



**TENDER FOR
Development of Container Handling Facilities on EPC Basis at
Sittwe & Paletwa in Myanmar Under Kaladan Multi-Modal
Transit Transport Project
(Volume-I)**

Tender No. IWAI//KPMU/ 44 /CONTAINER/2018

Inland Waterways Authority of India

(Ministry of Shipping, Govt. of India)

A-13, Sector -1, NOIDA, Dist. Gautam Budh Nagar - 201 301 (U.P.)

Ph No. 0120- 2522971

Web Site:- www.iwai.gov.in ; E-mail:- ce.iwai@nic.in, kpmu.iwai@nic.in

DISCLAIMER

1. This RFP document is neither an agreement nor an offer by "AUTHORITY" to the prospective Tenderers or any other person. The purpose of this RFP is to provide information to the interested parties that may be useful to them in the formulation of their Bid pursuant to this RFP.
2. The "Authority" does not make any representation or warranty as to the accuracy, reliability or completeness of the information in this RFP document and it is not possible for "Authority" to consider particular needs of each party who reads or uses this RFP document. This RFP includes statements, which reflect various assumptions, and assessments arrived at by the "Authority" in relation to the Management, Operation & Maintenance. Such assumptions, assessments and statements do not purport to contain all the information that each Tenderer may require. Each prospective Tenderer should conduct its own investigations and analysis to check the accuracy, reliability and completeness of the information provided in this RFP document and the Tenderer is advised to obtain further independent information from appropriate sources.
3. The "Authority" will not have any liability to any Contractor / Tenderer or any other person in any laws (including without limitation the law of contract, tort), the principles of equity, restitution or unjust enrichment or otherwise for any loss, expense or damage which may arise from or be incurred or suffered in connection with anything contained in this RFP document, any matter, deemed to form part of this RFP document, the award of the Assignment, the information and any other information supplied by or on behalf of the "Authority" or their employees, any consultants or otherwise arising in any way from the selection process for the Assignment. The "Authority" will also not be liable in any manner whether resulting from negligence or otherwise however caused arising from reliance of any Tenderer upon any statements contained in this RFP.
4. The "Authority" will not be responsible for any delay in receiving the Bids. The issue of this RFP does not imply that the "Authority" is bound to select a contractor/Tenderer or to appoint the Successful Tenderer, as the case may be. The "Authority" reserves the right to accept / reject any or all of Bids submitted in response to this RFP document at any stage without assigning any reasons whatsoever. The "Authority" also reserves the right to withhold or withdraw the process at any stage with intimation to all who submitted the RFP Application.
5. The information given is not an exhaustive account of statutory requirements and should not be regarded as a complete or authoritative statement of law. The "Authority" accepts no responsibility for the accuracy or otherwise for any interpretation or opinion on the law expressed herein.
6. The "Authority" reserves the right to change / modify / amend any or all provisions of this RFP document. Such revisions to the RFP / amended RFP will be made available on the website of NIC/ CPPP /IWAI.

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INLAND WATERWAYS AUTHORITY OF INDIA

(Ministry of Shipping, Govt. of India)

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Tender No. IWAI//KPMU/44 /CONTAINER/2018

NOTICE INVITING E-TENDER

Introduction:

- a) Inland Waterways Authority of India (IWAI), on behalf of Ministry of External Affairs of India (MEA) , invites ONLINE Tenders/Bids from reputed Indian Companies having capabilities of construction of ports/harbour with associated infrastructures / equipment's and Dredging , in two bid systems (Cover I-Technical Bid and Cover II - Financial Bid) under **Kaladan Multi-Modal Transit Transport Project** for:

Development of Container Handling Facilities on EPC Basis at Sittwe & Paletwa in Myanmar Under Kaladan Multi-Modal Transit Transport Project

- b) Critical Data Sheet:-

Interested parties may down load the tender document on line from the site <https://eprocure.gov.in/eprocure/appand> IWAI website “www.iwai.nic.in” and are required to pay Rs. 5,000/- (Rupees Five Thousand only) as the cost of RFP document deposited into Employer's Account “Pay & Accounts Officer, MEA” payable at New Delhi.

Document Download Start Date	01.10.2018
Pre-bid meeting	25.10.2018
Bid submission Last Date	27.11.2018
Bid Opening Date	28.11.2018
Cost of Tender (RFP) Document	Rs.5,000/-
EMD	Rs 2.41 Crores

- c) Scope of work:

Development of Container Handling Facilities on EPC Basis at Sittwe & Paletwa in Myanmar Under Kaladan Multi-Modal Transit Transport Project

- d) Method of Selection:

Tenderers meeting the eligibility criteria and quoting “lowest quote” will be selected as per procedures described in this RFP.

e) Clarifications:

Clarification/Query if any, on the RFP shall be obtained from the following address:

The Chief Engineer (Tech)
Inland Waterways Authority of India
A-13, Sector -1, Noida, Gautam Budh Nagar,
Uttar Pradesh- 201301,
Ph: 0120-2522971
Email id: ce.iwai@nic.in, kpmu.iwai@nic.in

- f) The “Authority” reserves the right to accept or reject any or all Tenders without signing any reason and no correspondence shall be entertained in this regard.

Chief Engineer (Tech)
IWAI, Noida

SECTION 1 - INSTRUCTIONS TO TENDERERS

1.1 Scope of Tender

1.1.1 IWAI (The Authority) on behalf of MEA (The Employer), invites tenders from suitably experienced Contractors, for Engineering, Design, Procurement of Materials, Construction/Installation, Testing, Commissioning and Performance Testing of Construction of container terminal with container handling facilities at Port of Sittwe and IWT terminal at Paletwa in Myanmar, under Kaladan Multi-Modal Transit Transport Project, hereinafter referred to as “the Works” which shall include all the works listed below and any / all other incidental and ancillary works that may be required to complete the Works.

- a. One Port jetty at Sittwe, One IWT jetty at Sittwe, One IWT jetty at Paletwa and Approach Trestle connecting the jetties to land at Sittwe and all other ancillary works.
- b. Development of onshore facilities such as site grading, container yard, boundary wall, internal roads, ITV parking area, water supply system, storm water drainage system and firefighting system at Sittwe.
- c. Development of onshore facilities such as site grading, container yard, boundary wall, internal roads, water supply system, storm water drainage system and firefighting system at Paletwa.
- d. Construction of miscellaneous structures such as workshop building, workers amenity room, D.G. room and reefer gantry at Sittwe.
- e. Construction of miscellaneous structures such as workshop building, workers amenity room, D.G. room and reefer gantry at Paletwa.
- f. Power distribution, lightning protection, system grounding, area lighting, communications and D.G. set at Sittwe and Paletwa.
- g. Carry out Dredging of all types of material at identified locations at Sittwe.
- h. One mobile harbor crane at Sittwe and one mobile harbor crane at Paletwa complete in all respects and ready to use as per approved specifications.
- i. Four ITVs at Sittwe and four ITVs at Paletwa complete in all respects and ready to use as per approved specifications.
- j. Two reach stackers at Sittwe and two reach stackers at Paletwa complete in all respects and ready to use as per approved specifications.

All the above works will consist of:

1. Engineering and Design as per design criteria / specification given in the tender.

2. Carrying out all surveys and investigations as necessary for execution of the works.
3. Provide and mobilize Plant and Equipment as required for each of the items.
4. Complete installation including earthwork / foundations etc. as required and relevant.
5. Carry out all the temporary works required for construction and protection to Structures during monsoon.
6. Any additional works required to be carried out to mitigate adverse effects on the environment as per approved EMP.

1.1.2 Throughout these tender documents, the terms *bid* and *tender* and their derivatives (*bidder / tenderer, bid / tender, bidding / tendering,*) etc., are synonymous, and day means calendar day.

1.2 Construction Period and Conditions of Contract

1.2.1 The successful Tenderer shall complete the Works as hereunder;

- (i) The Works shall be completed within 36 months from the Commencement Date.
- (ii) Completion of the Works shall be inclusive of the following:
 - (a) achieving the passing of the Tests on Completion, and
 - (b) Completing all work which is stated in the Contract as being required for the Works to be considered to be completed for the purposes of taking-over under Sub-Clause 10.1 (Taking Over of the Works).

1.2.2 **The Conditions of Contract applicable shall be the 'General Conditions of Contract for EPC / Turnkey Projects' First Edition, 1999 by Federation Internationale Des Ingenieurs-Counseils (FIDIC) along with conditions / modifications listed in Section 3 of Volume I of Tender Documents.**

1.3 Cost of Tendering

1.3.1 The Tenderer shall bear all costs associated with the preparation and submission of his Tender, and the Employer will in no case be responsible or liable for any cost incurred by the Tenderer.

1.4 One Tender per Tenderer

1.4.1 Each Tenderer shall submit only one Tender.

1.5 Site Visit

- 1.5.1 The Tenderer is advised to visit and examine the Site and its surroundings and obtain, on his own responsibility, all information that may be necessary for preparing the Tender and entering into a Contract for execution of the Works, if selected. The Tenderer must carefully examine all the Tender Documents and satisfy itself as to the tasks, obligations and responsibilities to be undertaken under the Contract. The Tenderer shall obtain prior permission of the Employer for visiting the Site. The costs of visiting the Site shall be borne by the Tenderer.
- 1.5.2 The Tenderer and any of his personnel or agents will be granted permission by the Employer to enter upon its premises and lands for the purpose of such visit, but only upon the condition that the Tenderer, his personnel and agents, will release and indemnify the Employer and his personnel and agents from and against all liability in respect thereof. The Tenderer will be responsible for any death or personal injury, loss of or damage to property, and any other loss, damage, costs, and expenses incurred by the Employer or his personnel, as a result of the Site visit / inspection by the Tenderer and/or his personnel or agents.
- 1.5.3 No request or claim whatsoever shall be entertained / allowed for any expenditure or extension of time on any ground including but not limited to the reason that insufficient information was given in the Tender Documents, and/or that the Tenderer was not conversant with the conditions prevailing at the Site and / or that during the course of execution of the Works, he encountered difficulty, which could have been avoided by inspecting the site.

1.6 Contents of Tender Document

- 1.6.1 The Tender Documents are those stated below and should be read in conjunction with any Addenda and clarifications issued in accordance with **Clause 1.8**.

VOLUME I: CONDITIONS OF CONTRACT

- Instructions to Tenderers.
- Form of EMD (enclosed as **Annexure-1**)
- General Conditions of Contract.
- Conditions of Particular Application.
- Form of Agreement (enclosed as **Annexure-2**)
- Bank Guarantees (Advance, Retention, Performance BG formats enclosed as **Annexures-3, 4 and 5** respectively)
- Schedules

VOLUME II: EMPLOYER'S REQUIREMENTS, SPECIFICATIONS & DRAWINGS

- General Information
- Employer's Requirements
- Design Criteria
- General Requirements
- Specifications
- Drawings

VOLUME III: SCHEDULE OF PRICES

- Preamble
- Bills
- Schedule

- 1.6.2 Bidding documents shall be downloaded. The Tenderer should first check that he is in possession of the complete Tender Document set, as listed in **Sub-Clause 1.6.1**. He should ensure that all pages are in correct sequence and that none is missing. Any deficiency, lack of clarity or discrepancy should be notified immediately in writing to the Employer for rectification.

1.7 Clarification of Tender Documents

- 1.7.1 A prospective Tenderer requiring any clarification of the Tender documents may notify the Employer in writing by email or courier at the Employer's address. The Employer will respond to any request for clarification received earlier than 14 days prior to the deadline for submission of Tenders. Copies of the Employer's response will be forwarded to all Tenderers including a description of the inquiry, but without identifying its source.

1.8 Amendment of Tender Documents

- 1.8.1 At any time 7 days prior to the deadline for submission of Tenders, the Employer may amend the Tender documents by issuing Addenda.
- 1.8.2 Any Addendum thus issued shall be part of the Tender Documents and shall be communicated in writing to all Tenderers. Tenderers shall promptly acknowledge receipt of

each such Addendum in writing to the Authority.

1.9 Language of Tender

- 1.9.1 The Tender, and all correspondence and documents related to the Tender exchanged by the Tenderer and the Authority/ Employer shall be in English.

1.10 Documents Comprising the Tender

- 1.10.1 The bidding documents should be filled and submitted through Central Public Procurement Portal for e-Procurement <https://eprocure.gov.in/eprocure/app>. The guidelines for e-submission of the Bids are enclosed separately.

In addition, the Tenderer shall submit his Tenders in three separately sealed envelopes clearly marked “**Volume 1: Qualification Documents**”, “**Volume 2: Technical Bid**” and “**Volume 3: Commercial Bid**”.

The contents of the three volumes shall be as given below:

Volume 1: Qualification Documents

- (a) Duly signed but **unpriced** copy of Form of Tender
- (b) EMD
- (c) Signed Copy of the Tender Document
- (d) Schedules 1 to 19 duly filled

Volume 2: Technical Bid

- (a) Technical offers, together with all information (Technical information only) required to be completed and submitted by Tenderer, as specified in the Tender Documents.
- (b) Statement of deviations to the tender conditions as per the format of Schedule 16.

Volume 3: Commercial Bid

The Commercial Bid shall comprise the following pursuant to **Sub-Clause 1.17.2**:

- (a) Duly signed and **Priced copy** of Form of Tender
- (b) Schedule of Prices

Commercial Bid should not contain any conditions.

The bid must be signed by the duly appointed person fully authorised to represent and bind the Tenderer. Any incomplete or improper Tender may be rejected.

All information pertaining to price of the bid shall be included in the Commercial Bid pursuant to **Sub-Clause 1.17.2**.

- 1.10.2 In addition to the Tender Documents issued for tendering purpose, the Tenderer, without any binding on the Employer, must also provide properly bound supplementary documents listed below in Volume 1 of his bid. Appropriate formats enclosed as **SCHEDULES** to this document shall be used.
- a) 3 copies (1 original +2 Copies) of Tender Document consisting of Volume I to III, duly initialled on each page

by the authorized person who signs the Tender.

- b) EMD as per format (Annexure 1) furnished by the Authority.
- c) Statement of the proposed site organisation (schedule 13A) giving the details of supervisory and technical staff along with their qualifications, previous experience together with the estimated skilled and unskilled labour to be employed and CVs of key personnel (schedule 13B) proposed to be deployed.

The Contractor is required, to the extent practicable and reasonable, to employ staff and labour with appropriate qualification and experience.

- d) Details of minimum Major Construction equipment (Schedule 14) for construction of container handling facilities.
- e) List of Sub-contractors and suppliers proposed to be employed and a description of the parts of the works on which they are to be employed together with documentary evidence of their capability and previous experience (Schedule 12).
- f) A list of all major works of similar nature which the Tenderer has completed in the past 7 (Seven) years (Schedule 10) and of all works which are presently under construction, giving the name of the Client, Consultant, location, value, duration and date of completion (Schedule 11).
- g) A statement of Tenderer's financial standing including the name and address of his bank together with the authority issued in favour of the Employer to approach the bank for relevant information. Tenderer shall also provide their turnover details for the past 3 (Three) years as per the format enclosed in (Schedule 6).
- h) A statement in writing certifying that the Tenderer has visited the site and familiarised himself with all conditions which may affect this Tender and that he has no queries on any matter concerning the Contract (Schedule 1).
- i) A Power of Attorney or board resolution authorizing the designated person(s) to sign documents on behalf of the Tenderer (Schedule 2).
- j) The Tenderer shall submit a detailed method statement defining each element clearly indicating the methodology and sequence proposed for the execution of work, and other relevant factors along with proposed implementation schedule (Schedule 15).
- k) Blank Bid Document as whole, each page duly signed and stamped.

- I) Duly signed correspondence, addendum, corrigendum issued by the Employer in relation to the Subject Bid, in token of receipt and acceptance

- 1.10.3 Tenderer's attention is drawn to the fact that it is of extreme importance that the documents, listed in **Clause 1.10** of these Instructions to be submitted along with the Tender. Any Tender not accompanied by the appropriate information may be rejected.

1.11 Reference Standards

- 1.11.1 Reference numbers of codes or any other standards stipulated in the Tender Document shall be deemed to mean the latest revisions of such standards current at the time of Tender.

1.12 Schedule of Prices

- 1.12.1 The Tender price shall be for all the Works, as described in **Sub-Clause 1.1.1**.
- 1.12.2 All duties, taxes, and other levies payable by the Contractor under the Contract, or for any other cause, shall be included in the rates and prices and total Tender Price submitted by the Tenderer. All payments under this Contract shall be subject to tax deductions at source as per the provisions of Applicable Laws and/or Statutory requirements.
- 1.12.3 The determining of the unit rate is to be made by the Tenderer at his own cost and responsibility and this will be used only for the purposes of making interim payments.
- 1.12.4 The successful Tenderer shall produce detailed analysis of the unit rate of various items when called for.
- 1.12.5 Alterations to the Form of Tender and associated documents shall not be permitted. Any alteration other than the filling in of blanks intended for that purpose or failure to comply with these instructions may result in the rejection of the Tender.
- 1.12.6 Tenders must be submitted solely on the basis of the Tender Documents and must be free of any qualifying statements.
- 1.12.7 Tenderer shall submit the Bid that comply with the requirements of the Tender Documents.

1.13 Currencies of Tender and Payment

- 1.13.1 The unit rates and the prices shall be quoted by the Tenderer in Indian Rupees (INR).

1.14 Tender Validity

- 1.14.1 Bids shall remain valid for a period of one hundred and eighty (180) days from the date fixed for the submission of Bids.
- 1.14.2 In exceptional circumstances, the Employer may request that the Tenderer extend the period of validity for a specified additional period. The request and the Tenderers' responses shall be made in writing.

1.15 Earnest Money Deposit

- 1.15.1 Tenderer shall furnish EMD of the amounts as mentioned in 1.32 (Data Sheet) except Micro and Small Enterprises (MSEs) as defined in MSE Procurement Policy issued by Department of Micro, Small and Medium Enterprises (MSME) or Department or Startups as recognized by Department of Industrial Policy & Promotion (DIPP) on submission of a valid registration certificate as per the Government of India rules.
- 1.15.2 The EMD for the amount mentioned above shall be deposited to MEA Fund in the form of Bank Guarantee in favour of “Joint Secretary (DPA III), MEA” of any scheduled bank having validity for six months or more from the last date of receipt of bids.
- 1.15.3 Bids submitted without EMD shall be rejected as non-responsive.
- 1.15.4 No interest shall be payable by the Employer for the sum deposited as earnest money deposit.
- 1.15.5 The EMD of the unsuccessful Tenderers would be returned within one month of signing of the contract with the successful Tenderer.
- 1.15.6 The Earnest Money of the successful Tenderer submitted in the form of RTGS will be retained as Security Deposit and that given in the form of Bank Guarantee will be discharged when the Tenderer has signed the Agreement and furnished the required Performance Security.
- 1.15.7 Part of EMD acceptable in the form of Bank Guarantee shall be deposited as per attached Bank Guarantee format (Annexure 1).
- 1.15.8 The EMD shall be forfeited by the Employer in the following events:
 - (a) If Bid is withdrawn during the validity period or any extension agreed by the Tenderer thereof;
 - (b) If the Tenderer tries to influence the evaluation process.
 - (c) If the First ranked Tenderer withdraws his proposal during negotiations (failure to arrive at consensus by both the parties shall not be construed as withdrawal of Proposal by the Contractor)
 - (d) In case the Tenderer, submits false certificate in terms of any documents supported to such Bid.
 - (e) If the Tenderer fails to sign the contract in accordance with conditions of contract on receipt of award of work.
 - (f) In case of a Tenderer revoking or withdrawing his Bid or varying any terms in regard thereof without the consent of the Employer in writing, his earnest money paid along with the bid shall be forfeited.
 - (g) In case the Tenderer is found to indulge in corrupt or fraudulent practices at any stage of the execution of the contract, as described in Clause 24 of SCC.
 - (h) In case the Tenderer fails to furnish the prescribed

Performance Bank Guarantee within the prescribed period.

- (i) In case of forfeiture of earnest money is as prescribed in (a) and (h) above, the tenderer shall not be allowed to participate in the retendering process of the work.

1.16 Pre-Bid Meeting

- 1.16.1 The Tenderer's designated representative is invited to attend the pre-bid meeting.
- 1.16.2 The purpose of the meeting will be to clarify issues and to answer queries on any matter that may be raised at that stage.
- 1.16.3 The Tenderer is requested, to submit any queries in writing, to reach the Employer not later than one week before the meeting. It may not be practical at the meeting to answer queries received late, but queries and responses will be uploaded on Website in accordance with the **Sub-Clause 1.16.4**.
- 1.16.4 Notes of the meeting, including the queries raised and the responses given, together with any responses prepared after the meeting, will be uploaded on Website within a week to all Tenderers. Any modification of the Tender Documents listed in **Sub-Clause 1.6.1** which may become necessary as a result of the pre-bid meeting shall be made by the Authority exclusively through the issue of an Addendum and clarifications and not through the minutes of the pre-bid meeting.

1.17 Format and Signing of Tenders

- 1.17.1 The Tenderer shall prepare and submit **One** set of original documents, **Two** sets of duplicate documents comprising of the tender as described in **Clause 1.10** of these Instructions to Tenderers in addition to the e-submission of the Bids. All pages must be machine numbered and signed by Authorised Representative on each page.
- 1.17.2 The outer envelope will have **separate sealed envelopes** for the three volumes, clearly marked "**Volume 1: Qualification Documents**", "**Volume 2: Technical Bid**" and "**Volume 3: Commercial Bid**" respectively. The Form of Tender, duly filled with the Price and signed, shall be enclosed only in the Commercial Bid Envelope. This Commercial Bid Envelope shall also contain the Priced Schedules. The **unpriced copy** of the Form of Tender shall be included in the Volume 1. **The "Volume 2: Technical Bid" pursuant to Clause 1.10.1 shall contain no information as to the total amount or parts thereof of the price that the Tenderer is quoting for completing the works.**

1.18 Sealing and Marking of Tenders

- 18.1 The Tenderer shall seal the sets of the bid duly marking the envelope as "ORIGINAL" & "COPY".
- 1.18.2 The inner and outer envelopes shall
 - (a) be addressed to
The Chief Engineer (Tech)
Inland Waterways Authority of India (IWAI)
A-13, Sector 1
Noida – 201 301
Uttar Pradesh

- (b) bear the name of the Contract “Development of Container Handling Facilities on EPC Basis at Sittwe & Paletwa in Myanmar under Kaladan Multit-Modal Transit Transport Project”.

- 1.18.3 In addition to the identification required in **Sub-Clause 1.18.2**, the inner envelopes shall indicate the name and address of the Tenderer to enable the Tender to be returned unopened in case it is declared “late” pursuant to **Clause 1.20** and for modification purposes under **Clause 1.21**.
- 1.18.4 If the outer envelope is not sealed and marked as above, the Authority will assume no responsibility for the misplacement or premature opening of the Bid.

1.19 Deadline for Submission of Bids

- 1.19.1 Bids must be submitted through Central Public Procurement Portal for e-Procurement <https://eprocure.gov.in/eprocure/app> before the deadline for submission given in 1.32 (Data sheet) and the Original documents shall be submitted at the address specified in **Sub-Clause 1.18.2** within one week after the online submission.
- 1.19.2 The Authority may, in exceptional circumstances and at its discretion, extend the deadline for submission of Tenders by issuing an Addendum in accordance with **Clause 1.8**, in which case all rights and obligations of the Employer and the Tenderers previously subject to the original deadline will thereafter be subject to the deadline as extended.

