
- (ii) for any direct loss or damage that exceeds (a) the Agreement Value set forth in Clause 6.1.2 of this Agreement, or (b) the proceeds the Consultant may be entitled to receive from any insurance maintained by the Consultant to cover such a liability in accordance with Clause 3.5.2, whichever of (a) or (b) is higher.

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

Agreement Value.

3.5 Insurance to be taken out by the Consultant

- 3.5.1 (a) The Consultant shall, for the duration of this Agreement, take out and maintain, and shall cause any Sub-Consultant to take out and maintain, at its (or the Sub-Consultant's, as the case may be) own cost, but on terms and conditions approved by the Authority, insurance against the risks, and for the coverages, as specified in the Agreement and in accordance with good industry practice.
- (b) Within 15 (fifteen) days of receiving any insurance policy certificate in respect of insurances required to be obtained and maintained under this clause, the Consultant shall furnish to the Authority, copies of such policy certificates, copies of the insurance policies and evidence that the insurance premia have been paid in respect of such insurance. No insurance shall be cancelled, modified or allowed to expire or lapse during the term of this Agreement.
- (c) If the Consultant fails to effect and keep in force the aforesaid insurances for which it is responsible pursuant hereto, the Authority shall, apart from having other recourse available under this Agreement, have the option, without prejudice to the obligations of the Consultant, to take out the aforesaid insurance, to keep in force any such insurances, and pay such premia and recover the costs thereof from the Consultant, and the Consultant shall be liable to pay such amounts on demand by the Authority.
- (d) Except in case of Third Party liabilities, the insurance policies so procured shall mention the Authority as the beneficiary of the Consultant and the Consultant shall procure an undertaking from the insurance company to this effect; provided that in the event the Consultant has a general insurance policy that covers the risks specified in this Agreement and the amount of insurance cover is equivalent to 3 (three) times the cover required hereunder, such insurance policy may not mention the Authority as the sole beneficiary of the Consultant or require an undertaking to that effect.
- 3.5.2 The Parties agree that the risks and coverages shall include but not be limited to the following:
- (a) Third Party liability insurance as required under Applicable Laws, with a minimum coverage of **Rs. 6 (Six) crores**;
- (b) employer's liability and workers' compensation insurance in respect of the Personnel of the Consultant and of any Sub-Consultant, in accordance with Applicable Laws; and
- (c) Professional liability insurance for an amount no less than the Agreement Value.

The indemnity limit in terms of "Any One Accident" (AOA) and "Aggregate limit on the policy period" (AOP) should not be less than the amount stated in Clause 6.1.2 of the Agreement. In case of consortium, the policy should be in the name of Lead Member and not in the name of individual Members of the consortium.

3.6 Accounting, inspection and auditing

The consultant shall:

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

3.7 Consultant's actions requiring the Authority's prior approval

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

- (a) appointing such members of the Professional Personnel as are not listed in Annex-2.
- (b) entering into a subcontract for the performance of any part of the Services, it being understood (i) that the selection of the Sub-Consultant and the terms and conditions of the subcontract shall have been approved in writing by the Authority prior to the execution of the subcontract, and (ii) that the Consultant shall remain fully liable for the performance of the Services by the Sub-Consultant and its Personnel pursuant to this Agreement; or
- (c) any other action that is specified in this Agreement.

3.8 Reporting obligations

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

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

3.9.1 All plans, drawings, specifications, designs, reports and other documents (collectively referred to as "**Consultancy Documents**") prepared by the Consultant (or by the Sub-Consultants or any Third Party) in performing the Services shall become and remain the property of the Authority, and all intellectual property rights in such Consultancy Documents shall vest with the Authority. Any Consultancy Document, of which the ownership or the intellectual property rights do not vest with the Authority under law, shall automatically stand assigned to the Authority as and when such Consultancy Document is created and the Consultant agrees to execute all papers and to perform such other acts as the Authority may deem necessary to secure its rights herein assigned by the Consultant.

3.9.2 The Consultant shall, not later than termination or expiration of this Agreement,

deliver all Consultancy Documents to the Authority, together with a detailed inventory thereof. The Consultant may retain a copy of such Consultancy Documents. The Consultant, its Sub-Consultants or a Third Party shall not use these Consultancy Documents for purposes unrelated to this Agreement without the prior written approval of the Authority.

