

# **BIDDING DOCUMENT**

**for**

**Procurement of EPC Contract**

**for**

**Construction of IWT Terminal at Sahibganj,  
Jharkhand**

**VOLUME-1**

**BIDDING DOCUMENT**

**ICB No: CANW-1/IWAI/JMV/11**

**Employer: Inland Waterways Authority of India, Ministry of Shipping,  
Government of India**

**Country: India**

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## **Part 1 – Bidding Procedures**

## Section I. Instructions to Bidders

### A. General

- 1. Scope of Bid**
  - 1.1 In connection with the Invitation for Bids **specified in the Bid Data Sheet (BDS)**, the Employer, **as specified in the BDS**, issues these Bidding Documents for the procurement of Works as specified in Section VII, Works Requirements. The name, identification, and number of lots (contracts) of this International Competitive Bidding (ICB) process are **provided in the BDS**.
  - 1.2 Throughout these Bidding Documents:
    - a) the term “in writing” means communicated in written form and delivered against receipt;
    - b) except where the context requires otherwise, words indicating the singular also include the plural and words indicating the plural also include the singular; and
    - c) “day” means calendar day.
- 2. Source of Funds**
  - 2.1 The Borrower or Recipient (hereinafter called “Borrower”) **specified in the BDS** has received or has applied for financing (hereinafter called “funds”) from the International Bank for Reconstruction and Development or the International Development Association (hereinafter called “the Bank”) in an amount **specified in the BDS**. The Borrower intends to apply a portion of the funds to eligible payments under the contract(s) for which these Bidding Documents are issued.
  - 2.2 Payment by the Bank will be made only at the request of the Borrower and upon approval by the Bank, and will be subject, in all respects, to the terms and conditions of the Loan (or other financing) Agreement. The Loan (or financing) Agreement prohibits a withdrawal from the Loan (or other financing) account for the purpose of any payment to persons or entities, or for any import of goods, if such payment or import, to the knowledge of the Bank, is prohibited by a decision of the United Nations Security Council taken under Chapter VII of the Charter of the United Nations. No party other than the Borrower shall derive any rights from the Loan (or other financing) Agreement or have any claim to the proceeds of the Loan (or other financing).
- 3. Corrupt and Fraudulent Practices**
  - 3.1 The Bank requires compliance with its policy in regard to corrupt and fraudulent practices as set forth in Section VI.
  - 3.2 In further pursuance of this policy, Bidders shall permit and shall cause its agents (whether declared or not), sub-contractors, sub-consultants, service providers, or suppliers and any personnel thereof, to permit the Bank to inspect all accounts, records and other documents relating to any prequalification process, bid submission, and contract performance (in the case of award),

and to have them audited by auditors appointed by the Bank.

#### 4. Eligible Bidders

- 4.1 A Bidder may be a firm that is a private entity, a government-owned entity - subject to ITB 4.5 - or any combination of such entities in the form of a joint venture (JV) under an existing agreement or with the intent to enter into such an agreement supported by a letter of intent. In the case of a joint venture, all members shall be jointly and severally liable for the execution of the Contract in accordance with the Contract terms. The JV shall nominate a Representative who shall have the Employer to conduct all business for and on behalf of any and all the members of the JV during the bidding process and, in the event the JV is awarded the Contract, during contract execution. **Unless specified in the BDS**, there is no limit on the number of members in a JV.
- 4.2 A Bidder shall not have a conflict of interest. Any Bidder found to have a conflict of interest shall be disqualified. A Bidder may be considered to have a conflict of interest for the purpose of this bidding process, if the Bidder:
- a) Directly or indirectly controls, is controlled by or is under common control with another Bidder; or
  - b) Receives or has received any direct or indirect subsidy from another Bidder; or
  - c) Has the same legal representative as another Bidder; or
  - d) Has a relationship with another Bidder, directly or through common third parties, that puts it in a position to influence the bid of another Bidder, or influence the decisions of the Employer regarding this bidding process; or
  - e) Participates in more than one bid in this bidding process. Participation by a Bidder in more than one Bid will result in the disqualification of all Bids in which such Bidder is involved. However, this does not limit the inclusion of the same subcontractor in more than one bid; or
  - f) Or any of its affiliates participated as a consultant in the preparation of the design or technical specifications of the works that are the subject of the bid; or
  - g) Or any of its affiliates has been hired (or is proposed to be hired) by the Employer or Borrower as Engineer for the Contract implementation;
  - h) Would be providing goods, works, or non-consulting services resulting from or directly related to consulting services for the preparation or implementation of the project specified in the **BDS ITB 2.1** that it provided or were provided by any affiliate that directly or indirectly controls, is controlled by, or is under

common control with that firm; or

- i) Has a close business or family relationship with a professional staff of the Borrower (or of the project implementing agency, or of a recipient of a part of the loan) who: (i) are directly or indirectly involved in the preparation of the bidding documents or specifications of the contract, and/or the bid evaluation process of such contract; or (ii) would be involved in the implementation or supervision of such contract unless the conflict stemming from such relationship has been resolved in a manner acceptable to the Bank throughout the procurement process and execution of the contract.

4.3 A Bidder may have the nationality of any country, subject to the restrictions pursuant to ITB 4.7. A Bidder shall be deemed to have the nationality of a country if the Bidder is constituted, incorporated or registered in and operates in conformity with the provisions of the laws of that country, as evidenced by its articles of incorporation (or equivalent documents of constitution or association) and its registration documents, as the case may be. This criterion also shall apply to the determination of the nationality of proposed sub-contractors or sub-consultants for any part of the Contract including related Services.

4.4 A Bidder that has been sanctioned by the Bank in accordance with the above ITB 3.1, including in accordance with the Bank's Guidelines on Preventing and Combating Corruption in Projects Financed by IBRD Loans and IDA Credits and Grants ("Anti-Corruption Guidelines"), shall be ineligible to be prequalified for, bid for, or be awarded a Bank-financed contract or benefit from a Bank-financed contract, financially or otherwise, during such period of time as the Bank shall have determined. The list of debarred firms and individuals is available at the electronic address **specified in the BDS**.

4.5 Bidders that are Government-owned enterprises or institutions in the Employer's Country may participate only if they can establish that they (i) are legally and financially autonomous (ii) operate under commercial law, and (iii) are not dependent agencies of the Employer. To be eligible, a government-owned enterprise or institution shall establish to the Bank's satisfaction, through all relevant documents, including its Charter and other information the Bank may request, that it: (i) is a legal entity separate from the government (ii) does not currently receive substantial subsidies or budget support; (iii) operates like any commercial enterprise, and, inter alia, is not obliged to pass on its surplus to the government, can acquire rights and liabilities, borrow funds and be liable for repayment of its debts, and can be declared bankrupt; and (iv) is not bidding for a contract to be awarded by the department or agency of the government which under their applicable laws or regulations is the reporting or supervisory Employer of the enterprise or has the

ability to exercise influence or control over the enterprise or institution.

- 4.6 A Bidder shall not be under suspension from bidding by the Employer as the result of the operation of a Bid–Securing Declaration.
- 4.7 Firms and individuals may be ineligible if so indicated in Section V and (a) as a matter of law or official regulations, the Borrower’s country prohibits commercial relations with that country, provided that the Bank is satisfied that such exclusion does not preclude effective competition for the supply of goods or the contracting of works or services required; or (b) by an act of compliance with a decision of the United Nations Security Council taken under Chapter VII of the Charter of the United Nations, the Borrower’s country prohibits any import of goods or contracting of works or services from that country, or any payments to any country, person, or entity in that country.
- 4.8 This bidding is open only to prequalified Bidders unless **specified in the BDS.**
- 4.9 A Bidder shall provide such evidence of eligibility satisfactory to the Employer, as the Employer shall reasonably request.

**5. Eligible Materials, Equipment, and Services**

- 5.1 The materials, equipment and services to be supplied under the Contract and financed by the Bank may have their origin in any country subject to the restrictions specified in Section V, Eligible Countries, and all expenditures under the Contract will not contravene such restrictions. At the Employer’s request, Bidders may be required to provide evidence of the origin of materials, equipment and services.

**B. Contents of Bidding Documents**

**6. Sections of Bidding Documents**

- 6.1 The Bidding Documents consist of Volumes 1, 2, and 3, which include all the Sections specified below, and which should be read in conjunction with any Addenda issued in accordance with ITB 8.

**VOLUME–1 : BIDDING DOCUMENT**

**Part 1 – Bidding Procedures**

Section I. Instructions to Bidders

Section II. Bid Data Sheet

Section III. Evaluation and Qualification Criteria

Section IV. Bidding Forms

Section V. Eligible Countries

Section VI. Bank Policy - Corrupt and Fraudulent Practices

**Part 2 - Works Requirements**

Section VII.: Conditions of Contract together with Schedules

## VOLUME-2 : TECHNICAL SPECIFICATION AND DRAWINGS

## VOLUME-3 : BILL OF QUANTITIES

- 6.2 The Invitation for Bids issued by the Employer is not part of the Bidding Documents.
- 6.3 The Bid Document shall be available online. In case fee is charged, the mode and process of payment of fee shall be **specified in BDS**.
- 6.4 The Bidder is expected to examine all instructions, forms, terms, and specifications in the Bidding Documents and to furnish with its bid all information and documentation as is required by the Bidding Documents.
- 7. Clarification of Bidding Documents, Site Visit, Pre-Bid Meeting**
- 7.1 A Bidder requiring any clarification of the Bidding Documents shall notify the Employer through the e-procurement portal **specified in the BDS** or raise its enquiries during the pre-bid meeting if provided for in accordance with ITB 7.4. The Employer's response to the clarification, including a description of the inquiry but without identifying its source will be made available through the e-procurement portal provided that such request is uploaded no later than fourteen (14) days prior to the deadline for submission of bids. Should the clarification result in changes to the essential elements of the Bidding Documents, the Employer shall amend the Bidding Documents in the e-procurement portal following the procedure under ITB 8 and ITB 22.2.
- 7.2 The Bidder is advised to visit and examine the Site of Works and its surroundings and obtain for itself on its own responsibility all information that may be necessary for preparing the bid and entering into a contract for construction of the Works. The costs of visiting the Site shall be at the Bidder's own expense.
- 7.3 The Bidder and any of its 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 express condition that the Bidder, its personnel, and agents will release and indemnify the Employer and its personnel and agents from and against all liability in respect thereof, and will be responsible for death or personal injury, loss of or damage to property, and any other loss, damage, costs, and expenses incurred as a result of the inspection.
- 7.4 If so specified in the **BDS**, the Bidder's designated representative is invited to attend a pre-bid meeting. The purpose of the meeting will be to clarify issues and to answer questions on any matter that may be raised at that stage.
- 7.5 The Bidder is requested to submit any questions through e-procurement portal, not later than one week before the meeting.



7.6 Minutes of the pre-bid meeting, if applicable, including the text of the questions asked by Bidders, without identifying the source, and the responses given, together with any responses prepared after the meeting, will be posted in the e-procurement portal. Any modification to the Bidding Documents that may become necessary as a result of the pre-bid meeting shall be made by the Employer exclusively through the issue of an Addendum in the e-procurement portal pursuant to ITB 8 and not through the minutes of the pre-bid meeting. Non-attendance at the pre-bid meeting will not be a cause for disqualification of a Bidder.

## **8. Amendment of Bidding Documents**

8.1 At any time prior to the deadline for submission of bids, the Employer may amend the Bidding Documents by issuing addenda in the e-procurement portal in accordance with ITB 7.1

8.2 Any addendum issued shall be part of the Bidding Documents.

8.3 To give Bidders reasonable time in which to take an addendum into account in preparing their bids, the Employer may extend the deadline for the submission of bids, pursuant to ITB 22.2 by issuing a notification in the e-procurement portal.

## **C. Preparation of Bids**

## **9. Cost of Bidding**

9.1 The Bidder shall bear all costs associated with the preparation and submission of its Bid, and the Employer shall not be responsible or liable for those costs, regardless of the conduct or outcome of the bidding process.

## **10. Language of Bid**

10.1 The Bid, as well as all correspondence and documents relating to the bid exchanged by the Bidder and the Employer, shall be written in the language **specified in the BDS**. Supporting documents and printed literature that are part of the Bid may be in another language provided they are accompanied by an accurate translation of the relevant passages in the language **specified in the BDS**, in which case, for purposes of interpretation of the Bid, such translation shall govern.

## **11. Documents Comprising the Bid**

11.1 The Bid shall comprise the following:

- a) Letter of Bid and Appendix to Bid;
- b) Deleted
- c) Scanned copy of Bid Security or Bid-Securing Declaration, in accordance with ITB 19.1;
- d) alternative bids, if permissible, in accordance with ITB 13;
- e) Scanned written confirmation authorizing the signatory of the Bid to commit the Bidder, in accordance with ITB 20.2;
- f) documentary evidence in accordance with ITB 17 establishing the Bidder's continued qualified status or, if post-qualification applies, as specified in accordance with ITB 4.8, the Bidder's qualifications to perform the contract

if its Bid is accepted;

- g) Technical Proposal in accordance with ITB 16; and
- h) any other document **required in the BDS**.

11.2 In addition to the requirements under ITB 11.1, bids submitted by a JV shall include a copy of the Joint Venture Agreement entered into by all members. Alternatively, a letter of intent to execute a Joint Venture Agreement in the event of a successful bid shall be signed by all members and submitted with the bid, together with a copy of the proposed Agreement.

11.3 The Bidder shall furnish in the Letter of Bid information on commissions and gratuities, if any, paid or to be paid to agents or any other party relating to this Bid.

## **12. Letter of Bid and Schedules**

12.1 The Letter of Bid and Schedules shall be prepared using the relevant forms furnished in Section IV, Bidding Forms. The forms must be completed without any alterations to the text, and no substitutes shall be accepted except as provided under ITB 20.2. All blank spaces shall be filled in with the information requested.

## **13. Alternative Bids**

**13.1 Unless otherwise specified in the BDS**, alternative bids shall not be considered.

13.2 When alternative times for completion are explicitly invited, a statement to that effect **will be included in the BDS**, as will the method of evaluating different times for completion.

13.3 Except as provided under ITB 13.4 below, Bidders wishing to offer technical alternatives to the requirements of the Bidding Documents must first price the Employer's design as described in the Bidding Documents and shall further provide all information necessary for a complete evaluation of the alternative by the Employer, including drawings, design calculations, technical specifications, breakdown of prices, and proposed construction methodology and other relevant details. Only the technical alternatives, if any, of the lowest evaluated Bidder conforming to the basic technical requirements shall be considered by the Employer.

**13.4 When specified in the BDS**, Bidders are permitted to submit alternative technical solutions for specified parts of the Works, and such parts **will be identified in the BDS**, as will the method for their evaluating, and described in Section VII, Works Requirements.

## **14. Bid Prices and Discounts**

14.1 The prices and discounts (including any price reduction) quoted by the Bidder in the Letter of Bid shall conform to the requirements specified below.

14.2 Deleted

- 14.3 The price to be quoted in the Letter of Bid, in accordance with ITB 12.1, shall be the total price of the Bid, excluding any discounts offered.
- 14.4 The Bidder shall quote any discounts and the methodology for their application in the Letter of Bid, in accordance with ITB 12.1.
- 14.5 Unless otherwise specified in the BDS** and the Contract, the prices quoted by the Bidder are subject to adjustment during the performance of the Contract in accordance with the provisions of the Conditions of Contract. In such a case, the Bidder shall furnish the indices and weightings for the price adjustment formulae in the Schedule of Adjustment Data and the Employer may require the Bidder to justify its proposed indices and weightings.
- 14.6 If so specified in ITB 1.1, bids are being invited for individual lots (contracts) or for any combination of lots (packages). Bidders wishing to offer discounts for the award of more than one Contract shall specify in their bid the price reductions applicable to each package, or alternatively, to individual Contracts within the package. Discounts shall be submitted in accordance with ITB 14.4, provided the bids for all lots (contracts) are opened at the same time.
- 14.7 All duties, taxes, and other levies payable by the Contractor under the Contract, or for any other cause, as of the date 28 days prior to the deadline for submission of bids, shall be included in the prices and the total Bid Price submitted by the Bidder.
- 15. Currencies of Bid and Payment**
- 15.1 The currency(ies) of the bid and the currency(ies) of payments shall be **as specified in the BDS**.
- 15.2 Bidders may be required by the Employer to justify, to the Employer's satisfaction, their local and foreign currency requirements, and to substantiate that the amounts included in the prices and shown in the Schedule of Adjustment Data in the Appendix to Bid are reasonable, in which case a detailed breakdown of the foreign currency requirements shall be provided by Bidders.
- 16. Documents Comprising the Technical Proposal**
- 16.1 The Bidder shall furnish a Technical Proposal including a statement of work methods, equipment, personnel, schedule and any other information as stipulated in Section IV, in sufficient detail to demonstrate the adequacy of the Bidder's proposal to meet the work requirements and the completion time.
- 17. Documents Establishing the Qualifications of the Bidder**
- 17.1 In accordance with Section III, Evaluation and Qualification Criteria, to establish its qualifications to perform the Contract, the Bidder shall provide the information requested in the corresponding information sheets included in Section IV, Bidding Forms.