1.20 Late Tenders

- 1.20.1 Any Bid received by the Authority after the deadline prescribed in **Clause 1.19** will be returned to the Tenderer.

1.21 Modification and Withdrawal of Bids

- 1.21.1 Tenderers may modify or withdraw their bid after bid submission, provided that written notice of the modification or withdrawal is received by the authority prior to the deadline for submission of bids.
- 1.21.2 The Tenderers’ modification or withdrawal notice shall be prepared, sealed, marked, and delivered in accordance with the provisions of **Clause 1.21.1**, with the outer and inner envelopes additionally marked “MODIFICATION” or “WITHDRAWAL,” as appropriate.
- 1.21.3 No Bid shall be modified by the Tenderer after the deadline for submission of Tenders.
- 1.21.4 Withdrawal of a Bid between the deadline for submission of Tenders and the expiration of the period of Tender validity or as extended shall result in the forfeiture of the EMD amount.

1.22 Process to be Confidential

- 1.22.1 Information relating to the examination, clarification, evaluation and comparison of bids, and recommendations for the award of a Contract shall not be disclosed to Tenderers or any other persons not officially concerned with such process until the award to the successful Tenderer has been announced. Any effort by a Tenderer to influence the Authority’s/Employer’s processing of Tenders or award decisions may result in the rejection of his bid.

1.23 Clarification of Bids

- 1.23.1 To assist in the examination, evaluation, and comparison of bids, the Employer may, at its discretion, ask any Tenderer for clarification of its bid, including breakdowns of unit rates. The request for clarification and the response shall be in writing or by email, but no change in the price or substance of the bid shall be sought, offered, or permitted except as required to confirm the correction of arithmetic errors discovered by the Employer in the evaluation of the Tenders.

1.24 Examination of Eligibility of Tenderers and Determination of Responsiveness of Bids

- 1.24.1 This Tendering procedure is open to all Tenderers who meet the eligibility criteria, for which Tenderers shall provide evidence of their eligibility, as per the details sought in the Tender document.

- a) The Tenderer may be a single entity of Indian Contractor or a group of entities in the form of a Consortium/Joint venture (herein after called "JVA"), with Indian Contractor in lead, coming together to construct the Works. However, no tender applying individually or as a member of a JVA, as the case may be, can be member of another JVA tender. The term Tenderer used herein would apply to both single entity and JVA.
- b) A Tenderer which is in the process of corporate debt restructuring are not permitted to submit the Bid till their debt restructuring issues are resolved with the Banks/Institutions as of the deadline of Bid submission.
- c) A Tenderer shall not be under suspension from Bidding by the Government (the "Government" means Central/State Government in India where the Tenderer is/ incorporated), as the result of the execution of a Bid–Securing Declaration.
- d) A Tenderer which has been barred by the GoI, or State Government where the firm is incorporated, and the bar subsist as on the Bid submission date, would not be eligible to submit Bid.
- e) The tenderer meets the financial and technical qualifications criteria as set out in the tender document.
- f) The further details of eligibility and qualifications criteria are elaborated in **Section 1A**.

- 1.24.2 In case the Tenderer is a JVA, it shall, comply with the following additional requirements:

- g) The number of members in a JVA shall not exceed two (02) including Lead Member;
- h) Members of the JVA shall nominate one member as the Lead Member (the "Lead Member").The nomination(s) shall be supported by a Power of Attorney, as per the format given in FORM-18: POA-2, signed by all other member(s) of the JVA;
- i) Share of the Lead Member shall not be less than 51% and the share of other member shall not be less than 29%.
- j) All members shall be jointly and severally liable for the execution of the Contract, if awarded, in accordance with the Contract terms
- k) The JVA shall nominate a Representative who shall have the authority to conduct all business for and on behalf of any and all the members of the JVA during the Tendering

process and, in the event the JVA is awarded the Contract, during Contract execution.

- l) Members of the JVA shall enter into a Joint Tendering Agreement, substantially in the format given in Schedule 17: JVA-JTA (the "Jt. Venture Agreement"), for the purpose of submitting tender. The proposed distribution of responsibilities both financial as well as technical for execution of the work amongst them shall be clearly elaborated.
- m) However, successful tenderer is required to submit proof of registration of JV / consortium after issue of Letter of Intent and before signing of agreement. The members of JV / Consortium shall incorporate a special purpose vehicle as Contractor under the provisions of Companies Act, 2013, to execute the Project, if awarded to the JV / Consortium.
- n) The Power of Attorney for Lead Member of the JVA (Schedule 18: POA-Lead Member Consortium/JV) along with extract of Board's Resolution or equivalent document in favour of the person executing the Power of Attorney shall be submitted alongwith the tender;
- o) Except as provided under these Tender Documents, there shall not be any amendment to the Jt. Tendering Agreement without the prior written consent of the Employer.
- p) Change in the composition of a JV will not be permitted by the Authority after due date of submission of RFP.

- 1.24.2 A substantially responsive Bid is one that conforms to all the terms, conditions, and specifications of the Tender Documents without material deviation or reservation. A material deviation or reservation is one (a) which affects in any substantial way the scope, quality, or performance of the Works; (b) which limits in any substantial way, inconsistent with the Tender documents, the Employer's rights or the Tenderer's obligations under the Contract; or (c) whose rectification would affect unfairly the competitive position of other Tenderers presenting substantially responsive Tenders.

If any material deviation or reservation among those stated in (a) to (c) above is observed in the Tenderer's submission, his Tender will be judged as non-responsive and rejected.

- 1.24.3 If a bid is not substantially responsive, it will be rejected by the Authority, and may not subsequently be made responsive by correction or withdrawal of the nonconforming deviation or reservation.
- 1.24.4 The Authority, may at its discretion, call for clarifications / presentation from any or all the Tenderers, or conduct clarification meeting(s) / presentations with any or all Tenderers to evaluate the Tenders received.
- 1.24.5 The Evaluation of Bids shall be done on the basis of the Tenderer's Technical Bid. The Commercial Bid of the eligible / qualified Tenderers as per **Clause 1.10** and **1.24** shall only be opened for further evaluation.

1.25 Correction of Errors

- 1.25.1 Only Bids determined to be substantially responsive will be checked by the Authority for any errors. Errors will be corrected by the Authority as follows:
- (a) where there is a discrepancy between the amounts in figures and in words, the amount in words will govern; and shall be binding on the Tenderer.
 - (b) if there is a discrepancy between the unit rate and the total cost that is obtained by multiplying the unit rate and the quantity, the unit rate shall prevail and the total cost shall be corrected unless in the opinion of the Employer there is an obvious misplacement of the decimal point in the unit rate, in which case the total cost as quoted will govern and the unit rate shall be corrected;
 - (c) if there is a discrepancy between the total Bid Price and the sum of the total costs, the sum of the total costs shall prevail and the total Bid Price will be corrected.
- 1.25.2 The amount stated in the Bid will be adjusted by the Authority in accordance with the above procedure for the correction of errors and, with the concurrence of the Tenderer, shall be considered as binding upon the Tenderer. If the Tenderer does not accept the corrected amount of bid, his bid will be rejected, and the EMD amount may be forfeited.

1.26 Award of Contract

- 1.26.1 The Employer will award the Contract to the Tenderer whose Bid has been determined to be responsive to the Bidding documents and who has offered the lowest evaluated Bid Price, provided that such Tenderer has been determined to be eligible and qualified in accordance with the provisions of **Clause 1.10** and **1.24**. The second Tenderer (i.e.L2) shall be kept in reserve and may be invited to match the bid submitted by the (L1) Tenderer in case such Tenderer withdraws or is not selected for any reason.

1.27 Employer's Right to Accept any Bid and to Reject any or all Bids

- 1.27.1 The Authority reserves the right to accept or reject any Bid, and to annul the bidding process and reject all Bids, to seek additional responses, to enter into negotiations with and subsequently contract with more than one Tenderer, and/or to award the contract on the basis of criteria other than price at any time prior to award of Contract, without thereby incurring any cost/ liability to the affected Tenderer or Tenderers or any obligation to inform the affected Tenderer or Tenderers of the grounds for the Employer's action. Mere issuance of Tender Document to any Tenderer or opening of Techno-Commercial Bid shall not construe that such Tenderer is considered automatically qualified.

1.28 Notification of Award

- 1.28.1 Prior to expiration of the period of Tender validity prescribed by the Authority, the Authority will notify the successful Tenderer through email to the mail-id given by Tenderer, which shall be valid for all official communication and confirmed by registered letter that its bid has been accepted. This letter (hereinafter and in the Conditions of Contract called the "Letter of Award") shall specify the sum which the Employer will pay the Contractor in consideration of the execution and completion of the Works and the remedying of any defects therein by the Contractor as prescribed by the Contract (hereinafter and in the Conditions of Contract called "the Contract Price").
- 1.28.2 The notification of award will constitute the formation of the Contract Agreement.

1.29 Signing of Agreement

- 1.29.1 Subsequent to issue of the Letter of Award to the successful Tenderer, performance bank guarantee (PBG) shall be submitted by such Tenderer within 14 days from the date of Letter of Award and Contract Agreement shall be signed within 14 days of submission of PBG. PBG shall be verified by employer and shall be included as part of Agreement.
- 1.29.2 Successful Tenderer should attend the office of Employer to sign the agreement against intimation by the Authority.

1.30 Performance Security

- 1.30.1 Within 14 days of receipt of the Letter of Award from the Employer, the successful Tenderer shall furnish to the Employer a Performance Security (PBG) in the form of an unconditional Bank Guarantee for an equivalent of ten (10) percent of the Contract Price. The Bank Guarantee shall be issued by a Nationalised Bank located anywhere in India or if issued from abroad, the same shall be authenticated by Indian National Bank.
- 1.30.2 Failure of the successful Tenderer to comply with the requirements of **Clauses 1.29 or 1.30.1** shall constitute a breach of Contract, cause for annulment of the award, forfeiture of the EMD, and any such other remedy the Employer may take under the Contract, and the Employer may resort to awarding the Contract to the next responsive Tenderer.

- | | | |
|-------------------------------------|--------|---|
| <u>1.31 Form of Tender</u> | 1.31.1 | Enclosed separately |
| <u>1.32 Data Sheet</u> | 1.32.1 | Enclosed separately |
| <u>1.33 Tender Fee</u> | 1.33.1 | <p>All Tenderers except Micro and Small Enterprises (MSEs) as defined in MSE Procurement Policy issued by Department of Micro, Small and Medium Enterprises (MSME) or Department or Startups as recognized by Department of Industrial Policy & Promotion (DIPP) on submission of a valid registration certificate as per the Government of India rules are required to pay the cost of Tender Document as mentioned in 1.32 (Data Sheet) through Demand Draft in favour of "Pay & Accounts Officer, MEA, New Delhi" payable at New Delhi. The cost of Tender Document is Non-Refundable.</p> |
| <u>1.34 Bank Solvency</u> | 1.34.1 | <p>All Tenderers shall submit bank solvency certificate from a nationalized / scheduled bank in India for the amounts as mentioned in 1.32 (Data Sheet).</p> <p>The solvency certificate submitted by the Tenderer shall not be older than one (01) year from the Bid Submission Last Date. In case Tenderer does not adhere to this criterion, his bids shall be considered non-responsive and shall not be considered for further evaluation process. The bank solvency certificate shall be from any Nationalized / Scheduled Bank in India in the name of the Tenderer.</p> |
| <u>1.35 Custom Clearance</u> | 1.35.1 | <p>The Tenderer shall note that the Works are to be executed in foreign land (Myanmar) and accordingly he shall plan all the activities, take all necessary custom clearances and permissions and comply with all the required regulations. No request or claim whatsoever shall be entertained / allowed for any expenditure or extension of time in this regard.</p> |

FORM OF TENDER

**Name of Contract -
Engineering, Procurement of Material and Construction of
Development of Container Handling Facilities at Sittwe & Paletwa in Myanmar under
Kaladan Multi-Modal Transit Transport Project**

To,

Inland Waterways Authority of India (IWAI)
A-13, Sector 1
Noida – 201 301
Uttar Pradesh

Dear Sir,

1. Having examined the Tender Document comprising of Conditions of Contract, Employer's Requirements, Specifications, Schedule of Prices and Addenda / Clarifications for execution of the above named works, we offer to design, procure materials, construct and complete the whole of the said Works, maintain and remedy any defects therein in conformity with the Tender Documents for the sum of INR_____ (INR_____).
2. We acknowledge that the Addenda / clarifications shall form part of our Tender.
3. We undertake if our bid is accepted that we will provide the specified Performance Security within 14 days of Letter of Award.
4. We accept that we will commence the Works immediately on receipt of Letter of Award and deliver the whole of the Works comprised in the Contract within 36 (Thirty Six) months from the date of commencement.
5. We agree to abide by this Tender for a period of 180 (One Hundred and Eighty) days from the date fixed for receiving the same and it shall remain binding upon us and may be accepted at any time before the expiration of that period.
6. Unless and until a formal Agreement is prepared and executed, this tender together with your Letter of Award, shall constitute a binding Contract between us.
7. We acknowledge that you are not bound to accept the lowest or any tender that you may receive.

Dated this_____ Day of _____2018.

Signature_____ in the capacity of _____
duly authorized to sign Tenders and on behalf of _____

Address:_____

Witness:_____

Address:_____

Witness:_____

DATA SHEET

Clause No. of Data Sheet	Ref. of ITB	Particulars	Description
1.	1.1	Employer	Ministry of External Affairs, India (MEA)
2.	1.1	Authority	Inland Waterways Authority of India (IWAI)
3.	1.1	Name of the Project	Development of Container Handling Facilities on EPC Basis at Sittwe & Paletwa in Myanmar under Kaladan Multit-Modal Transit Transport Project
4.	1.1	Location of assignment	Sittwe Port and Paletwa Terminal, Myanmar
5.	1.2	Contract Period	36 months
6.	1.7	Last date for seeking clarifications	Date: 24.10.2018 Time: 15:00 Email: ce.iwai@nic.in , kpmu.iwai@nic.in
7.	1.10	The formats for the Technical Bid	Form of Tender Schedule 1: Form of Tender Schedule 2: Power of Attorney Schedule 3: Composition of Tenderer's Organisation Schedule 4: Pending Litigation Schedule 5: Litigation History Schedule 6: Average Annual Turnover Schedule 7A: Working Capital Situation Schedule 7B: Financial Situation of the Applicant Schedule 7C: Corporate Debt Restructuring Schedule 8: Bidding Capacity Schedule 9: General Experience Record Schedule 10: Similar Works Experience Schedule 11: Summary Sheet: Current Contract Commitments / Works in Progress Schedule 12: Declaration of Sub-Contractors Schedule 13A: Tenderer's Proposed Site Organisation Schedule 13B: Details of Contractor's Supervisory and Technical Staff Schedule 14: Plant and Equipment Schedule 15: Method Statement and Implementation Schedule Schedule 16: Statement of Deviations Schedule 17: Format for JV Agreement Schedule 18: Format for Power of Attorney for Lead Member Schedule 19: Check List
8.	1.14	Bid Validity	180 days from the last date of submission of bid
9.	1.15	EMD	INR 2.41 crores (Rupees Two Crores Forty-One Lakhs only)
10.	1.16	A pre-bid meeting will be held on	Date: 25.10.2018 Time: 1400 hrs INLAND WATERWAYS AUTHORITY OF INDIA

			(Ministry of Shipping, Govt. of India) A-13, Sector-1, Noida, Dist. Gautam Budh Nagar, U.P – 201 301, Ph. No. 0120-2522971 Website: www.iwai.gov.in , Email: ce.iwai@nic.in , kpmu.iwai@nic.in
11.	1.19	Date & time and address for submission of Bid	Date: 27.11.2018 Time: 1400 hrs ONLINE Submission INLAND WATERWAYS AUTHORITY OF INDIA (Ministry of Shipping, Govt. of India) A-13, Sector-1, Noida, Dist. Gautam Budh Nagar, U.P – 201 301, Ph No. 0120-2522971 Website: www.iwai.gov.in , Email: ce.iwai@nic.in , kpmu.iwai@nic.in
12.	1.24	Eligibility of Tenderers	Maximum numbers of members in JV shall be : 2 (two)
13.	1.26	Method of Selection	Lowest Financial Bid of Technically qualified Tenderer
14.	1.33	Tender Fee	INR 5,000/- (Rupees Five Thousand only)
15.	1.34	Bank Solvency	INR 93.0 crores (Rupees Ninety Three Crores only)
16.		Bid Opening Date and time	Date: 28.11.2018 Time:1400 hrs

Section 1A: Eligibility and Qualification Criteria

This Section contains all the methods, criteria, and requirements that the Employer shall use to evaluate Applications. The information to be provided in relation to each requirement and the definitions of the corresponding terms are included in the respective Application Forms.

ELIGIBILITY AND QUALIFICATION CRITERIA			COMPLIANCE REQUIREMENTS				DOCUMENTATION
Subject	Requirement	Single Entity	JV (Existing or Intended)			Submission Requirements	
			All Parties combined	Each Member	Lead Member		
1. ELIGIBILITY							
1.1	Conflict of Interest	No conflicts of interest. A Tenderer shall be deemed to have a Conflict of Interest affecting the Tendering Process, if: a. Tenderers in two different Bids have controlling shareholders in common (however this provision is not applicable for government owned entity); or b. Submits more than one bid; or c. The Tenderer has participated as a consultant in the preparation of the design or technical specifications of the Works that are subject of this Tender; or d. Such Tenderer, or any	Must meet requirement	Must meet requirement	Must meet requirement	Must meet requirement	

ELIGIBILITY AND QUALIFICATION CRITERIA			COMPLIANCE REQUIREMENTS				DOCUMENTATION
Subject		Requirement	Single Entity	JV (Existing or Intended)			Submission Requirements
				All Parties combined	Each Member	Lead Member	
		<p>associate thereof receives or has received any direct or indirect subsidy, grant, concessional loan or subordinated debt from any other Tenderer, or any associate thereof or has provided any such subsidy, grant, concessional loan or subordinated debt to any other Tenderer, or any associate thereof (however this provision is not applicable for government owned entity); or</p> <p>e. Such Tenderer has the same Authorized Representative for purposes of this Tender as any other Tenderer.</p>					
1.2	Barred by Government	Not barred by Government as on the Tender Due Date. ("the Government" means Central/State Government in	Must meet requirement	Must meet requirement	Must meet requirement	Must meet requirement	Schedule 1

ELIGIBILITY AND QUALIFICATION CRITERIA			COMPLIANCE REQUIREMENTS				DOCUMENTATION
Subject		Requirement	Single Entity	JV (Existing or Intended)			Submission Requirements
				All Parties combined	Each Member	Lead Member	
		India, or any entity controlled by it).					
1.3	Corporate Debt Restructuring	No corporate debt restructuring is in process and/or no unresolved debt restructuring issues with the Banks/ Institutions as on the Tender Due Date.	Must meet requirement	Must meet requirement	Must meet requirement	Must meet requirement	Schedule 7C
2. PENDING LITIGATION AND LITIGATION HISTORY							
2.1	Pending Litigation	Tenderer's financial position and prospective long term profitability still sound according to criteria established in Criteria No. 3.1 (ii) below and assuming that 50% of all pending litigation will be resolved against the Tenderer	Must meet requirement	Must meet requirement	Must meet requirement	Must meet requirement	Schedule 4
2.2	Litigation History	The aggregate amount of court/ arbitration awards related to contractual litigation against the Tenderer, if any, since 1 st April, 2011, shall not exceed 25% of the Net Worth as per the latest Financial statements.	Must meet requirement	Must meet requirement	Must meet requirement	Must meet requirement	Schedule 5

ELIGIBILITY AND QUALIFICATION CRITERIA			COMPLIANCE REQUIREMENTS				DOCUMENTATION
Subject		Requirement	Single Entity	JV (Existing or Intended)			Submission Requirements
				All Parties combined	Each Member	Lead Member	
3. FINANCIAL SITUATION AND PERFORMANCE							
3.1	Financial Capabilities	The audited balance sheets for the last 5 (five) financial years shall be submitted and must demonstrate the current soundness of the Tenderer's financial position. * Note: The information submitted by the Tenderer must mention Total Assets, Current Assets; Total Liabilities; Current Liabilities; Share Capital, Profit Before Taxes, Profit After Taxes	Must be submitted	Must be submitted	Must be submitted	Must be submitted	Audited balance sheets/financial statements of the last five years
		(i) The Tenderer shall demonstrate that it has access to, or has available, liquid assets, lines of credit, and other financial means (independent of any contractual advance payment) sufficient to meet the cash flow requirements of INR 232 Crores for the subject contract after meeting its cash flow requirements for contracts currently in progress and for future contract commitments.	Must meet requirement	Must meet requirement	Must meet Twenty Five percent (25%) of the requirement	Must meet Fifty percent (50%) of the requirement	Schedule 7 (A and B)

ELIGIBILITY AND QUALIFICATION CRITERIA			COMPLIANCE REQUIREMENTS				DOCUMENTATION
Subject		Requirement	Single Entity	JV (Existing or Intended)			Submission Requirements
				All Parties combined	Each Member	Lead Member	
		(ii) The Tenderer shall have positive Net Worth at the close of the latest financial year.	Must meet requirement	Must meet requirement	Must meet requirement	Must meet requirement	Schedule 7B
3.2	Average Annual Turnover	Minimum average annual turnover ⁽²⁾ equivalent to INR 69.49 Crores calculated as total certified payments received for contracts in progress and/or completed within the last three (3) financial years, divided by three (3).	Must meet requirement	Must meet requirement	Must meet Twenty Five percent (25%) of the requirement	Must meet Fifty percent (50%) of the requirement	Schedule 6
3.3	Bidding Capacity	The Tenderer should have minimum available Bidding Capacity of 232 crore in accordance with the formula stated in Schedule 11	Must meet requirement	Must meet requirement	Must meet Twenty Five percent (25%) of the requirement	Must meet Fifty percent (50%) of the requirement	Schedule 8
4. EXPERIENCE							
4.1	Similar Work(s) Experience ⁽³⁾	A minimum number ⁽⁴⁾ of similar works specified below that have been satisfactorily completed as a prime contractor, joint venture member ⁽⁵⁾ between 1 st April 2011 and Tender Due Date: “Similar Work(s)” means construction of Marine Works	Must meet the requirement of at least 1 (one) contract of minimum value of INR 185.30 Crores	Must meet the requirement of at least 1 (one) contract of minimum value of INR 185.30 Crores	Must meet the requirement of at least 1 (one) contract of minimum value of Rs. 58 crores having one or more project components covered under	Must meet the requirement of at least 1 (one) contract of minimum value of INR 92.65 Crores	Schedule 10 with all supporting documents which can demonstrate the requirement being met

ELIGIBILITY AND QUALIFICATION CRITERIA			COMPLIANCE REQUIREMENTS				DOCUMENTATION
Subject		Requirement	Single Entity	JV (Existing or Intended)			Submission Requirements
				All Parties combined	Each Member	Lead Member	
		like Jetties, Quay, and wharf.			"Similar Work(s)".		
		The project components may also include material handling Cranes, dredging, yard development, terminal buildings, Mechanical, Electrical & Plumbing (MEP) works but their cost for evaluation purposes shall be limited to 50% of the value of the project.	OR	OR	OR	OR	
			Must meet the requirement of at least 2 (two) contracts each of minimum value INR 115.81 Crores	Must meet the requirement of at least 2 (two) contracts each of minimum value INR 115.81 Crores	Must meet the requirement of at least 1 (one) contract of minimum value of Rs. 58 crores having one or more project components covered under "Similar Work(s)".	Must meet the requirement of at least 1 (one) contract of minimum value of INR 92.65 Crores	
			OR	OR	OR	OR	
			Must meet the requirement of at least 3 (three) contracts each of minimum value of INR 92.65 Crores	Must meet the requirement of at least 3 (three) contracts each of minimum value of INR 92.65 Crores	Must meet the requirement of at least 1 (one) contract of minimum value of Rs. 58 crores having one or more project components covered under "Similar Work(s)".	Must meet the requirement of at least 1 (one) contract of minimum value of INR 92.65 Crores	

ELIGIBILITY AND QUALIFICATION CRITERIA			COMPLIANCE REQUIREMENTS				DOCUMENTATION
Subject		Requirement	Single Entity	JV (Existing or Intended)			Submission Requirements
				All Parties combined	Each Member	Lead Member	
5. STANDARD EQUIPMENT WITH CAPACITIES							
5.1	Proposed Equipment	Details of the proposed dredging equipment including pipelines, floating crafts, survey boat, survey equipment, other equipment for completion of dredging works.	Must meet requirement	Must meet requirement	N/A	N/A	Schedule 14
5.2	Methodology and Work Programme	Tenderer's proposed methodology to completion of dredging works to meet the timelines	Must meet requirement	Must meet requirement	N/A	N/A	Schedule 15

⁽⁵⁵⁾ The Tenderer shall provide accurate information on the related Tender Form about any litigation or arbitration resulting from contracts completed or ongoing under its execution from 1st April 2011 to 31st March 2018. A consistent history against the Tenderer or any member of a joint venture may result in disqualification of the Tenderer.