- 3.9.3 The Consultant shall hold the Authority harmless and indemnified for any losses, claims, damages, expenses (including all legal expenses), awards, penalties or injuries (collectively referred to as 'claims') which may arise from or due to any unauthorised use of such Consultancy Documents, or due to any breach or failure on part of the Consultant or its Sub-Consultants or a Third Party to perform any of its duties or obligations in relation to securing the aforementioned rights of the Authority.

3.10 Equipment and materials furnished by the Authority

The Authority will not provide any equipment or materials.

3.11 Providing access to Project Office and Personnel

The Authority's official, who has been authorized by the Authority in this behalf, shall have the right to inspect the Services in progress, interact with Personnel of the Consultant and verify the records relating to the Services for his satisfaction.

3.12. Accuracy of Documents

The Consultant shall be responsible for accuracy of the data collected by it directly or procured from other agencies/authorities, the designs, drawings, estimates and all other details prepared by it as part of these services. The Consultant shall also be responsible for promptly correcting, at its own cost and risk, the drawings including any re-survey / investigations.

4. CONSULTANT'S PERSONNEL AND SUB-CONSULTANTS

4.1 General

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

4.2 Deployment of Personnel

The consultant shall employ the key personnel as require in this RFP and according to the requirement of the project.

4.4 Substitution of Key Personnel

The Authority expects all the Key Personnel specified in the Proposal to be available during implementation of the Agreement. The Authority will not consider any substitution of Key Personnel except under compelling circumstances beyond the control of the Consultant and the concerned Key

Personnel. Such substitution shall be limited to not more than two Key Personnel subject to equally or better qualified and experienced personnel being provided to the satisfaction of the Authority. Without prejudice to the foregoing, substitution of one Key Personnel shall be permitted subject to reduction of a sum equal to **2%** (two per cent) of the **accepted basic cost of the assignment shall** be deducted from the payments due to the Consultant. In the case of a second substitution hereunder, such deduction shall be **5% (five per cent)** of the **accepted basic cost of the assignment**. Any further substitution may lead to disqualification of the Applicant or termination of the Agreement.

4.5 Deleted

4.6 Resident Team Leader and Project Manager

The person designated as the Team Leader of the Consultant's Personnel shall be responsible for the coordinated, timely and efficient functioning of the Personnel. In addition, the Consultant shall designate a suitable person as Project Manager (the "**Project Manager**") who shall be responsible for day to day performance of the Services.

4.7 Sub-Consultants - deleted

5. OBLIGATIONS OF THE AUTHORITY

5.1 Assistance in clearances etc.

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

- (a) provide the Consultant, its Sub-Consultants and Personnel with work permits and such other documents as may be necessary to enable the consultant, its Sub-Consultants or Personnel to perform the Services; and
- (b) issue to officials, agents and representatives of the Government all such instructions as may be necessary or appropriate for the prompt and effective implementation of the Services.

5.2 Access to land and property

The Authority warrants that the Consultant shall have, free of charge, unimpeded access to the site of the project in respect of which access is required for the performance of Services;

5.3 Change in Applicable Law

If, after the date of this Agreement, there is any change in the Applicable Laws with respect to taxes and duties which increases or decreases the cost incurred by the Consultant in performing the Services, such increase / decrease shall be borne by the Authority.

5.4 Payment

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

6. PAYMENT TO THE CONSULTANT

6.1 Cost estimates and Agreement Value

- 6.1.1 An abstract of the cost of the Services payable to the Consultant is set forth in **Annex-2** of the Agreement.
- 6.1.2 Except as may be otherwise agreed under Clause **2.6** and subject to Clause 6.1.3, the payments under this Agreement shall not exceed the agreement value specified herein (the "**Agreement Value**"). The Parties agree that the Agreement Value is Rs. (Rupees), excluding service tax.
- 6.1.3 Notwithstanding anything to the contrary contained in Clause 6.1.2, if pursuant to the provisions of Clauses 2.6 and 2.7, the Parties agree that additional payments shall be made to the Consultant in order to cover any additional expenditures not envisaged in the cost estimates referred to in Clause 6.1.1 above, the Agreement Value set forth in Clause 6.1.2 above shall be increased by the amount or amounts, as the case may be, of any such additional payments.