- 17.2 If a margin of preference applies as specified in accordance with ITB 33.1, domestic Bidders, individually or in joint ventures, applying for eligibility for domestic preference shall supply all information required to satisfy the criteria for eligibility specified in accordance with ITB 33.1.
- 18. Period of Validity of Bids**
- 18.1 Bids shall remain valid for the period **specified in the BDS** after the bid submission deadline date prescribed by the Employer in accordance with ITB 22.1. A bid valid for a shorter period shall be rejected by the Employer as non-responsive.
- 18.2 In exceptional circumstances, prior to the expiration of the bid validity period, the Employer may request Bidders to extend the period of validity of their bids. The request and the responses shall be made in writing in a manner **specified in the BDS**. If a bid security is requested in accordance with ITB 19, it shall also be extended for twenty-eight (28) days beyond the deadline of the extended validity period. A Bidder may refuse the request without forfeiting its bid security. A Bidder granting the request shall not be required or permitted to modify its bid, except as provided in ITB 18.3.
- 18.3 If the award is delayed by a period exceeding fifty-six (56) days beyond the expiry of the initial bid validity, the Contract price shall be determined as follows:
- a) In the case of fixed price contracts, the Contract price shall be the bid price adjusted by the factor **specified in the BDS**.
  - b) In the case of adjustable price contracts, no adjustment shall be made.
  - c) In any case, bid evaluation shall be based on the bid price without taking into consideration the applicable correction from those indicated above.
- 19. Bid Security**
- 19.1 The Bidder shall furnish as part of its bid, either a Bid-Securing Declaration or a scanned copy of the bid security in the amount and currency **specified in the BDS**. The original of the Bid Security shall be submitted in accordance with the procedures **specified in the ITB 20.1 below**.
- 19.2 A Bid-Securing Declaration shall use the form included in Section IV, Bidding Forms.
- 19.3 If a bid security is specified pursuant to ITB 19.1, the bid security shall be a demand guarantee in any of the following forms at the Bidder's option:
- a) an unconditional guarantee issued by a bank or financial institution (such as an insurance, bonding or surety company);
  - b) an irrevocable letter of credit;
  - c) a cashier's or certified check; or

d) another security **specified in the BDS,**

From a reputable source from an eligible country. If the unconditional guarantee is issued by a financial institution located outside the Employer's Country, the issuing financial institution shall have a correspondent financial institution located in the Employer's Country to make it enforceable. In the case of a bank guarantee, the bid security shall be submitted either using the Bid Security Form included in Section IV, Bidding Forms, or in another substantially similar format approved by the Employer prior to bid submission. The bid security shall be valid for twenty-eight (28) days beyond the original validity period of the bid, or beyond any period of extension if requested under ITB 18.2.

19.4 If a bid security is specified pursuant to ITB 19.1, any bid not accompanied by a substantially responsive bid security or Bid-Securing Declaration shall be rejected by the Employer as non-responsive.

19.5 If a bid security is specified pursuant to ITB 19.1, the bid security of unsuccessful Bidders shall be returned as promptly as possible upon the successful Bidder's signing the Contract and furnishing the performance security pursuant to ITB 42.

19.6 The bid security of the successful Bidder shall be returned as promptly as possible once the successful Bidder has signed the Contract and furnished the required performance security.

19.7 The bid security may be forfeited or the Bid-Securing Declaration executed:

d) if a Bidder withdraws its bid during the period of bid validity specified by the Bidder on the Letter of Bid, or any extension thereto provided by the Bidder; or

e) if the successful Bidder fails to:

i. sign the Contract in accordance with ITB 41; or

ii. furnish a performance security in accordance with ITB 42.

19.8 The bid security or the Bid-Securing Declaration of a JV shall be in the name of the JV that submits the bid. If the JV has not been legally constituted into a legally enforceable JV at the time of bidding, the bid security or the Bid-Securing Declaration shall be in the names of all future members as named in the letter of intent referred to in ITB 4.1 and ITB 11.2.

19.9 If a bid security is **not required in the BDS pursuant to ITB 19.1,** and

(a) if a Bidder withdraws its bid during the period of bid validity specified by the Bidder on the Letter of Bid, or

(b) if the successful Bidder fails to sign the Contract in

accordance with ITB 41; or furnish a performance security in accordance with ITB 42;

the Borrower may, **if provided for in the BDS**, declare the Bidder ineligible to be awarded a contract by the Employer for a period of time **as stated in the BDS**.

**20. Format and Signing of Bid**

- 20.1 The Bidder shall prepare the documents comprising the bid as described in ITB 11 and upload them in the e-procurement portal as specified in BDS. Alternative bids, if permitted in accordance with ITB 13, shall be clearly marked "ALTERNATIVE." In addition, the Bidder shall produce originals of the Bid Security and the Power of Attorney, in the manner **specified in the BDS**. In the event of any discrepancy between the original and the uploaded documents, the original shall prevail.
- 20.2 The bid shall be signed by a person duly authorized to sign on behalf of the Bidder. This authorization shall consist of a written confirmation **as specified in the BDS** and shall be uploaded along with the bid. The name and position held by each person signing the authorization must be typed or printed below the signature.
- 20.3 In case the Bidder is a JV, the Bid shall be signed by an authorized representative of the JV on behalf of the JV, and so as to be legally binding on all the members as evidenced by a power of attorney signed by their legally authorized representatives. A scanned copy of the power of attorney shall be uploaded along with the bid.

**D. Submission and Opening of Bids**

**21. Sealing and Marking of Bids**

- 21.1 The Bidder shall submit the bids electronically, including alternative bids, if permitted in accordance with ITB 13, through the e-procurement portal. Any document submitted through any other means will not be considered as part of the Bid except for the Originals specified in ITB 20.1.

**22. Deadline for Submission of Bids**

- 22.1 Bids must be submitted in the e-procurement system no later than the date and time **specified in the BDS**.
- 22.2 The Employer may, at its discretion, extend the deadline for the submission of bids by amending the Bidding Documents in accordance with ITB 8, in which case all rights and obligations of the Employer and Bidders previously subject to the deadline shall thereafter be subject to the deadline as extended.

**23. Late Bids**

- 23.1 The e-Procurement system would not allow any late submission of bids after due date & time as per server system. After electronic online proposal submission, the system generates a unique identification number which is time stamped. This shall be treated as acknowledgement of the proposal submission. Any other system functionality shall be specified in the **BDS**.

**24. Withdrawal, Substitution, and**

- 24.1 A Bidder may withdraw, substitute, or modify its bid on the e-portal, in accordance with the process defined in the **BDS**, no later than the

## **Modification of Bids**

date and time **specified in the BDS.**

### 24.2 Deleted

24.3 No bid may be withdrawn, substituted, or modified in the interval between the deadline for submission of bids and the expiration of the period of bid validity specified by the Bidder on the Letter of Bid or any extension thereof. Modification/Withdrawal of the Bid sent through any other means shall not be considered by the Employer.

## **25. Bid Opening**

25.1 The Employer shall publicly open the bids as per electronic bid opening procedures and read out in accordance with ITB 25.3 all bids received by the deadline, at the date, time and place **specified in the BDS**, in the presence of Bidders` designated representatives and anyone who choose to attend. Specific electronic bid opening procedures shall be in accordance with ITB 22.1, **as specified in the BDS. Bidders can also view the bid opening by logging on to the e-procurement system.**

25.2 The withdrawn bid will not be available in the system therefore will not be read. Only the last modified bid shall be available in the system which shall be opened and read along with other bids. Only bids that are opened and read out at bid opening shall be considered further.

25.3 All other bids shall be opened one at a time, reading out: the name of the Bidder and whether there is a modification; the total Bid Price, per lot (contract) if applicable, including any discounts and alternative bids; the presence or absence of a bid security, if required; and any other details as the Employer may consider appropriate. Only discounts and alternative bids read out at bid opening shall be considered for evaluation. The Employer shall neither discuss the merits of any bid nor reject any bid.

25.4 The Employer shall prepare a record of the bid opening that shall include, as a minimum: the name of the Bidder and whether there is a withdrawal, substitution, or modification; the Bid Price, per lot (contract) if applicable, including any discounts and alternative bids; and the presence or absence of a bid security, if one was required. The Bidders` representatives who are present in the office of the Employer to witness the bid opening shall be requested to sign the record. The omission of a Bidder`s signature on the record shall not invalidate the contents and effect of the record. A copy of the record shall be made available on the e-procurement system. .

## **E. Evaluation and Comparison of Bids**

## **26. Confidentiality**

26.1 Information relating to the evaluation of bids and recommendation of contract award shall not be disclosed to Bidders or any other persons not officially concerned with the bidding process until information on Contract award is

communicated to all Bidders in accordance with ITB 40.

26.2 Any attempt by a Bidder to influence the Employer in the evaluation of the bids or Contract award decisions may result in the rejection of its bid.

26.3 Notwithstanding ITB 26.2, from the time of bid opening to the time of Contract award, if a Bidder wishes to contact the Employer on any matter related to the bidding process, it shall do so in writing.

## **27. Clarification of Bids**

27.1 To assist in the examination, evaluation, and comparison of the bids, and qualification of the Bidders, the Employer may, at its discretion, ask any Bidder for a clarification of its bid, given a reasonable time for a response. Any clarification submitted by a Bidder that is not in response to a request by the Employer shall not be considered. The Employer's request for clarification and the response shall be in writing. No change, including any voluntary increase or decrease, in the prices or substance of the bid shall be sought, offered, or permitted.

27.2 If a Bidder does not provide clarifications of its bid by the date and time set in the Employer's request for clarification, its bid may be rejected.

## **28. Deviations, Reservations, and Omissions**

28.1 During the evaluation of bids, the following definitions apply:

- (a) "Deviation" is a departure from the requirements specified in the Bidding Documents;
- (b) "Reservation" is the setting of limiting conditions or withholding from complete acceptance of the requirements specified in the Bidding Documents; and
- (c) "Omission" is the failure to submit part or all of the information or documentation required in the Bidding Documents.

## **29. Determination of Responsiveness**

29.1 The Employer's determination of a bid's responsiveness is to be based on the contents of the bid itself, as defined in ITB11.

29.2 A substantially responsive bid is one that meets the requirements of the Bidding Documents without material deviation, reservation, or omission. A material deviation, reservation, or omission is one that,

a) if accepted, would

- i) affect in any substantial way the scope, quality, or performance of the Works specified in the Contract; or
- ii) limit in any substantial way, inconsistent with the Bidding Documents, the Employer's rights or the Bidder's obligations under the proposed Contract; or

b) if rectified, would unfairly affect the competitive position of



other Bidders presenting substantially responsive bids.

29.3 The Employer shall examine the technical aspects of the bid submitted in accordance with ITB 16, Technical Proposal, in particular, to confirm that all requirements of Section VI, Works Requirements have been met without any material deviation, reservation or omission.

29.4 If a bid is not substantially responsive to the requirements of the Bidding Documents, it shall be rejected by the Employer and may not subsequently be made responsive by correction of the material deviation, reservation, or omission.

**30. Nonmaterial  
Nonconformities**

30.1 Provided that a bid is substantially responsive, the Employer may waive any nonconformities in the Bid.

30.2 Provided that a bid is substantially responsive, the Employer may request that the Bidder submit the necessary information or documentation, within a reasonable period of time, to rectify nonmaterial nonconformities in the bid related to documentation requirements. Requesting information or documentation on such nonconformities shall not be related to any aspect of the price of the Bid. Failure of the Bidder to comply with the request may result in the rejection of its Bid.

30.3 Deleted.

**31. Correction of  
Arithmetical Errors**

31.1 Deleted.

31.2 Deleted.

**32. Conversion to Single  
Currency**

32.1 For evaluation and comparison purposes, the currency(ies) of the Bid shall be converted into a single currency **as specified in the BDS.**

**33. Margin of Preference**

33.1 **Unless otherwise specified in the BDS,** a margin of preference for domestic bidders<sup>1</sup> shall not apply.

**34. Subcontractors**

34.1 **Unless otherwise stated in the BDS,** the Employer does not intend to execute any specific elements of the Works by subcontractors selected in advance by the Contractor.

34.2 The Employer may permit subcontracting for certain specialized works as indicated in Section III 4.2. When subcontracting is permitted by the Employer, the specialized sub-contractor's experience shall be considered for evaluation. Section III

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<sup>1</sup>An individual firm is considered a domestic bidder for purposes of the margin of preference if it is registered in the country of the Employer or has more than 50 percent ownership by nationals of the country of the Employer, and if it does not subcontract more than 10 percent of the contract price, excluding provisional sums, to foreign contractors. JVs are considered as domestic bidders and eligible for domestic preference only if the individual member firms are registered in the country of the Employer or have more than 50 percent ownership by nationals of the country of the Employer, and the JV shall be registered in the country of the Borrower. The JV shall not subcontract more than 10 percent of the contract price, excluding provisional sums, to foreign firms. JVs between foreign and national firms will not be eligible for domestic preference.

describes the qualification criteria for sub-contractors.

34.3 Bidders may propose subcontracting up to the percentage of total value of contracts or the volume of works as **specified in the BDS**.

### **35. Evaluation of Bids**

35.1 The Employer shall use the criteria and methodologies listed in this Clause. No other evaluation criteria or methodologies shall be permitted.

35.2 To evaluate a bid, the Employer shall consider the following:

- a) the bid price;
- b) deleted;
- c) price adjustment due to discounts offered in accordance with ITB 14.3;
- d) converting the amount resulting from applying (a) to (c) above, if relevant, to a single currency in accordance with ITB 32;
- e) deleted;
- f) the additional evaluation factors are specified in Section III, Evaluation and Qualification Criteria;

35.3 The estimated effect of the price adjustment provisions of the Conditions of Contract, applied over the period of execution of the Contract, shall not be taken into account in bid evaluation.

35.4 If these Bidding Documents allows Bidders to quote separate prices for different lots (contracts), the methodology to determine the lowest evaluated price of the lot (contract) combinations, including any discounts offered in the Letter of Bid Form, is specified in Section III, Evaluation and Qualification Criteria.

35.5 If the bid, which results in the lowest Evaluated Bid Price, is seriously unbalanced or front loaded in the opinion of the Employer, the Employer may require the Bidder to produce detailed price analyses for any or all items of the Bill of Quantities, to demonstrate the internal consistency of those prices with the construction methods and schedule proposed. After evaluation of the price analyses, taking into consideration the schedule of estimated Contract payments, the Employer may require that the amount of the performance security be increased at the expense of the Bidder to a level sufficient to protect the Employer against financial loss in the event of default of the successful Bidder under the Contract.

### **36. Comparison of Bids**

36.1 The Employer shall compare the evaluated prices of all

substantially responsive bids established in accordance with ITB 35.2 to determine the lowest evaluated bid.

**37. Qualification of the Bidder**

- 37.1 The Employer shall determine to its satisfaction whether the Bidder that is selected as having submitted the lowest evaluated and substantially responsive bid meets the qualifying criteria specified in Section III, Evaluation and Qualification Criteria.
- 37.2 The determination shall be based upon an examination of the documentary evidence of the Bidder's qualifications submitted by the Bidder, pursuant to ITB 17.1.
- 37.3 An affirmative determination shall be a prerequisite for award of the Contract to the Bidder. A negative determination shall result in disqualification of the bid, in which event the Employer shall proceed to the next lowest evaluated bid to make a similar determination of that Bidder's qualifications to perform satisfactorily.