⁽¹⁾ This requirement also applies to contracts executed by the Tenderer as CONSORTIUM/JV member.

⁽²⁾ If the annual turnover is not clearly stated in the Audited Balance Sheets/Financial Statements of the Tenderer, specific certificates issued by its Statutory Auditors, should be submitted.

⁽³⁾ The Similar Works experience(s) of Group Companies, Parent Companies or Sister Companies shall not be considered for evaluation. The Tenderers are advised to strictly adhere to this requirement and submit the Similar Works experience(s) from the client(s) of the Tenderer only

⁽⁴⁾ Summation of number of small value contracts (less than the value specified under requirement) to meet the overall requirement will not be accepted.

⁽⁵⁾ For contracts under which the Tenderer participated as a member of a joint venture/consortium; only the Tenderer's share, by value shall be considered to meet this requirement.

Guidelines for e-submission of the Bids

1. The Bids should be submitted through Central Public Procurement Portal for e-Procurement <https://eprocure.gov.in/eprocure/app>.
2. Possession of valid Digital Signature Certificate (DSC) and enrolment/registration of the Contractors/Tenderers on the e-procurement/e-Tender portal is a prerequisite for e-Tendering.
3. Tenderer should enrol in the e-Procurement site using the <https://eprocure.gov.in/eprocure/app> option available “Enrol Here” on the home page portal. Enrolment is free of charge. During enrolment/registration, the Tenderers should provide the correct/true information including valid e-mail id. All the correspondence shall be made directly with the Contractors/Tenderers through email id provided.
4. Tenderers need to login to the site through their user ID/password chosen during enrolment/registration.
5. Then the Digital Signature Certificate (Class - II or Class - III Certificates with signing key usage) issued by SIFY/TCS/node/eMudra or any Certifying Employer recognized by CCA India on e-Token/Smart Card, should be registered.
6. Only the registered DSC, should be used by the Tenderer and should ensure safety of the same.
7. Contractor/Tenderer may go through the Tenders published on the site and download the required Tender documents/schedules in which the Tenderer is interested.
8. After downloading/getting the Tender document/schedules, the Tenderer should go through them carefully and then submit the documents as asked.
9. If there are any clarifications, this may be obtained online through the Tender site, or through the contact details as specified in 1.32 (Data Sheet). The Tenderer should also take into account the addendum/corrigendum published before submitting the Bids online.
10. Then the Tenderer may log into the site through the secured log in by giving the user id/ password chosen during enrolment/registration and then by giving the password of the e-Token/Smart card to access DSC.
11. Tenderer selects the tender which he/she is interested in by using the search option & then moves it to the ‘my favourites’ folder.
12. From the favourite’s folder, he selects the tender to view all the details indicated.
13. It is construed that the Tenderer has read all the terms and conditions before submitting their offer. Tenderer should go through the tender schedules carefully and upload the documents as asked; otherwise, the bid will be rejected.
14. Tenderer, in advance, should get ready the Bid documents to be submitted as indicated in the Tender document/schedule and generally, they can be in general PDF/xls/rar/jpg formats. If there is more than one document, they can be clubbed together and can be provided in the requested format as specified in 1.32 (Data Sheet). Each document to be uploaded online should be less than 2 MB. If any document is more than 2MB, it can be reduced through zip/rar and the same can be uploaded, if permitted.

15. The Tenderers can update well in advance, the documents such as certificates, manual report details etc., under My Space option and these can be selected as per Tender requirements and then sent along with Bid documents during Bid submission. This will facilitate the Bid submission process making it faster by reducing upload time of Bids.
16. Tenderer should submit the Tender Fee/ EMD for the amount as specified in 1.32 (Data Sheet). The original payment instruments should be posted/couriered/given in person to the employer within the due date as mentioned in this Tender document. Scanned copy of the instrument should be uploaded as part of the offer, if asked for.
17. While submitting the Bids online, the Tenderer should accept the Terms & Conditions and proceed further to submit the Bid packets.
18. The Tenderer has to select the payment option as offline to pay the Tender Fee/ EMD as applicable and enter details of the instruments.
19. The details of the DD/any other accepted instrument, physically sent, should tally with the details available in the scanned copy and the data entered during Bid submission time. Otherwise submitted Bid will not be acceptable.
20. The Tenderer has to digitally sign and upload the required Bid documents one by one as indicated. Tenderers to note that the very act of using DSC for downloading the Bids and uploading their offers shall be deemed to be a confirmation that they have read all sections and pages of the Bid document including conditions of contract without any exception and have understood the entire document and are clear about the requirements of the Tender requirements.
21. The Tenderer has to upload the relevant files required as indicated in the cover content. In case of any irrelevant files, the Bid will be automatically rejected.
22. If the price Bid format is provided in a spread sheet file like BoQ_xxxx.xls, the rates offered should be entered in the allotted space only and uploaded after filling the relevant columns. The Price Bid/BOQ template must not be modified/replaced by the Tenderer; else the Bid submitted is liable to be rejected for this Tender.
23. The Tenderers are requested to submit the Bids through online e-tendering system to the Tender Inviting Authority (TIA) well before the Bid submission end Date &Time (as per Server System Clock). The TIA will not be held responsible for any sort of delay or the difficulties faced during the online submission of Bids by the Tenderers at the eleventh hour.
24. After the Bid submission, the acknowledgement number, given by the e-tendering system should be printed by the Tenderer and kept as a record of evidence for online submission of Bid for the particular Tender and will also act as an entry pass to participate in the Bid opening date.
25. The Tenderer should ensure/see that the Bid document submitted is free from virus and if the documents could not be opened, due to virus, during Tender opening, the Bid is likely or liable to be rejected.

26. The time settings fixed in the server side & displayed at the top of the Tender site, will be valid for all actions of requesting, Bid submission, Bid opening etc., in the e-Tender system. The Tenderers should follow these time settings during Bid submission.
27. All the data being entered by the Tenderers would be encrypted using PKI encryption techniques to ensure the secrecy of the data. The data entered will not be viewable by unauthorized persons during Bid submission & not be viewable by any one until the time of Bid opening.
28. Any Bid document that is uploaded to the server is subjected to symmetric encryption using a system generated symmetric key. Further this key is subjected to asymmetric encryption using buyers/Bid openers public keys. Overall, the uploaded Tender documents become readable only after the Tender opening by the authorized Bid openers.
29. The confidentiality of the Bids is maintained since the secured Socket Layer 128 bit encryption technology is used. Data storage encryption of sensitive fields is done.
30. The Tenderer should logout of the Tendering system using the normal logout option available at the top right hand corner and not by selecting the (X) exit option in the browser.
31. Any queries relating to the Tender document and the Terms and Conditions contained therein should be addressed to the Tender Inviting Employer for a Tender or the relevant contact person indicated in the Tender.
32. Any queries relating to the process of online Bid submission or queries relating to CPP Portal in general may be directed to the 24x7 CPP Portal Helpdesk. The contact number for the helpdesk is 1800 233 7315.

SECTION 2 - GENERAL CONDITIONS OF CONTRACT

Inland Waterways Authority of India (IWAI)

[The Employer]

**Engineering, Procurement of Material and Construction of
Development of Container Handling Facilities at Sittwe & Paletwa in Myanmar under
Kaladan Multi-Modal Transit Transport Project**

GENERAL CONDITIONS

The Conditions of Contract applicable shall be the 'General Conditions of Contract of the Conditions of Contract for EPC / Turnkey Projects' First Edition, 1999 by Federation Internationale Des Ingenieurs-Counseils (FIDIC) along with conditions / modifications listed in **Clause 3.0** of Volume I of Tender Documents.

Copies of the FIDIC Conditions of Contract can be obtained from:

FIDIC Secretariat
P.O. Box 86
CH 1000 Lausanne 12
Switzerland
Facsimile: 41 21 653 5432
Telephone: 41 21 653 5003

SECTION 3 - SPECIAL CONDITIONS OF CONTRACT

Conditions of Particular Application

The above mentioned General Condition of Contract shall be prevailed over / replaced / modified by the following Condition of Particular Application to the extent mentioned therein.

Conditions of Particular Applications

Sub-Clause 1.1 Definitions	<p><i>Replace the definition with the following;</i></p> <p>In the Conditions of Contract the following words and expressions shall have the meanings stated. Words indicating persons or parties include corporations and other legal entities, except where the context requires otherwise.</p>
Sub-Clause 1.1.1.3 Employer's Requirements	<p><i>Replace the last sentence with the following;</i></p> <p>The said document shall consist of Conditions of Contract, Employer's Requirements, General Information, Design Criteria, Engineering Design, General Requirements, Field Surveys & Investigations, Specifications, Drawings, Quality Assurance.</p>
Sub-Clause 1.1.2.2 Employer	<p><i>Insert the following as address of the Employer;</i></p> <p>Ministry of External Affairs of India, Jawaharlal Nehru Bhawan, Janpath, New Delhi - 110011</p>
Sub-Clause 1.1.2.3 Contractor	<p><i>Modify the definition of the Contractor as under;</i></p> <p>"Contractor" means the person(s); (i) to whom the Letter of Award has been issued by the Employer or (ii) named as contractor in the Contract Agreement and any subsequent changes thereto and the legal successors in title to this person(s).</p>
Sub-Clause 1.1.3.2 Commencement Date	<p><i>Replace the Sub-Clause with the following;</i></p> <p>"Commencement Date" means the date of issue of 'Letter of Award' by the Employer to the Contractor.</p>
Sub-Clause 1.1.3.3 Time for Completion	<p><i>Replace the Sub-Clause with the following;</i></p> <p>"Time for Completion" means the time for completing the Works under Sub-Clause 8.2 [Time for Completion], as stated in the Conditions (with any extension under Sub-Clause 8.4 [Extension of Time for Completion]), determined by the Employer from the Commencement Date.</p>
Sub-Clause 1.1.3.7 Defects Notification Period	<p><i>Replace the Sub-Clause with the following;</i></p> <p>"Defects Notification Period" means the period for notifying defects in the Works under Sub-Clause 11.1 [Completion of Outstanding Work and Remedying Defects] with any extension under Sub-Clause 11.3 [Extension of Defects Notification Period], calculated from the date on which the Works are completed as certified under Sub-Clause 10.1 [Taking Over of the Works]. The Defects Notification Period shall be 24 months, which shall commence from the date of Taking-Over Certificate."</p>
Sub-Clause 1.1.4.2 Cost	<p><i>Replace the Sub-Clause with the following;</i></p> <p>"Cost" means all expenditure reasonably incurred by the Contractor, on Site, but does not include overhead towards owned resources including men, materials, equipment etc., and profit.</p>

Sub-Clause 1.1.5.6 Section	<i>Delete the Sub-clause;</i>
Sub-Clause 1.1.6.3 Employer's Equipment	<i>Delete the Sub-clause;</i>
Sub-Clause 1.1.6.5 Laws	<i>Add the words "of India" at the end.</i>
Sub-Clause 1.3 Communications	<i>Replace 'para (a)' with the following;</i> "in writing and delivered by hand (against receipt), sent by mail or courier to the address of the Employer mentioned in Sub-Clause 1.1.2.2 herein; and"
Sub-Clause 1.4 Law and Language	<i>Replace the Sub-Clause with the following;</i> a) The Contract shall be governed by the laws of the India. Any legal dispute under this Contract shall be subjected exclusively to the jurisdiction of court of law at New Delhi, India. b) The Contract shall be in the English Language and all communication shall be in the same language i.e. English.
Sub-Clause 1.6 Contract Agreement	<i>Replace the word "Employer" at the end with the word "Contractor", and insert the following additional para.</i> "Unless and until a formal Contract Agreement is prepared and executed, the Employer's Letter of Award shall constitute a binding Contract between the Employer and the Contractor."
Sub-Clause 2.1 Right of Access to the Site	<i>Replace the Sub-Clause with the following;</i> As soon as possible, but not later than 60 days after the Commencement Date, the Employer will give the Contractor right of access to and possession of the Site.
Sub-Clause 2.2 Permits, Licences or Approvals	<i>Replace the Sub-Clause with the following;</i> The Contractor shall be responsible to obtain all necessary permits, Licences and Approvals for execution of the Works. The Employer (where he is in position to do so and without any obligation) will supply copies of such documents as may be requested by the Contractor.
Sub-Clause 2.4 Employer's Financial Arrangements	<i>Delete the Sub-Clause.</i>
Sub-Clause 2.5 Employer's Claims	<i>Replace the first sentence of the last para with the following;</i> The Employer, without prejudice to the other recourse available under the Contract, may deduct the amount from any moneys due, or to become due, to the Contractor.

Sub-Clause 3.2 Other Employer's Personnel	<p><i>Replace the last two sentences of first para with the following;</i></p> <p>These assistants may include a Resident Engineer, and/or independent inspectors appointed to inspect and/or test items of the Works. The assignment, delegation or revocation shall not take effect until a copy of it has been duly communicated to the Contractor as mentioned herein.</p>
Sub-Clause 3.3 Delegated Persons	<p><i>Insert the word "breaches" in between the words "errors" and "omissions" in para (a).</i></p>
Sub-Clause 3.4 Instructions	<p><i>Add "or the Employer's Representative" after the word Employer at the beginning of first para.</i></p> <p><i>Delete the words "or an assistant" in the last para.</i></p>
Sub-Clause 3.5 Determinations	<p><i>Delete the last sentence of the second para and add the following as subsequent separate paras ;</i></p> <p>If the Contractor fails to give notice of dissatisfaction to the Employer within such period of 14 days the determination shall become final and binding on the Contractor and the Employer shall be deemed to have been discharged from all liability in connection with such claim / dispute.</p> <p>In the event of giving notice of dissatisfaction as hereinabove within 14 days, the Contractor may endeavour to settle the dispute in accordance with Sub-clause 20.5 and Sub-clause 20.6.</p> <p>However, during the above process, the Contractor shall continue to / proceed with execution of the Works in accordance with the Contract.</p>
Sub-Clause 4.1 Contractor's General Obligations	<p><i>Add the following at the end of the first para;</i></p> <p>The design responsibility of the Contractor shall survive for the design life of the Works as stipulated in the Employer's Requirements.</p> <p><i>Replace the second para with the following;</i></p> <p>The Contractor shall execute the Works and provide Contractor's Documents specified in the Contract, and all Contractor's Personnel, Goods, consumables and other things and services, whether of a temporary or permanent nature, required in and for this design, execution, completion and remedying of defects.</p> <p>Add the following paras at the end of the Sub-Clause;</p> <p>In the event the Works executed are not in accordance with the Contract and the Contractor fails to remedy the same for whatsoever reason, the Employer shall proceed in accordance with Sub-clause 2.5 [Employer's Claim] and Sub-clause 3.5 [Determinations] to;</p> <p>(a) reject such work in full and recover all such monies due to the Employer as per the above Determination including but not limited to set-off / adjustment / recovery of the amounts already paid, if any, for such works or otherwise; or</p> <p>(b) devalue the value of such work and recover all such monies due to the Employer as per the above Determination including but not limited to set-off / adjustment / recovery of the amounts already paid, if any, for such works or otherwise.</p>

<p>Sub-Clause 4.2 Performance Security</p>	<p><i>Replace the first para with the following;</i></p> <p>The Contractor shall obtain (at his cost) a Performance Security equivalent to 10% (ten percent) of the Contract Price for proper performance, in the currencies stated in the Contract.</p> <p><i>Replace the second and last sentence of second para with the following;</i></p> <p>The Contractor shall deliver the Performance Security to the Employer within 14 days of issue of Letter of Award. The Performance Security shall be in the form of unconditional bank guarantee approved by the Employer and issued by a Nationalized Bank located anywhere in India or if issued from abroad, the same shall be authenticated by Indian National Bank, in the format annexed hereto.</p> <p><i>Add the following as a new para;</i></p> <p>Any enforcement of / recourse to any claim against the Contractor shall remain non-refundable to the extent so claimed by the Employer. The Contractor shall thereafter furnish a fresh Performance Security of the remaining balance of the Performance Security to the extent not claimed, while proceeding execution or completion of the Works or attend to any defect.</p> <p><i>Add the following at the beginning of the fourth para;</i> Save as provided herein otherwise,</p> <p><i>Add the following to para (d);</i></p> <p>'and / or the Contract has been terminated'.</p> <p><i>After para (d) add the following paras as (e) and (f);</i></p> <p>(e) failure by the Contractor to comply with any of the Instructions of the Employer and/or failure by the Contractor to honour any of the obligations under the Contract.</p> <p>(f) in the event of any breach or abandonment or negligence or misconduct or omission or non-compliance on the part of the Contractor in connection with the Contract.</p> <p><i>Replace the last para with the following para;</i></p> <p>The Employer shall return the Performance Security to the Contractor within 21 days after the Contractor has received the Performance Certificate.</p>
<p>Sub-Clause 4.3 Contractor's Representative</p>	<p><i>Delete the last sentence of second para and add the following as last sentence;</i></p> <p>If consent is withheld or subsequently revoked, or if the appointed person fails or incapable in the opinion of the Employer / Employer's Representative, to act as Contractor's Representative, the Contractor shall immediately replace such person and submit the name and particulars of another suitable person for such appointment.</p> <p><i>Replace the fourth para with the following para;</i></p> <p>The Contractor's Representative shall, on behalf of the Contractor, receive all communication and/or instructions under Sub-Clause 3.4 [Instructions].</p> <p><i>Replace the fifth para with the following para;</i></p> <p>The Contractor's Representative, with the prior consent of the Employer, may delegate any powers, functions and authority to any competent person, and may at any time revoke the delegation. Any delegation or revocation shall not take effect until consent</p>

	<p>of the Employer's Representative has been received by the Contractor's Representative.</p> <p><i>Add the following paras at the end of the Sub-Clause;</i></p> <p>The Contractor, during currency of the Contract, shall not remove any key personnel from the Site without permission of the Employer, which permission may or may not be given considering the requirements of the Works.</p> <p>If, in the opinion of the Employer's Representative, the presence of any Contractor's personnel, including the Contractor's Representative, will have adverse effect to the Parties or the Works, the Employer's Representative may instruct the Contractor to remove / replace such personnel from the Site or work place and the Contractor shall immediately comply with such instructions and such personnel shall never be present in the Site unless permitted by the Employer otherwise.</p>
<p>Sub-Clause 4.4 Subcontractors</p>	<p><i>Replace the Sub-Clause with the following;</i></p> <p>The Contractor shall not subcontract the whole of the Works.</p> <p>The Contractor, subject to the relevant terms and obligations under this Contract, may subcontract (less than 25%) a part of the Works but not subcontract the whole of the Works under any circumstances and the Contractor shall not be relieved from any of its liabilities or obligations or responsibilities under the Contract due to such subcontracting.</p> <p>The Contractor shall not subcontract any part of the Works without the prior consent of the Employer or the Employer's Representative. The Contractor shall, in order to obtain the prior written consent of the Employer, notify in writing to the Employer or the Employer's Representative of all the details of the subcontracts intended to be awarded to any Subcontractor under this Contract.</p> <p>The Contractor is not required to obtain consent from the Employer for: (i) the provision of labour, or (ii) the subcontracting of any part of the Works for which the Sub-Contractor is named in the Contract.</p> <p>The Contractor shall be responsible for the acts or defaults of any Subcontractor, his agents or employees, as if they were the acts or defaults of the Contractor. Where specified in the Contract, the Contractor shall give the Employer not less than 28 days' notice of:</p> <ul style="list-style-type: none"> (a) the intended appointment of the Subcontractor, with detailed particulars which shall include his relevant experience, (b) the intended commencement of the Subcontractor's work, and (c) the intended commencement of the Subcontractor's work on the Site. <p>The Contractor shall also submit an undertaking from the proposed Subcontractor indemnifying the Employer from any claims of whatsoever nature, including but not limited to payments due to Subcontractor from the Contractor, any claims or disputes between the Contractor and Subcontractor.</p> <p>The Contractor shall indemnify or hold harmless against Subcontractor payment, wages, non-compliance of taxes / statutory norms etc. resulting from any subcontract.</p> <p>The Employer at its sole discretion may or may not give consent to the Contractor for appointment of a Subcontractor for any part of the Works.</p> <p>In the event the Employer gives consent for appointment, such consent shall not relieve the Contractor from any liability or obligation under the Contract and the</p>