6.2 Currency of payment

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

6.3 Mode of billing and payment

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

(a) **(Deleted)**

- (b) The Consultant shall be paid for its services as per the Payment Schedule at **Annex-3** of this Agreement, subject to the Consultant fulfilling the following conditions:
- (i) No payment shall be due for the next stage till the Consultant completes, to the satisfaction of the Authority, the work pertaining to the preceding stage.
 - (ii) The Authority shall pay to the Consultant, only the undisputed amount.
- (c) The Authority shall cause the payment due to the Consultant to be made within 30 (thirty) days after the receipt by the Authority of duly completed bills with necessary particulars (the "**Due Date**"). Interest at the rate of 10% (ten per cent) per annum shall become payable as from the Due Date on any amount due by, but not paid on or before, such Due Date.
- (d) The final payment under this Clause shall be made only after the final report and a final statement, identified as such, shall have been submitted by the Consultant and approved as satisfactory by the Authority. The Services shall be deemed completed and finally accepted by the Authority and the final deliverable shall be deemed approved by the Authority as

satisfactory upon expiry of 90 (ninety) days after receipt of the final deliverable by the Authority unless the Authority, within such 90 (ninety) day period, gives written notice to the Consultant specifying in detail, the deficiencies in the Services. The Consultant shall thereupon promptly make any necessary corrections and/or additions, and upon completion of such corrections or additions, the foregoing process shall be repeated. The Authority shall make the final payment upon acceptance or deemed acceptance of the final deliverable by the Authority.

- (e) Any amount which the Authority has paid or caused to be paid in excess of the amounts actually payable in accordance with the provisions of this Agreement shall be reimbursed by the Consultant to the Authority within 30 (thirty) days after receipt by the Consultant of notice thereof. Any such claim by the Authority for reimbursement must be made within 1 (one) year after receipt by the Authority of a final report and a final statement in accordance with Clause 6.3 (d). Any delay by the Consultant in reimbursement by the due date shall attract simple interest @ 10% (ten per cent) per annum.
- (f) (Deleted)
- (g) All payments under this Agreement shall be made to the account of the Consultant as may be notified to the Authority by the Consultant.

7. LIQUIDATED DAMAGES AND PENALTIES

7.1 Performance Security

7.1.1 The Authority shall retain by way of performance security (the "**Performance Security**"), 5% (five per cent) of all the amounts due and payable to the Consultant, to be appropriated against breach of this Agreement or for recovery of liquidated damages as specified in **Clause 7.2** herein. The balance remaining out of the Performance Security shall be returned to the Consultant at the end of 3 (three) months after the expiration of this Agreement pursuant to **Clause 2.4** hereof.

7.1.2 The Consultant may, in lieu of retention of the amounts as referred to in Clause 7.1.1 above, furnish a Bank Guarantee substantially in the form specified at **Annex-4** of this Agreement.

7.2 Liquidated Damages

7.2.1 Liquidated Damages for error/variation

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

7.2.2 Liquidated Damages for delay

In case of delay in completion of Services, liquidated damages not exceeding an amount equal to 0.2% (zero point two per cent) of the Agreement Value per day,

subject to a maximum of 10% (ten per cent) of the Agreement Value will be imposed and shall be recovered by appropriation from the Performance Security or otherwise. However, in case of delay due to reasons beyond the control of the Consultant, suitable extension of time shall be granted.