**38. Employer's Right to Accept Any Bid, and to Reject Any or All Bids**

- 38.1 The Employer reserves the right to accept or reject any bid, and to annul the bidding process and reject all bids at any time prior to contract award, without thereby incurring any liability to Bidders. In case of annulment, all bids submitted and specifically, bid securities, shall be promptly returned to the Bidders.

**F. Award of Contract**

**39. Award Criteria**

- 39.1 Subject to ITB 38.1, the Employer shall award the Contract to the Bidder whose offer has been determined to be the lowest evaluated bid and is substantially responsive to the Bidding Documents, provided further that the Bidder is determined to be qualified to perform the Contract satisfactorily.

**40. Notification of Award**

- 40.1 Prior to the expiration of the period of bid validity, the Employer shall notify the successful Bidder, in writing, that its bid has been accepted. The notification letter (hereinafter and in the Conditions of Contract and Contract Forms called the "Letter of Acceptance") shall specify the sum that the Employer will pay the Contractor in consideration of the execution and completion of the Works (hereinafter and in the Conditions of Contract and Contract Forms called "the Contract Price"). At the same time, the Employer shall also notify all other Bidders of the results of the bidding on the Employer's website and on e-procurement system and shall publish in *UNDB online* the results identifying the bid and lot (contract) numbers and the following information:
- i) name of each Bidder who submitted a Bid;
  - ii) bid prices as read out at Bid Opening;
  - iii) name and evaluated prices of each Bid that was evaluated;

- iv) name of bidders whose bids were rejected and the reasons for their rejection; and
  - v) name of the successful Bidder, and the Price it offered, as well as the duration and summary scope of the contract awarded.
- 40.2 Until a formal contract is prepared and executed, the notification of award shall constitute a binding Contract.
- 40.3 The Employer shall promptly respond in writing to any unsuccessful Bidder who, after notification of award in accordance with ITB 40.1, requests in writing the grounds on which its bid was not selected.
- 41. Signing of Contract**
- 41.1 Promptly upon notification, the Employer shall send the successful Bidder the Contract Agreement.
- 41.2 Within twenty-eight (28) days of receipt of the Contract Agreement, the successful Bidder shall sign, date, and return it to the Employer.
- 42. Performance Security**
- 42.1 Within twenty-eight (28) days of the receipt of notification of award from the Employer, the successful Bidder shall furnish the performance security in accordance with the Contract, subject to ITB 35.5, using for that purpose the Performance Security Form included in Schedule-G, or another form acceptable to the Employer. A foreign institution providing a guarantee shall have a correspondent financial institution located in the Employer's Country.
- 42.2 Failure of the successful Bidder to submit the above-mentioned Performance Security or sign the Contract shall constitute sufficient grounds for the annulment of the award and forfeiture of the bid security. In that event the Employer may award the Contract to the next lowest evaluated Bidder whose offer is substantially responsive and is determined by the Employer to be qualified to perform the Contract satisfactorily.

## Section II. Bid Datasheet

<b>A. Introduction</b>	
<b>ITB 1.1</b>	The number of the Invitation for Bids is: <b>IFB/JMV/6</b>
<b>ITB 1.1</b>	The Employer is: <b>Project Director, Jal Marg Vikas Project, Inland Waterways Authority of India, Ministry of Shipping, Government of India</b>
<b>ITB 1.1</b>	ICB for <b>“Construction of IWT Terminal at Sahibganj, Jharkhand”</b> The identification number of the ICB is: <b>CANW-1/IWAI/JMV/11</b> <b>The number and identification of lots comprising this bidding process is: the work is not divided into lots</b>
<b>ITB 2.1</b>	The Borrower is: <b>Inland Waterways Authority of India, Ministry of Shipping, Government of India</b>
<b>ITB 2.1</b>	Loan or Financing Agreement amount: <b>USD 700 Million (Loan Agreement yet to be signed)</b>
<b>ITB 2.1</b>	The name of the Project is: <b>Capacity Augmentation of National Waterway – 1 (CANW-1)</b>
<b>ITB 4.1</b>	Maximum number of members in the JV shall be: <b>2 (Two)</b>
<b>ITB 4.4</b>	The electronic address of firms and individuals debarred by the Bank is: <a href="http://www.worldbank.org/debarr">http://www.worldbank.org/debarr</a> .
<b>ITB 4.8</b>	This Bidding Process is <b>NOT</b> subject to prequalification <b>and is open for all bidders</b>
<b>ITB 6.1</b>	<p>Modified as:</p> <p>The Bidding Documents consist of Volumes 1, 2, and 3, which include all the Sections specified below, and which should be read in conjunction with any Addenda issued in accordance with ITB 8.</p> <p style="text-align: center;"><b>VOLUME–1 : BIDDING DOCUMENT</b></p> <p style="text-align: center;"><b>Part 1 – Bidding Procedures</b></p> <p style="text-align: center;">Section I. Instructions to Bidders</p> <p style="text-align: center;">Section II. Bid Data Sheet</p> <p style="text-align: center;">Section III. Evaluation and Qualification Criteria</p> <p style="text-align: center;">Section IV. Bidding Forms</p> <p style="text-align: center;">Section V. Eligible Countries</p> <p style="text-align: center;">Section VI. Bank Policy - Corrupt and Fraudulent Practices</p> <p style="text-align: center;"><b>Part 2 - Works Requirements</b></p> <p style="text-align: center;">Section VII.: Conditions of Contract together with Schedules</p> <p style="text-align: center;"><b>VOLUME–2 : TECHNICAL SPECIFICATION AND DRAWINGS</b></p> <p style="text-align: center;"><b>VOLUME–3 : BILL OF QUANTITIES</b></p>

ITB 6.3	<p>Tender fee is required: <b>Yes</b></p> <p><b>A fee of Rs 6,000 (Rs. Six thousand) or USD 100 (USD One Hundred) is to be paid through Demand Draft in favor of IWAI Fund; payable at Noida on or before date of opening of bids, i.e. February 11, 2016</b></p>
<b>B. Bidding Documents</b>	
ITB 7.1	<p>The e-procurement portal of the Employer is: <a href="https://eprocure.gov.in/eprocure/app">https://eprocure.gov.in/eprocure/app</a></p> <p>The prospective Bidder can seek clarifications by sending mails to mf.iwai@nic.in along with e-procurement portal of the employer.</p>
ITB 7.4	<p>A Pre-Bid meeting will take place at the following date, time and place:</p> <p><b>Date: January 12, 2016</b>  <b>Time: 11.30 hours IST</b>  <b>Place: Inland Waterways Authority of India, A-13, Sector-1, Noida - 201301, Uttar Pradesh, India</b></p>
ITB 7.6	<p>Minutes of pre-bid meeting and Addendum to Bidding Documents will also be hosted on the Employer's e-procurement portal, i.e. <a href="https://eprocure.gov.in/eprocure/app">https://eprocure.gov.in/eprocure/app</a></p>
ITB 8.1	<p>Addendum to Bidding Documents will also be hosted on the Employer's e-procurement portal <a href="https://eprocure.gov.in/eprocure/app">https://eprocure.gov.in/eprocure/app</a></p> <p>The Addendum/Corrigendum, if any, shall be uploaded on the e-procurement portal and shall be available online. Prospective bidders may keep in touch with the portal for the relevant information.</p>
ITB 8.3	<p>Notification regarding extension of deadline for submission of Bids will also be hosted on the Employer's e-procurement portal <a href="https://eprocure.gov.in/eprocure/app">https://eprocure.gov.in/eprocure/app</a></p>
<b>C. Preparation of Bids</b>	
ITB 10.1	<p>The language of the bid is: <b>English</b></p> <p>All correspondence exchange shall be in <b>English</b> language.</p> <p>Language for translation of supporting documents and printed literature is <b>English. Such translation shall be attested by Apostille/ Embassy of that country in India.</b></p>
ITB 11.1(h)	<p>The Bidder shall submit with its bid the following additional documents:</p> <p>A scanned copy of an affidavit that the information furnished with the bid document is correct in all respects.</p> <p>The hard copy of the following documents will be submitted in the envelope containing the original Bid Security, tender fee, JV agreement (if applicable), power of attorney.</p>
ITB 11.2	<p>The Bidder shall submit the scanned copy of the Joint Venture Agreement as per the Performa enclosed with the bid documents. The original shall be submitted in the envelope containing the originals as mentioned in Data Sheet ITB 20.1</p>
ITB 13.1	<p><b>Alternative bid shall be permitted.</b></p>
ITB 13.2	<p><b>Alternative time for completion shall be permitted.</b></p>
ITB 13.4	<p>Alternative technical solutions shall be permitted for the following parts of the Works:</p>

	<b>Not Permitted.</b>
<b>ITB 14.3</b>	No changes
<b>ITB 14.4</b>	No changes
<b>ITB 14.5</b>	The prices quoted by the bidder shall be subject to adjustment in accordance with the provisions of Conditions of Contract.
<b>ITB 14.7</b>	<p>Add the following at the end of ITB Clause 14.7.</p> <p>Bidders may like to ascertain availability of excise / custom duty exemption benefits available in India to the contracts financed under World Bank loan / credits. They are solely responsible for obtaining such benefits which they have considered in their bid and in case of failure to receive such benefits for reasons whatsoever, the employer will not compensate the bidder (contractor). Where the bidder has quoted taking into account such benefits, he must give all information required for issue of certificates in terms of such notifications as per form attached to the Qualification Information in the bid. To the extent the employer determines the quantity indicated therein are reasonable keeping in view the approved design, bill of quantities, construction programme and methodology, the certificates will be issued and no subsequent changes will be permitted. No certificate will be issued for items where no quantity for materials is indicated in the statement. Where such Certificates are issued by the Purchaser, Excise Duty will not be reimbursed separately.</p> <p>The bids which do not conform to the above provisions will be treated as non-responsive and rejected. Any delay in procurement of the construction materials as a result of the above shall not be a cause for granting any extension of time.)</p>
<b>ITB 15.1</b>	<p>The currency(ies) of the bid and the payment currency(ies) shall be in accordance with and as described below:</p> <p><b>Bidders to quote entirely in local currency</b></p> <p>(a) The unit rates and the prices shall be quoted by the Bidder in the Bill of Quantities, entirely in <b>Indian Rupees</b>, the name of the currency of the Employer’s country, and further referred to as “the local currency”. A Bidder expecting to incur expenditures in other currencies for inputs to the Works supplied from outside the Employer’s country (referred to as “the foreign currency requirements”) shall indicate in the Appendix to Bid - Table C, the percentage(s) of the Bid Price (excluding Provisional Sums), needed by the Bidder for the payment of such foreign currency requirements, limited to no more than three foreign currencies.</p> <p>(b) The rates of exchange to be used by the Bidder in arriving at the local currency equivalent and the percentage(s) mentioned in (a) above shall be specified by the Bidder in the Appendix to Bid - Table C</p>
<b>ITB 18.1</b>	The bid validity period shall be 120 days.
<b>ITB 18.2</b>	The Employer, if required, may request the Bidders to extend validity of their Bid for a specified period prior to expiry of validity period of Bid through registered e-mail id of the Bidder. If a Bidder is interested to extend validity period of his Bid he may do so by submitting a written communication to the Employer under the signature of the authorized person who has signed the original Bid. The said communication along with

	amendment to the bid security for extension of its validity period shall be delivered by the Bidder to the Employer by 15.00 Hours IST of the last date of validity period of the Bids in his address given in BDS against ITB1.1.
<b>ITB 18.3(a)</b>	The bid price shall be adjusted by the following factor: N.A.
<b>ITB 19.1</b>	A Bid Security of <b>INR Three Crore</b> or <b>USD Five Hundred Thousand</b> is required.
<b>ITB 19.3</b>	<p>a) An unconditional bank guarantee issued by scheduled/ Nationalized bank</p> <p>b) Deleted</p> <p>c) Deleted</p> <p>d) None</p> <p><i>Wherever “financial institution” appears, read as “financial bank”</i></p>
<b>ITB 19.3 (d)</b>	No other types of securities acceptable.
<b>ITB 19.9</b>	N.A.
<b>ITB 20.1</b>	<p>The bidder shall upload the bid at: <a href="https://eprocure.gov.in/eprocure/app">https://eprocure.gov.in/eprocure/app</a></p> <ol style="list-style-type: none"> <li>1. Possession of valid Digital Signature Certificate (DSC) and enrollment / registration of the contractors / bidders on the eprocurement / etender portal is a prerequisite for e-tendering.</li> <li>2. Bidder should do the enrollment in the eProcurement site using the <a href="https://eprocure.gov.in/eprocure/app">https://eprocure.gov.in/eprocure/app</a> option available on the home page. Portal enrollment is generally free of charge. During enrollment / registration, the bidders should provide the correct / true information including valid email_id. All the correspondence shall be made directly with the contractors/bidders through email_id provided.</li> <li>3. Bidder need to login to the site thro’ their user ID / password chosen during enrollment / registration.</li> <li>4. Then the Digital Signature Certificate (Class II or Class III Certificates with signing key usage) issued by SIFY / TCS / nCode / eMudra or any Certifying Employer recognized by CCA India on eToken / SmartCard, should be registered.</li> <li>5. The DSC that is registered only, should be used by the bidder and should ensure safety of the same.</li> <li>6. Contractor / Bidder may go through the tenders published on the site and download the required tender documents / schedules for the tenders he / she is interested.</li> <li>7. After downloading / getting the tender document / schedules, the Bidder should go thro’ them carefully and then submit the documents as asked.</li> <li>8. If there are any clarifications, this may be obtained online thro’ the tender site, or thro’ the contact details. Bidder should take into account of the corrigendum published before submitting the bids online.</li> <li>9. Bidder then logs in to 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 eToken / SmartCard to access DSC.</li> <li>10. Bidder selects the tender which he/she is interested in by using the search option &amp; then moves it to the ‘my favourites’ folder.</li> </ol>



11. From my favourites folder, bidder can select the tender to view all the details indicated.
12. It is construed that the bidder has read all the terms and conditions before submitting their offer. Bidder should go through the tender schedules carefully and upload the documents as asked, otherwise, the bid will be rejected.
13. Bidder, in advance, should get ready the bid documents to be submitted as indicated in the tender document / schedule and generally, they can be in PDF / xls / rar / jpg / dwf formats. If there is more than one document, they can be clubbed together and can be provided in the requested format. Each document to be uploaded through online for the tenders 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.
14. If there are any clarifications, this may be obtained through the site, or during the pre-bid meeting if any. Bidder should take into account the corrigendum published from time to time before submitting the online bids.
15. The Bidders can update well in advance, the documents such as certificates, annual report details etc., under My Space option and these can be selected as per tender requirements and then send along with bid documents during bid submission. This will facilitate the bid submission process faster by reducing upload time of bids.
- 16. Bidder should submit the Tender document Fee/ EMD as specified in the tender. The original payment instruments should be posted/couriered/given in person to the Tender Inviting 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 bidder reads the terms & conditions and accepts the same to proceed further to submit the bid packets.
18. The bidder has to select the payment option as offline to pay the TFEF / 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 bidder has to digitally sign and upload the required bid documents one by one as indicated. Bidders 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 General conditions of contract without any exception and have understood the entire document and are clear about the requirements of the tender requirements.

21. The bidder has to upload the relevant files required as indicated in the cover content. In case of any irrelevant files, the bid will be 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 bidder, else the bid submitted is liable to be rejected for this tender.
23. The bidders are requested to submit the bids through online e-tendering system to the Tender Inviting Employer (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 submission of bids online by the bidders at the eleventh hour.
24. After the bid submission, the acknowledgement number, given by the e-tendering system should be printed by the bidder 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 bidder should ensure / see that the bid documents submitted should be free from virus and if the documents could not be opened, due to virus, during tender opening, the bid is likely / 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 bidders should follow this time during bid submission.
27. All the data being entered by the bidders 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 bidder 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.