	<p>Contractor shall solely be responsible for the acts or breaches or failures or defaults or neglects of any Sub-Contractor as fully as they were the acts or breaches or failures or defaults or neglects of the Contractor.</p> <p>The Contractor shall, on written notice from the Employer's Representative, terminate the employment of any Subcontractor whose acts or omissions, in the reasonable opinion of the Employer's Representative, may any time be detrimental to the interest of the Employer or the Contractor or the Works.</p>
Sub-Clause 4.6 Cooperation	<p><i>Replace the Sub-Clause with the following;</i></p> <p>The Contractor shall, as specified in the Contract or as instructed by the Employer, allow appropriate opportunities for carrying out work to:</p> <ul style="list-style-type: none"> a. the Employer's Personnel, b. the personnel of any legally constituted public authorities, <p>who may be employed in the execution on or near the Site of any work not included in the Contract.</p> <p>The Contractor shall be responsible for all his construction activities on the Site for due and proper execution of the Works and interface obligations related to other works at the Site, and shall co-ordinate his own activities with those of others to ensure that no works including but not limited to the Works herein have been hampered or disturbed to the extent (if any) specified in the Employer's Requirements. The Contractor undertakes and also indemnifies the Employer from all or any claims of the other contractors due to any of his direct or indirect actions or inactions or breaches or failures or defaults etc.</p> <p>If, under the Contract, the Employer is required to give to the Contractor possession of any foundation, structure, plant or means of access in accordance with Contractor's Documents, the Contractor shall submit such documents to the Employer in the time and manner stated in the Employer's Requirements.</p>
Sub-Clause 4.8 Safety Procedures	<p><i>Add the following at the end of this Sub-Clause:</i></p> <p>"The Contractor shall comply with all precautions as required for the safety of the workmen by I.L.O. convention (No.62) as far as they are applicable to the Contract. The Contractor shall provide all necessary safety appliances, equipment such as goggles, helmets, masks, etc., to the workmen and staff. The Contractor shall be responsible for observance by his subcontractors of the foregoing provisions."</p>
Sub-Clause 4.13 Rights of Way and Facilities	<p><i>Add the following at the end of the Sub-Clause;</i></p> <p>The Contractor shall plan all his activities to ensure that such his activities will not damage or disturb or hinder the existing facilities and/or ongoing operations of the Terminal of the Employer, including but not limited to security measures and permissions and entry restrictions etc.</p>
Sub-Clause 4.14 Avoidance of Interference	<p><i>Add the following para (c) after Para (b);</i></p> <p>(c) existing facilities and/or ongoing operations of the Terminal of the Employer.</p>
Sub-Clause 4.15 Access Route	<p><i>Add the following at the end of the Sub-Clause;</i></p> <p>The Contractor shall understand that the access route is not exclusive to himself and the same access route shall be used by the Employer and Employer's other contractors also. This shall not relieve the Contractor from performing his contractual obligations mentioned herein above including but not limited to maintenance of the</p>

	access route, providing necessary display signs, etc.
Sub-Clause 4.16 Transport of Goods	<i>Delete the words "Particular Conditions" in the first sentence of this Sub-Clause and insert the word "Contract";</i>
Sub-Clause 4.17 Contractor's Equipment	<i>Add the following at the end of the Sub-Clause;</i> and unless permitted at the request of the Contractor or otherwise directed by the Employer to remove or demobilize, the Contractor's Equipment shall remain at Site during currency of the Contract without any cost or implications to the Employer. Any demobilization of the Contractor's Equipment without prior approval of the Employer shall be an event of breach of the Contract by the Contractor and the Employer may proceed in accordance with the Contract. The Employer shall not have any implications for time consumed in giving permission to demobilize the Contractor's Equipment.
Sub-Clause 4.19 Electricity, Water and Gas	<i>Replace the Sub-Clause with the following;</i> Unless agreed otherwise by the Parties, the Contractor shall make his own arrangements for electricity, water and gas and other services he may require in connection with the Contract. The Employer shall, at his sole discretion and without any obligation to do so, may facilitate / provide assistance for procuring electricity, water and gas connections. The Contractor shall always cooperate with regulatory agency norms in the procurement of these services.
Sub-Clause 4.20 Employer's Equipment and Free-Issue Material	<i>Delete the Sub-Clause.</i>
Sub-Clause 4.21 Progress Reports	<i>Delete the words "Particular Conditions" in the first sentence of first Para of this Sub-Clause and insert the word "Contract";</i> <i>Insert the following next to the first sentence of the first para of this Sub-Clause;</i> Non-submission of the Progress Reports as herein shall amount to breach of the Contract by the Contractor. <i>Modify the para (b) as hereunder;</i> (b) photographs and video records showing the status of progress of the Works on the Site; <i>Delete para (f);</i>
Sub-Clause 4.22 Security of the Site	<i>Replace the first para / sentence of the Sub-Clause with the following two paras;</i> The Contractor shall scrupulously comply with the security measures / guidelines at the Site and / or the Terminal and in the event of failure for whatsoever reason, the Contractor, without any limitation, shall be responsible for all the direct and indirect consequences / losses / damages etc. thereof. Save as and unless otherwise stated in the Contract: <i>Add the following paras (c) and (d) after Para (b);</i>

	<p>(c) the Contractor shall be responsible for safe keeping of Employer's goods , if any, supplied for project, and</p> <p>(d) the Contractor shall comply or honour the security measures being / to be implemented at the Site or the Terminal.</p>
<p>Sub-Clause 4.23 Contractor's Operations on Site</p>	<p><i>Replace second para with the following;</i></p> <p>During the execution of the Works, the Contractor, save as provided herein, shall keep the Terminal / Site free from all unnecessary obstruction, and shall store or dispose of any Contractor's Equipment. The Contractor shall clear away and remove from the Terminal / Site any wreckage, rubbish and Temporary Works which are no longer required.</p> <p><i>Replace third para with the following;</i></p> <p>Upon the issue of the Taking-Over Certificate for the Works, the Contractor shall clear away and remove all Contractor's Equipment, wreckage, rubbish and Temporary Works, except those are specifically instructed by the Employer and/or required for completion of the balance / pending works and/or to attend defect rectification. The Contractor shall leave the Site and the Works in a clean and safe condition. However, the Contractor may retain on Site, during the Defects Notification Period, such Goods as are required for the Contractor to fulfill obligations under the Contract.</p> <p><i>Add the following at the end of the Sub-Clause;</i></p> <p>In addition to and not in derogation with the other conditions stipulated herein, the Contractor shall note that the Employer and other contractors employed by the Employer will be working on the Site and the Contractor shall not obstruct any such works and shall extend co-operation to these agencies.</p>
<p>Sub-Clause 5.1 General Design Obligations</p>	<p><i>Replace para (d) with the following;</i></p> <p>(d) portions, data and information which the Contractor has been expressly exempted to verify the accuracy and correctness of the same.</p>
<p>Sub-Clause 5.4 Technical Standards and Regulations</p>	<p><i>Delete the word "Country's" from the first para and insert the word "Indian".</i></p> <p><i>Delete the words "and each Section" and the words "or Section" from the beginning part of the second para.</i></p> <p><i>Add the following to the last para;</i></p> <p>All designs and construction drawings are required to meet the technical standards and regulations stipulated in the Contract, and the same shall be submitted to the Employer / the Employer's Representative for review and comments, if any. Such submission and receipt or non-receipt of any observations or comment shall not relieve the Contractor from his responsibilities / obligations under the Contract.</p>
<p>Sub-Clause 6.1 Engagement of Staff and Labour</p>	<p><i>Add the following as last para to the Sub-Clause;</i></p> <p>The Contractor is encouraged, to the extent practicable and reasonable, to employ staff and labour with appropriate qualifications and experience from the sources, if available, within the reasonable vicinity of the Terminal area.</p>
<p>Sub-Clause 6.2 Rates of Wages and Conditions of Labour</p>	<p><i>Replace the Sub-Clause with the following;</i></p> <p>The Contractor shall pay the labour engaged by him for the Works not less than fair wages which expression shall mean whether for the time or piece work, the labour rates of wages as fixed by the Government of Myanmar under the Minimum Wages Act as fair wages payable to the different categories of labourers.</p>

	<p>The Contractor shall maintain records of wages and other remuneration paid to his labour, employees in such forms as may be prescribed by and to the requirements of the Employer and Conciliation Officer, Central Ministry of Labour, Government of Myanmar or such other authorized persons appointed by the Government.</p> <p>The Employer or any other person authorized by him on his behalf shall have power to make enquiry's with a view to ascertain proper observance of the Fair Wage Clause. He shall also have the power to investigate into and settle any complaints regarding any default made by the Contractor or Subcontractor in regard to such provisions or payment of wages to the labour / workmen and adjust such amount from any amount due and payable to the Contractor or may recover otherwise.</p> <p>The Contractor shall be fully responsible for complying with all applicable laws related to employing the labour / construction workers for the execution of the Contract and the Contractor shall fully indemnify the Employer / Employer's Representative from all penalties, fines, liabilities, statutory payment, if any, that are imposed by the government authorities against violation of any of the laws / rules / conditions.</p>
Sub-Clause 6.4 Labour Laws	<p><i>Insert the following as second para of the Sub-Clause;</i></p> <p>The Employer may require the Contractor at any time to furnish necessary documents for verification and / or to comply with the conditions herein and/or the laws in force from time to time.</p>
Sub-Clause 6.5 Working Hours	<p><i>Add the following at the beginning of the Sub-Clause;</i></p> <p>The Contractor shall in all dealings with labour in his/her employment have due regard to all recognised festivals, days of rest and religious or other customs.</p>
Sub-Clause 6.6 Facilities for Staff and Labour	<p><i>Replace the second para with the following;</i></p> <p>The Contractor shall not permit any of the Contractor's Personnel / labour to maintain any temporary or permanent living quarters / arrangement within the structures forming part of the permanent Works/Site.</p> <p><i>Add the following as last paras of the Sub-Clause;</i></p> <p>The Contractor shall, so far as is reasonably practicable having regard to local conditions, provide on the Site, to the satisfaction of the Employer an adequate supply of drinking and other water for the use of the Contractor's staff and work people.</p> <p>The Contractor shall arrange for the provision of a sufficient supply of suitable food at reasonable prices for all his staff, labour and sub-contractors for the purposes of or in connection with the Contract.</p> <p>The Contractor shall, at his own expense, provide proper and suitable footwear and Personal Protection Equipment for all labour and staff engaged on concrete mixing and all other types of work involving the use of tar, cement, etc. to the satisfaction of the Employer, and on his failure to do so, the Employer shall be entitled to provide the same and recover the cost from the Contractor.</p>
Sub-Clause 6.7 Health and Safety	<p><i>Add the following as last paras of the Sub-Clause;</i></p> <p>In the event of any outbreak of illness of an epidemic nature the Contractor shall comply with and carry out such regulations, orders and requirements as may be made by the Government or the local medical or sanitary authorities for the purpose of dealing with and overcoming the same.</p> <p>The Contractor shall within 24 hours of the occurrence of any accident at or about the site</p>

	<p>or in connection with the execution of the work, report such accidents to the Employer. The Contractor shall also report such accidents to the Competent Authorities to whom such report is required by Law. The Contractor shall fully indemnify the Employer from all penalties, fines, and liabilities etc. that are imposed by the relevant Government authorities against violation of any of the conditions.</p> <p>The Contractor shall follow and implement the Environmental Management Plan given at Specification and also the updates if any. The contractor shall develop Environmental Management Systems that covers all its operations and shall be certified to ISO 14001 within one year from the award of the contract.</p> <p>The contractor shall develop Occupational Health & Safety Management Systems that covers all its activities / operations and shall be certified to OHSAS 18001 within one year from the award for contract.</p>
Sub-Clause 6.11 Disorderly Conduct	<p><i>Add the following as last para of the Sub-Clause;</i></p> <p>The Contractor or his personnel shall not import, bring in consume, sell, give, barter or otherwise dispose of any alcoholic liquor or drugs or any prohibited product by law in the Terminal area. The Contractor shall not permit or suffer any such importation, consumption, sale, gift, barter or disposal by his Subcontractors, agents or employees.</p>
New Sub-Clause 6.12 Arms and Ammunitions	<p><i>Add the following Sub-Clause;</i></p> <p>The Contractor shall not give, barter or otherwise dispose of to any person or persons any arms or ammunitions of any kind or permit or suffer the same as aforesaid. The Contractor shall fully indemnify the Employer from any consequences, both financial as well as criminal, arising as a result of violation of any of the Myanmar Laws.</p>
New Sub-Clause 6.13 Compliance with Regulations, etc.	<p><i>Add the following Sub-Clause;</i></p> <p>The Contractor shall at all times during the continuance of the Contract comply fully with all existing Acts, regulations and bye-laws including all statutory amendments and re-enactments of State or Central Government and other local authorities and any other enactments and Acts that may be passed in future either by the State or Central Government or local authority. The acts include but not limited to Minimum Wages and Factory Acts, Contract Labour Regulation and Abolition Act, Workmen's Compensation Act, Construction Labour Welfare Cess Act and schemes made under the said Acts, Health and Sanitary Arrangements for Workmen, Insurance and other benefits under any other Acts applicable from time to time. The Contractor shall keep the Employer indemnified in case any action is commenced for contravention by the Contractor.</p> <p>If the Employer is caused to pay or reimburse such amounts as may be necessary to cause or observe, or for non-observance of the provisions stipulated here forth on the part of the Contractor, the Employer shall have the right to deduct from any moneys due to the Contractor or his amount of guarantee or recover from the Contractor personally any sum required or estimated to be required for making good the loss or damage suffered by the Employer.</p>
New Sub-Clause 6.14 Expenses Towards Compliances	<p><i>Add the following Sub-Clause;</i></p> <p>The Contract Price shall be deemed to include all expenses whatsoever that the Contractor may be required to incur for compliance with the provisions of the Contract, relevant Regulations, Acts and Bye-Laws, Custom clearances, etc.</p>
New Sub-Clause 6.15 Repatriation of Labour	<p><i>Add the following Sub-Clause;</i></p> <p>The Contractor shall be responsible for the return to the place where they were recruited or to their domicile of all such persons as he recruited and employed for the purpose of or in connection with the Contract and shall maintain such persons, as are to be so returned, in a suitable manner until they shall have left the Site, or in case of persons who are not</p>

	nationals of and have been recruited outside, Myanmar, shall have left Myanmar.
New Sub-Clause 6.16 Deduction of Moneys from the Contractor	<i>Add the following Sub-Clause;</i> The Employer shall have the right to deduct from the monies due to the Contractor any sum required or estimated to be required for making good the loss suffered by a worker or workers by reason of the non-payment of the aforesaid fair wage and/or non-compliance of the aforesaid acts.
New Sub-Clause 6.17 Contractor Responsible for Observance	<i>Add the following Sub-Clause;</i> The Contractor shall be responsible for observance by his Subcontractors of the foregoing provisions.
New Sub-Clause 6.18 Record of Labour etc.	<i>Add the following Sub-Clause;</i> The Contractor shall disclose and display at his office on the Site in proper and at such intervals as the Employer may prescribe, details of the supervisory staff and the several classes of labour from time to time employed on the Site.
Sub-Clause 7.1 Manner of Execution	<i>Replace the first para with the following;</i> The Contractor shall carry out execution of the Works: <i>Replace the word "Contract" in para (a) with the words "Employer's Requirements".</i> <i>Add the following para at the end of the Sub-Clause;</i> No material shall be brought to Site until its source has been approved by the Employer after doing all the tests as specified in relevant Codes or specified in the Contract.
Sub-Clause 7.4 Testing	<i>Replace the first para with the following;</i> This Sub-Clause shall apply to all tests specified in the Employer's Requirement and any other tests that the Employer requires the Contractor to perform, other than the Tests, after Completion (if any). <i>Delete the word "Plant" from the third para;</i> <i>Delete para (b);</i>
New Sub-Clause 7.9 Conditions for Hire of Construction Equipment and Subcontractors	<i>Add the following Sub-Clause;</i> With a view to securing in the event of termination of the Contract, for the continued availability for the purpose of executing the Works of any essential hired Construction Equipment held and/or the subcontracts entered into by the Contractor under any agreement for the purpose thereof, the Contractor shall not bring on to the Site any hired Construction Equipment or shall not engage any subcontractor unless the agreement for the purpose thereof contains the following provisions. The Owner of any item of plant or any subcontractor upon receiving instructions in writing from the Employer shall transfer the hiring of the said items of plant from the Contractor to the Employer or the obligations of the subcontracts in favour of the Employer on the same terms and conditions except that the Employer shall be entitled to permit the use thereof by any other Sub-contractor employed by him for the purpose of completing the Works. Copy of such agreement shall be submitted by the Contractor to Employer prior to bringing the construction equipment to the Site and/or engaging the subcontractor, as the case may be.

<p>New Sub-Clause 7.10 Payments by Employer to Construction Equipment of Owner / Subcontractors</p>	<p><i>Add the following Sub-Clause;</i></p> <p>In the event of termination or in the event of the failure of the Contractor to pay the sums due to the owner of any Construction Equipment / Subcontractor from time to time, the Employer shall in order to avoid seizure by the owner of any Construction Equipment held by the Contractor or suspension of the Works by the Subcontractor under an agreement for purpose thereof be entitled to pay such owner / subcontractor the amount due and payable under such agreement and in the event of the Employer doing so any amount so paid by him shall be debt due from the Contractor to the Employer and without reference to the provisions of Employer's Claims may be deducted by the Employer from any moneys due or that may become due to the Contractor under the Contract or recover the same from the Contractor otherwise. In the event of forfeiture of all expenses incurred in this respect by the Employer shall, for the purpose of this Clause, be part of the cost of completing the Works.</p> <p>The Contractor shall not bring on the Site any Construction Equipment hired or subcontractor engaged under an agreement unless the agreement in respect thereof shall contain the following provisions.</p> <p>The owner of the plant or the Subcontractor upon receiving instructions in writing from the Employer will accept payment from the Employer of the sums due and payable under the respective agreement and transfer the benefit of such agreement from the Contractor to the Employer on the same terms and conditions, and the Employer shall be entitled to use such construction equipment or permit the use thereof by any other Sub-contractor employed by him for the purpose of completing the Works.</p>
<p>Sub-Clause 8.1 Commencement of Works</p>	<p><i>Replace the Sub-Clause with the following;</i></p> <p>The Contractor shall commence the design and execution of the Works immediately after the Commencement Date and shall then proceed with the Works with due expedition and without delay.</p>
<p>Sub-Clause 8.2 Time for Completion</p>	<p><i>Replace the Sub-Clause with the following;</i></p> <p>The Contractor shall complete the whole of the Works within 36 (Thirty Six) months from the Commencement Date, including:</p> <ul style="list-style-type: none"> (a) achieving the passing of the Tests on Completion, and (b) completing all work which is stated in the Contract as being required for the Works to be considered to be completed for the purposes of taking-over under Sub-Clause 10.1 [Taking Over of the Works].
<p>Sub-Clause 8.3 Programme</p>	<p><i>Replace the Sub-Clause with the following;</i></p> <p>The Contractor shall prepare and submit to the Employer not later than 21 days after the Commencement Date, a detailed programme showing various activities of the Works using MS project (Windows) / any other suitable Project Monitoring and Review Software as suggested by the Employer to achieve a regular monthly report and as and when required by the Employer. It is important that Contractor shall develop the level 4 programme and level 2 programme for implementation and resource planning.</p> <p>Time is the essence of the Contract. Construction updates using software for Project Status & Resource Planning, should therefore be regularly submitted. The Contractor shall continuously update these reports with related information in a format acceptable to the Employer, so as to reach the satisfaction level of the Employer.</p> <p>Updates of various reports shall be necessarily submitted in hard copies and soft copies on CD-ROM's.</p> <p>Unless otherwise stated in the Contract, each programme shall include:</p>

	<ul style="list-style-type: none"> (a) the order in which the Contractor intends to carry out the Works, including the anticipated timing of each major stage of the Works, (b) the periods for reviews under Sub-Clause 5.2 [Contractor's Documents], (c) the sequence and timing of inspections and tests specified in the Contract, and (d) a supporting report which includes: <ul style="list-style-type: none"> (i) a general description of the methods which the Contractor intends to adopt for the execution of each major stage of the Works, and (ii) the approximate number of each class of Contractor's Personnel and of each type of Contractor's Equipment for each major stage.
Sub-Clause 8.4 Extension of Time for Completion	<p><i>Delete the words "and Sections" in the first para.</i></p> <p><i>Delete the sentence "or the Employer's other contractors on the Site" from para (c).</i></p> <p><i>Replace last para with the following;</i></p> <p>The Contractor shall not be entitled for extension of time for the failures / defaults for which the reasons attributable to the Contractor. The Contractor, subject to other provisions in the Contract, is entitled for extension of time in accordance with this Sub-Clause only for the actual number of days of an event that entitled the Contractor to apply for extension of time and the Contractor shall not be entitled for extension of time towards consequences of such actual delay. Save as the same, if the Contractor considers himself to be entitled to an extension of the Time for Completion, the Contractor shall give notice to the Employer in accordance with Sub-Clause 20.1 [Contractor's Claims]. When determining each extension of time under Sub-Clause 20.1, the Employer shall review previous determinations and may increase, but shall not decrease, the total extension of time, except in case of deletion of a part of the Works.</p>
Sub-Clause 8.5 Delays Caused by Authorities	<p><i>Delete the Sub-Clause;</i></p>
Sub-Clause 8.7 Delay Damages	<p>Replace the Sub-Clause with the following;</p> <p>If the Contractor fails to comply with Sub-Clause 8.2 [Time for Completion], the Contractor shall pay delay damages to the Employer for this default for every week or a part thereof, which shall elapse between the Time for Completion and the date of actual completion or the date stated in the Taking- Over Certificate, whichever is later.</p> <p>In the event of delay in completion of the Works, the Delay Damages shall be at the rate of 1% of the value of the Contract per week or a part thereof, provided that the amount of such delay damages shall not exceed 10% of the all inclusive Value of the Contract.</p> <p>The Delay Damages stipulated herein is a genuine pre-estimation of and reasonable compensation for the loss and damage that the Employer has suffered or may suffer.</p> <p>The Employer may recover the Delay Damages from the amounts due and payable to the Contractor or the Contractor shall pay the same, upon receipt of demand from the</p>

	<p>Employer.</p> <p>These Delay Damages shall be the only damages due from the Contractor for such default, other than in the event of termination under Sub-Clause 15.2 [Termination by Employer] prior to completion of the Works. These damages shall not relieve the Contractor from his obligation to complete the Works, or from any other duties, obligations or responsibilities which he may have under the Contract.</p>
<p>Sub-Clause 8.9 Consequence of Suspension</p>	<p><i>Rename the Sub-Clause as the following;</i></p> <p>8.9 Recourse for Suspension by the Employer;</p> <p><i>Replace the word “delay” in para (a) with the words “actual period of suspension”.</i></p> <p><i>Replace last para with the following;</i></p> <p>The Contractor shall not be entitled to an extension of time for, or to payment of the Cost incurred in, making good the consequences of the Contractor's faulty design, work methods, workmanship, equipment, or materials, or of the Contractor's failure to protect, store or secure his work and equipment.</p>
<p>Sub-Clause 8.10 Payment for Plant and Materials in Event of Suspension</p>	<p><i>Replace the Sub-Clause with the following;</i></p> <p>The Contractor shall not be entitled to payment for the plant & material, which have not been delivered at Site and/or delivered at Site, but not required for execution of the Works during the suspended period.</p>
<p>Sub-Clause 9.1 The Contractor Obligations</p>	<p><i>Delete the words “Unless otherwise stated in the Particular Conditions” at the beginning of third para.</i></p> <p><i>Replace the word “Plant” in para (a) with the words “the Works”.</i></p> <p><i>Delete the words “or Section” from Para (b) and para (c).</i></p> <p><i>Replace the words “particular condition” in penultimate para with the word “Contract”.</i></p>
<p>Sub-Clause 9.3 Retesting</p>	<p><i>Delete the words “or a Section” at the beginning of the Sub-Clause.</i></p>
<p>Sub-Clause 9.4 Failure to Pass Tests on Completion</p>	<p><i>Delete the words “or a Section” at the beginning of the Sub-Clause.</i></p>
<p>Sub-Clause 10.1 Taking Over of the Works and Sections</p>	<p><i>Delete the word “and Sections” from the Sub-Clause name.</i></p> <p><i>Replace the second para with the following;</i></p> <p>The Contractor may apply by notice to the Employer for a Taking-Over Certificate not earlier than 14 days upon the Works are completed and ready for taking over.</p> <p><i>Delete the words “or Section were” and “substantially” and “or Section” from para (a) of the Sub-Clause.</i></p> <p><i>Replace the last para with the following;</i></p> <p>If the Employer fails either to issue the Taking-Over Certificate or to reject the Contractor's application within the period of 28 days, and if the Works are completed in accordance with the Contract, the Taking-Over Certificate shall be deemed to have</p>

	been issued on the last day of that period.
Sub-Clause 10.2 Taking Over of Parts of the Works	<i>Replace the Sub-Clause with the following;</i> The Contractor is not entitled to apply for Taking-over Certificate for parts of the Works. However, the Employer shall have right to make use of the Works / parts thereof. The Employer shall, at his sole discretion and without obligation to do so, also have right to takeover parts of the Works before the Time for Completion stipulated herein.
Sub-Clause 10.3 Interference with Tests on Completion	<i>Delete the words “and/or incurs Cost” at the beginning of the second para.</i> <i>Delete para (b);</i>
Sub-Clause 11.1 Completion of Outstanding Works and Remedying Defects.	<i>Delete the words “and each Section” from the first para.</i>
Sub-Clause 11.3 Extension of Defects Notification Period	<i>Replace the Sub-Clause with the following;</i> The defects notification period shall be 24 months from the date of issuance of Taking-over Certificate. The Defects Notification Period shall, in respect of any work, which requires repair or replacement and in respect of that work affected by such repair or replacement, be extended for the Works by a period equal to the period during which the work is out of operation and the provisions of this Sub-Clause [Extension of Defects Notification Period] shall apply to the Works remedied or replaced, though the Defects Rectification Period in respect thereof had commenced on the date of such remedy or replacement. The Employer shall be entitled subject to Sub-Clause 2.5 [Employer's Claims] to an extension of the Defects Notification Period for the Works if and to the extent that affected by such repair or replacement, be extended by a period equal to the period. However, a Defects Notification period shall not be extended by more than two years. If delivery and/or erection of Plant and/or Materials was suspended under Sub-Clause 8.8 [Suspension of Work] the Contractor's obligations under this Clause shall not apply to any defects or damage occurring more than two years after the Defects Notification Period for the Plant and/or Materials would otherwise have expired.
Sub-Clause 11.8 Contractor to Search	<i>Delete the second sentence of the Sub-Clause.</i>
Sub-Clause 12.2 Delayed Tests	<i>Delete the words “plus reasonable profit, which shall be added to the Contract Price” at the end of the first para.</i> <i>Delete the words “and profit” at the end of the second para.</i>
Sub-Clause 12.4 Failure to Pass Tests after Completion	<i>Delete words “plus reasonable profit, which shall be added to the Contract Price” at the end of the last but second para.</i> <i>Delete words “and profit” at the end of last para.</i>
Sub-Clause 13.1 Right to Vary	<i>Replace the first para with the following;</i> Variations may be initiated by the Employer at any time prior to issuing the Taking-Over Certificate for the Works, either by an instruction or by a request for the Contractor to submit a proposal. A Variation shall not comprise the omission of any