7.2.3 Encashment and appropriation of Performance Security

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

7.3 Penalty for deficiency in Services

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

8. FAIRNESS AND GOOD FAITH

8.1 Good Faith

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

8.2 Operation of the Agreement

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

9. SETTLEMENT OF DISPUTES

9.1 Amicable settlement

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

9.2 Dispute resolution

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

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

9.3 Conciliation

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

9.4 Arbitration

9.4.1 Any Dispute which is not resolved amicably by conciliation, as provided in Clause 9.3, shall be finally decided by reference to arbitration by an Arbitral Tribunal appointed in accordance with Clause 9.4.2. Such arbitration shall be held in accordance with the Rules of Arbitration of the International Centre for Alternative Dispute Resolution, New Delhi (the “**Rules**”), or such other rules as may be mutually agreed by the Parties, and shall be subject to the provisions of the Arbitration and Conciliation Act, 1996. The venue of such arbitration shall be **Chennai** and the language of arbitration proceedings shall be English.

9.4.2 There shall be a sole arbitrator whose appointment shall be made in accordance with the Rules.

9.4.3 The arbitrators shall make a reasoned award (the “**Award**”). Any Award made in any arbitration held pursuant to this Clause 9 shall be final and binding on the Parties as from the date it is made, and the Consultant and the Authority agree and undertake to carry out such Award without delay.

9.4.4 The Consultant and the Authority agree that an Award may be enforced against the Consultant and/or the Authority, as the case may be, and their respective assets wherever situated.

9.4.5 This Agreement and the rights and obligations of the Parties shall remain in full force and effect, pending the Award in any arbitration proceedings hereunder.

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

SIGNED, SEALED AND DELIVERED SIGNED, SEALED AND DELIVERED

For and on behalf of
Consultant:

For and on behalf of
[Authority]

(Signature)

(Signature)

(Name)

(Name)

(Designation)

(Designation)

(Address)

(Address)

(Fax No.)

(Fax No.)

In the presence of:

1.

2.

Annex-1

Terms of Reference
(Refer Clause 3.1.2)

(Reproduce Schedule-1 of RFP)

Annex-2

Cost of Services
(Refer Clause 6.1)

(Reproduce as per Form-4of Appendix)

Annex- 3

Payment Schedule*(Refer Clause 6.3)***A. For Development of JD (East) berths as Coal terminal**

Key Date No.	Description of Deliverables	Week No.	Payment out of Quoted rate
KD1	Inception Report	1	-
KD2	Draft Feasibility report	6	30%
KD3	Final Feasibility report	8	20%
		TOTAL	50%

B. For Development of BD-II berth as Coal terminal

Key Date No.	Description of Deliverables	Week No.	Payment out of Quoted rate
KD1	Inception Report	1	-
KD2	Draft Feasibility report	6	30%
KD3	Final Feasibility report	8	20%
		TOTAL	50%

Notes:

- 1 *All Reports shall first be submitted as draft reports for comments of the Authority. The Authority shall provide its comments no later than 3 (three) weeks from the date of receiving a draft report and in case no comments are provided within such 3 (three) weeks, the Consultant shall finalize its report. Provided, however, that the Authority may take upto 4 (four) weeks in providing its comments on the FR.*
- 2 *Final Feasibility Report shall be completed in 8 (Eight) weeks excluding the time taken by the Authority in providing its comments on the Draft Reports.*
- 3 *Final payment of 20% (Twenty percent) shall be released upon completion of Services in their entirety.*

Annex- 4

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

To

The Chairman

Chennai Port Trust

In consideration of The Chairman acting on behalf of the Board Of Trustees of Chennai Port Trust (hereinafter referred as the "Authority", which expression shall, unless repugnant to the context or meaning thereof, include its successors, administrators and assigns) having awarded to M/s....., having its office at (hereinafter referred as the "Consultant" which expression shall, unless repugnant to the context or meaning thereof, include its successors, administrators, executors and assigns), vide the Authority's Agreement no. dated..... valued at Rs. (Rupees), (hereinafter referred to as the "Agreement") Consultancy Services for preparation of FR for the Development of JD(East) & BD - II berths as Coal Terminal at Chennai Port and the Consultant having agreed to furnish a Bank Guarantee encashable and enforceable at Chennai, amounting to Rs. (Rupees.....) to the Authority for performance of the said Agreement.