	<p>31. For any queries regarding e-tendering process , the bidders are requested to contact through the modes given below:  E mail:- mf.iwai@nic.in Web Site:- <a href="http://www.iwai.gov.in">www.iwai.gov.in</a>  Tel. No. : 0120- 2544004, Fax No. – 0120-2543976</p> <p>32. In person: Shri. Pravir Pandey, Member (Finance) and Project Director (Jal Marg Vikas Project)</p> <p><b>In case of non-receipt of these original documents, the bid will be declared non-responsive.</b></p>
<b>ITB 20.2</b>	<p>The written confirmation of authorization to sign on behalf of the Bidder shall consist of: <b>legally enforceable Power of Attorney duly attested by the Notary.</b></p> <p>The scanned copy of this Power of Attorney shall be uploaded along with the Bid.</p>
<b>ITB 20.3</b>	<p>Modified as:</p> <p>In case the Bidder is a JV, the Bid shall be signed by authorized representative of all the JV partners, and so as to be legally binding on all the members as evidenced by a power of attorney signed by their legally authorized representatives. A scanned copy of the power of attorney shall be uploaded along with the bid.</p>
<b>D. Submission and Opening of Bids</b>	
<b>ITB 22.1</b>	<p><b>The deadline for bid submission is:</b></p> <p>Date: February 12, 2016  Time: 15:00 Hrs (IST)  Bidders have to submit their bids electronically.</p>
<b>ITB 23.1</b>	None
<b>ITB 24.1</b>	<p>Bidders may modify their bids by uploading their request for modification before the deadline for submission of bids on <a href="https://eprocure.gov.in/eprocure/app">https://eprocure.gov.in/eprocure/app</a>.</p> <p>For modification of bids, the bidder need not make any additional payment towards the cost of tender document. For bid modification and consequential re-submission, the bidder is not required to withdraw his bid submitted earlier. The last modified bid submitted by the bidder within the bid submission time shall be considered as the bid. For this purpose, modification/withdrawal by other means will not be accepted. In online system of bid submission, the modification and consequential re-submission of bids is allowed any number of times.</p> <p><b>PLEASE NOTE: The bidders may withdraw his bid by uploading their request before the deadline for submission of bids, however, if the bid is withdrawn, the re-submission of the bid is not allowed.</b></p> <p>Modification (including offering discount)/ withdrawal of Bids by any other means shall not be permitted.</p>
<b>ITB 25.1</b>	The bid opening shall take place <b>at the Office of the Inland Waterways Authority of India, A-13, Sector-1, Noida – 201301, Uttar Pradesh, India</b> on

	<p>Date: February 12, 2016</p> <p>Time: 15:30 Hrs (IST)</p> <p>The Employer will open all the Bids received (except those whose original documents were not received up-to specified time), including modifications made pursuant to Clause 22 and 24, online and this could be viewed by bidders online. In the event of the specified date of Bid opening being declared a holiday for the Employer, the Bids will be opened at the appointed time and location on the next working day.</p>
<b>ITB 25.3</b>	<p>Modified as:</p> <p>“All other bids shall be opened one at a time, reading out: the name of the Bidder and whether there is a modification; the total Bid Price, per lot (contract) if applicable, excluding any discounts and alternative bids; discount offered; the presence or absence of a bid security, if required; and any other details as the Employer may consider appropriate. Only discounts and alternative bids read out at bid opening shall be considered for evaluation. The Employer shall neither discuss the merits of any bid nor reject any bid.”</p>
<b>ITB 25.4</b>	<p>The Employer shall open the bids online and this could be viewed by the bidders also online. The electronic summary of the opening will be generated and kept online. The Employer will also prepare minutes of the Bid opening, including the information disclosed and upload the same for viewing online. Any complaint shall be dealt with in accordance with complaint handling protocol of the Employer.</p>
<b>ITB 27.2</b>	<p>Modified as</p> <p>If a Bidder does not provide clarifications of its bid by the date and time set in the Employer’s request for clarification, its bid will be evaluated based on the available information and interpretation of the Employer.</p>
<b>E. Evaluation, and Comparison of Bids</b>	
<b>ITB 32.1</b>	<p>The currency that shall be used for bid evaluation and comparison purposes to convert all bid prices expressed in various currencies in to a single currency is: Indian National Rupees</p> <p>The source of exchange rate shall be: Reserve Bank of India</p> <p>The date for the exchange rate shall be: Bid Opening Date.</p> <p>The currency (ies) of the Bid shall be converted in to a single currency in accordance with the procedure that follows:</p> <p>For comparison of bids, the Bid Price shall first be broken down into the respective amounts payable in various currencies by using the exchange rates specified by the bidder in accordance with Sub-Clause 15.1.</p> <p>In the second step, the Employer will convert the amounts in various currencies in which the Bid Price is payable (excluding Provisional Sums but including Day work where priced competitively) to the single currency identified above at the selling rates established for similar transactions by the Employer specified and on the date stipulated above.</p>
<b>ITB 33.1</b>	<p>No margin of preference to domestic bidders.</p>
<b>ITB 34.1</b>	<p>At this time the Employer <i>does not want to</i> execute any part of the Works by sub-contractors selected in advance.</p>
<b>ITB 34.3</b>	<p>a) Contractor’s proposed subcontracting: Maximum percentage of subcontracting</p>

	<p>permitted is: 20% by value of contract Works and not whole of Works or any particular length / stretch</p> <p>b) Bidders planning to subcontract more than 10% of value of contract Works shall specify, in the Bid Submission Form, the activity (ies) or parts of the works to be subcontracted along with complete details of the sub-contractors and their qualification and experience. The qualification and experience of the sub-contractors must meet the minimum criteria for the relevant work to be sub-contracted failing which such sub-contractors will not be permitted to participate.</p> <p>c) Sub-contractors' qualification and experience will not be considered for evaluation of the Bidder. The Bidder on its own (without taking into account the qualification and experience of the sub-contractor) should meet the qualification criteria.</p>
<b>ITB 35.2</b>	deleted
<b>ITB 38.1</b>	In case of annulment of Bids, the original Bid Security and Power of Attorney(s) only shall be returned to the Bidders
<b>ITB 42.1</b>	Wherever "financial institution" appears, read as "financial bank"

### **Section III. Evaluation and Qualification Criteria (Without Prequalification)**

This Section contains all the criteria that the Employer shall use to evaluate bids and qualify Bidders. In accordance with ITB 35 and ITB 37, no other factors, methods or criteria shall be used. The Bidder shall provide all the information requested in the forms included in Section IV, Bidding Forms.

Wherever a Bidder is required to state a monetary amount, Bidders should indicate the USD equivalent using the rate of exchange determined as follows:

- For construction turnover or financial data required for each year - Exchange rate prevailing on the last day of the respective financial year (in which the amounts for that year is to be converted) was originally established. For the avoidance of doubt, financial year shall for the purpose mentioned here under mean the accounting year followed by the applicant in the course of its normal business.
- Value of single contract - Exchange rate prevailing on the date of the respective contract.

Exchange rates shall be taken from the publicly available source identified in the ITB 32.1. Any error in determining the exchange rates in the Bid may be corrected by the Employer.

The enhancement factors given below shall be multiplied by the Average Annual Turnover values (and other cost of work) of the previous years for converting them to current year (2014-2015) values:

<b>Year</b>	<b>Factor</b>
2014 - 2015	1.00
2013 - 2014	1.07
2012 - 2013	1.16
2011 - 2012	1.25
2010 - 2011	1.35
2009 - 2010	1.46

## **1. Evaluation**

In addition to the criteria listed in ITB 35.2 (a) – (e) the following criteria shall apply:

### **1.1 Assessment of adequacy of Technical Proposal with Requirements**

Evaluation of the Bidder's Technical Proposal will include an assessment of the Bidder's technical capacity to mobilize key equipment and personnel for the contract consistent with its proposal regarding work methods, scheduling, and material sourcing in sufficient detail and fully in accordance with the requirements stipulated in Section VII (Works Requirements).

### **1.2 Multiple Contracts, if permitted under ITB 35.4, will be evaluated as follows: Not applicable**

**1.3 Alternative Completion Times**, if permitted under ITB 13.2, will be evaluated as follows: Will be considered if the alternative solution is technically suitable and leads to lesser time.

**1.4 Technical alternatives**, N.A.

**1.5 Specialised Subcontractors - Deleted**

## 2. Qualification

Attach certificates from Employer for the experience claimed. Experience, where certificates are not provided shall not be considered.

<b>Factor</b>	<b>2.1 Eligibility</b>					
<b>Sub-Factor</b>	<b>Requirement</b>	<b>Criteria</b>				<b>Documentation Required</b>
		<b>Single Entity</b>	<b>Bidder</b>			
			<b>All partners combined</b>	<b>Each partner</b>	<b>At least one partner (This shall be the Lead Partner)</b>	
2.1.1 Nationality	Nationality in accordance with ITB 4.3.	Must meet requirement	Existing or intended JVA must meet requirement	Must meet requirement	Must meet requirement	Form ELI-1 and 2, with attachments
2.1.2 Conflict of Interest	No- conflicts of interests as described in ITB 4.2.	Must meet requirement	Existing or intended JVA must meet requirement	Must meet requirement	Must meet requirement	Letter of Bid
2.1.3 Bank Ineligibility	Not having been declared ineligible by the Bank as described in ITB 4.4.	Must meet requirement	Existing JVA must meet requirement	Must meet requirement	Must meet requirement	Letter of Bid
2.1.4 Government Owned Entity	Compliance with conditions of ITB 4.5	Must meet requirement	Must meet requirement	Must meet requirement	Must meet requirement	Form ELI-1 and 2, with attachments



<b>Factor</b>	<b>2.1 Eligibility</b>					
<b>Sub-Factor</b>	<b>Criteria</b>					<b>Documentation Required</b>
	<b>Requirement</b>	<b>Bidder</b>				
		<b>Single Entity</b>	<b>Joint Venture</b>			
<b>All partners combined</b>			<b>Each partner</b>	<b>At least one partner (This shall be the Lead Partner)</b>		
2.1.5 Ineligibility based on a United Nations resolution or Borrower's country law	Not having been excluded as a result of the Borrower's country laws or official regulations, or by an act of compliance with UN Security Council resolution, in accordance with ITB 4.7	Must meet requirement	Existing JVA must meet requirement	Must meet requirement	Must meet requirement	Letter of Bid

Factor	2.2 Historical Contract Non-Performance					
Sub-Factor	Criteria					Documentation Required
	Requirement	Bidder				
		Single Entity	Joint Venture			
			All partners combined	Each partner	At least one partner (This shall be the Lead Partner)	
2.2.1 History of non-performing contracts	Non-performance <sup>2</sup> of a contract did not occur within the last five (5) years from 1 <sup>st</sup> April 2010 to 31 <sup>st</sup> March 2015 prior to the deadline for bid submission, based on all information on fully settled disputes or litigation. (A fully settled dispute or litigation is one that has been resolved in accordance with the Dispute Resolution Mechanism under the respective contract, and where all appeal instances available to the bidder have	Must meet requirement by itself or as partner to past or existing JVA	Must meet requirements	Must meet requirement by itself or as partner to past or existing JVA	Must meet requirements	Form CON - 2

<sup>2</sup>Non performance, as decided by the Employer, shall include all contracts where (a) non performance was not challenged by the contractor, including through referral to the dispute resolution mechanism under the respective contract, and (b) contracts that were so challenged but fully settled against the contractor. Nonperformance shall not include contracts where Employers decision was overruled by the dispute resolution mechanism. Non performance must be based on all information on fully settled disputes or litigation, i.e. dispute or litigation that has been resolved in accordance with the dispute resolution mechanism under the respective contract and where all appeal instances available to the applicant have been exhausted.

	been exhausted.)					
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Sub-Factor	Criteria					Documentation Required
	Requirement	Bidder				
		Single Entity	Joint Venture			
			All partners combined	Each partner	At least one partner (This shall be the Lead Partner)	
2.2.2 Suspension Based on Execution of Bid Securing Declaration by the Employer or withdrawal of the Bid within Bid validity	Not under suspension based on execution of a Bid Securing Declaration pursuant to ITB 4.6 or withdrawal of the Bid pursuant ITB 19.9.	Must meet requirement	Must meet requirement	Must meet requirement	Must meet requirement <sup>3</sup>	Bid Submission Form
2.2.3 Pending Litigation	All pending litigation <sup>3</sup> shall in total not represent more than fifty percent (50%) of the Bidder's net worth and shall be treated as resolved against the Bidder.	Must meet requirement by itself or as partner to past or existing JVA	N / A	Must meet requirement by itself or as partner to past or existing JVA	Must meet requirement <sup>3</sup>	Form CON – 2

<sup>3</sup>The Bidder shall provide accurate information on the related Form about any litigation or arbitration resulting from contracts completed or ongoing under its execution over the last five years. A consistent history of awards against the Bidder or any member of a joint venture may result in rejection of Bid

Sub-Factor	Criteria					Documentation Required
	Requirement	Bidder				
		Single Entity	Joint Venture			
			All partners combined	Each partner	At least one partner (This shall be the Lead Partner)	
2.2.4 Litigation History	No consistent history of court/arbitral award decisions against the Bidder <sup>4</sup> since 1 <sup>st</sup> January 2013	Must meet requirement	Must meet requirement	Must meet requirement	Must meet requirement	Form CON – 2

<sup>4</sup> The Bidder shall provide accurate information on the letter of Bid about any litigation or arbitration resulting from contracts completed or ongoing under its execution over the last five years. A consistent history of court/arbitral awards against the Bidder or any member of a joint venture may result in disqualifying the Bidder.

Factor	2.3 Financial Situation					
Sub-Factor	Criteria					Documentation Required
	Requirement	Bidder				
		Single Entity	Joint Venture			
All partners combined	Each partner		At least one partner (This shall be the Lead Partner)			
2.3.1 Financial Capabilities	(i) The Bidder shall demonstrate that it has access to, or has available, liquid assets, unencumbered real assets, lines of credit, and other financial means (independent of any contractual advance payment) sufficient to meet the construction cash flow requirements estimated as INR 1,216 Million/USD 20.27 Million for the subject contract(s) net of the Bidders other commitments (ii) The Bidders shall also demonstrate, to the satisfaction of the Employer, that it has adequate sources of finance to meet the cash flow requirements on works currently in progress and for future contract commitments.	Must meet requirement	Must meet requirement	N/A	N / A	Form FIN –1 and Form FIN – 3 Including attachments where required,
Must meet requirement		N/A	Must meet requirement	N/A		
Must meet requirement		N/A	Must Meet Requirement	N/A		

Factor	2.3 Financial Situation					
Sub-Factor	Criteria					Documentation Required
	Requirement	Bidder				
		Single Entity	Joint Venture			
All partners combined	Each partner		At least one partner (This shall be the Lead Partner)			
	<p>(iii) The audited balance sheets or, if not required by the laws of the Bidder's country, other financial statements acceptable to the Employer, for the last 3 (<i>Three</i>) years i.e. from FY 2012-13 to FY 2013-15 shall be submitted and must demonstrate the current soundness of the Bidder's financial position and indicate its prospective long-term profitability.</p> <p><b>"As a minimum, a Bidder's net worth calculated as the difference between total assets and total liabilities should be positive."</b></p>					

Factor	2.3 Financial Situation					
Sub-Factor	Criteria					Documentation Required
	Requirement	Bidder				
		Single Entity	Joint Venture			
			All partners combined	Each partner	At least one partner (This shall be the Lead Partner)	
<b>2.3.2. Average Annual Turnover</b>	Minimum average annual turnover of <b>INR 6,080 Million / USD 101.33 million</b> or an equivalent amount in a freely convertible currency, calculated as total certified payments received for contracts in progress or completed, within the last three (3) years <b>from 1<sup>st</sup> April 2012 to 31<sup>st</sup> March 2015</b>	Must meet requirement	Must meet requirement	Must meet forty percent (40 %) of the requirement	Must meet Sixty percent (60%) of the requirement	Form FIN –2

Factor	2.4 Experience					
Sub-Factor	Criteria					Documentation Required
	Requirement	Single Entity	Bidder			
			Joint Venture		At least one partner (This shall be the Lead Partner)	
		All partners combined	Each partner			
<b>2.4.1 General Experience</b>	Experience under contracts in the role of contractor, subcontractor, or management contractor for at least the last seven [7] years from 1 <sup>st</sup> April 2008 to 31 <sup>st</sup> March 2015 prior to the bid submission deadline	Must meet requirement	N / A	Must meet requirement	N/A	Form EXP-1

Sub-Factor	Criteria					Documentation Required
	Requirement	Single Entity	Bidder			
			Joint Venture		At least one partner (This shall be the Lead Partner)	
		All partners combined	Each partner			



Sub-Factor	Criteria				Documentation Required	
	Requirement	Bidder				
		Single Entity	Joint Venture			
			All partners combined	Each partner		At least one partner (This shall be the Lead Partner)
2.4.2 Specific Experience	<p>a) Participation<sup>5</sup> as contractor, joint venture member<sup>6</sup>, management contractor, or subcontractor, in at least one (1) contracts within the last seven (7) years <b>from 1<sup>st</sup> April 2008 to 31<sup>st</sup> March 2015.</b></p> <p>With a value of at least one contract of at least <b>INR 2500 Million or USD 41.67 Million</b> / two contracts each with the value of at least <b>INR 1500 Million or USD 25 million</b> / three contracts each with the value of at least <b>INR 1000 Million or USD 16.67 million</b> or an equivalent amount in a freely convertible currency that have been successfully and substantially<sup>7</sup> completed and that are similar<sup>8</sup> to the proposed Works within last seven (7) years. The similarity shall be based on the physical size, complexity, methods / technology or other characteristics as described in Part 2, Employer's Requirements. Jetty or Harbour with pile foundation in river / sea or construction of bridge in river executed under BOQ contracts shall also be considered as similar works.</p> <p>*Cost of works of previous years shall be increased by 7% per year</p>	Must meet requirement	Must meet requirements	Must meet 40% of requirement	Must meet 60% of requirement	Form EXP 2(a)

<sup>5</sup>For contracts under which the Bidder participated as a joint venture member or sub-contractor, only the Bidder's share, by value, shall be considered to meet this requirement.