	<p>work, with an intention to carry out such work by the Employer through others prior to the date of the Time for Completion. However, provided that the Employer shall have right to omit any work or part thereof in the event of (i) the Contractor gives consent or (ii) termination as provided in the Contract or (iii) the Employer intended to change nature / structure and the Employer and the Contractor unable to arrive at (i) an agreement on the price of such variation or (ii) the Contractor serves notice of dissatisfaction on the amount determined by the Employer.</p> <p><i>Insert the following two paras at the end of the Sub-Clause;</i></p> <p>The Employer shall not be responsible nor pay for any risks, contingencies, variation in quantities, assumptions, methodologies and manner either due to any mistake or oversight or ignorance of the Contractor.</p> <p>However, the Employer, except as provided herein, shall pay for variations due to any changes or modifications made by him in the Employer's Requirements. For such variations ordered by the Employer, the rates affixed by the Contractor in the Price Schedule shall be utilised for valuation.</p>
Sub-Clause 13.2 Value Engineering	<p><i>Replace the last para with the following;</i></p> <p>The proposal shall be prepared at the cost of the Contractor and shall include the items listed in Sub-Clause 13.3 [Variation Procedure]. The Employer may or may not accept the proposal at its sole discretion.</p>
Sub-Clause 13.3 Variation Procedure	<p><i>Replace the last sentence of the para coming after para (c) with the following;</i></p> <p>The Contractor shall not delay any other work or related work to the extent required whilst awaiting a response.</p> <p><i>Delete the last sentence of the last para and then insert the following as a separate last para;</i></p> <p>In the event, the Contractor, without due process stipulated under the above Sub-Clauses, adopts any variation on his own and minimizes his cost of execution of the Works, the Employer, without prejudice to the other clauses herein, may serve a notice on the Contractor and proceed in accordance with Sub-Clause 2.5 [Employer's Claims] and 3.5 [Determinations] to agree or determine adjustments to the Contract Price in this regard. However, the Contractor is not discharged of any of his obligations under the Contract or otherwise.</p>
Sub-Clause 13.7 Adjustments for Changes in Legislation	<p><i>Replace the Sub-Clause with the following;</i></p> <p>If, after the date of signing the Contract there occur in the Country, in which the Works are being or are to be executed, changes to any National or State Statute, Ordinance, Decree or other Law or any regulation or bye-law of any local or other duly constituted authority, or the introduction of any such State Statute, Ordinance, Decree, Law, regulation or bye-law, which causes additional or reduced cost to the Contractor towards Levies and Duties, in the execution of the Contract, such additional or reduced cost shall, after due consultation with the Employer and the Contractor, be determined by the Employer / Employer's Representative, and shall be added to or deducted from the Contract Price and the Employer / Employer's Representative shall notify the Contractor accordingly. This Sub-Clause shall not apply to any labour / industrial related legislation and the Contractor shall bare all direct and indirect costs of such labour / industrial legislation. In addition any benefit by reduction in the taxes or levies or duties by virtue of any order or direction of the competent authority shall be passed on to the benefit of the Employer.</p>
Sub-Clause 13.8 Adjustments for	<p><i>Replace the Sub-Clause with the following;</i></p> <p>The Contractor shall not be entitled to claim additional payment due to rises or falls in</p>

Changes in Costs	the cost of labour, Goods and any other inputs to the Works.
Sub-Clause 14.2 Advance Payment	<p><i>Replace the Sub-Clause with the following;</i></p> <p>Advance Payment which forms part of the Contract Agreement shall be considered by the Employer, the exact amount of which, subject to a maximum of 10% of the Contract Price, shall be decided after discussions with the selected Contractor, for mobilisation and design, when the Contractor submits a bank guarantee equivalent to the Advance Payment in a format approved by the Employer and issued by a scheduled commercial bank branch in National Capital region (NCR), India.</p> <p>The Contractor shall ensure that the guarantee is valid and enforceable until the advance payment has been recovered by the Employer.</p> <p>The advance payment shall be recovered by the Employer from the first interim payment onwards at proportionate basis by means of a 10% deduction from each interim payment.</p> <p>If the advance payment has not been repaid in full prior to the issue of the Taking-over Certificate for the Works or prior to termination under Clause 15, Clause 16 or Clause 19 as the case may be, the whole of the balance then outstanding shall become due and payable by the Contractor and the Employer is entitled to recover such outstanding advance payment under the said bank guarantee, without notice to the Contractor.</p> <p>Notwithstanding, the Employer is also entitled to claim under this Advance Payment Security in accordance with the terms of the Performance Security.</p>
Sub-Clause 14.3 Application for Interim Payments	<p><i>Replace the Sub-Clause with the following;</i></p> <p>The Contractor shall submit a Statement in three hard and soft copies to the Employer at end of each month, in a form approved by the Employer, showing in detail the amounts to which the Contractor submits the statement, together with supporting documents which shall include the relevant report on progress.</p> <p>The statement shall include the following items as applicable.</p> <ol style="list-style-type: none"> The estimated Contract Value of the Works executed during the month computed on the basis of estimated quantity of various sections of the work multiplied by the rates affixed in the Price Schedule for such sections of the work. If actual progress is found to be less than that on which the Schedule of Payments was based, then the Employer may determine revised installments, which shall take account of the extent to which progress is less than that on which the installments were previously based. Deduction of 5% of the amount to which the Contractor is entitled under para (a) above as Retention Money. The Retention Money shall be released on submission of Bank Guarantees in the format acceptable to the Employer on a periodic basis. Deduction of 10% of the amount to which the Contractor is entitled under para (a) above as repayment of Advance Payment. If the advance payment has not been repaid in full prior to the issue of the Taking-over Certificate for the Works or prior to termination under Clause 15, Clause 16 or Clause 19 as the case may be, the whole of the balance then outstanding shall become due and payable by the Contractor and the Employer is entitled to recover such outstanding advance payment under the said bank guarantee, without notice to the Contractor. Deductions, other than pursuant to Sub-clause 8.7 of any sums which may have become due and payable by the Contractor to the Employer. Deduction of amounts included in previous statements.

	<p>f) Deduction of Income Tax as per the relevant provisions of the Income Tax Act and or as per the advice of the Income Tax Authority.</p> <p>g) Submission of relevant valid policies of insurance for car, third party, workmen's compensation policies and any other detail required by Employer.</p>
<p>Sub-Clause 14.4 Schedule of Payments</p>	<p><i>Replace the Sub-Clause with the following;</i></p> <p>The Employer is not bound to make any payment under this Sub-Clause if the gross work done amount for the relevant bill is less than 2% of the Contract Value.</p> <p>Notwithstanding the terms of Sub-clause 14.2 or any other clause of this Contract, no amount shall be paid by the Employer until he has received and approved the Performance Security.</p> <p>If anything supplied or work done by the Contractor is not in accordance with the Contract, the cost of rectification or replacement may be withheld until rectification or replacement has been completed; and/or</p> <p>If the Contractor fails to comply with Sub-clause 8.2, Delay Damages shall be recovered in accordance with Sub-clause 8.7.</p> <p>If the Contractor was or is failing to perform any work or obligation in accordance with the Contract, and has been so notified by the Employer, save as to the extent provided herein, the value of this work or obligation may be withheld until the work or obligation has been performed.</p> <p>The Employer may make any correction or modifications that should properly be made to any amount previously considered due. Payment shall not be deemed to indicate the Employer's acceptance, approval, consent or satisfaction.</p>
<p>Sub-Clause 14.5 Plant and Materials intended for the Works;</p>	<p><i>Delete the Sub-Clause;</i></p>
<p>Sub-Clause 14.8 Delayed Payment</p>	<p><i>Delete the Sub-Clause;</i></p>
<p>Sub-Clause 14.15 Currencies of Payment</p>	<p><i>Replace the Sub-Clause with the following;</i></p> <p>The Contract shall be designated in the quoted and agreed currencies and all payments shall be effected only in the same currencies.</p>
<p>Sub-Clause 15.2 Termination by Employer</p>	<p><i>Insert the following paras as paras (g) and (h) in the Sub-Clause;</i></p> <p>(g) breaches or fails to honour any of the obligations under the Contract and/or plainly demonstrates misconduct or negligence or intention not to comply with the instruction of the Employer in connection with the Contract.</p> <p>(h) fails either to complete the Works in accordance with the Contract before the cap of amount of Delay Damages as agreed herein and/or to accelerate the progress of the Works to the satisfaction of the Employer.</p> <p><i>In the para that begins with "In any of these events" and ends with "..... the Contract immediately", replace the last sentence with the following;</i></p> <p>However, in the case of sub-paragraph (e) or (f), the Employer, may by one day notice terminate the Contract.</p>

Sub-Clause 16.1 Contractor's Entitlement to Suspend Work.	<i>Delete the Sub-Clause.</i>
Sub-Clause 16.2 Termination by Contractor	<i>Delete paras (a),(b), (d) and (e).</i> <i>Delete the last sentence of the penultimate para of the Sub-Clause.</i>
Sub-Clause 16.4 Payment on Termination	<i>Replace the first para with the following;</i> After a notice of termination under Sub-Clause 16.2 [Termination by Contractor] has taken effect, the Employer, save as to the extent provided herein otherwise, shall promptly: <i>Delete para (c).</i>
Sub-Clause 17.1 Indemnities	<i>Replace the last para with the following;</i> The Employer shall indemnify and hold harmless the Contractor, the Contractor's Personnel, and their respective agents, against and from all claims, damages, losses and expenses (including legal fees and expenses) in respect of (1) bodily injury, sickness, disease or death, which is attributable to any negligence, willful act or breach of the Contract by the Employer, the Employer's Personnel, or any of their respective agents.
Sub-Clause 17.4 Consequences of Employer's Risks	<i>Replace the second para with the following;</i> If the Contractor suffers delay the Contractor shall give a further notice to the Employer and shall be entitled subject to Sub-Clause 20.1 [Contractor's Claims] to: <i>Delete para (b).</i>
Sub-Clause 17.6 Limitation of Liability	<i>Delete the words "Sub-Clause 4.20 [Employer's Equipment and Free-Issue Material]," in the penultimate para of the Sub-Clause.</i> <i>Replace the words "Particular Conditions" with the word "Contract" in the penultimate para of the Sub-Clause.</i>
Sub-Clause 18.1 General Requirements for Insurance	<i>Insert the following para at the end of the Sub-Clause.</i> The Insuring Party shall be the Contractor. Insurances shall be affected with an insurance company approved by the Employer and on approved terms.
Sub-Clause 18.2 Insurance for Works and Contractor's Equipment	<i>Delete the words "and Clause 12 [Tests after Completion]" from the second para of the Sub-Clause.</i> <i>Replace the words "Particular Conditions" in forth para and para (d), with the word "Contract".</i> <i>Delete the words ", subject to Sub-Clause 14.5 [Plant and Materials intended for the Works]" from the sub-para (e) (iv).</i> <i>Replace the last para with the following para at the end of the Sub-Clause.</i> Contractor's all risk policy for the Works, Plant and Contractor's Equipment, should be obtained by the Contractor from an Insurance Company approved by the Employer, for

	the value of the work including cost of materials supplied by the Employer. Insurance shall be in the joint names of the Employer and the Contractor.
Sub-Clause 18.3 Insurance against Injury to Persons and Damage to Property	<p><i>Add the following sentences to second para of the Sub-Clause;</i></p> <p>The minimum amount of the insurance shall be INR 10,00,000 for any one incident and the total value of the policy shall be 10% of the Contract Price. This shall cover the loss of the Employer / its personnel or to any Contractor employed by the Employer and working in the Contractor's area.</p> <p><i>Replace the words "Particular Conditions" with the word "Contract" in the third para of the Sub-Clause.</i></p>
Sub-Clause 18.4 Insurance for Contractor's Personnel	<p><i>Insert the following para at the end of the Sub-Clause;</i></p> <p>The Insurance shall also cover any person employed by the Employer or any other of the Employer's personnel.</p>
Sub-Clause 19.1 Definition of Force Majeure	<p><i>Replace the first para with the following;</i></p> <p>In this clause," Force Majeure" shall mean the events or circumstances listed herein from (i) to (v), so long as conditions (a) to (d) below are satisfied;</p> <p><i>Replace the para that comes after the para (d) with the following para;</i></p> <p>Subject to satisfaction of the above conditions; the following shall only be the events or circumstances of Force Majeure;</p>
Sub-Clause 19.2 Notice of Force Majeure	<p><i>Replace the last sentence of the first para with the following;</i></p> <p>The notice shall be given within 14 days of the earliest of either of the following;</p> <ul style="list-style-type: none"> (i) the party became aware of the event / circumstance constituting Force Majeure; or (ii) occurring the event or circumstance constituting Force Majeure, <p><i>Replace the second para with the following para;</i></p> <p>The Party, unless gives notice as above within such period of 14 days, shall not be excused performance of such obligation so long as such Force Majeure prevents it from performing them and / or entitled for a remedy available, if any, and the other party shall be discharged from all liability in connection with such Force Majeure.</p>
Sub-Clause 19.3 Duty to Minimise Delay	<p><i>Rename the name of the Sub-Clause as under;</i></p> <p>19.3 Duty to Avoid and/or Minimise Delay</p> <p><i>Replace the first para with the following para;</i></p> <p>Each party shall at all times use all reasonable endeavors to avoid or minimize any stoppage or delay in the performance of the Contract as a result of or due to Force Majeure.</p>
Sub-Clause 19.4 Consequences of Force Majeure	<p><i>Replace the Sub-Clause with the following;</i></p> <p>If the Contractor is prevented from performing any of his obligations under the Contract by Force Majeure of which notice has been given under Sub Clause 19.2 [Notice of Force Majeure], and suffers delay by reason of such Force Majeure, the Contractor shall only be entitled subject to Sub Clause 20.1 [Contractor's Claims] to an extension of time (without</p>

	<p>entitlement for any Cost) for the equivalent period of Force Majeure event, if completion is or will be delayed under Sub Clause 8.4 [Extension of time for Completion].</p> <p>Save and except as expressly provided in this Sub-Clause 19.4 neither Party hereto shall be liable in any manner whatsoever to the other Party in respect of any direct and/or consequential delay, loss, damage, cost, expense, claims, demands and proceedings relating to or arising out of occurrence or existence of any event of Force Majeure.</p>
<p>Sub-Clause 19.6 Optional Termination, Payment and Release</p>	<p><i>Replace second para with the following;</i></p> <p>Upon such termination, the Employer, subject to Sub-Clause 20.1, shall pay to the Contractor:</p> <p><i>Replace the word “work” in para (a) with the words “Permanent Works”.</i></p> <p><i>Replace para (b) with the following para;</i></p> <p>(b) The value of materials ordered for consumption in the Permanent Works, which have been delivered to the Contractor, or of which the Contractor is liable to accept delivery. This material shall become the property of (and be at the risk of) the Employer when paid for by the Contractor shall place the same at the Employer’s disposal;</p> <p><i>Delete paras (c), (d) and (e).</i></p>
<p>Sub-Clause 20.1 Contractor’s Claims</p>	<p><i>Replace the Sub-Clause with the following;</i></p> <p>If the Contractor considers himself to be entitled to any extension of the Time for Completion and/or any additional payment, under any clause of these Conditions in connection with the Works, the Contractor shall give notice to the Employer referring to such clause and describing the event giving rise to the claim and all supporting particulars / documents for whole of the claim as relevant to such event. The notice shall be given as soon as practicable, the Contractor became aware, or should have become aware, of the event, but not later than 28 days after occurrence of the event giving rise to the claim.</p> <p>If the Contractor fails to give such notice within the said period of 28 days, the Time for Completion shall not be extended and/or the Contractor shall not be entitled to additional payment, and the Employer shall be discharged from all liability in connection with such claim. Unless and until all the documents and supporting particulars are supplied to substantiate whole of the claim so notified, the Employer shall have no obligation to proceed with / respond to the notice of claim of the Contractor. Otherwise, the following conditions of this Sub-Clause shall apply:</p> <p>Upon receipt of all documents and supporting particulars as above, the Employer under this Clause shall respond to the notice of the Contractor within 42 days, either by rejecting or considering the entitlement of the Contractor for a claim either in full or in part. In the event of rejection, the Contractor, if dissatisfied with the rejection by the Employer of claim, shall notify its dissatisfaction under Sub-Clause 3.5 and the relevant remaining provisions therein shall apply.</p> <p>The Employer, if considers entitlement of a claim either in full or in part, shall proceed in accordance with Sub-Clause 3.5 to agree or determine the entitlement of the Contractor for the number of days towards extension of time and/or the amount towards additional payment, if any.</p> <p>The Contractor if satisfied with the determination of the Employer of the amount towards additional payment shall submit a separate application for payment (and not along with Application for Interim Payment) for such determined amount, and/or shall submit a revised programme for completion of the Works, in satisfaction of such his claim.</p>

	<p>The Contractor if dissatisfied with the determination of the Employer on extension of time and/or additional amount the provisions of Sub-Clause 3.5 shall apply.</p>
<p>Sub-Clause 20.6 Arbitration</p>	<p><i>Replace the Sub-Clause with the following;</i></p> <p>Any dispute in respect of which amicable settlement has not been reached within the period stated in Sub-Clause 20.5, shall be finally and conclusively settled by Arbitration under the Arbitration and Conciliation Act, 1996 by appointing two arbitrators one by each party and a presiding arbitrator to be appointed by the said arbitrators. Any such Arbitration proceeding shall be within the exclusive jurisdiction of court of law at New Delhi, India. The place of Arbitration shall be New Delhi and the Language of Arbitration shall be English .The Contractor shall continue to attend to discharge all his obligations under the Contract during pendency of the Arbitration proceedings.</p>
<p>New Clause 21 Removal of debris or Craft or Plant</p>	<p><i>Insert the following as Clause 21;</i></p> <p>The Contractor shall ensure that none of his construction material or debris haven been discharged or thrown or fallen into any of the Terminal areas and/or any of the work sites of the other contractors. In case of failure, all direct and indirect risks and costs and consequences shall be to the account of the Contractor only. It is also the obligation of the Contractor to remove or clear the same at his own cost and risk,</p> <p>The Contractor shall forthwith and with dispatch at his own cost raise and remove any craft or plant (floating or otherwise belonging to him or to any Sub-Contractor employed by him including also any plant which is held by the Contractor or any Sub-contractor under agreement for hire or hire purchase) which may be sunk in the course of the construction, completion or maintenance of the Works or otherwise deal with the same as the Employer may direct until the same shall be raised and removed. The Contractor shall set all such buoys and display at night such lights and do all such things for the safety of navigation as may be required by the Employer in the event of the Contractor not carrying out the obligation imposed upon him by this Clause the Employer may buoy and light such sunken craft or plant and raise and remove the same and the Contractor shall refund to the Employer all costs incurred in connection therewith.</p>
<p>New Clause 22 Contractor's Temporary Moorings</p>	<p><i>Insert the following as Clause 22;</i></p> <p>Should the Contractor for the purpose of this Contract desire to provide temporary mooring for his marine fleet / craft and floating plant he will be allowed to do so in position and manner approved by the Employer. The Contractor shall not lay such moorings so as to interfere with the traffic in the waterways and such moorings shall be removed if any when required by the Employer.</p> <p>The Employer shall permit for moorings as above (only for the marine fleet / craft and floating plant required for the Works) at free of charge till the date of Time for Completion stipulated herein or Employer's approval for demobilization, whichever is earlier. The Contractor shall pay commercial rent for such marine fleet / craft / floating plant beyond the said date, however, subject to prior approval of the Employer.</p>
<p>New Clause 23 Life Saving Appliances & First Aid Equipment</p>	<p><i>Insert the following as Clause 23;</i></p> <p>The Contractor shall provide and maintain for use at all times upon the Works proper and efficient life saving appliances and first aid equipment in accordance with the requirements of the Works and/or of ILO, Convention No. 62.</p>
<p>New Clause 24 Bribes, Commission</p>	<p><i>Insert the following as Clause 24;</i></p> <p>Any bribe, commission, gift or advantage given, promised or offered by or on behalf of the Contractor or his partner, agent or servant or anyone on his or their behalf to any officer, servant, representative or agent of the Employer or to any person on his behalf in relation</p>