- 1 **We,Bank,.....Branch, Chennai-** (hereinafter referred to as the "Bank") at the request of the Consultant do hereby undertake to pay to the Authority an amount not exceeding Rs. (Rupees) against any loss or damage caused to or suffered or would be caused to or suffered by the Authority by reason of any breach by the said Consultant of any of the terms or conditions contained in the said Agreement.
- 2 We, (indicate the name of the Bank) do hereby undertake to pay the amounts due and payable under this Guarantee without any demur, merely on a demand from the Authority stating that the amount/claimed is due by way of loss or damage caused to or would be caused to or suffered by the Authority by reason of breach by the said Consultant of any of the terms or conditions contained in the said Agreement or by reason of the Consultant's failure to perform the said Agreement. Any such demand made on the bank shall be conclusive as regards the amount due and payable by the Bank under this Guarantee. However, our liability under this Guarantee shall be restricted to an amount not exceeding Rs. (Rupees).
- 3 We, (indicate the name of Bank) undertake to pay to the Authority any money so demanded notwithstanding any dispute or disputes raised by the Consultant in any suit or proceeding pending before any court or tribunal relating thereto, our liability under this present being absolute and unequivocal. The payment so made by us under this bond shall be a valid discharge of our liability for payment thereunder and the Consultant shall have no claim against us for making such payment.
- 4 We, (indicate the name of Bank) further agree that the Guarantee herein contained shall remain in full force and effect during the period that would

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

- 5 We, (indicate the name of Bank) further agree with the Authority that the Authority shall have the fullest liberty without our consent and without affecting in any manner our obligations hereunder to vary any of the terms and conditions of the said Agreement or to extend time of performance by the said Consultant from time to time or to postpone for any time or from time to time any of the powers exercisable by the Authority against the said Consultant and to forbear or enforce any of the terms and conditions relating to the said Agreement and we shall not be relieved from our liability by reason of any such variation, or extension being granted to the said Consultant or for any forbearance, act or omission on the part of the Authority or any indulgence by the Authority to the said Consultant or any such matter or thing whatsoever which under the law relating to sureties would, but for this provision, have the effect of so relieving us.
- 6 This Guarantee will not be discharged due to the change in the constitution of the Bank or the Consultant(s).
- 7 We, (indicate the name of Bank) lastly undertake not to revoke this Guarantee during its currency except with the previous consent of the Authority in writing.
- 8 For the avoidance of doubt, the Bank's liability under this Guarantee shall be restricted to Rs. *** crore (Rupees ***** crore) only. The Bank shall be liable to pay the said amount or any part thereof only if the Authority serves a written claim on the Bank in accordance with paragraph 2 hereof, on or before [*** (indicate date falling 180 days after the date of this Guarantee)].

For

Name of Bank:

Seal of the Bank:

Dated, the day of, 20

(Signature, name and designation of the authorized signatory)

NOTES:

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

SCHEDULE-3
(See Clause 2.3.3)

Guidance Note on Conflict of Interest

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

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

- 4 The normal way to identify conflicts of interest is through self-declaration by consultants. Where a conflict exists, which has not been declared, competing companies are likely to bring this to the notice of the Authority. All conflicts must be declared as and when the consultants become aware of them.
- 5 Another approach towards avoiding a conflict of interest is through the use of "Chinese walls" to avoid the flow of commercially sensitive information from one part of the consultant's company to another. This could help overcome the problem of availability of limited numbers of experts for the project. However, in reality

effective operation of “Chinese walls” may be a difficult proposition. As a general rule, larger companies will be more capable of adopting Chinese walls approach than smaller companies. Although, “Chinese walls” have been relatively common for many years, they are an increasingly discredited means of avoiding conflicts of interest and should be considered with caution. As a rule, “Chinese walls” should be considered as unacceptable and may be accepted only in exceptional cases upon full disclosure by a consultant coupled with provision of safeguards to the satisfaction of the Authority.