<sup>6</sup>In the case of JV, the value of contracts completed by its members shall not be aggregated to determine whether the requirement of the minimum value of a single contract has been met. Instead, each contract performed by each member shall satisfy the minimum value of a single contract as required for single entity.

In determining whether the JV meets the requirement of total number of contracts, only the number of contracts completed by all members each of value equal or more than the minimum value required shall be aggregated.

<sup>7</sup>Substantial completion shall be based on 80% or more works completed under the contract

<sup>8</sup>The similarity shall be based on the physical size, complexity, methods/technology and/or other characteristics described in Scope of Works. Summation of number of small value contracts (less than the value specified under requirement) to meet the overall requirement will not be accepted.

Sub-Factor	Criteria				Documentation Required
	Requirement	Bidder			
		Single Entity	Joint Venture		
	All partners combined		Each partner	At least one partner (This shall be the Lead Partner)	
	based on Rupee value to bring them to 2014-15 price level.				

Sub-Factor	Criteria				Documentation Required
	Requirement	Bidder			
		Single Entity	Joint Venture		
	All partners combined		Each partner	At least one partner (This shall be the Lead Partner)	

Sub-Factor	Criteria				Documentation Required	
	Requirement	Bidder				
		Single Entity	Joint Venture			
	All partners combined		Each partner	At least one partner (This shall be the Lead Partner)		
2.4.2 Specific Experience	<p>b) For the above or other contracts executed during the period stipulated in 2.4.2(a) above, a minimum experience<sup>9</sup> in the following key activities:</p> <ul style="list-style-type: none"> <li>• <i>Designing of Jetty or Harbour in river/sea or a bridge in river of minimum INR 3800 Million or USD 63.33 Million</i></li> <li>• <i>Marine / River civil works involving minimum 1100 mm diameter or equivalent area piles in marine / river conditions.</i></li> <li><i>or</i></li> <li>• <i>RCC well foundation works involving minimum 7000 mm diameter or equivalent area in marine / river conditions.</i></li> </ul>	Must meet requirements	Must meet requirements	Must Meet 40% of requirements	Must meet 60% of the requirements	Form EXP-2(b)

<sup>9</sup>Volume, number or rate of production of any key activity can be demonstrated in one or more contracts combined if executed during same time period. The rate of production shall be the annual production rate for the key construction activity (or activities). For the rate of production, either the average during the entire period or in any one or more years during the period should be specified

## 2.5 Personnel

The Bidder must demonstrate that it has the personnel for the key positions that meet the following requirements:

No.	Position	Total Work Similar Experience (years)	In Similar Works Experience (years)	In case of JV, to be proposed by
1	Project Manager & Team Leader	15	10	Lead Member
2	Asst. Project Manager	10	7	Lead Member
3	Mechanical Engineer	10	7	Lead Member
4	Electrical Engineer	10	8	Lead Member
5	Civil Engineer	8	5	Any Member
6	Planning Engineer	10	5	Any Member
7	Foundation Engineer	10	5	Any Member
8	Billing Engineer	10	5	Any Member
8	QC/QA Engineer- Mech.	10	5	Any Member
9	QC & QAI Engineer- Civil	10	5	Any Member
10	Surveyor	10	5	Any Member

Note:- All Personnel mentioned above should be having minimum B.E. / B.Tech Degree in Engineering. Only in case of Billing Engineers/Surveyors, Personnel having Diploma may be acceptable whose experience requirement shall be increased by 3 years.

The Project Manager proposed must have experience in construction of jetty / berths in river / marine conditions or construction of bridges and culverts in river / marine conditions in at least one project. The Bidder shall provide details of the proposed personnel and their experience records using Form PER-1 and PER-2 included in Section IV, Bidding Forms.

## 2.6 Equipment

The Bidder must demonstrate that it has the key equipment listed hereafter:

Sl. No.	Equipment Type and Characteristics			Minimum Number required
	Equipment	Minimum Capacity	Max. age (years)	
1*	Crane (Tyre mounted)	100T	5	1 No.
2*	Crane (Tyre mounted)	50T	5	2 Nos.
3*	Pile Driving Rigs with minimum 10T winch complete with	-	5	2 Nos.

Sl. No.	Equipment Type and Characteristics			Minimum Number required
	Equipment	Minimum Capacity	Max. age (years)	
	DMC/Bailor/Chiesel etc.			
4*	Hydra	10 to 12 T	5	4 nos.
5*	Trailer	-	5	2 Nos.
6*	Winches	10 to 12 T	5	2 Nos.
7	Concrete Batching Plant	30 cum/hour		
8	Transit Mixer	5 cum		
9.	Concrete pump with adequate pipelines	30 cum/hour		
*- These equipment must be owned by bidder and by lead member in case of JV				

**Notes:**

- Bidders are requested to verify latest position in respect of “Duties on Contractor’s Equipment” from Department of Revenue, Ministry of Finance, Government of India.
- The equipment listed above should not be older than 5 years of age.
- The Bidder shall furnish the details of proposed equipment using Form EQU included in Section IV.

## 2.7 Bid Capacity

Eligibility and Qualification Criteria		Compliance Requirements				Documentation
Subject	Requirement	Single Entity	Joint Venture (existing or intended)			Submission Requirements
			All Parties Combined	Each Member	Atleast One Member (this shall be Lead Member)	
<b>5. Bid Capacity</b>						
<b>5.1 Bid capacity</b>	Available Bid Capacity should be More than value of contract/ contracts applied for	Must meet requirement	Must meet requirement	Must meet <b>60% (Sixty percent)</b> of the requirement	Must meet <b>70% (Seventy percent)</b> of the requirement	Form FIN 4 & EXP 1

**Bid Capacity= [(A\*N\*2)-B],** where

A= Maximum value of works executed in any one year during the last five years (updated to the current price level), in INR

B= Value at current price level of the existing commitments and ongoing works to be completed concurrently with the works specified upto the period of 'N' below

N= 2.5 (No. of years prescribed for completion of works for which bids are invited)

## **Section IV. Bidding Forms**

## Letter of Bid

Date:

ICB No.: .....

Invitation for Bid No.: .....

To:

**Member (Finance & Traffic) and Project Director (Jal Marg Vikas Project),  
Inland Waterways Authority of India,  
A – 13, Sector – 1,  
Noida – 201301, Uttar Pradesh – INDIA  
Telephone No. : (91) 0120-2544004  
Fax No. : (91) 0120-2543976  
Email. : [mf.iwai@nic.in](mailto:mf.iwai@nic.in)**

We, the undersigned, declare that:

- a) We have examined and have no reservations to the Bidding Documents, including Addenda issued in accordance with Instructions to Bidders (ITB 8);
- b) We meet the eligibility requirements and have no conflict of interest in accordance with ITB 4;
- c) We have not been suspended nor declared ineligible by the Employer based on execution of a Bid Securing Declaration in the Employer's country in accordance with ITB 4.6
- d) We offer to execute in conformity with the Bidding Documents the following Works:  
**Construction of IWT Terminal at Sahibganj, Jharkhand;**
- e) The total price of our Bid, excluding any discounts offered in item (f) below is: **(currency: INR.....) (amount in figure) (amount in words Rupees.....)**
- f) The discounts offered and the methodology for their application are:
  - i) The discounts offered are: \_\_\_\_\_
  - ii) The exact method of calculations to determine the net price after application of discounts is shown below:
- g) Our bid shall be valid for a period of **120 days** from the date fixed for the bid submission deadline **(i.e) DD MM YYYY** in accordance with the Bidding Documents, and it shall remain binding upon us and may be accepted at any time before the expiration of that period;
- h) If our bid is accepted, we commit to obtain a performance security in accordance with the Bidding Documents;
- i) We are not participating, as a Bidder or as a subcontractor, in more than one bid in this bidding process in accordance with ITB 4.2(e), other than alternative bids submitted in accordance with ITB 13;
- j) We, including any of our subcontractors or suppliers for any part of the contract, have not been declared ineligible by the Bank, under the Employer's country laws or official regulations or by an act



of compliance with a decision of the United Nations Security Council;

- k) We are not a government owned entity/ We are a government owned entity but meet the requirements of ITB 4.5;<sup>10</sup>
- l) We have paid, or will pay the following commissions, gratuities, or fees with respect to the bidding process or execution of the Contract:

Name of Recipient	Address	Reason	Amount

(If none has been paid or is to be paid, indicate "none.")

- m) We understand that this bid, together with your written acceptance thereof included in your notification of award, shall constitute a binding contract between us, until a formal contract is prepared and executed; and
- n) We understand that you are not bound to accept the lowest evaluated bid or any other bid that you may receive.
- o) We hereby certify that we have taken steps to ensure that no person acting for us or on our behalf will engage in any type of fraud and corruption

Name of the Bidder\*

Name of the person duly authorized to sign the Bid on behalf of the Bidder\*\*

Title of the person signing the Bid

Signature of the person named above

Date signed \_\_\_\_\_ day of \_\_\_\_\_,

---

<sup>10</sup> Bidder to use as appropriate

\*: In the case of the Bid submitted by joint venture specify the name of the Joint Venture as Bidder

\*\* : Person signing the Bid shall have the power of attorney given by the Bidder to be attached with the Bid

### Appendix to Bid Schedule of Adjustment Data

[In Tables A, B, and C, below, the Bidder shall (a) indicate its amount of local currency payment, (b) indicate its proposed source and base values of indices for the different foreign currency elements of cost, (c) derive its proposed weightings for local and foreign currency payment, and (d) list the exchange rates used in the currency conversion. In the case of very large and/or complex works contracts, it may be necessary to specify several families of price adjustment formulae corresponding to the different works involved.]

**Table A. Local Currency**

Index code*	Index description*	Source of index*	Base value and date*	Bidder's related currency amount	Bidder's proposed weighting
A	Labour	Labour Bureau, Ministry of Labour, GOI	<b>28 days preceding the Bid Submission Date.</b>		<b>As shown in GCC Clause 19.10</b>
B	Cement	Ministry of Industrial Development, GOI			
C	Steel				
D	Bitumen	Official retail price at nearest Indian Oil Corporation refinery			
E	POL (Fuel & Lubricants)	Official retail price of HSD at existing nearest IOC outlet			
F	Plant, Machinery & Spares	Ministry of Industrial Development, GOI			
G	Other Materials				
<b>Total</b>				<b>1.00</b>	

**Table B. Foreign Currency (FC)**

**State type:** ..... [If the Bidder is allowed to receive payment in foreign currencies this table shall be used. If Bidder wishes to quote in more than one foreign currency (up to three currencies permitted) then this table should be repeated for each foreign currency.]

Index code	Index description	Source of index	Base value and date	Bidder's related source currency in type/amount	Equivalent in FC1	Bidder's proposed weighting
	Nonadjustable	—	—	—		0.15
A	Labour					
B	Cement					
C	Steel					
D	Bitumen					
E	POL (Fuel & Lubricants)					
F	Plant, Machinery & Spares					
G	Other Materials					
				<b>Total</b>		<b>1.00</b>

[Bidder will be required to modify the value such that the total weighting =1.00]

The Bidder shall in his tender indicate the foreign input (plant, material, Engineer's salary etc.,) and appropriate index, the source of which shall be Government or public organization. The Bidder shall also attach specimens of the publications of the last 12 months for information of the Employer. If the index proposed by the Bidder is not acceptable to the Employer, then the Employer will specify alternative index and the source of publishing of the index.

The currency of foreign exchange payment and index shall belong to the same country.

**Table C. Summary of Payment Currencies**

**Table: Alternative A**

For..... [insert name of Section of the Works]

Name of payment currency	A Amount of currency	B Rate of exchange (local currency per unit of foreign)	C Local currency equivalent C = A x B	D Percentage of Total Bid Price (TBP) 100xC TBP
Local currency		1.00		
Foreign currency #1				
Foreign currency #2				
Foreign currency #				
Total Bid Price				100.00
TOTAL BID PRICE				

## Technical Proposal

- **Site Organization**
- **Method Statement**
- **Quality Assurance Plan (QAP)**
- **Mobilization Schedule**
- **Construction Schedule**
- **Equipment**
- **Others**

## Site Organization

## **Method Statement**

## **Mobilization Schedule**



**Construction Schedule**

### Form EQU: Equipment

The Bidder shall provide adequate information to demonstrate clearly that it has the capability to meet the requirements for the key equipment listed in Section III, Evaluation and Qualification Criteria. A separate Form shall be prepared for each item of equipment listed, or for alternative equipment proposed by the Bidder.

Item of equipment		
Equipment information	Name of manufacturer	Model and power rating
	Capacity	Year of manufacture
	Registration number or any other unique identification number	
Current status	Current location	
	Details of current commitments	
Source	Indicate source of the equipment <input type="checkbox"/> Owned <input type="checkbox"/> Rented <input type="checkbox"/> Leased <input type="checkbox"/> Specially manufactured	

Omit the following information for equipment owned by the Bidder.

Owner	Name of owner	
	Address of owner	
	Telephone	Contact name and title
	Fax	Telex
Agreements	Details of rental / lease / manufacture agreements specific to the project	

## Personnel

### Form PER-1: Proposed Personnel

Bidders should provide the names of suitably qualified personnel to meet the specified requirements stated in Section III. The data on their experience should be supplied using the Form below for each candidate.

1.	Title of position*
	Name
2.	Title of position*
	Name
3.	Title of position*
	Name
4.	Title of position*
	Name

\*As listed in Section III.

**Form PER-2: Resume of Proposed Personnel**

<b>Name of Bidder</b>
-----------------------

<b>Position</b>		
<b>Personnel information</b>	<b>Name</b>	<b>Date of birth</b>
	<b>Professional qualifications</b>	
<b>Present employment</b>	<b>Name of employer</b>	
	<b>Address of employer</b>	
	<b>Telephone</b>	<b>Contact (manager / personnel officer)</b>
	<b>Fax</b>	<b>E-mail</b>
	<b>Job title</b>	<b>Years with present employer</b>

Summarize professional experience over the last 20 years, in reverse chronological order. Indicate particular technical and managerial experience relevant to the project.

From	To	Company / Project / Position / Relevant Technical and Management Experience

### Bidders Qualification without prequalification

To establish its qualifications to perform the contract in accordance with Section III (Evaluation and Qualification Criteria) the Bidder shall provide the information requested in the corresponding Information Sheets included hereunder.