	<p>to obtaining benefits to the execution of this or any other contract with the Employer, shall in addition to any criminal liability which he may incur, subject the Contractor to the termination of this and all other Contracts with the Employer and also to the payment of any loss or damage resulting from such termination. The Employer shall be entitled to deduct the amounts so payable from any money otherwise due to the Contractor under this or any other Contract. Any question or dispute as to the occurrence of any offense under the present Clause shall be settled by the Employer in such manner and on such evidence or information as he shall think fit and consider sufficient and his decision shall be final and conclusive.</p>
<p>New Clause 25 Drawings, Photographs and videos of the Works and the Terminal including its operations.</p>	<p><i>Insert the following as Clause 25;</i></p> <p>The Contractor shall not disclose details of drawings furnished to him and works on which he is engaged without the approval of the Employer. No photograph or video of the works or any part thereof or plant employed thereon or the Terminal / operations at Terminal shall be taken or permitted by the Contractor to be taken by any of his employees or any employee of his sub-contractors without the approval of the Employer and no such photograph shall be published or otherwise circulated without the approval of the Employer. Otherwise, the Employer, save to the extent provided herein, shall have the right to take all appropriate and suitable measures against the Contractor and such of his personnel.</p>
<p>New Clause 26 Pollution</p>	<p><i>Insert the following as Clause 26;</i></p> <p>Subject and without prejudice to any other provisions of the Contract, the Contractor shall assume / take all responsibilities / precautions as below;</p> <ul style="list-style-type: none"> (a) In connection with the sea or any harbours, rivers, streams, waterways, drains, water courses, reservoirs and the like to prevent; <ul style="list-style-type: none"> (i) Pollution of the water so as to affect adversely the quality or appearance thereof or cause injury or death to animal and plant life. (b) In connection with underground water resources including percolating water prevent; <ul style="list-style-type: none"> (i) Any interference with the supply to or abstractions from such sources. (ii) Pollution of the water so as to affect adversely the quality thereof.
<p>New Clause 27 Customs, Security & Safety Requirements at Terminal</p>	<p><i>Insert the following as Clause 27;</i></p> <p>The Contractor shall comply with all regulations imposed by the Authorities with regard to Customs, Security and Safety Requirement in respect of the passage of plant, materials and personnel. Contractor shall execute his works in such a way that existing Terminal works / operation are not disturbed. The Contractor shall not be entitled to any extension of time or additional payment in this regard.</p>
<p>New Clause 28 Interface Obligation</p>	<p><i>Insert the following as Clause 28;</i></p> <p>The Contractor shall acknowledge that the Works are part and parcel of other contracts / works being / to be executed by other contractors employed / to be employed by the Employer. The Contractor undertakes to manage and be responsible for all interfaces of the Works with other contractors. Further, the Contractor indemnifies the Employer from any of claims, of himself and/or the other contractors, including towards any business loss without limitation under Clause 17.6 in connection with the interface with other contracts.</p>

SCHEDULES

SCHEDULE 1 FORM OF TENDER

[On Tenderer's Letter Head]

To:
Inland Waterways Authority of India (IWAI)
A-13, Sector 1
Noida – 201 301
Uttar Pradesh

SUBJECT: Development of container handling facilities at Sittwe & Paletwa in Myanmar under KMTT Project

1. With reference to your Tender Documents bearing No. IWAI/KPMU/44/Container/2018 of 2018, we, having inspected the Site and having examined the Tender Documents and the following Addenda and/or Corrigenda to the Tender Documents and understood its contents, hereby we offer to develop container handling facilities at Sittwe & Paletwa in Myanmar under KMTT Project, on EPC basis Form of Tender and remedy any defects therein in conformity with the Tender Documents for the sum of INR----- (Indian Rupees)
2. We acknowledge that the Authority will be relying on the information provided in the Form of Tender and the documents accompanying such Tender, and we certify that all information provided in the Form of Tender and through Forms is true and correct; nothing has been omitted or concealed which renders such information misleading and all documents accompanying such Form of Tender are true copies of their respective originals.
3. We shall make available to the Authority any additional information it may find necessary or require to supplement or authenticate the Technical Proposal.
4. We acknowledge the right of the Authority to reject our bid without assigning any reason or otherwise and hereby waive, to the fullest extent permitted by applicable law, our right to challenge the same on any account whatsoever.
5. We, the undersigned, declare that:
 - (a) we have examined and have no reservations to the Tender Documents, including following Addenda and / or Corrigenda issued by the Employer;

(i)

(ii)

[insert above the number and issuing date of each Addendum and/or Corrigendum]

 - (b) if our Bid is accepted, we commit to obtain a Performance Security in accordance with the Tender Documents;
 - (c) we, including our respective personnel (including subcontractors, suppliers, manufacturers) and affiliates, for any part of the contract, do not have any conflict of interest in accordance with Section 1 A;
 - (d) we are not submitting more than one Tender in this Tendering process, in accordance with ITT 1.4.1;

- (e) we, including our respective personnel (including subcontractors, suppliers, manufacturers) and affiliates, not been found engaged in 'corrupt, fraudulent, collusive, coercive or undesirable' practices in accordance with Clause 24 of SCC;
 - (f) we have not been suspended by the Government of India or any State Government in India or by the Government of the [..... name of the country(ies)]¹, as a result of the execution of a Tender-Securing Declaration, in conformity with Section 1 A;
 - (g) we are not barred by the Government of India or any State Government in India and no bar subsists as on the Tender submission date, in conformity with Section 1A; and
 - (h) we, in conformity with Section 1A, are not in the process of corporate debt restructuring as of the deadline of Tender submission.
- 6. We understand that you reserve the right to accept or reject any Tender, and to annul the Tendering process and reject all Tender at any time prior to Contract award, without thereby incurring any liability to Tenderer, in accordance with ITT 1.27.1.
 - 7. We certify that in regard to matters other than security and integrity of the country, we/ any member of the Consortium/ JV have not been convicted by a Court of Law or indicted or adverse orders passed by a regulatory authority which could cast a doubt on our ability to undertake the Contract or which relates to a grave offence that outrages the moral sense of the community
 - 8. We undertake that in case due to any change in facts or circumstances during the Tendering Process, we are attracted by the provisions of disqualification in terms of the provisions of this Tender Documents; we shall intimate the Employer of the same immediately.
 - 9. We hereby irrevocably waive any right or remedy which we may have at any stage as per law or howsoever otherwise arising to challenge or question any decision taken by the Employer in connection with the selection of the Tenderer, or in connection with the selection/Tendering Process itself, in respect of the above mentioned Works and the terms and implementation thereof.
 - 10. We confirm that no agent, middle-man or any intermediary has been, or will be engaged to provide any services, or any other item of work related to the award and performance of this Contract. We further confirm and declare that no agency commission or any payment, which may be construed as an agency commission has been, or will be, paid and that the Tender price does not include any such amount. We acknowledge the right of the Employer, if he finds to the contrary, to declare our Tender to be non-compliant and if the Contract has been awarded to declare the Contract null and void.
 - 11. We undertake to hold in confidence all documents and information whether technical or commercial supplied to us at any time by or on behalf of the Authority in connection with this Tender Documents or/with the above mentioned Works, without your written authority or as otherwise required by the Law and not to publish or otherwise disclose the same.
 - 12. We acknowledge that the Forms to the Technical Proposal are integral part of the Tender.
-

13. A Power of Attorney in favour of the authorised signatory to sign and submit the Tender and documents, is attached herewith as per format placed at Forms of Tender.
14. We have independently considered the amount shown in Conditions of Contract together with Appendix to Tender as Delay Damages and agree that they represent a fair estimate of the damages likely to be suffered by the Employer in the event of Works not being completed in time.
15. We hereby confirm that the Tender complies with:
 - (a) The Tender validity in accordance to ITT 1.14.
 - (b) The Tender security in accordance to ITT 1.15.
16. We agree and undertake to abide by all the terms and conditions of the Tender Documents.

For and on behalf of [Name of the Tenderer]

.....

[Signature]

.....

[Name of the person duly authorized to sign the Tender on behalf of the Tenderer]

.....

[Title of the person signing the Tender]

.....

[Date DD/MMM/YYYY]

SCHEDULE 2
POWER OF ATTORNEY
FORMAT FOR POWER OF ATTORNEY FOR SIGNING OF TENDER
(Refer ITT 1.10.2)

SUBJECT: Construction of container handling facilities at Sittwe & Paletwa in Myanmar under KMTT Project

Know all men by these presents, We..... *[name of the firm and address of the registered office]* do hereby irrevocably constitute, nominate, appoint and authorise Mr/ Ms *[name]*, son/daughter/wife of and presently residing at, who is presently employed with us and holding the position of, as our true and lawful attorney (hereinafter referred to as the "Attorney") to do in our name and on our behalf, all such acts, deeds and things as are necessary or required in connection with or incidental to submission of our Tender for the Works proposed by the (the "Authority") including but not limited to signing and submission of Tender and other documents and writings, participate in pre-tender and other conferences and providing information/ responses to the Authority, representing us in all matters before the Authority, signing and execution of all contracts including the Contract Agreement and undertakings consequent to acceptance of our Tender, and generally dealing with the Authority in all matters in connection with or relating to or arising out of our Tender for the said Works and/ or upon award thereof to us and/or till the entering into of the Contract Agreement with the Employer.

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

IN WITNESS WHEREOF WE, *[name of Tenderer]*, THE ABOVE NAMED PRINCIPAL HAVE EXECUTED THIS POWER OF ATTORNEY ON THIS DAY OF 20
For.....

(Signature, name, designation and address)

The Common Seal of *[name of*)
Tenderer], is hereunto affixed in the presence)
of *[name with position]*, who has signed)
these presents in token thereof.)

Witnesses:

1.

2.

Accepted

.....

(Signature)

(Name, Title and Address of the Attorney)

(Notarised)

Notes:

1. *The mode of execution of the Power of Attorney should be in accordance with the procedure, if any, laid down by the applicable law and the charter documents of the executant(s) and when it is so required, the same should be under common seal affixed in accordance with the required procedure.*
2. *Wherever required, the Tenderer should submit for verification the extract of the charter documents and documents such as a board or shareholders' resolution/ power of attorney in favour of the person executing this Power of Attorney for the delegation of power hereunder on behalf of the Tenderer.*

SCHEDULE 3 COMPOSITION OF TENDERER'S ORGANISATION

The Tenderer shall give below details of the organisation structure of the company. This shall include but not be limited to the name and address of the Company, country in which the company is registered, size and registered capital of the Company, name of partnership and list of partners together with the name, qualification, position and authority of key personnel, etc.

1. (a) Name:
(b) Country of incorporation:
(c) Address of the corporate headquarters and its branch office(s), if any, in India:
(d) Date of incorporation and/ or commencement of business:
2. Brief description of the Company including details of its main lines of business and proposed role and responsibilities in this Contract:
3. Particulars of individual(s) who will serve as the point of contact/ communication for the Tenderer:
 - (a) Name:
 - (b) Designation:
 - (c) Company:
 - (d) Address:
 - (e) Telephone Number:
 - (f) E-Mail Address:
 - (g) Fax:
4. Particulars of the Authorized Signatory of the Tenderer:
 - (a) Name:
 - (b) Designation:
 - (c) Address:
 - (d) Phone Number:
5. In case of a Consortium/JV:
 - (a) The information above (1-4) should be provided for all the Members of the Consortium/JV.
 - (b) A copy of the Jt. Bidding Agreement should be attached to the Tender.
 - (c) Information regarding the role of each Member should be provided as per table below:

S.No.	Name of Member	Role	Percentage of participation in the Consortium/JV**
1.			
2.			
3.			

* The role of each Member, as may be determined by the Tenderer, should be indicated.

****The percentage of participation should be indicated.**

6. In case of Specialised Sub-Contractor proposed, the information above (1-4) should be provided. Consent letter from the participating Specialised Sub-Contractor is as provided in the RFQ.

7. The following information shall also be provided for the Tenderer, including each Member of the Consortium/JV and Specialised Sub-Contractor:

S.No.	Criteria	Yes	No
1.	Has the Tenderer/ constituent of the Consortium/JV, Specialized Sub-Contractor been barred by the Central/ State Government, or any entity controlled by it, from participating in any project?		
2.	If the answer to 1 is yes, does the bar subsist as on the date of Tender?		
3.	Has the Tenderer/ constituent of the Consortium/JV paid liquidated damages of more than 5% of the contract value in a contract due to delay or has been penalized due to any other reason in relation to execution of a contract, in the last seven years?		

Note:

* Attached are the copies of original documents of:

1. Articles of Incorporation in conformity with the provisions of the laws of that country (or equivalent documents of constitution or association) and/or documents of registration of the legal entity named above.
2. In case of government-owned entity documents establishing:
 - a. Legal and financial autonomy
 - b. Operation under commercial law
3. Included are the organizational chart, a list of Board of Directors and the beneficial ownership.

SCHEDULE 4 PENDING LITIGATION

[The following table shall be filled in by the Tenderer and in the case of a Consortium/JV, by each Member]

Tenderer's Name: *[insert full name]*.....

Date: *[insert day, month, year]*.....

Details of Pending Litigation up to 31st March 2018, in accordance with Section 1A, Eligibility and Qualification Clause No. 1.24.1 are as follows:

Date, month & Year of dispute	Amount in dispute (Currency, INR Equivalent (exchange rate*))	Contract Identification	Total Contract Amount (Currency), INR Equivalent (exchange rate*)
[insert date]	<i>[insert amount]</i>	Contract Identification: <i>[indicate complete contract name, number, date and any other identification]</i> Name of Employer: <i>[insert full name]</i> Address of Employer: <i>[insert street/city/country]</i> Matter in dispute: <i>[indicate main issues in dispute]</i> Party who initiated the dispute: <i>[indicate "Employer" or "Contractor"]</i> Status of dispute: <i>[Indicate if it is being treated by the Adjudicator, under Arbitration or being dealt with by the Judiciary]</i>	[insert amount]
[insert date]	<i>[insert amount]</i>	Contract Identification: <i>[indicate complete contract name, number, date and any other identification]</i> Name of Employer: <i>[insert full name]</i> Address of Employer: <i>[insert street/city/country]</i> Matter in dispute: <i>[indicate main issues in dispute]</i> Party who initiated the dispute: <i>[indicate "Employer" or "Contractor"]</i> Status of dispute: <i>[Indicate if it is being treated by the Adjudicator, under Arbitration or being dealt with by the Judiciary]</i>	[insert amount]
[insert date]	<i>[insert amount]</i>	Contract Identification: <i>[indicate complete contract name, number, date and any other identification]</i> Name of Employer: <i>[insert full name]</i> Address of Employer: <i>[insert street/city/country]</i> Matter in dispute: <i>[indicate main issues in dispute]</i>	[insert amount]

Date, month & Year of dispute	Amount in dispute (Currency, INR Equivalent (exchange rate*))	Contract Identification	Total Contract Amount (Currency), INR Equivalent (exchange rate*)
		<i>Party who initiated the dispute: [indicate "Employer" or "Contractor"]</i> <i>Status of dispute: [Indicate if it is being treated by the Adjudicator, under Arbitration or being dealt with by the Judiciary]</i>	

Certified that the above information is correct as per records and nothing has been omitted / concealed.

.....(Signature of the Statutory Auditor)

..... (Full Name of the Statutory Auditor)

..... (Name of the Statutory Auditor's Firm)

..... (Complete Address of the Statutory Auditor's Firm)

..... (Telephone/fax numbers, including country and city codes)

..... (E-mail of the Statutory Auditor)

..... (Seal of the Statutory Auditor)

Membership No. of the Statutory Auditor:

Notes:

- (i) The Tenderer shall provide accurate information about all pending litigation and / or arbitration cases resulting from contracts completed or ongoing under its execution.
- (ii) The Tenderer shall also provide details of pending litigation referred in paragraph (i) above, which has been accounted for in the submitted latest audited Balance Sheet as follows:
 - (a) The claims and suits lodged against the company for which the company has not accounted for the liability in its books as the matter is pending with arbitration/ courts and the same has not been finally settled up to the date of Balance Sheet and the company is sure that the decision will not go against the company. **(Please indicate the page no. of the Audited Balance Sheet where these amounts have been reflected).**
 - (b) The claims and suits lodged by the company against customers/ supplies for recovery of dues and the matter is pending with arbitration/ courts and the company has accounted for the claims as receivable in its books of account considering the decision will be in favour of

the company. **(Please indicate the page no. of the Audited Balance Sheet where these amounts have been reflected).**

- (iii) Schedule-4 should be duly certified by the Statutory Auditors of the Applicant.

SCHEDULE 5 LITIGATION HISTORY

[The following table shall be filled in by the Tenderer and in the case of a Consortium/JV, by each Member]

Applicant's Name: *[insert full name]*.....

Date: *[insert day, month, year]*.....

Details of Litigation History till 31st March 2018 in accordance with Section 1A, Eligibility and Qualification Clause No. 1.24.1 are as follows:

Date, month & Year of award	Amount of Award (Currency), INR Equivalent (exchange rate*)	Contract Identification	Total Contract Amount (Currency), INR Equivalent (exchange rate*)
<i>[insert date]</i>	<i>[insert amount]</i>	Contract Identification: <i>[indicate complete contract name, number, date and any other identification]</i> Name of Employer: <i>[insert full name]</i> Address of Employer: <i>[insert street/city/country]</i> Matter in dispute: <i>[indicate main issues in dispute]</i> Party who initiated the dispute: <i>[indicate "Employer" or "Contractor"]</i> Status of dispute: <i>[Indicate if it is being treated by the Adjudicator, under Arbitration or being dealt with by the Judiciary]</i>	<i>[insert amount]</i>
<i>[insert date]</i>	<i>[insert amount]</i>	Contract Identification: <i>[indicate complete contract name, number, date and any other identification]</i> Name of Employer: <i>[insert full name]</i> Address of Employer: <i>[insert street/city/country]</i> Matter in dispute: <i>[indicate main issues in dispute]</i> Party who initiated the dispute: <i>[indicate "Employer" or "Contractor"]</i> Status of dispute: <i>[Indicate if it is being treated by the Adjudicator, under Arbitration or being dealt with by the Judiciary]</i>	<i>[insert amount]</i>
<i>[insert date]</i>	<i>[insert amount]</i>	Contract Identification: <i>[indicate complete contract name, number, date and any other</i>	<i>[insert amount]</i>

Date, month & Year of award	Amount of Award (Currency), INR Equivalent (exchange rate*)	Contract Identification	Total Contract Amount (Currency), INR Equivalent (exchange rate*)
		<i>identification]</i> <i>Name of Employer: [insert full name]</i> <i>Address of Employer: [insert street/city/country]</i> <i>Matter in dispute: [indicate main issues in dispute]</i> <i>Party who initiated the dispute: [indicate "Employer" or "Contractor"]</i> <i>Status of dispute: [Indicate if it is being treated by the Adjudicator, under Arbitration or being dealt with by the Judiciary]</i>	

Certified that the above information is correct as per records and nothing has been omitted / concealed.

.....(Signature of the Statutory Auditor)

..... (Full Name of the Statutory Auditor)

..... (Name of the Statutory Auditor's Firm)

..... (Complete Address of the Statutory Auditor's Firm)

..... (Telephone/fax numbers, including country and city codes)

..... (E-mail of the Statutory Auditor)

..... (Seal of the Statutory Auditor)

Membership No. of the Statutory Auditor:

Notes:

- (i) The Applicant shall provide accurate information about any litigation or arbitration resulting from contracts completed or ongoing under its execution over the last five years.
- (ii) This may be noted that under this category only cases of arbitration /litigation finally settled against the Applicant should be listed. If the case is pending at any level of arbitration or judiciary, the same should be listed in Pending Litigation and NOT under Litigation History. A consistent history of awards against the Applicant may result in failure of the Application.
- (iii) Schedule-5 should be duly certified by the Statutory Auditors of the Applicant

SCHEDULE 6 AVERAGE ANNUAL TURNOVER

[The following table shall be filled in by the Tenderer and in the case of a Consortium/JV, by each Member]

Applicant's Name: *[insert full name]*:

Year (Financial year to be indicated by Applicant)	Amount	ANNUAL TURNOVER (INR Crores)
<i>[indicate financial year]</i>	<i>[insert amount and indicate currency]</i>	
Average Annual Turnover		

Note:

Annual Turnover should be substantiated through (i) Audited Balance Sheets of the relevant financial years, provided the figures, are stated in the Balance Sheet(s) or (ii) Specific certificate(s) issued by the Statutory Auditors or (iii) Certificate(s) issued by the Clients for CONSORTIUM/JV Member.

SCHEDULE 7A
WORKING CAPITAL SITUATION
SOURCES OF FINANCE

Specify proposed sources of financing, such as liquid assets, unencumbered real assets, and other financial means, net of current commitments, available to meet the total cash flow demands of the subject contract, as indicated in **Clause No. 1.24.1: Eligibility and Qualification Criteria**. The following table to be duly certified by the statutory auditor of Applicant

	Source of finance	Amount (INR equivalent)

SCHEDULE 7B FINANCIAL SITUATION OF THE APPLICANT

[The following table shall be filled in by the Tenderer]

Applicant's Name: *[insert full name]*

1. Financial data

Type of Financial information in (currency)	Historic information for previous 5 (Five) Years (amount in currency, exchange rate*, INR equivalent)				
Statement of Financial Position (Information from Balance Sheet)					
A. Total Assets (TA) (Excluding Deferred Expenditure and Losses)					
B. Total Outside Liabilities (TL) (Long Term Liabilities and Current Liabilities and Provisions)					
C. 25% of Litigation value as per details in schedule 4, net of provisions already made.					
D. Net Worth = A - B - C					
E. Current Assets (CA)					
F. Current Liabilities and Provisions (CL)					
G. Working Capital = E - F					
H. Proposed Specific Line of Credit Agreed by Commercial Bank and/or any Other Source of Finance for the subject contract.					
I. Total Available Working capital (G + H) for the subject contract					
J. Working Capital requirements for current contract commitments [
K. Sources of Finance for current contract commitments					
L. Working Capital available after meeting the Working Capital requirements for					

Type of Financial information in (currency)	Historic information for previous 5 (Five) Years (amount in currency, exchange rate*, INR equivalent)				
current contract commitments (I – J + K)					
III. Financial Soundness					
M. Net worth					
N. Profit before taxes					
O. Profit after taxes					

2. Financial documents

- (a) The Audited Balance Sheets, Profit and Loss Account and cash flow statement of Group Companies, Parent Companies or Sister Companies shall not be considered for evaluation. The Applicants are advised to strictly adhere to this requirement and submit the above statements of the Applicant.
- (b) The Applicant shall attach copies of the Audited Balance Sheets, other Financial Statements for 5 (five) years preceding the Application Due Date, which shall:
- (i) Reflect the financial situation of the Application, and not an affiliated entity(such as parent company or group company)
 - (ii) Be statutorily audited, certified ;
 - (iii) Be complete, including all notes attached thereto;
 - (iv) Correspond to accounting periods already completed and audited (no statements for partial periods shall be requested or accepted).

Note:

1. Year 1 will be the latest completed financial year preceding the Application Due Date. Year 2 shall be the year immediately preceding Year 1 and so on. For the avoidance of doubt, financial year shall, for the purposes of the Application hereunder, mean the accounting year followed by the Applicant in the normal course of its business.
2. If the most recent set of Balance Sheet or the Financial Statement, as the case may be, is for a period earlier than 12 months from the date of application, justification should be provided for the same.

SCHEDULE 7C
CORPORATE DEBT RESTRUCTURING

TO WHOM SO EVER IT MAY CONCERN

This is to certify that [Applicant's legal name with address], is not under the process of Corporate Debt Restructuring and/or [Applicant's legal name with address] resolved all debt restructuring issues with the Banks/Institutions as on 18th July 2018

According to the information, explanations and documents provided by the Applicant to us, we certify that the above information is correct to the best of our knowledge and belief.

..... (Signature of the Statutory Auditor)

..... (Full Name of the Statutory Auditor)

..... (Name of the Statutory Auditor's Firm)

..... (Complete Address of the Statutory Auditor's Firm)

..... (Telephone/fax numbers, including country and city codes)

..... (E-mail of the Statutory Auditor)

..... (Seal of the Statutory Auditor)

Membership No. of the Statutory Auditor:

Note: The information in above prescribed format (Schedule:7C) shall be certified by the Statutory Auditors of the Applicant or in case the accounts of the Applicant are not required to be statutorily audited, certified in accordance with local legislation.