- 6 Another way to avoid conflicts of interest is through the appropriate grouping of tasks. For example, conflicts may arise if consultants drawing up the terms of reference or the proposed documentation are also eligible for the consequent assignment or project.
- 7 Another form of conflict of interest called “scope–creep” arises when consultants advocate either an unnecessary broadening of the terms of reference or make recommendations which are not in the best interests of the Authority but which will generate further work for the consultants. Some forms of contractual arrangements are more likely to lead to scope-creep. For example, lump-sum contracts provide fewer incentives for this, while time and material contracts provide built in incentives for consultants to extend the length of their assignment.
- 8 Every project contains potential conflicts of interest. Consultants should not only avoid any conflict of interest, they should report any present/ potential conflict of interest to the Authority at the earliest. Officials of the Authority involved in development of a project shall be responsible for identifying and resolving any conflicts of interest. It should be ensured that safeguards are in place to preserve fair and open competition and measures should be taken to eliminate any conflict of interest arising at any stage in the process.

Appendices

APPENDIX-I

Form-1**Letter of Proposal**

(On Applicant's letter head)

(Date and Reference)

To

The Chief Engineer
Chennai PortTrust

Sub: Appointment of Consultant for preparation of Feasibility Report for Development of JD (East) & BD-II berths as Coal Terminal at Chennai Port.

Ref : Tender No.T/NP1/5/2016/E.

Dear Sir,

With reference to your RFP Document dated, I/we, having examined all relevant documents and understood their contents, hereby submit our Proposal for selection as Consultant for Solid Waste Management including Disposal of Garbage at Chennai Port Trust. The proposal is unconditional and unqualified.

2. All information provided in the Proposal and in the Appendices is true and correct and all documents accompanying such Proposal are true copies of their respective originals.
3. This statement is made for the express purpose of appointment as the Consultant for the aforesaid Project.
4. I/We shall make available to the Authority any additional information it may deem necessary or require for supplementing or authenticating the Proposal.
5. I/We acknowledge the right of the Authority to reject our application without assigning any reason or otherwise and hereby waive our right to challenge the same on any account whatsoever.
6. I/We certify that in the last three years, we or any of our Associates have neither failed to perform on any contract, as evidenced by imposition of a penalty by an arbitral or judicial authority or a judicial pronouncement or arbitration award against the Applicant, nor been expelled from any project or contract by any public authority nor have had any contract terminated by any public authority for breach on our part.
7. I/We declare that:
 - (a) I/We have examined and have no reservations to the RFP Documents, including any Addendum issued by the Authority;

- (b) I/We do not have any conflict of interest in accordance with Clause 2.3 of the RFP Document;
 - (c) I/We have not directly or indirectly or through an agent engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice, as defined in Clause 4.3 of the RFP document, in respect of any tender or request for proposal issued by or any agreement entered into with the Authority or any other public sector enterprise or any government, Central or State; and
 - (d) I/We hereby certify that we have taken steps to ensure that in conformity with the provisions of Section 4 of the RFP, no person acting for us or on our behalf will engage in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice.
8. I/We understand that you may cancel the Selection Process at any time and that you are neither bound to accept any Proposal that you may receive nor to select the Consultant, without incurring any liability to the Applicants in accordance with **Clause 2.8** of the RFP document.
9. I/We declare that we/any member of the consortium, are/is not a Member of a/any other Consortium applying for Selection as a Consultant.
10. I/We certify that in regard to matters other than security and integrity of the country, we or any of our Associates have not been convicted by a Court of Law or indicted or adverse orders passed by a regulatory authority which would cast a doubt on our ability to undertake the Consultancy for the Project or which relates to a grave offence that outrages the moral sense of the community.
11. I/We further certify that in regard to matters relating to security and integrity of the country, we have not been charge-sheeted by any agency of the Government or convicted by a Court of Law for any offence committed by us or by any of our Associates.
12. I/We further certify that no investigation by a regulatory authority is pending either against us or against our Associates or against our CEO or any of our Directors/Managers/ employees.
13. I/We hereby irrevocably waive any right or remedy which we may have at any stage at law or howsoever otherwise arising to challenge or question any decision taken by the Authority and/ or the Government of India in connection