#### Form ELI – 1: Bidder’s Information Sheet

<b>Bidder’s Information</b>	
<b>Bidder’s legal name</b>	
<b>In case of JV, legal name of each partner</b>	
<b>Bidder’s country of constitution</b>	
<b>Bidder’s year of constitution</b>	
<b>Bidder’s legal address in country of constitution</b>	
<b>Bidder’s authorized representative</b> (name, address, telephone numbers, fax numbers, e-mail address)	
<p><b>Attached are copies of the following original documents.</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> 1. In case of single entity, articles of incorporation or constitution of the legal entity named above, in accordance with ITB 4.1 and 4.2.</li> <li><input type="checkbox"/> 2. Authorization to represent the firm or JV named in above, in accordance with ITB 20.2.</li> <li><input type="checkbox"/> 3. In case of JV, letter of intent to form JV or JV agreement, in accordance with ITB 4.1.</li> <li><input type="checkbox"/> 4. In case of a government-owned entity, any additional documents not covered under 1 above required to comply with ITB 4.5.</li> </ul>	

**Form ELI – 2: JV Information Sheet**

*Each member of a JV must fill in this form*

<b>JV / Specialist Subcontractor Information</b>	
<b>Bidder's legal name</b>	
<b>JV Partner's or Subcontractor's legal name</b>	
<b>JV Partner's or Subcontractor's country of constitution</b>	
<b>JV Partner's or Subcontractor's year of constitution</b>	
<b>JV Partner's or Subcontractor's legal address in country of constitution</b>	
<b>JV Partner's or Subcontractor's authorized representative information</b> (name, address, telephone numbers, fax numbers, e-mail address)	
<p><b>Attached are copies of the following original documents.</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> 1. Articles of incorporation or constitution of the legal entity named above, in accordance with ITB 4.1 and 4.2.</li> <li><input type="checkbox"/> 2. Authorization to represent the firm named above, in accordance with ITB 20.2.</li> <li><input type="checkbox"/> 3. In the case of government-owned entity, documents establishing legal and financial autonomy and compliance with commercial law, in accordance with ITB 4.5.</li> </ul>	

**Form CON-2: Historical Contract Non-Performance**

*[The following table shall be filled in for the Bidder and for each partner of a Joint Venture]*

Bidder's Legal Name: \_\_\_\_\_  
 Date: \_\_\_\_\_  
 Joint Venture Party Legal Name: \_\_\_\_\_  
 ICB No. and title: \_\_\_\_\_  
 Page \_\_\_\_\_ of \_\_\_\_\_ pages

Non-Performing Contracts in accordance with Section III, Qualification Criteria and Requirements			
<input type="checkbox"/> Contract non-performance did not occur during the <i>last five (5)</i> years specified in Section III, Qualification Criteria and Requirements, Sub-Factor 2.1.			
<input type="checkbox"/> Contract(s) not performed during the <i>last five (5)</i> years specified in Section III, Qualification Criteria and Requirements, requirement 2.1			
Year	Non performed portion of contract	Contract Identification	Total Contract Amount (current value, US\$ equivalent)
		Contract Identification: Name of Employer: Address of Employer: Reason(s) for non-performance:	
Pending Litigation, in accordance with Section III, Qualification Criteria and Requirements			
<input type="checkbox"/> No pending litigation in accordance with Section III, Qualification Criteria and Requirements, Sub-Factor 2.2.			
<input type="checkbox"/> Pending litigation in accordance with Section III, Qualification Criteria and Requirements, Sub-Factor 2.2 as indicated below.			
Year	Outcome as Percentage of Total Assets	Contract Identification	Total Contract Amount (current value, US\$ equivalent)
		Contract Identification: Name of Employer:] Address of Employer: Matter in dispute:	



**Form FIN-1: Financial Situation**

*Each Bidder or member of a JV must fill in this form*

Financial Data for Previous 5Years [US\$ Equivalent]						
Year 1: 2014-2015	Year 2: 2013-2014	Year 3: 2012- 2013	Year 4: 2011-2012	Year 5: 2010-2011	Year 6: 2009- 2010	Year 7: 2008-2009

**Information from Balance Sheet**

<b>Total Assets</b>			
<b>Total Liabilities</b>			
<b>Net Worth</b>			
<b>Current Assets</b>			
<b>Current Liabilities</b>			

**Information from Income Statement**

<b>Total Revenues</b>			
<b>Profits Before Taxes</b>			
<b>Profits After Taxes</b>			

- Attached are copies of financial statements (balance sheets including all related notes, and income statements) for the last five years, as indicated above, complying with the following conditions.
- All such documents reflect the financial situation of the Bidder or partner to a JV, and not sister or parent companies.
  - Historic financial statements must be audited by a certified accountant.
  - Historic financial statements must be complete, including all notes to the financial statements.
  - Historic financial statements must correspond to accounting periods already completed and audited (no statements for partial periods shall be requested or accepted).

**Form FIN-2: Average Annual Construction Turnover**

*Each Bidder or member of a JV must fill in this form*

<b>Year</b>	<b>Amount US\$</b>
2014-2015	
2013-2014	
2012-2013	
2011-2012	
2010-2011	
2009-2010	
2008-2009	
Average Annual Turn Construction Over	

The information supplied should be the Annual Turnover of the Bidder or each member of a JV in terms of the amounts billed to clients for each year for work in progress or completed, converted to US\$ at the rate of exchange at the end of the period reported.

**Form FIN-3: Financial Resources**

Specify proposed sources of financing, such as liquid assets, unencumbered real assets, lines of credit, and other financial means, net of current commitments, available to meet the total construction cash flow demands of the subject contract or contracts as indicated in Section III (Evaluation and Qualification Criteria)

<b>Financial Resources</b>		
<b>No.</b>	<b>Source of financing</b>	<b>Amount (US\$ equivalent)</b>
1		
2		
3		

**Form FIN-4: Current Contract Commitments / Works in Progress**

Bidders and each partner to a JV 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.

<b>Current Contract Commitments</b>						
<b>No.</b>	<b>Name of Contract</b>	<b>Employer's Contact Address, Tel, Fax</b>	<b>Total value of contract (US\$ Equivalent)</b>	<b>Value of Outstanding Work [Current US\$ Equivalent]</b>	<b>Estimated Completion Date</b>	<b>Average Monthly Invoicing Over Last Six Months [US\$/month]</b>
1						
2						
3						
4						
5						

**Form EXP-1: General Construction Experience**

*Each Bidder or member of a JV must fill in this form*

<b>General Construction Experience</b>				
<b>Starting Month Year</b>	<b>Ending Month Year</b>	<b>Years</b>	<b>Contract Identification and Name Name and Address of Employer Brief Description of the Works Executed by the Bidder</b>	<b>Role of Bidder</b>

**Form EXP-2(a): Specific Construction Experience**

Fill up one (1) form per contract.

<b>Contract of Similar Size and Nature</b>		
<b>Contract No . . . . . of . ...</b>	<b>Contract Identification</b>	
<b>Award Date</b>	<b>Completion Date</b>	
<b>Role in Contract</b>	<b>Contractor</b>	<b>Management Contractor</b> <b>Subcontractor</b>
<b>Total Contract Amount</b>	<b>US\$</b>	
<b>If partner in a JV or subcontractor, specify participation of total contract amount</b>	<b>Percent of Total</b>	<b>Amount</b>
<b>Employer's Name Address Telephone/Fax Number E-mail</b>		
<b>Description of the similarity in accordance with Criteria 2.4.2(a) of Section III</b>		

**Form EXP-2(b): Specific Construction Experience in Key Activities**

Fill up one (1) form per contract

<b>Contract with Similar Key Activities</b>		
<b>Contract No . . . . . of . ...</b>	<b>Contract Identification</b>	
<b>Award Date</b>	<b>Completion Date</b>	
<b>Role in Contract</b>	<input type="checkbox"/> <b>Contractor</b>	<input type="checkbox"/> <b>Management Contractor</b> <input type="checkbox"/> <b>Subcontractor</b>
<b>Total Contract Amount</b>	<b>US\$</b>	
<b>If partner in a JV or subcontractor, specify participation of total contract amount</b>	<b>Percent of Total</b>	<b>Amount</b>
<b>Employer's Name Address Telephone Number Fax Number E-mail</b>		
<b>Description of the key activities in accordance with Criteria 2.4.2(b) of Section III</b>		

## Form of Bid Security

### (Demand Guarantee)

**Beneficiary:**

**Inland Waterways Authority of India,  
A – 13, Sector – 1,  
Noida – 201301, Uttar Pradesh – INDIA  
Telephone No. : (91) 0120-2544004  
Fax No. : (91) 0120-2543976  
Email. : [mf.iwai@nic.in](mailto:mf.iwai@nic.in)**

**Invitation for Bids No:** .....

**Date:** \_\_\_\_\_

**BID GUARANTEE No.:** \_\_\_\_\_

**Guarantor:** \_\_\_\_\_

We have been informed that \_\_\_\_\_ (hereinafter called "the Applicant") has submitted or will submit to the Beneficiary its bid (hereinafter called "the Bid") for the execution of \_\_\_\_\_ under Invitation for Bids No. \_\_\_\_\_ ("the IFB").

Furthermore, we understand that, according to the Beneficiary's conditions, bids must be supported by a bid guarantee.

At the request of the Applicant, we, as Guarantor, hereby irrevocably undertake to pay the Beneficiary any sum or sums not exceeding in total an amount of \_\_\_\_\_ (\_\_\_\_\_) upon receipt by us of the Beneficiary's complying supported by the Beneficiary's statement, whether in the demand itself or a separate signed document accompanying or identifying the demand, stating either that the Applicant:

- a) has withdrawn its Bid during the period of bid validity specified by the applicant in the Letter of Bid, or any extension thereto provided by the Applicant; or
- b) having been notified of the acceptance of its Bid by the Beneficiary during the period of bid validity, (i) fails to execute the Contract Agreement or (ii) fails to furnish the performance security, in accordance with the Instructions to Bidders ("ITB") of the Beneficiary's bidding document.

This guarantee will expire: (a) if the Applicant is the successful Bidder, upon our receipt of copies of the contract agreement signed by the Applicant and the performance security issued to the Beneficiary upon the instruction of the Applicant; or (b) if the Applicant is not the successful Bidder, upon the earlier of (i) our receipt of a copy of the Beneficiary's notification to the Applicant of the results of the bidding process; or (ii) twenty-eight days after the Validity Period, i.e. .... which date shall be established by presentation to us of copies of the Letter of Bid and any extension(s) thereto, accompanied by the bidding document; or (c) three years after the date of issue of this guarantee.



Consequently, any demand for payment under this guarantee must be received by us at the office indicated above on or before that date.

This guarantee is subject to the Uniform Rules for Demand Guarantees (URDG) 2010 Revision, ICC Publication No. 758 except that the supporting statement under Article 15(a) is hereby excluded.

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*[signature(s)]*

***Note: All italicized text is for use in preparing this form and shall be deleted from the final product.***

### Form of Bid-Securing Declaration

Date: \_\_\_\_\_  
Bid No.: \_\_\_\_\_  
Alternative No.: \_\_\_\_\_

To:

We, the undersigned, declare that:

We understand that, according to your conditions, bids must be supported by a Bid-Securing Declaration.

We accept that we will automatically be suspended from being eligible for bidding in any contract with the entity that invited Bids for the period of time of 2 years starting on DD MM YYYY, if we are in breach of our obligation(s) under the bid conditions, because we:

- a) have withdrawn our Bid during the period of bid validity specified in the Letter of Bid; or
- b) having been notified of the acceptance of our Bid by the Employer during the period of bid validity, (i) fail or refuse to execute the Contract, if required, or (ii) fail or refuse to furnish the Performance Security, in accordance with the ITB.

We understand this Bid-Securing Declaration shall expire if we are not the successful Bidder, upon the earlier of (i) our receipt of your notification to us of the name of the successful Bidder; or (ii) twenty-eight days after the expiration of our Bid.

Name of the Bidder\*

Name of the person duly authorized to sign the Bid on behalf of the Bidder\*\* \_\_\_\_\_

Title of the person signing the Bid \_\_\_\_\_

Signature of the person named above \_\_\_\_\_

Date signed \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_

\*: In the case of the Bid submitted by joint venture specify the name of the Joint Venture as Bidder

\*\* : Person signing the Bid shall have the power of attorney given by the Bidder attached to the Bid

*[Note: In case of a Joint Venture, the Bid-Securing Declaration must be in the name of all members to the Joint Venture that submits the bid.]*

## JOINT VENTURE AGREEMENT

**[This should be on stamp paper of value INR 100 & notarized]**

PERFORMA FOR JOINT VENTURE AGREEMENT BETWEEN M/s. .... and M/s.....  
For ICB No..... Invitation for Bid No..... of Inland Waterways Authority  
of India, Ministry of Shipping, Government of India.

The Joint Venture Agreement executed on this day of ..... between  
M/s....., a company under the Laws of Company Act, 1956 and having its  
registered office at ..... and Corporate  
Office at ..... (hereinafter called the LEAD PARTNER, which expression  
shall include its successors, Executors and permitted Assigns)

AND M/s..... a company having its registered office at  
..... (herein after called as PARTNER, which expression shall  
include its successors, Executors and permitted Assigns)

which expression shall include its successors, Executors and permitted Assigns) for the purpose of  
making a Bid and entering into a contract (in case of award) for **“Construction of IWT Terminal at  
Sahibganj, Jharkhand”** ICB No ..... by Inland Waterways  
Authority of India, Ministry of Shipping, Government of India (herein after called as the  
EMPLOYER).

WHEREAS, the EMPLOYER invited Bids as per above mentioned tender Document for the  
“.....”

WHEREAS in accordance with Instruction to Bidders – clause 4 “Eligible Bidders” of the Tender  
Specification. A Bidder may be a private entity or a government-owned entity – subject to ITB 4.5 –  
or any combination of such entities with the intent to enter into an agreement supported by a  
letter of intent or under an agreement in the form of a Joint Venture or consortium.

NOW THIS INDENTURE WITNESSETH AS UNDER

In consideration of the above premises and agreements all the partners to this Joint Venture do  
hereby now agree as follows :

1. In consideration of the award of the Contract by the Employer to the partners, we, the  
Partners to the Joint Venture Agreement do hereby agree that M/s. .... shall  
act as LEAD PARTNER and further declare and confirm that we shall jointly be bound unto the  
Employer for the successful performance of the Contract and shall be fully responsible for the  
works in terms of quality requirements and timeliness in performance in accordance with the  
Contract. Irrespective of Joint responsibility, it is expressly understood that LEAD PARTNER will  
be present at the site of the works, through its authorized representative at all times and play  
lead role in mobilizing resources and execution of the contract. The LEAD PARTNER will incur  
liabilities and receive instructions for and on behalf of any or all partners of the Joint Venture  
and entire execution of the contract shall be done by the LEAD PARTNER and payment under  
the contract shall be received by the LEAD PARTNER. The precise responsibility of the members  
of the Joint Venture in respect of planning, quality, execution of the works are as under :

LEAD PARTNER : .....

PARTNER : .....

(Please refer to Section III, Para 3.5 and 3.6)

If in the determination of the Employer that the LEAD PARTNER is unable to fulfill its responsibility as above, the Employer shall be at liberty to terminate the contract which shall be binding on all partners of the Joint Venture.

The personnel deployed by the member of Joint Venture are as under:

LEAD PARTNER :

PARTNER :

The equipment deployed by the member of Joint Venture are as under :

LEAD PARTNER :

PARTNER :

2. In case of any breach of the said Contract by the LEAD PARTNER or other Partners of the Joint Venture Agreement, the Partner(s) do hereby agree to be fully responsible for the successful performance of the Contract and to carry out all the obligations and responsibilities under the Contract in accordance with the requirements of the Contract.
3. Further, if the Employer suffers any loss or damage on account of any breach in the Contract or any shortfall in meeting the performance guaranteed as per the works Contract, the Partner(s) of these presents undertake to promptly make good such loss or damages caused to the Employer, on its demands without any demur. It shall not be necessary or obligatory for the Employer to proceed against LEAD PARTNER to these presents before proceeding against or dealing with other Partner(s).
4. The financial liability of the Partners of this Joint Venture agreement to the Employer, with respect to any of the claims arising out of the performance or non-performance of the obligations set forth in the said Joint Venture Agreement, read in conjunction with the relevant conditions of the Contract shall, however, not be limited in any way so as to restrict or limit the liabilities of any of the Partners of the Joint Venture agreement.
5. It is expressly understood and agreed between the Partners to this Joint Venture agreement that the responsibilities and obligations of each of the Partners has been delineated in clause no. 1 herein above to this agreement. It is further agreed by the Partners that the above sharing of responsibilities and obligations shall not in any way be a limitation of joint responsibilities of the Partners under this Contract.