SCHEDULE 8 BIDING CAPACITY

(Eligibility and Qualification Clause No. 1.24.1)

Average annual turnover for last five (5) financial years	Value of works outstanding as on 31st March 2018 (in INR crore)	No. of years prescribed for Completion of the works for which Bids are invited	Available Bid Capacity (in INR crore)	Remarks [minimum available Bid capacity shall be Rs 30 crore]
A	B	N	{[A x N x 2] - B}	
Amount as per Schedule 6	Total as per Schedule 11	3		

Note:

- Minimum Available Bidding Capacity of Rs. 232 crore (INR Two Thirty Two Crore Only) for Civil construction works

$$\text{Bidding Capacity} = \{[A \times N \times 2] - B\}$$

Where,

A = Maximum turnover in construction works executed in any one year during the last five years taking into account the completed as well as works in progress. The value of completed works shall be brought to current costing level by enhancing at a simple rate of 7% per annum.

N = Number of years prescribed for completion of work for which bids has been invited.

B = Value of existing commitments and ongoing works to be completed during the period of completion of work for which bids have been invited.

SCHEDULE 9 GENERAL EXPERIENCE RECORD

Name of Tenderer:

All individual firms are requested to complete the information in this form. The information supplied should be the annual turnover of the Tenderer, in terms of the amounts billed to clients for each year for work in progress or completed, at the end of the period reported.

<i>Annual turnover data (Civil Construction only)</i>			
<i>S. No.</i>	<i>Year</i>	<i>Turnover</i>	<i>Indian Rupees</i>
1.			
2.			
3.			
4.			
5.			

Signature of Tenderer

SCHEDULE 10 SIMILAR WORKS EXPERIENCE

[The following table shall be filled in for contracts performed by the Tenderer]

Applicant's Name: *[insert full name]*

Similar work No. <i>[insert number] of [insert number of similar works required]</i>	Information		
Description of the similarity in accordance with similar work as defined in Section 1 A, Eligibility and Qualification Criteria			
Contract Identification	<i>[insert contract name and number, if applicable]</i>		
Award date	<i>[insert day, month, year]</i>		
Completion date	<i>[insert day, month, year]</i>		
Role in Contract <i>[check the appropriate box]</i>	Prime Contractor <input type="checkbox"/>	Member in Joint Venture of Contractor	
Total Contract Amount	<i>[insert total contract amount in local currency]</i>	INR <i>[insert Exchange rate and total contract amount in INR equivalent]*</i>	
Total Contract Amount after accounting for escalation as per provision given below *	<i>[insert total contract amount in local currency after escalation]</i>	INR <i>[insert Exchange rate and total contract amount in INR Equivalent after escalation]*</i>	
If member in a joint venture or sub-contractor, specify participation in total contract amount	<i>[insert a percentage amount]</i>		
Employer's Name:	<i>[insert full name]</i>		

Similar work No. <i>[insert number] of [insert number of similar works required]</i>	Information
Address: Telephone/fax number E-mail:	<i>[indicate street / number / town or city / country]</i> <i>[insert telephone/fax numbers, including country and city area codes]</i> <i>[insert e-mail address, if available]</i>

*For completed works, escalation @ 7% per annum (applied from the date of completion of the works until 31st March 2018) shall be considered for equating the works of the previous years to the current year for Indian Rupees (INR).

*In case currencies other than INR, for equating the works of the previous years to the current year, an escalation of 2% per annum on foreign currency amount shall first be applied (applied from the date of completion of works until 31st March 2018). The resulting amount then shall be converted into INR using the exchange rate applicable on 31st march as detailed below.

Exchange Rates

Whenever requires a tenderer to state a monetary amount, he should indicate INR equivalent using the rate of exchange determined as follows

1. Value of single contract – Exchange rate prevailing on date of completion of the project.
2. For the purpose of conversion of foreign currency to Indian Rupees (INR), the tenderers shall use the reference rates of foreign currency published by:
 - (a) Reserve Bank of India (www.rbi.org.in).
 - (b) in case the exchange rate is not published by Reserve Bank of India, then the “selling rate” of such currency shall be taken from the web site: <http://www.oanda.com>.
 - (c) in case a particular currency rate is not available on the above website also, then the “mid-market” rate of such currency shall be taken from the following internet web site: <http://www.xe.com>.
3. Any error in determining the exchange rate in the bid may be corrected by the Authority.

SCHEDULE 11

SUMMARY SHEET: CURRENT CONTRACT COMMITMENTS / WORKS IN PROGRESS

Name of Tenderer

Tenderers should provide information on their current commitments on all **Marine works like Berthing Structures and Approach Contracts** that have been awarded, or for which a letter of intent or acceptance has been received, or for contracts approaching completion, but for which an unqualified, full completion certificate has yet to be issued.

S. No.	Name of the Contract	Joint venture Percentage Share (%)	Commencement Date as per Contract	Completion Date as per Contract	Period of completion of work (in months)	Total Contract Value	Work done up to 31 st March 2018	Value of works outstanding as on 31 st March 2018	Converted Contract Value Share of Applicant	Value of works outstanding as on 31 st March 2018 Share of Applicant	Working Capital requirement for 3 months* Share of Applicant	Fund based line of credit sanctioned for these contracts
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)	(13)
1												
2												
3												
...												
Total (A)												
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)	(13)
1												
2												
3												
4												
...												
Total (B)												
Total (A+B)												

Certified that the above information is correct as per records and nothing has been omitted / concealed.

.....(Signature of the Statutory Auditor)
..... (Full Name of the Statutory Auditor)
..... (Name of the Statutory Auditor's Firm)
..... (Complete Address of the Statutory Auditor's Firm)
..... (Telephone/fax numbers, including country and
city codes)
..... (E-mail of the Statutory Auditor)
..... (Seal of the Statutory Auditor)

Membership No. of the Statutory Auditor:

Note:

1. Applicants should provide information on their current commitments on all contracts that have been awarded, or for which a letter of intent or acceptance has been received, or for contracts approaching completion, but for which an unqualified, full completion certificate has yet to be issued even if completion of such works spills over beyond completion period of this contract.
2. The working capital requirements for 3 months shall be calculated on the basis of period of completion of work (i.e. dividing the value of work by period (in months) of completion to execute the work and multiplying by three).
3. The Documentary evidence of the amount and source of funds indicated in column 13 shall be submitted by the Applicant. In the absence of the supporting documentary evidence, the amount of funds indicated in column 13 against respective works shall not be considered.

The financial data in above prescribed format (Schedule 11) shall be certified by the Statutory Auditors of the Applicant or in case the accounts of the Applicant are not required to be statutorily audited, certified in accordance with local legislation.

SCHEDULE 12 DECLARATION OF SUB-CONTRACTORS

It is our intention to employ the following subcontractors who we believe, after investigation, to be reliable and competent for the performance of that part of the work indicated. All other work will be done by us.

Name and Address of Principal Subcontractors:	Principal Division of the work to be done by Sub-Contractor:
--	---

It is agreed that we shall not subcontract any principal division of the work with any other individual or organisation without the consent of the Employer in writing.

Signature of Tenderer

SCHEDULE 13A
TENDERER'S PROPOSED SITE ORGANISATION

(Clause 1.10 of Instructions to Tenderers)

The Tenderer shall indicate below his **Site Organisations** to be employed in planning and supervising Engineering aspects for this project. This shall include but not be limited to the setup and size of the site organisation together with the name, position, qualification, experience and authority of such personnel required for the execution of the project as per form attached along with their **period of deployment** for this project in a **Bar Chart** to suit the construction schedule.

Signature of Tenderer

SCHEDULE 13B DETAILS OF CONTRACTOR'S SUPERVISORY AND TECHNICAL STAFF

(Clause 1.10 of Instructions to Tenderers)

1. FULL NAME OF STAFF 2. NATIONALITY.....

3. EDUCATION

Institution Attended	Address	From (Year)	To (Year)	Degrees/Diplomas Received
a.				
b.				
c.				
d.				

4. WORK EXPERIENCE

Name of Project	Location	Name of Employer	Size of Project Cost		Position held
			Indian Rupees		
a.					
b.					
c.					
d.					

5. YEARS OF EXPERIENCE (as applicable) - Port & Harbour
Construction / Marine
Civil Construction

6. POSITION TO BE ASSIGNED TO HIM BY THE CONTRACTOR;

7. PERIOD OF DEPLOYMENT

Date:

Signature of Tenderer

SCHEDULE 14 PLANT AND EQUIPMENT

(Clause 1.10 of Instructions to Tenderers)

The Tender must demonstrate that it has the key equipment listed hereafter or shall give an undertaking to provide these equipment's in case of award of contract to him. The undertaking shall be in the form of an affidavit on a judicial stamp paper stating that the Tenderer shall provide all the Major equipment as listed below:

S. No.	Equipment Characteristics	Capacity	Owned/ Leased	Year Make	Minimum Number
1.	Mobile Crane	Min 75 T			2
2.	Batching Plant	30 cum/hr			2
3.	Diesel Generator	125 KVA			2
4.	Air Compressor	400 CFM			3
5.	Double Drum Winch	7.5MT			5
6.	Concrete Mixing Plant with cement debugger	60 cum			2
7.	Concrete Pump	48 cum			2

Note:

1. Acceptance of these details shall not relieve the Tenderer of any of his obligations under the Contract.
2. The Plants and Equipment's will be either owned by the Contractor or would be taken on lease for the Contract. In its Tender the Contractor will demonstrate the details as such.
3. The Contractor will mobilize additional and requisite Plants and Equipment to complete the Scope of work.
4. The proposed equipment should be in good working condition for its intended purposes.

Signature of Tenderer

SCHEDULE 15

METHOD STATEMENT AND IMPLEMENTATION SCHEDULE

(Clause 1.10 of Instructions to Tenderers)

The method statement defining each element clearly indicating the methodology and sequence proposed for the execution of work, and other relevant factors along with proposed implementation schedule.

SCHEDULE 16 STATEMENT OF DEVIATIONS

The Tenderer(s) shall indicate in the format given below the deviation(s), if any, he proposes against specific clauses of both Volume-I and Volume-II separately. It is to be noted that in case no deviation is listed herein, it shall be considered that the Tenderer has agreed to comply with all the requirements of the Tender Documents.

Forma for Statement of Deviations

Volume I/II Clause No.	Deviation	Remarks (including justification)
-----------------------------------	------------------	--

SCHEDULE 17

FORMAT FOR JOINT VENTURE AGREEMENT

[To be executed on Stamp paper of appropriate value]

THIS JOINT TENDERING AGREEMENT is entered into on this the day of 2018
BETWEEN

1., a company having its registered office at (hereinafter referred to as the “**First Part**” which expression shall, unless repugnant to the context include its successors and permitted assigns)

AND

2., a company having its registered office at (hereinafter referred to as the “**Second Part**” which expression shall, unless repugnant to the context include its successors and permitted assigns).

The above mentioned parties of the FIRST and SECOND are collectively referred to as the “**Parties**” and each is individually referred to as a “**Party**”

WHEREAS,

- (A) THE PROJECT _____, represented by its _____ (hereinafter referred to as the “**Employer**” which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and assigns) has invited Tenders for the works (the “**Works**”).
- (B) The Parties are interested in jointly Tendering for the Works as members of a CONSORTIUM/JV and in accordance with the terms and conditions of the Tender document in respect of the Works, and
- (C) It is a necessary condition under the Tender document that the members of the CONSORTIUM/JV shall enter into a Joint Tendering Agreement and furnish a copy thereof with the Tender.

NOW IT IS HEREBY AGREED as follows:

1. Definitions and Interpretations

In this Agreement, the capitalised terms shall, unless the context otherwise requires, have the meaning ascribed thereto under the RFQ.

2. Consortium/Joint Venture

- 2.1 The Parties do hereby irrevocably constitute a consortium/joint venture (the “**CONSORTIUM/JV**”) for the purposes of jointly participating in the Tendering Process for the Works.
- 2.2 The Parties hereby undertake to participate in the Tendering Process only through this CONSORTIUM/JV and not individually and/ or through any other consortium constituted for this Works, either directly or indirectly or through any of their associates.

3. Covenants

The Parties hereby undertake that in the event the CONSORTIUM/JV is declared the selected Applicant and awarded the Contract, the CONSORTIUM/JV members shall enter into a Contract Agreement with the Employer through its lead partner, undertake to perform all its obligations in compliance with the Contract Agreement for the Works.

4. Role of the Parties

The Parties hereby undertake to perform the roles and responsibilities as described below:

- a) Party of the First Part shall be the Lead member of the CONSORTIUM/JV and shall have the power of attorney from all Parties for conducting all business for and on behalf of the CONSORTIUM/JV during the Tendering Process and until the Contract Agreement is entered into with the Employer; Party of the First Part shall be the and
- b) Party of the Second Part shall be the.....

5. Joint and Several Liabilities

The Parties do hereby undertake to be jointly and severally responsible for all obligations and liabilities relating to the Works and in accordance with the terms of the, Tendering Document and the Contract Agreement.

6. Percentage Participation in the CONSORTIUM/JV

6.1 The Parties agree that the proportion of percentage participation in works among the Parties in the CONSORTIUM/JV shall be as follows:

First Party (Lead Member): *[should have at-least 51% percentage participation]*

Second Party: *[should have at-least 29 % percentage participation]*

6.2 The Parties undertake that they shall collectively hold 100% (hundred percent) of the percentage participation of the CONSORTIUM/JV at all times until the Completion of Guarantee Period of the Works.

7. Representation of the Parties

Each Party represents to the other Parties as of the date of this Agreement that:

- (a) Such Party is duly organised, validly existing and in good standing under the laws of its incorporation and has all requisite power and authority to enter into this Agreement;
- (b) The execution, delivery and performance by such Party of this Agreement has been authorised by all necessary and appropriate corporate or governmental action and a copy of the extract of the charter documents and board resolution/ power of attorney in favour of the person executing this Agreement for the delegation of power and authority to execute this Agreement on behalf of the CONSORTIUM/JV Member is annexed to this Agreement, and will not, to the best of its knowledge:
 - (i) Require any consent or approval not already obtained;
 - (ii) Violate any applicable law presently in effect and having applicability to it;
 - (iii) Violate the memorandum and articles of association, by-laws or other applicable organisational documents thereof;

- (iv) Violate any clearance, permit, concession, grant, license or other governmental authorisation, approval, judgement, order or decree or any mortgage agreement, indenture or any other instrument to which such party is a party or by which such party or any of its properties or assets are bound or that is otherwise applicable to such party; or
- (v) Create or impose any liens, mortgages, pledges, claims, security interests, charges or encumbrances or obligations to create a lien, charge, pledge, security interest, encumbrances or mortgage in or on the property of such party, except for encumbrances that would not, individually or in the aggregate, have a material adverse effect on the financial condition or prospects or business of such party so as to prevent such party from fulfilling its obligations under this agreement;
- (c) this Agreement is the legal and binding obligation of such Party, enforceable in accordance with its terms against it; and
- (d) there is no litigation pending or, to the best of such Party's knowledge, threatened to which it or any of its associates is a party that presently affects or which would have a material adverse effect on the financial condition or prospects or business of such Party in the fulfilment of its obligations under this Agreement.

8. Termination

This Agreement shall be effective from the date hereof and shall continue in full force and effect until the Completion of Guaranty Period of the Works is achieved under and in accordance with the Contract Agreement, in case the Contract is awarded to the CONSORTIUM/JV. However, in case the CONSORTIUM/JV does not get selected for award of the Contract, the Agreement will stand terminated or upon return of the Tender Security by the Employer to the Applicant, as the case may be.

9. Miscellaneous

9.1 This Joint Tendering Agreement shall be governed by laws of India.

9.2 The Parties acknowledge and accept that this Agreement shall not be amended by the Parties without the prior written consent of the Employer.

IN WITNESS WHEREOF THE PARTIES ABOVE NAMED HAVE EXECUTED AND DELIVERED THIS AGREEMENT AS OF THE DATE FIRST ABOVE WRITTEN.

SIGNED, SEALED AND DELIVERED

SIGNED, SEALED AND DELIVERED

For and on behalf of LEAD MEMBER

For and on behalf of SECOND

(Signature)

(Signature)

(Name)

(Name)

(Designation)

(Designation)

(Address)

(Address)

In the presence of:

1.

2.

Notes:

1. *The mode of the execution of the Joint Tendering Agreement should be in accordance with the procedure, if any, laid down by the Applicable Law and the charter documents of the executant(s) and when it is so required, the same should be under common seal affixed in accordance with the required procedure.*
2. *Each Joint Tendering Agreement should attach a copy of the extract of the charter documents and documents such as resolution / power of attorney in favour of the person executing this Agreement for the delegation of power and authority to execute this Agreement on behalf of the Consortium Member.*
3. *For a Joint Tendering Agreement executed and issued overseas, the document shall be legalised by the Indian Embassy and notarized in the jurisdiction where the Power of Attorney has been executed. However, the Power of Attorney provided by Applicants from countries that have signed the Hague Legislation Convention 1961 are not required to be legalised by the Indian Embassy if it carries a conforming Apostille certificate.*

SCHEDULE 18

POWER OF ATTORNEY FOR LEAD MEMBER OF CONSORTIUM/JV

Whereas the (“the Employer”) has invited applications from interested parties for the Works (the “Works”).

Whereas,,,and
(collectively the “CONSORTIUM/JV”) being Members of the CONSORTIUM/JV are interested in Tendering for the Works in accordance with the terms and conditions of the Tender Documents and other connected documents in respect of the Works, and

Whereas, it is necessary for the Members of the CONSORTIUM/JV to designate one of them as the Lead Member with all necessary power and authority to do for and on behalf of the CONSORTIUM/JV, all acts, deeds and things as may be necessary in connection with the CONSORTIUM/JV’s Tender for the Works and its execution.

NOW THEREFORE KNOW ALL MEN BY THESE PRESENTS

We, M/s..... having our registered office at and having our registered office at, (hereinafter collectively referred to as the “Principals”) do hereby irrevocably designate, nominate, constitute, appoint and authorise M/S having its registered office at, being one of the Members of the CONSORTIUM/JV, as the Lead Member and true and lawful attorney of the CONSORTIUM/JV (hereinafter referred to as the “Attorney”). We hereby irrevocably authorise the Attorney (with power to sub-delegate) to conduct all business for and on behalf of the CONSORTIUM/JV and any one of us during the Tendering process and, in the event the CONSORTIUM/JV is awarded the contract, during the execution of the Works and in this regard, to do on our behalf and on behalf of the CONSORTIUM/JV, all or any of such acts, deeds or things as are necessary or required or incidental to the submission of its Tender for the Works, including but not limited to signing and submission of all applications, Tenders and other documents and writings, accept the Letter of Award, participate in meetings and other conferences, respond to queries, submit information/ documents, sign and execute Contract(s) and undertakings consequent to acceptance of the Tender of the CONSORTIUM/JV and generally to represent the CONSORTIUM/JV in all its dealings with the Employer, and/ or any other Government Agency or any person, in all matters in connection with or relating to or arising out of the CONSORTIUM/JV’s Tender for the Works and/ or upon award thereof until the Contract Agreement is entered into with the Employer.

AND hereby agree to ratify and confirm and do hereby ratify and confirm all acts, deeds and things done or caused to be done by our said Attorney pursuant to and in exercise of the powers conferred by this Power of Attorney and that all acts, deeds and things done by our said Attorney in exercise of

the powers hereby conferred shall and shall always be deemed to have been done by us/
CONSORTIUM/JV.

IN WITNESS WHEREOF WE THE PRINCIPALS ABOVE NAMED HAVE EXECUTED THIS POWER
OF ATTORNEY ON THIS DD DAY OF MM-YYYY

For

(Signature)

.....

(Name & Title)

For

(Signature)

.....

(Name & Title)

Witnesses:

1.

2.

.....

(Executants)

(To be executed by all the Members of the CONSORTIUM/JV)

(Notarised)

Notes:

1. *The mode of execution of the Power of Attorney should be in accordance with the procedure, if any, laid down by the applicable law and the charter documents of the executant(s) and when it is so required, the same should be under common seal affixed in accordance with the required procedure.*
2. *Also, wherever required, the Applicant should submit for verification the extract of the charter documents and documents such as a board or shareholders' resolution/ power of attorney in favour of the person executing this Power of Attorney for the delegation of power hereunder on behalf of the Applicant.*
3. *For a Power of Attorney executed and issued overseas, the document will also have to be legalised by the Indian Embassy and notarised in the jurisdiction where the Power of Attorney is being issued. However, the Power of Attorney provided by Applicants from countries that have signed the Hague Legislation Convention 1961 are not required to be legalised by the Indian Embassy if it carries a conforming Apostille certificate.*

SCHEDULE 19 CHECK LIST

S. No.	Documents	Ref.	Put ✓ or X as Applicable	Page No.	Remarks
1	One Original Bid in hard bound	ITB 1.17.1			
2	Two copies of Bid in spiral/hard bound	ITB 1.17.1			
3	All pages are machine numbered and signed by Authorised Representative on each page	ITB 1.17.1			
4	Power of Attorney to submit Bid	ITB 1.10.2			
5	Bid Security in the form of Bank Guarantee	ITB 1.15.1 ITB 1.15.2 ITB 1.15.3			
6	Certificate for Corporate Debt Restructuring	Schedule 7C			
7	Declaration of Undertaking	ITB 1.10.2			
8	Form of Tender	Schedule 1			
9	Tenderer Information	Schedule 3			
10	Pending Litigation, Litigation History	Schedule 4 & Schedule 5			
11	Similar Works Experience details alongwith supporting documents such as Client's Certificate etc.	Schedule 10			
12	Audited Financial Statement of the last five (05) completed financial year	Schedule 6			
13	Working Capital Situation – Sources of Finance duly certified by Statutory Auditors.	Schedule 7A			
14	Average Annual Turnover	Schedule 6			

S. No.	Documents	Ref.	Put ✓ or X as Applicable	Page No.	Remarks
15	Details of Current Contract Commitments	Schedule 11			
16	Tendering Capacity	Schedule 8			
18	Method Statement and Implementation Schedule	Schedule 15			
19	Organisation and Management	Schedule 13A			
20	Proposed Key Personnel	ITB 1.10.2			
21	Resume of Proposed Key Personnel;	ITB 1.10.2			
22	Plant and Equipment	Schedule 14			
23	Blank Bid Document as whole, each page duly signed and stamped.	ITB 1.17			
25	Duly signed correspondence, addendum, corrigendum issued by the Employer in relation to the Subject Bid, in token of receipt and acceptance	ITB 1.10			
26	Joint Tendering Agreement	Schedule 17			
27	Power of attorney for lead member	Schedule 18			

ANNEXURES

ANNEXURE 1 FORM OF EMD (BANK GUARANTEE)

DATE:

Name of the Works:

To,
Director (DPA)
Ministry of External Affairs,
Jawaharlal Nehru Bhawan,
Janpath, New Delhi - 110011

WHEREAS, _____ *[name of Tenderer]* (hereinafter called "the Tenderer") has submitted his Tender dated _____ for the performance of the above-named works .