- with the selection of Consultant or in connection with the Selection Process itself in respect of the above mentioned Project.
- 14 The Bid Security of Rs. ***** (Rupees *****) in the form of a Demand Draft is attached, in accordance with the RFP document.
- 15 I/We agree and understand that the proposal is subject to the provisions of the RFP document. In no case, shall I/we have any claim or right of whatsoever nature if the Consultancy for the Project is not awarded to me/us or our proposal is not opened or rejected.
- 16 I/We agree to keep this offer valid for 120 (one hundred and twenty) days from the Proposal Due Date specified in the RFP.
- 17 A Power of Attorney in favour of the authorized signatory to sign and submit this Proposal and documents is attached herewith in **Form 3**.
- 18 In the event of my/our firm/ consortium being selected as the Consultant, I/we agree to enter into an Agreement in accordance with the form at Schedule–2 of the RFP. We agree not to seek any changes in the aforesaid form and agree to abide by the same.
- 19 I/We have studied RFP and all other documents carefully and also surveyed the Project site. We understand that except to the extent as expressly set forth in the Agreement, we shall have no claim, right or title arising out of any documents or information provided to us by the Authority or in respect of any matter arising out of or concerning or relating to the Selection Process including the award of Consultancy.
- 20 The Financial Proposal is being submitted herewith.
- 21 I/We agree and undertake to abide by all the terms and conditions of the RFP Document. In witness thereof, I/we submit this Proposal under and in accordance with the terms of the RFP Document.

Yours faithfully,

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

Form-2

Statement of Legal Capacity

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

Ref. Date:

To

The Chief engineer
Chennai Port Trust

Dear Sir,

Sub: RFP for appointment of Consultant: for Preparation of Feasibility Report for the Development of JD(East) & BD-II berths as Coal Terminal at Chennai Port.

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

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

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

Yours faithfully,

(Signature, name and designation of the authorized signatory)

For and on behalf of

**Please strike out whichever is not applicable*

Form-3

Power of Attorney

Know all men by these presents, we, (name of Firm and address of the registered office) do hereby constitute, nominate, appoint and authorise Mr / Ms..... son/daughter/wife and presently residing at, who is presently employed with us and holding the position of as our true and lawful attorney (hereinafter referred to as the "Authorised Representative") to do in our name and on our behalf, all such acts, deeds and things as are necessary or required in connection with or incidental to submission of our Proposal for and appointment of Consultant for Preparation of Feasibility Report for Development of JD(East) & BD –II berths as Coal Terminal at Chennai Port under PPP mode, proposed to be developed by the Chennai Port Trust (the "Authority") including but not limited to signing and submission of all applications, proposals and other documents and writings, participating in pre-bid and other conferences and providing information/ responses to the Authority, representing us in all matters before the Authority, signing and execution of all contracts and undertakings consequent to acceptance of our proposal and generally dealing with the Authority in all matters in connection with or relating to or arising out of our Proposal for the said Project and/or upon award thereof to us till the entering into of the Agreement with the Authority.

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

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

For

(Signature, name, designation and address)

Witnesses:

- 1.
- 2.

Notarised

Accepted

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

Notes:

The mode of execution of the Power of Attorney should be in accordance with the procedure, if any, laid down by the applicable law and the charter documents of the executant(s) and when it is so required the same should be under common seal affixed in accordance with the required procedure. The Power of Attorney should be executed on a non-judicial stamp paper of Rs. 50 (fifty) and duly notarised by a notary public.

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

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

**REQUEST FOR PROPOSAL (RFP)
FOR SELECTION OF CONSULTANT**

**PREPARATION OF FEASIBILITY REPORT (FR)
FOR
DEVELOPMENT OF JD(East) & BD-II BERTHS AS COAL TERMINAL AT CHENNAI
PORT UNDER PPP MODE**

PRICE BID

**CONSULTANCY FOR PREPARATION OF FEASIBILITY REPORT FOR
DEVELOPMENT OF JD (East) & BD-II BERTH AS COAL TERMINAL AT CHENNAI
PORT UNDER PPP MODE**

Financial Proposal

Particulars	Amount in Rupees
Basic cost of the services (Excluding service tax)	

(Rupees.....only)

Note:

- 1 The financial evaluation shall be based on the basic cost quoted by the bidder.
- 2 No escalation on any account will be payable on the above amounts.
- 3 All other charges, taxes, etc., not shown here and all insurance premia are considered included in the basic cost quoted.
- 4 All payments shall be made in Indian Rupees and shall be subject to applicable Indian laws withholding taxes if any.