6. This Joint Venture Agreement shall be construed and interpreted in accordance with the laws of India, courts of Delhi shall have the exclusive jurisdiction in all matters arising there under.
7. It is further agreed that the Joint Venture agreement shall be irrevocable and shall form an integral part of the contract, and shall continue to be enforceable till the Employer discharges the same. It shall be effective from the date first mentioned above for all purposes and intents.

IN WITNESS WHEREOF, the Partners to the Joint Venture Agreement have through their Authorized Representatives executed these presents and affixed Common Seals of their companies, on the day, month and year first mentioned above.

[Name, Signature of all Joint Venture Partners]

[Name and Signature of Witnesses]

## **Section V. Eligible Countries**

### **Eligibility for the Provision of Goods, Works and Non Consulting Services in Bank-Financed Procurement**

1. In reference to ITB 4.7 and 5.1, for the information of the Bidders, at the present time firms, goods and services from the following countries are excluded from this bidding process:

Under ITB 4.7(a) and 5.1: None.

Under ITB 4.7(b) and 5.1: None.

## Section VI. Bank Policy - Corrupt and Fraudulent Practices

Guidelines for Procurement of Goods, Works, and Non-Consulting Services under IBRD Loans and IDA Credits & Grants by World Bank Borrowers, dated January 2011.

### “Fraud and Corruption:

It is the Bank’s policy to require that Borrowers (including beneficiaries of Bank loans), bidders, suppliers, contractors and their agents (whether declared or not), sub-contractors, sub-consultants, service providers or suppliers, and any personnel thereof, observe the highest standard of ethics during the procurement and execution of Bank-financed contracts.<sup>11</sup> In pursuance of this policy, the Bank:

- a) defines, for the purposes of this provision, the terms set forth below as follows:
  - i) “corrupt practice” is the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another party;<sup>12</sup>
  - ii) “fraudulent practice” is any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation;<sup>13</sup>
  - iii) “collusive practice” is an arrangement between two or more parties designed to achieve an improper purpose, including to influence improperly the actions of another party;<sup>14</sup>
  - iv) “coercive practice” is impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party;<sup>15</sup>
  - v) “obstructive practice” is
    - aa) deliberately destroying, falsifying, altering, or concealing of evidence material to the investigation or making false statements to investigators in order to materially impede a Bank investigation into allegations of a corrupt, fraudulent, coercive or collusive practice; and/or threatening, harassing or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation, or
    - bb) acts intended to materially impede the exercise of the Bank’s inspection and audit rights provided for under paragraph 1.16(e) below.

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<sup>11</sup> In this context, any action to influence the procurement process or contract execution for undue advantage is improper.

<sup>12</sup> For the purpose of this sub-paragraph, “another party” refers to a public official acting in relation to the procurement process or contract execution. In this context, “public official” includes World Bank staff and employees of other organizations taking or reviewing procurement decisions.

<sup>13</sup> For the purpose of this sub-paragraph, “party” refers to a public official; the terms “benefit” and “obligation” relate to the procurement process or contract execution; and the “act or omission” is intended to influence the procurement process or contract execution.

<sup>14</sup> For the purpose of this sub-paragraph, “parties” refers to participants in the procurement process (including public officials) attempting either themselves, or through another person or entity not participating in the procurement or selection process, to simulate competition or to establish bid prices at artificial, non-competitive levels, or are privy to each other’s bid prices or other conditions.

<sup>15</sup> For the purpose of this sub-paragraph, “party” refers to a participant in the procurement process or contract execution.

- b) will reject a proposal for award if it determines that the bidder recommended for award, or any of its personnel, or its agents, or its sub-consultants, sub-contractors, service providers, suppliers and/or their employees, has, directly or indirectly, engaged in corrupt, fraudulent, collusive, coercive, or obstructive practices in competing for the contract in question;
- c) will declare misprocurement and cancel the portion of the loan allocated to a contract if it determines at any time that representatives of the Borrower or of a recipient of any part of the proceeds of the loan engaged in corrupt, fraudulent, collusive, coercive, or obstructive practices during the procurement or the implementation of the contract in question, without the Borrower having taken timely and appropriate action satisfactory to the Bank to address such practices when they occur, including by failing to inform the Bank in a timely manner at the time they knew of the practices;
- d) will sanction a firm or individual, at any time, in accordance with the prevailing Bank's sanctions procedures,<sup>16</sup> including by publicly declaring such firm or individual ineligible, either indefinitely or for a stated period of time: (i) to be awarded a Bank-financed contract; and (ii) to be a nominated<sup>17</sup>;
- e) will require that a clause be included in bidding documents and in contracts financed by a Bank loan, requiring bidders, suppliers and contractors, and their sub-contractors, agents, personnel, consultants, service providers, or suppliers, to permit the Bank to inspect all accounts, records, and other documents relating to the submission of bids and contract performance, and to have them audited by auditors appointed by the Bank."

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<sup>16</sup> A firm or individual may be declared ineligible to be awarded a Bank financed contract upon: (i) completion of the Bank's sanctions proceedings as per its sanctions procedures, including, inter alia, cross-debarment as agreed with other International Financial Institutions, including Multilateral Development Banks, and through the application the World Bank Group corporate administrative procurement sanctions procedures for fraud and corruption; and (ii) as a result of temporary suspension or early temporary suspension in connection with an ongoing sanctions proceeding. See footnote 14 and paragraph 8 of Appendix 1 of these Guidelines.

<sup>17</sup> A nominated sub-contractor, consultant, manufacturer or supplier, or service provider (different names are used depending on the particular bidding document) is one which has either been: (i) included by the bidder in its pre-qualification application or bid because it brings specific and critical experience and know-how that allow the bidder to meet the qualification requirements for the particular bid; or (ii) appointed by the Borrower.



## **Part 2 - Work Requirements**

## **Section VII - Conditions of Contract together with Schedules**

## **Part I - Preliminary**

## ENGINEERING, PROCUREMENT AND CONSTRUCTION AGREEMENT

THIS AGREEMENT is entered into on this the ..... day of ....., 20....

### BETWEEN

**Inland Waterways Authority of India, Ministry of Shipping, Government of India** (hereinafter referred to as the “**Employer**” which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and assigns) of One Part;

### AND

{-----}, means the selected bidder *{single entity or the joint venture which is the selected bidder under the ICB No.....having its registered office at .....and at .....(in case of JV),* (hereinafter referred to as the “**Contractor**” which expression shall, unless repugnant to the context or meaning thereof, include its successors and permitted assigns) of the Other Part.

### WHEREAS:

- A) Inland Waterways Authority of India, Ministry of Shipping, Government of India has intended to take up the Capacity Augmentation of National Waterway – 1.
- B) The Employer had resolved to take up the work “**Construction of IWT Terminal at Sahibganj, Jharkhand**” on Engineering, Procurement, Construction (“**EPC**”) basis in accordance with the terms and conditions to be set forth in an agreement to be entered into.
- C) The Employer had prescribed the technical and commercial terms and conditions, and invited bids IFB No. \_\_\_\_\_ from all bidders having required eligibility and qualification criteria for undertaking the Project.
- D) After evaluation of the bids received, the Employer had accepted the bid of the selected bidder and issued its Letter of Acceptance No. .... dated ..... (hereinafter called the “**LOA**”) to the selected bidder for “**Construction of IWT Terminal at Sahibganj, Jharkhand**” at the contract price specified hereinafter, requiring the selected bidder to inter alia:
  - i) deliver to the Employer a legal opinion from the legal counsel of the selected bidder with respect to the Employer of the selected bidder to enter into this Agreement and the enforceability of the provisions thereof, within 10 (ten) days of the date of issue of LOA; and
  - ii) execute this Agreement within 28(twenty eight) days of the date of issue of LOA.
- E) The Contractor has fulfilled the requirements specified in Recital (D) above;

NOW THEREFORE in consideration of the foregoing and the respective covenants and agreements set forth in this Agreement, the sufficiency and adequacy of which is hereby acknowledged, the Employer hereby covenants to pay the Contractor, in consideration of the obligations specified herein, the Contract Price or such other sum as may become payable under the provisions of the Agreement at the times and in the manner specified by the Agreement and intending to be legally bound hereby, the Parties agree as follows:

## **ARTICLE-1**

### **DEFINITIONS AND INTERPRETATION**

#### **1.1 Definitions**

The words and expressions beginning with capital letters and defined in this Agreement (including those in Article 28) shall, unless the context otherwise requires, have the meaning ascribed thereto herein, and the words and expressions defined in the Schedules and used therein shall have the meaning ascribed thereto in the Schedules.

#### **1.2 Interpretation**

1.2.1 In this Agreement, unless the context otherwise requires,

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

- k) Any reference to month shall mean a reference to a calendar month as per the Gregorian calendar;
- l) References to any date, period or Project Milestone shall mean and include such date, period or Project Milestone as may be extended pursuant to this Agreement;
- m) Any reference to any period commencing “from” a specified day or date and “till” or “until” a specified day or date shall include both such days or dates; provided that if the last day of any period computed under this Agreement is not a business day, then the period shall run until the end of the next business day;
- n) The words importing singular shall include plural and vice versa;
- o) References to any gender shall include the other and the neutral gender;
- p) “Lakh” means a hundred thousand (100,000) and “crore” means ten million (10,000,000);
- q) “Indebtedness” shall be construed so as to include any obligation (whether incurred as principal or surety) for the payment or repayment of money, whether present or future, actual or contingent;
- r) References to the “winding-up”, “dissolution”, “insolvency”, or “reorganisation” of a company or corporation shall be construed so as to include any equivalent or analogous proceedings under the law of the jurisdiction in which such company or corporation is incorporated or any jurisdiction in which such company or corporation carries on business including the seeking of liquidation, winding-up, reorganisation, dissolution, arrangement, protection or relief of debtors;
- s) Save and except as otherwise provided in this Agreement, any reference, at any time, to any agreement, deed, instrument, licence or document of any description shall be construed as reference to that agreement, deed, instrument, licence or other document as amended, varied, supplemented, modified or suspended at the time of such reference; provided that this Clause shall not operate so as to increase liabilities or obligations of the Employer hereunder or pursuant hereto in any manner whatsoever;
- t) Any agreement, consent, approval, authorisation, notice, communication, information or report required under or pursuant to this Agreement from or by any Party or the Employer’s Engineer shall be valid and effective only if it is in writing under the hand of a duly authorised representative of such Party or the Employer’s Engineer, as the case may be, in this behalf and not otherwise;
- u) The Schedules and Recitals to this Agreement form an integral part of this Agreement and will be in full force and effect as though they were expressly set out in the body of this Agreement;
- v) References to Recitals, Articles, Clauses, Sub-clauses or Schedules in this Agreement shall, except where the context otherwise requires, mean references to Recitals, Articles, Clauses, Sub-clauses and Schedules of or to this Agreement, and references to a Paragraph shall, subject to any contrary indication, be construed as a reference to a Paragraph of this Agreement or of the Schedule in which such reference appears;
- w) The damages payable by either Party to the other of them, as set forth in this Agreement, whether on per diem basis or otherwise, are mutually agreed genuine pre-estimated loss and damage likely to be suffered and incurred by the Party entitled to receive the same and are not by way of penalty (the “Damages”); and

- x) Time shall be of the essence in the performance of the Parties' respective obligations. If any time period specified herein is extended for the reasons specified in the Agreement, such extended time shall also be of the essence.
- y) References to "World Bank" shall mean the International Bank for Reconstruction and Development (The Bank). The Bank is the financing institution which has provided funds toward a part of the cost of the Project. Payments by the World Bank will be made only at the request of the Recipient (IWAI) of the funds and upon approval by the World Bank in accordance with the terms and conditions of the financing agreement (Loan Agreement) and will be subject in all respects to the terms and conditions of that Loan Agreement. No party other than the Recipient shall derive any rights from the Loan Agreement or have claim to any funds."

1.2.2 Unless expressly provided otherwise in this Agreement, any Documentation required to be provided or furnished by the Contractor to the Employer shall be provided free of cost and in three copies, and if the Employer is required to return any such Documentation with its comments and/or approval, it shall be entitled to retain two copies thereof.

1.2.3 The rule of construction, if any, that a contract should be interpreted against the parties responsible for the drafting and preparation thereof, shall not apply.

1.2.4 Any word or expression used in this Agreement shall, unless otherwise defined or construed in this Agreement, bear its ordinary English meaning and, for these purposes, the General Clauses Act, 1897 shall not apply.

### **1.3 Measurements and Arithmetic Conventions**

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

### **1.4 Priority of agreements and errors/discrepancies**

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

- a) Corrigendum to Conditions of Contract together with Schedules (issued if any)
- b) This Agreement including Conditions of Contract together with Schedules; and
- c) All other agreements and documents forming part hereof or referred to herein; i.e. this Agreement at (b) above shall prevail over the agreements and documents at (c).

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

- a) Between a Clause of this Agreement and Corrigendum, the provisions of Corrigendum
- b) Between two or more Clauses of this Agreement, the provisions of a specific Clause relevant to the issue under consideration shall prevail over those in other Clauses;
- c) Between the Clauses of this Agreement and the Schedules, the Clauses shall prevail and between Schedules and Annexes, the Schedules shall prevail;
- d) Between any two Schedules, the Schedule relevant to the issue shall prevail;

- e) Between the written description on the Drawings and the Specifications & Standards, the latter shall prevail;
- f) Between the dimension scaled from the Drawing and its specific written dimension, the latter shall prevail; and between any value written in numerals and that in words, the latter shall prevail.

## **1.5 Joint and Several Liability**

- 1.5.1 If the Contractor has formed a Joint Venture (JV) of two persons for implementing the Project:
  - a) These persons shall, without prejudice to the provisions of this Agreement, be deemed to be jointly and severally liable to the Employer for the performance of the Agreement; and
  - b) The Contractor shall ensure that no change in the composition of the Joint Venture (JV) is effected without the prior consent of the Employer.
- 1.5.2 Without prejudice to the joint and several liability of all the members of the Joint Venture (JV), the Lead Member shall represent all the members of the Joint Venture (JV) and shall at all times be liable and responsible for discharging the functions and obligations of the Contractor. The Contractor shall ensure that each member of the Joint Venture (JV) shall be bound by any decision, communication, notice, action or inaction of the Lead Member on any matter related to this Agreement and the Employer shall be entitled to rely upon any such action, decision or communication of the Lead Member. The Employer shall release the payment only to the Joint Venture (JV)



## **Part II - Scope of Project**

## ARTICLE-2

### SCOPE OF THE PROJECT

#### 2.1 Scope of the Project

Under this Agreement, the scope of the Project (the "Scope of the Project") shall mean and include:

- a) Design & construction of the terminal on the Site set forth in Schedule-A and as specified in Schedule-B together with provision of Project Facilities as specified in Schedule-C, and in conformity with the Specifications and Standards set forth in Schedule-D;
- b) Performance and fulfilment of all other obligations of the Contractor in accordance with the provisions of this Agreement and matters incidental thereto or necessary for the performance of any or all of the obligations of the Contractor under this Agreement.