KNOW ALL PEOPLE BY THESE PRESENTS THAT, We _____ *[name of Bank]* having our registered office at _____ and Branch in _____ *[city in which branch is located]* at _____ *[Address of the bank's branch giving the guarantee]* (hereinafter called "the Bank") are bound unto the Ministry of External Affairs of India (MEA), (hereinafter called "the Employer") in the sum of _____ - *[amount]* ("the Bond Amount") for which payment well and truly to be made to the said Employer, the Bank binds himself, his successors, and assigns by these presents.

SEALED with the Common Seal of the said Bank this _____ day of _____ 20__.

THE CONDITIONS of this obligation are:

- (1) if the Tenderer withdraws his Tender during the period of Tender validity specified in the Form of Tender; or
- (2) if the Tenderer refuses to accept the correction of errors in his Tender; or
- (3) if the Tenderer, having been notified of the acceptance of his Tender by the Employer during the period of Tender validity;
 - (a) fails or refuses to execute the Form of Agreement in accordance with the Conditions of Contract, if required; or
 - (b) fails or refuses to furnish the Performance Security, in accordance with the Conditions of Contract;

We undertake to pay to the Employer without demur and without the Employer having to substantiate his demand the Bond Amount mere upon receipt of first written demand from the Employer by notifying that the amount claimed by him is due to him, owing to the occurrence of any of the above-mentioned conditions or their combination, and specifying the occurred condition or conditions,.

This Guarantee will remain in force till 30th January 2019 and any demand of the Employer in respect of this Guarantee shall reach the Bank not later than the above date.

This Guarantee shall be governed by the laws of India and the courts at Noida, India shall only have jurisdiction to adjudicate any dispute in this connection.

FOR AND ON BEHALF OF THE *[name of the bank]*, *[name of the branch]*

_____ *[Signature of Authorised Signatory from the Bank]*

_____ *[Name of the Authorised Signatory]*

_____ *[Designation of the Authorised Signatory]*

DATE _____

WITNESS _____ SEAL _____

ANNEXURE 2 FORM OF AGREEMENT

THIS AGREEMENT has been made on this the day of 2018 at New Delhi, Delhi, India

BY AND BETWEEN

Ministry of External Affairs (MEA), having its registered office at -----, represented by its [Designation of the signing authority], hereinafter referred to as Employer, (which expression shall unless repugnant to the context or meaning thereof, include its administrators, successors and permitted assigns) on the ONE PART,

AND

..... [*name of the Contractor*], a company incorporated under the laws of and having its registered office at represented by the [*Designation of the signing authority*], hereinafter referred to as **the Contractor**, (which expression shall unless repugnant to the context or meaning thereof, include its administrators, successors and permitted assigns) on the OTHER PART,

Individually referred to as "Party" and collectively as "Parties",

WHEREAS the Employer is desirous that the works of Engineering, Procurement of Materials and Construction of Container Handling Facilities at Sittwe & Paletwa in Myanmar under Kaladan Multi-Modal Transit Transport Project including rectification of defects should be executed by the Contractor in terms of the Contract.

NOW THIS AGREEMENT WITNESSETH as follows:

1. In this Agreement words and expressions shall have the same meanings as are respectively assigned to them in the Conditions of Contract hereinafter referred to.
2. The following documents shall be deemed to form and be read and construed as part of this Agreement viz.:
 - (a) the Letter of Award;
 - (b) Conditions of Contract;
 - (c) the Employer's Requirements, Specifications and Drawings including addenda and clarifications;
 - (d) the preamble and priced Schedule of Prices;
 - (e) The Tender; and
 - (f) Any other Document

3. In consideration of the payments to be made by the Employer to the Contractor as agreed between the Parties, , the Contractor hereby covenants with the Employer to design, execute, complete the Works and remedy the defects, if any thereof and maintain the Works in conformity in all respects with the provisions of the Contract.
4. The Employer hereby covenants to pay the Contractor as per the Contract Conditions in consideration of the design, execution, completion and maintenance of the Works and remedying of defects therein, the final Contract Price at the times and in the manner prescribed by the Contract and as stated in the Schedule of Payments.

IN WITNESS whereof the parties hereto have hereunder set their respective hands and seals on the day and year first above written.

Signed, sealed, and delivered by

by the said

Binding Signature of Employer:

Name :.....

Address:.....

Designation:

by the said

Binding Signature of Contractor....

Name :.....

Address:.....

Designation:.....

In the presence of:

Signature:.....

Name :.....

Designation:.....

Address:.....

(on behalf of the Employer)

In the presence of:

Signature:.....

Name :.....

Designation:.....

Address:.....

(on behalf of the Contractor)

ANNEXURE 3

FORM OF ADVANCE PAYMENT BANK GUARANTEE

BG No :

DATED :

VALID UPTO

To,
Director (DPA)
Ministry of External Affairs,
Jawaharlal Nehru Bhawan,
Janpath, New Delhi - 110011

Dear Sirs,

- A. Ministry of External Affairs (MEA) having its registered office at ----- New Delhi – 110011, New Delhi., India, hereinafter referred to as (“MEA”), which expression shall unless repugnant to the context or meaning thereof, include its administrators, successors and permitted assigns, is the operator of Sittwe and Paletwa Terminals in Myanmar.
- B. M/s. [name of Contractor] having its registered office at [address of contractor] (hereinafter called “**the Contractor**” which expression shall include its successors and permitted assigns) is in the business of civil and other construction works.
- C. MEA, relying on the representations of the Contractor, has awarded to the Contractor, the works of Engineering, Procurement of Materials and Construction of Container Handling Facilities at Sittwe & Paletwa in Myanmar under Kaladan Multi-Modal Transit Transport Project and MEA and the Contractor have signed a contract on _____ (“the Contract”) on certain terms and conditions stipulated therein.
- D. MEA has agreed in the Contract to pay an advance amount on certain terms and conditions inter alia the Contractor shall furnish a Guarantee from a Scheduled Commercial Bank in New Delhi, Delhi, India, equivalent to the advance amount, which shall be in force till the advance amount in full has been repaid / return by the Contractor to the Employer as agreed in the Contract.

Therefore, we _____ [name of Bank] having our registered office at _____ and Branch in [city in which branch is located] at [address of the bank's branch giving the guarantee] (hereinafter called “the Bank” which expression shall include its successors and assigns), in consideration of MEA having awarded the Contract to the Contractor and at the request of the Contractor, with the intent to bind the Bank and its successors and assigns, do hereby unconditionally and irrevocably guarantee the due performance / discharge of the advance amount repayment obligation of the Contractor and for the purpose, we the Bank do hereby guarantee / undertake that;

- 1) The Bank shall to pay to MEA forthwith mere on first demand without protest or demur or proof or satisfaction and without reference to this guarantee upon to an aggregate limit of INR (Indian Rupees only).
- 2) This guarantee shall come into effect immediately upon being signed, sealed and delivered to the Employer, and shall be a continuing guarantee and shall remain valid and irrevocable for all claims of the Employer upon the Bank made up to [date of Expiry] (one month after date of completion of the whole of the Works as per the terms of the said Contract). Provided further that, the Bank undertake to give notice to the Employer, full 30 days before the end of the validity of this guarantee, and if such a notice is not given, the validity of this guarantee shall stand extended for a commensurate period of the delayed issue of such notice.

- 3) The Employer shall have the full liberty without reference to the Bank and without affecting in any way the liability of the Bank under this Guarantee/Undertaking, at any time and/or from time to time amend or vary the Contract and/or any of the terms and conditions thereof or to extend the time for performance of the said Contract in whole or part or to postpone for any time and/or from time to time any of the obligations of the Contractor and/or the powers or remedies exercisable by the Employer against the Contractor and either to enforce or forbear from enforcing any of the terms and conditions of or governing the said Contract or the securities available to the Employer or any of them and the Bank shall not be released from its liability under these presents and the liability of the Bank hereunder shall remain in full force and effect notwithstanding any exercise by the Employer of the liberty with reference to any or all the matters aforesaid or be reason of time being given to the Contractor or any other forbearance, act or omission on the part of the Contractor or of any indulgence by the Employer to the Contractor or any other act, matter or thing whatsoever which under the law relating to sureties or otherwise which could but for the provision have the effect of releasing the Bank from its liability hereunder or any part thereof and the Bank hereby specifically waives any and all contrary rights whatsoever.
- 4) The obligations of the Bank to the Employer hereunder shall be as principal to principal and shall be wholly independent of the Contract and it shall not be necessary for the Employer to proceed against the Contractor before proceeding against the Bank and the Guarantee/Undertaking herein contained shall be enforceable against the Bank notwithstanding the existence of any other Guarantee/Undertaking or security for any indebtedness of the Contractor to the Employer and notwithstanding that any such undertaking or security shall at the time when claim is made against the Bank or proceedings taken against the Bank hereunder, be outstanding or unrealized.
- 5) The amount stated by the Employer in any demand, claim or notice made with reference to this Guarantee shall, as between the Bank and the Employer for the purpose of these presents, be conclusive of the amount payable by the Bank to the Employer hereunder and the Bank hereby waives the necessity of the Employer demanding the said amount from the Contractor before presenting the Bank with the demand.
- 6) The liability of the Bank to the Employer under this Guarantee/Undertaking shall remain in full force and effect notwithstanding the existence of any difference or dispute between the Contractor and the Employer, the Contractor and the Bank and/or the Bank and the Employer or otherwise howsoever touching or affecting these presents for the liability of the Contractor to the Employer, and notwithstanding the existence of any instructions or purported instructions by the Contractor or any other person to the Bank not to pay or for any cause withhold or defer payment to the Employer under these presents, with the intent that notwithstanding the existence of such difference, dispute or instruction, the Bank shall be and remain liable to make payment to the Employer in terms hereof.
- 7) The Bank shall not revoke this undertaking during its currency except with the previous consent of the Employer in writing and also agrees that any change in the constitution of the Contractor or the Bank or the Employer shall not discharge the Bank's liability hereunder.
- 8) Notwithstanding anything contained herein:
 - (a) The Bank's liability under this Guarantee/Undertaking shall not exceed [INR.]
 - (b) This Guarantee/Undertaking shall remain in force up to [date of Expiry] and any extension(s) thereof as per provisions of this guarantee; and
 - (c) The Bank shall be released and discharged from all liability under this Guarantee/Undertaking unless a written claim or demand is issued to the Bank on or before [date of Expiry] or the date of expiry of any extension(s) thereof if this Guarantee/Undertaking has been extended.

- 9) This Guarantee shall be governed by and construed in accordance with the laws of the Republic of India and the parties to this Guarantee hereby submit to the jurisdiction of the Courts of Noida for the purposes of settling any disputes or differences which may arise out of or in connection with this Guarantee, and for the purposes of enforcement under this Guarantee.
- 10) The Bank doth hereby declare that Mr..... (name of the person signing on behalf of the Bank) who is (his designation), is authorized to sign this undertaking on behalf of the Bank and to bind the Bank hereby.

Signature with Seal.....
Name & Designation
Name of the Branch
Dated

Witness:

- 1)
2)

ANNEXURE 4 FORM OF RETENTION BANK GUARANTEE

BG No :
DATED :
VALID UPTO

To,
Director (DPA)
Ministry of External Affairs,
Jawaharlal Nehru Bhawan,
Janpath, New Delhi - 110011

Dear Sirs,

- A. Ministry of External Affairs (MEA) having its registered office at ----- New Delhi – 110011, New Delhi., India, hereinafter referred to as (“MEA”), which expression shall unless repugnant to the context or meaning thereof, include its administrators, successors and permitted assigns, is the operator of Sittwe and Paletwa Terminals in Myanmar.
- B. M/s. [name of Contractor] having its registered office at [address of contractor] (hereinafter called “**the Contractor**” which expression shall include its successors and permitted assigns) is in the business of civil and other construction works.
- C. MEA, relying on the representations of the Contractor, has awarded to the Contractor, the works of Engineering, Procurement of Materials and Construction of Container Handling Facilities at Sittwe & Paletwa in Myanmar under Kaladan Multi-Modal Transit Transport Project and MEA and the Contractor have signed a contract on _____ (“the Contract”) on certain terms and conditions stipulated therein.
- D. The Contractor has inter-alia undertaken in the Contract that under and in terms of the Contract, the Employer may deduct a percentage of every interim payment to be made to the Contractor and retain the same (“the Retention Money”) till the date of issuance of completion certificate or alternatively, the Contractor may provide a Guarantee from a Scheduled Commercial Bank in Noida, India, in lieu of the Retention Money and request the Employer not to deduct and retain any money towards the Retention Money.

Therefore, we _____ [name of Bank] having our registered office at _____ and Branch in [city in which branch is located] at [address of the bank's branch giving the guarantee] (hereinafter called “the Bank” which expression shall include its successors and assigns), in consideration of MEA, having awarded the Contract to the Contractor and at the request of the Contractor, with the intent to bind the Bank and its successors and assigns, do hereby unconditionally and irrevocably guarantee the due performance / discharge of the Retention Money obligation of the Contractor and do hereby guarantee / undertake that;

- 1) The Bank shall to pay to MEA forthwith mere on first demand without protest or demur or proof or satisfaction and without reference to this guarantee upon to an aggregate limit of INR. (Indian Rupees only).
- 2) This guarantee shall come into effect immediately upon being signed, sealed and delivered to the Employer, and shall be a continuing guarantee and shall remain valid and irrevocable for all claims of the Employer upon the Bank made up to [date of Expiry] (one month after date of completion of the whole of the Works as per the terms of the said Contract). Provided further that, the Bank undertake to give notice to the Employer, full 30 days before the end of the validity of this guarantee, and if such a notice is not given, the validity of this guarantee shall stand extended for a commensurate period of the delayed issue of such notice.

- 3) The Employer shall have the full liberty without reference to the Bank and without affecting in any way the liability of the Bank under this Guarantee/Undertaking, at any time and/or from time to time amend or vary the Contract and/or any of the terms and conditions thereof or to extend the time for performance of the said Contract in whole or part or to postpone for any time and/or from time to time any of the obligations of the Contractor and/or the powers or remedies exercisable by the Employer against the Contractor and either to enforce or forbear from enforcing any of the terms and conditions of or governing the said Contract or the securities available to the Employer or any of them and the Bank shall not be released from its liability under these presents and the liability of the Bank hereunder shall remain in full force and effect notwithstanding any exercise by the Employer of the liberty with reference to any or all the matters aforesaid or be reason of time being given to the Contractor or any other forbearance, act or omission on the part of the Contractor or of any indulgence by the Employer to the Contractor or any other act, matter or thing whatsoever which under the law relating to sureties or otherwise which could but for the provision have the effect of releasing the Bank from its liability hereunder or any part thereof and the Bank hereby specifically waives any and all contrary rights whatsoever.
- 4) The obligations of the Bank to the Employer hereunder shall be as principal to principal and shall be wholly independent of the Contract and it shall not be necessary for the Employer to proceed against the Contractor before proceeding against the Bank and the Guarantee/Undertaking herein contained shall be enforceable against the Bank notwithstanding the existence of any other Guarantee/Undertaking or security for any indebtedness of the Contractor to the Employer and notwithstanding that any such undertaking or security shall at the time when claim is made against the Bank or proceedings taken against the Bank hereunder, be outstanding or unrealized.
- 5) The amount stated by the Employer in any demand, claim or notice made with reference to this Guarantee shall, as between the Bank and the Employer for the purpose of these presents, be conclusive of the amount payable by the Bank to the Employer hereunder and the Bank hereby waives the necessity of the Employer demanding the said amount from the Contractor before presenting the Bank with the demand.
- 6) The liability of the Bank to the Employer under this Guarantee/Undertaking shall remain in full force and effect notwithstanding the existence of any difference or dispute between the Contractor and the Employer, the Contractor and the Bank and/or the Bank and the Employer or otherwise howsoever touching or affecting these presents for the liability of the Contractor to the Employer, and notwithstanding the existence of any instructions or purported instructions by the Contractor or any other person to the Bank not to pay or for any cause withhold or defer payment to the Employer under these presents, with the intent that notwithstanding the existence of such difference, dispute or instruction, the Bank shall be and remain liable to make payment to the Employer in terms hereof.
- 7) The Bank shall not revoke this undertaking during its currency except with the previous consent of the Employer in writing and also agrees that any change in the constitution of the Contractor or the Bank or the Employer shall not discharge the Bank's liability hereunder.
- 8) Notwithstanding anything contained herein:
 - (a) The Bank's liability under this Guarantee/Undertaking shall not exceed [INR.] (Indian Rupees only)
 - (b) This Guarantee/Undertaking shall remain in force up to [date of Expiry] and any extension(s) thereof as per provisions of this guarantee; and
 - (c) The Bank shall be released and discharged from all liability under this Guarantee/Undertaking unless a written claim or demand is issued to the Bank on or before [date of Expiry] or the date of expiry of any extension(s) thereof if this Guarantee/Undertaking has been extended.

- 9) This Guarantee shall be governed by and construed in accordance with the laws of the Republic of India and the parties to this Guarantee hereby submit to the jurisdiction of the Courts of Noida for the purposes of settling any disputes or differences which may arise out of or in connection with this Guarantee, and for the purposes of enforcement under this Guarantee.
- 10) The Bank doth hereby declare that Mr..... (name of the person signing on behalf of the Bank) who is (his designation), is authorized to sign this undertaking on behalf of the Bank and to bind the Bank hereby.

Signature with Seal.....
Name & Designation
Name of the Branch
Dated

Witness:

- 1)
2)

ANNEXURE 5 FORM OF PERFORMANCE BANK GUARANTEE

BG No :
DATED :
VALID UPTO

To,
Director (DPA)
Ministry of External Affairs,
Jawaharlal Nehru Bhawan,
Janpath, New Delhi - 110011

Dear Sirs,

- A. Ministry of External Affairs (MEA) having its registered office at ----- New Delhi – 110011, New Delhi., India, hereinafter referred to as (“MEA”), which expression shall unless repugnant to the context or meaning thereof, include its administrators, successors and permitted assigns, is the operator of Sittwe and Paletwa Terminals in Myanmar.
- B. M/s. [name of Contractor] having its registered office at [address of contractor] (hereinafter called “**the Contractor**” which expression shall include its successors and permitted assigns) is in the business of civil and other construction works.
- C. MEA, relying on the representations of the Contractor, has awarded to the Contractor, the works of Engineering, Procurement of Materials and Construction of Container Handling Facilities at Sittwe & Paletwa in Myanmar under Kaladan Multi-Modal Transit Transport Project and MEA and the Contractor have signed a contract on _____ (“the Contract”) on certain terms and conditions stipulated therein.
- D. The Contractor has inter-alia undertaken in the Contract to duly fulfill all its obligations under the Contract and such obligations shall be inter-alia secured by a Bank Guarantee issued by a scheduled commercial bank in Noida, India.

Therefore, we _____ [name of Bank] having our registered office at _____ and Branch in [city in which branch is located] at [address of the bank's branch giving the guarantee] (hereinafter called “the Bank” which expression shall include its successors and assigns), in consideration of MEA, having awarded the Contract to the Contractor and at the request of the Contractor, with the intent to bind the Bank and its successors and assigns, do hereby unconditionally and irrevocably guarantee the due performance / discharge of the obligations of the Contractor and / or undertaken to pay to MEA forthwith mere on first demand without protest or demur or proof or satisfaction and without reference to this guarantee upon to an aggregate limit of INR. (Indian Rupees only).

E. AND the Bank doth hereby further guarantee / undertake that;

- 1) This guarantee shall come into effect immediately upon being signed, sealed and delivered to MEA, and shall be a continuing guarantee and shall remain valid and irrevocable for all claims of MEA upon the Bank made up to [date of Expiry] (30 days from date of completion of Defects Rectification Period as per the terms of the said Contract). Provided further that, the Bank undertake to give notice to MEA, full 30 days before the end of the validity of this guarantee, and if such a notice is not given, the validity of this guarantee shall stand extended for a commensurate period of the delayed issue of such notice.

- 2) MEA shall have the full liberty without reference to the Bank and without affecting in any way the liability of the Bank under this Guarantee/Undertaking, at any time and/or from time to time amend or vary the Contract and/or any of the terms and conditions thereof or to extend the time for performance of the said Contract in whole or part or to postpone for any time and/or from time to time any of the obligations of the Contractor and/or the powers or remedies exercisable by MEA against the Contractor and either to enforce or forbear from enforcing any of the terms and conditions of or governing the said Contract or the securities available to IWA or any of them and the Bank shall not be released from its liability under these presents and the liability of the Bank hereunder shall remain in full force and effect notwithstanding any exercise by MEA of the liberty with reference to any or all the matters aforesaid or be reason of time being given to the Contractor or any other forbearance, act or omission on the part of the Contractor or of any indulgence by MEA to the Contractor or any other act, matter or thing whatsoever which under the law relating to sureties or otherwise which could but for the provision have the effect of releasing the Bank from its liability hereunder or any part thereof and the Bank hereby specifically waives any and all contrary rights whatsoever.
- 3) The obligations of the Bank to MEA hereunder shall be as principal to principal and shall be wholly independent of the contract and it shall not be necessary for MEA to proceed against the Contractor before proceeding against the Bank and the Guarantee/Undertaking herein contained shall be enforceable against the Bank notwithstanding the existence of any other Guarantee/Undertaking or security for any indebtedness of the Contractor to MEA and notwithstanding that any such undertaking or security shall at the time when claim is made against the Bank or proceedings taken against the Bank hereunder, be outstanding or unrealized.
- 4) The amount stated by MEA in any demand, claim or notice made with reference to this Guarantee shall, as between the Bank and MEA for the purpose of these presents, be conclusive of the amount payable by the Bank to MEA hereunder and the Bank hereby waives the necessity of MEA demanding the said amount from the Contractor before presenting the Bank with the demand.
- 5) The liability of the Bank to MEA under this Guarantee/Undertaking shall remain in full force and effect notwithstanding the existence of any difference or dispute between the Contractor and MEA, the Contractor and the Bank and/or the Bank and MEA or otherwise howsoever touching or affecting these presents for the liability of the Contractor to MEA, and notwithstanding the existence of any instructions or purported instructions by the Contractor or any other person to the Bank not to pay or for any cause withhold or defer payment to MEA under these presents, with the intent that notwithstanding the existence of such difference, dispute or instruction, the Bank shall be and remain liable to make payment to MEA in terms hereof.
- 6) The Bank shall not revoke this undertaking during its currency except with the previous consent of MEA in writing and also agrees that any change in the constitution of the Contractor or the Bank or MEA shall not discharge the Bank's liability hereunder.
- 7) Notwithstanding anything contained herein:
 - (a) The Bank's liability under this Guarantee/Undertaking shall not exceed [INR.] (Indian Rupees only)
 - (b) This Guarantee/Undertaking shall remain in force up to [date of Expiry] and any extension(s) thereof as per the provisions of this guarantee; and
 - (c) The Bank shall be released and discharged from all liability under this Guarantee/Undertaking unless a written claim or demand is issued to the Bank on or before [date of Expiry] or the date of expiry of any extension(s) thereof if this Guarantee/Undertaking has been extended.

- 8) This Guarantee shall be governed by and construed in accordance with the laws of the Republic of India and the parties to this Guarantee hereby submit to the jurisdiction of the Courts of Delhi for the purposes of settling any disputes or differences which may arise out of or in connection with this Guarantee, and for the purposes of enforcement under this Guarantee.
- 9) The Bank doth hereby declare that Mr..... (name of the person signing on behalf of the Bank) who is (his designation), is authorized to sign this undertaking on behalf of the Bank and to bind the Bank hereby.

Signature with Seal.....

Name & Designation

Name of the Branch

Dated

Witness:

1)

2)