## ARTICLE-3

### OBLIGATIONS OF THE CONTRACTOR

#### 3.1 Obligations of the Contractor

- 3.1.1 Subject to and on the terms and conditions of this Agreement, the Contractor shall undertake the survey, investigation including sub-soil investigation, design, engineering, procurement, construction of the terminal and observe, fulfil, comply with and perform all its obligations set out in this Agreement or arising hereunder.
- 3.1.2 The Contractor shall comply with all Applicable Laws and Applicable Permits (including renewals as required) in the performance of its obligations under this Agreement. The Contractor shall comply with all environmental clearances required during construction including implementation of Environmental Management Plan (EMP).
- 3.1.3 Subject to the provisions of Clauses 3.1.1 and 3.1.2, the Contractor shall discharge its obligations in accordance with Good Industry Practice and as a reasonable and prudent person.
- 3.1.4 The Contractor shall remedy any and all loss or damage to the terminal from the Appointed Date until the end of the Construction Period at the Contractor's cost, save and except to the extent that any such loss or damage shall have arisen from any default or neglect of the Employer.
- 3.1.5 The Contractor shall remedy any and all loss or damage to the terminal during the Defects Liability Period at the Contractor's cost to the extent that such loss or damage shall have arisen out of the reasons specified in Clause 17.3.
- 3.1.6 Deleted.
- 3.1.7 The Contractor shall, at its own cost and expense, in addition to and not in derogation of its obligations elsewhere set out in this Agreement:
- a) Make, or cause to be made, necessary applications to the relevant Government Instrumentalities with such particulars and details as may be required for obtaining Applicable Permits set forth in Schedule-F and obtain and keep in force and effect such Applicable Permits in conformity with the Applicable Laws;
  - b) Procure, as required, the appropriate proprietary rights, licences, agreements and permissions for Materials, methods, processes and systems used or incorporated into the terminal;
  - c) Make reasonable efforts to maintain harmony and good industrial relations among the personnel employed by it or its Sub-contractors in connection with the performance of its obligations under this Agreement;
  - d) Ensure and procure that its Sub-contractors comply with all Applicable Permits and Applicable Laws in the performance by them of any of the Contractor's obligations under this Agreement;
  - e) Not do or omit to do any act, deed or thing which may in any manner be violative of any of the provisions of this Agreement;
  - f) Support, cooperate with and facilitate the Employer in the implementation and operation of the Project in accordance with the provisions of this Agreement;
  - g) Ensure that the Contractor and its Sub-contractors comply with the safety and welfare

measures for labour in accordance with the Applicable Laws and Good Industry Practice;

- h) Keep, on the Site, a copy of this Agreement, publications named in this Agreement, the Drawings, Documents relating to the Project, and Change of Scope Orders and other communications given under this Agreement. The Employer's Engineer and its authorised personnel shall have the right of access to all these documents at all reasonable times;
- i) Cooperate with other contractors if any employed by the Employer and personnel of any public Employer; and
- j) Not interfere unnecessarily or improperly with the convenience of the public, or the access to and use and occupation of all roads and footpaths, irrespective of whether they are public or in the possession of the Employer or of others.

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

### **3.1.9 Inspections and Audit by the World Bank**

The Contractor shall permit, and shall cause its Subcontractors and sub-consultants to permit, the World Bank and/or persons appointed by the World Bank to inspect the Site and all accounts and records relating to the performance of the Contract and the submission of the bid, and to have such accounts and records audited by auditors appointed by the World Bank if requested by the World Bank. The Contractor's and its Subcontractors' and sub-consultants' attention is drawn to Clause 3.9 [Corrupt or Fraudulent Practices] which provides, inter alia, that acts intended to materially impede the exercise of the Bank's inspection and audit rights provided for under Clause 11.6.1 constitute a prohibited practice subject to contract termination (as well as to a determination of ineligibility pursuant to the World Bank's prevailing sanctions procedures).

## **3.2 Obligations Relating to Sub-contracts and any other Agreements**

3.2.1 The Contractor shall not sub-contract any Works in more than 20% (twenty per cent) of the contract price and shall carry out Works directly under its own supervision and through its own personnel in at least 80% (eighty per cent) of the contract price. Provided, however, that in respect of the Works carried out directly by the Contractor, it may enter into contracts for the supply and installation of Materials, Plant, equipment, road furniture, safety devices and labour, as the case may be, for such Works. The Parties further agree that all obligations and liabilities under this Agreement for the entire Terminal shall at all times remain with the Contractor.

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

3.2.3 In the event any sub-contract referred to in Clause 3.2.2 relates to a sub-contractor who has, over the preceding 3 (three) years, not undertaken at least one work of a similar nature with a contract value exceeding 80% (eighty per cent) of the value of the sub-

contract to be awarded hereunder and received payments in respect thereof for an amount equal to at least such 80% (eighty per cent), the Employer may, no later than 15 (fifteen) business days from the date of receiving the communication from the Contractor, require the Contractor not to proceed with such sub-contract, and the Contractor shall comply therewith.

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

### **3.3 Employment of Foreign Nationals**

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

### **3.4 Contractor's Personnel**

- 3.4.1 The Contractor shall ensure that the personnel engaged by it or by its Sub-contractors in the performance of its obligations under this Agreement are at all times appropriately qualified, skilled and experienced in their respective functions in conformity with Good Industry Practice. The Contractor shall give preference to the local villagers for unskilled labour requirement and provide a quarterly report to the Employer Engineer on the details of person days of employment provided to the local villagers (for both men and women separately).
- 3.4.2 The Employer's Engineer may, for reasons to be specified in writing, direct the Contractor to remove any member of the Contractor's or Sub-contractor's personnel. Provided that any such direction issued by the Employer's Engineer shall specify the reasons for the removal of such person.
- 3.4.3 The Contractor shall on receiving such a direction from the Employer's Engineer order for the removal of such person or persons with immediate effect. It shall be the duty of the Contractor to ensure that such persons are evicted from the Site within 10 (ten) days of any such direction being issued in pursuance of Clause 3.4.2. The Contractor shall further ensure that such persons have no further connection with the Works or Maintenance under this Agreement. The Contractor shall then appoint (or cause to be appointed) a replacement within 28 days from the date of such direction to remove, all at the Contractor's cost.

### **3.5 Advertisement on Terminal**

The terminal or any part thereof shall not be used in any manner to advertise any commercial product or services.

### **3.6 Contractor's Care of the Works**

The Contractor shall bear full risk in and take full responsibility for the care of the Works, and of the Materials, goods and equipment for incorporation therein, from the Appointed Date until the date of Provisional Certificate (with respect to the Works completed prior to the issuance of the Provisional Certificate) and/or Completion Certificate (with respect to the Works referred to in the Punch List), save and except to the extent that any such loss or damage shall have arisen from any default or neglect of the Employer.

### **3.7 Electricity, Water and other Services**

The Contractor shall be responsible for procuring of all power, water and other services that it may require.

### **3.8 Unforeseeable Difficulties**

Except as otherwise stated in the Agreement:

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

### **3.9 Corrupt or Fraudulent Practices**

The Bank requires compliance with its policy in regard to corrupt and fraudulent practices as set forth in Appendix to the GCC.

## ARTICLE-4

### OBLIGATIONS OF THE EMPLOYER

#### 4.1 Obligations of the Employer

4.1.1 The Employer shall, at its own cost and expense, undertake, comply with and perform all its obligations set out in this Agreement or arising hereunder.

4.1.2 The Employer shall be responsible for the correctness of the Scope of the Project, Project Facilities, Specifications & Standards and the criteria for testing of the completed Works.

4.1.3 The Employer shall provide to the Contractor:

- a) Upon receiving the Performance Security under Clause 7.1.1, the Right of Way in accordance with the provisions of Clauses 8.2 and 8.3, as specified in Schedule A;
- b) Deleted
- c) Environmental clearances are not required but proposed Environment Management Plan (EMP) is to be implemented.

4.1.4 Delay in providing the Right of Way in accordance with the provisions of Clause 4.1.3 shall entitle the Contractor to Damages in a sum calculated in accordance with the provisions of Clause 8.3 of this Agreement and Time Extension in accordance with the provisions of Clause 10.5 of this Agreement.

4.1.5 Notwithstanding anything to the contrary contained in this Agreement, the Parties expressly agree that the aggregate Damages payable under Clauses 4.1.4, 8.3 and 9.2 shall not exceed 1% (one per cent) of the Contract Price. For the avoidance of doubt, the Damages payable by the Employer under the aforesaid Clauses shall not be additive if they arise concurrently from more than one cause but relate to the same part of the terminal.

Both the parties agree that payment of these Damages shall be full and final settlement of all claims of the Contractor and such compensation shall be the sole remedy against delays of the Employer and both parties further agree this as final cure against delays of the Employer.

4.1.6 The Employer agrees to provide support to the Contractor and undertakes to observe, comply with and perform, subject to and in accordance with the provisions of this Agreement and the Applicable Laws, the following:

- a) Upon written request from the Contractor, and subject to the Contractor complying with Applicable Laws, provide reasonable support to the Contractor in procuring Applicable Permits required from any Government Instrumentality for implementation of the Project;
- b) Upon written request from the Contractor, provide reasonable assistance to the Contractor in obtaining access to all necessary infrastructure facilities and utilities, including water and electricity at rates and on terms no less favourable than those generally available to commercial customers receiving substantially equivalent services;
- c) Procure that no barriers that would have a material adverse effect on the works are erected or placed on or about the terminal by any Government Instrumentality or persons claiming through or under it, except for reasons of Emergency, national security, law and order or collection of inter-state taxes;

- d) Not do or omit to do any act, deed or thing which may in any manner be violative of any of the provisions of this Agreement;
- e) Support, cooperate with and facilitate the Contractor in the implementation of the Project in accordance with the provisions of this Agreement; and
- f) Upon written request from the Contractor and subject to the provisions of Clause 3.3, provide reasonable assistance to the Contractor and any expatriate personnel of the Contractor or its Sub-contractors to obtain applicable visas and work permits for the purposes of discharge by the Contractor or its Sub-contractors of their obligations under this Agreement and the agreements with the Sub-contractors.
- g) Upon written request from the Contractor and subject to the provisions of the Contract and as per the prevailing norms of Government of India, shall issue exemption certificate for excise duty/ customs duty for materials used in the work as per the latest notification and based on the work requirements.

**4.2 Deleted**

**4.3 Environmental Clearances**

The Employer represents and warrants that the environmental clearances are not required for construction of the Project but the proposed EMP is to be implemented by the Contractor.



## ARTICLE-5

### REPRESENTATIONS AND WARRANTIES

#### 5.1 Representations and warranties of the Contractor

The Contractor represents and warrants to the Employer that:

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

representation or warranty not misleading;

- k) No sums, in cash or kind, have been paid or will be paid, by it or on its behalf, to any person by way of fees, commission or otherwise for securing the contract or entering into this Agreement or for influencing or attempting to influence any officer or employee of the Employer in connection therewith;
- l) All information provided by the (selected bidder/ members of the JV) in response to the RFQ No. \_\_\_\_\_ and RFP No. \_\_\_\_\_ or otherwise, is to the best of its knowledge and belief, true and accurate in all material respects; and
- m) Nothing contained in this Agreement shall create any contractual relationship or obligation between the Employer and any Sub-contractors, designers, consultants or agents of the Contractor.

## **5.2 Representations and Warranties of the Employer**

The Employer represents and warrants to the Contractor that:

- a) It has full power and Employer to execute, deliver and perform its obligations under this Agreement and to carry out the transactions contemplated herein and that it has taken all actions necessary to execute this Agreement, exercise its rights and perform its obligations, under this Agreement;
- b) It has taken all necessary actions under the Applicable Laws to authorise the execution, delivery and performance of this Agreement;
- c) It has the financial standing and capacity to perform its obligations under this Agreement;
- d) This Agreement constitutes a legal, valid and binding obligation enforceable against it in accordance with the terms hereof;
- e) It has no knowledge of any violation or default with respect to any order, writ, injunction or any decree of any court or any legally binding order of any Government Instrumentality which may result in any material adverse effect on the Employer's ability to perform its obligations under this Agreement;
- f) It has complied with Applicable Laws in all material respects;
- g) It has good and valid right to the Site and has the power and Employer to grant the Right of Way in respect thereof to the Contractor; and
- h) It has procured Right of Way and environment clearances such that the Contractor can commence construction forthwith on the Terminal as per Schedule A.

## **5.3 Disclosure**

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

## **ARTICLE-6**

### **DISCLAIMER**

#### **6.1 Disclaimer**

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

## **Part III - Construction and Maintenance**

## **ARTICLE-7**

### **PERFORMANCE SECURITY**

#### **7.1 Performance Security**

- 7.1.1 The Contractor shall, for the performance of its obligations hereunder during the Construction Period, provide to the Employer, within 28 (twenty eight) days of the date of LOA, an irrevocable and unconditional guarantee from a Scheduled / Nationalized Bank in the form set forth in Schedule-G (the "Performance Security") for an amount equal to 10% (ten percent) of the Contract Price. The Contractor has the option of submitting two guarantees of equal amount towards Performance Security totalling to 10% (ten percent) of the Contract Price. The Performance Security shall be valid until 60 (sixty) days after the Defects Liability Period. Until such time the Performance Security is provided by the Contractor pursuant hereto and the same comes into effect, the Bid Security shall remain in force and effect, and upon such provision of the Performance Security, the Employer shall release the Bid Security to the Contractor.
- 7.1.2 Notwithstanding anything to the contrary contained in this Agreement, the Parties agree that in the event of failure of the Contractor to provide the Performance Security in accordance with the provisions of Clause 7.1.1 and within the time specified therein or such extended period as may be provided by the Employer, in accordance with the provisions of Clause 7.1.3, the Employer may encash the Bid Security and appropriate the proceeds thereof as Damages, and thereupon all rights, privileges, claims and entitlements of the Contractor under or arising out of this Agreement shall be deemed to have been waived by, and to have ceased with the concurrence of the Contractor, and this Agreement shall be deemed to have been terminated by mutual agreement of the Parties.
- 7.1.3 In the event the Contractor fails to provide the Performance Security within 28 (twenty eight) days of LOA, it may seek extension of time for a period not exceeding 20 (Twenty) days on payment of Damages for such extended period in a sum calculated at the rate of 0.05% (zero point zero five per cent) of the Contract Price for each day until the Performance Security is provided.

#### **7.2 Extension of Performance Security - Deleted**

#### **7.3 Appropriation of Performance Security**

- 7.3.1 Upon occurrence of a Contractor's Default, the Employer shall, without prejudice to its other rights and remedies hereunder or in law, be entitled to encash and appropriate the relevant amounts from the Performance Security as Damages for such Contractor's Default.
- 7.3.2 Upon such encashment and appropriation from the Performance Security, the Contractor shall, within 30 (thirty) days thereof, replenish, in case of partial appropriation, to its original level the Performance Security, and in case of appropriation of the entire Performance Security provide a fresh Performance Security, as the case may be, and the Contractor shall, within the time so granted, replenish or furnish fresh Performance Security as aforesaid failing which the Employer shall be entitled to terminate the Agreement in accordance with Article 23. Upon replenishment or furnishing of a fresh Performance Security, as the case may be, as aforesaid, the Contractor shall be entitled to an additional Cure Period of 30 (thirty) days for remedying the Contractor's Default, and in the event of the Contractor not curing its default within such Cure Period, the Employer

shall be entitled to encash and appropriate such Performance Security as Damages, and to terminate this Agreement in accordance with Article 23.

#### **7.4 Release of Performance Security**

The Employer shall return the Performance Security to the Contractor within 60 (sixty) days of the later of the expiry of the Defects Liability Period under this Agreement. Notwithstanding the aforesaid, the Parties agree that the Employer shall not be obliged to release the Performance Security until all Defects identified during the Defects Liability Period have been rectified. In case the Contractor has provided two bank guarantees in accordance with Clause 7.1.1, the Employer shall return one of the guarantees to the Contractor 2 (two) years after completion of construction

#### **7.5 Retention Money**

- 7.5.1 From every payment for Works due to the Contractor in accordance with the provisions of Clause 19.5, the Employer shall deduct 6% (six per cent) thereof as guarantee money for performance of the obligations of the Contractor during the Construction Period (the "Retention Money") subject to the condition that the maximum amount of Retention Money shall not exceed 5% (five per cent) of the Contract Price.
- 7.5.2 Upon occurrence of a Contractor's Default, the Employer shall, without prejudice to its other rights and remedies hereunder or in law, be entitled to appropriate the relevant amounts from the Retention Money as Damages for such Contractor's Default.
- 7.5.3 The Contractor may, upon furnishing an irrevocable and unconditional bank guarantee substantially in the form provided at Annex-II of Schedule-G, require the Employer to refund the Retention Money deducted by the Employer under the provisions of Clause 7.5.1. Provided that the refund hereunder shall be made in tranches of not less than 1% (one per cent) of the Contract Price.
- 7.5.4 Within 15 (fifteen) days of the date of issue of the Completion Certificate, the Employer shall discharge the bank guarantees furnished by the Contractor under the provisions of Clause 7.5.3 and refund the balance of Retention Money remaining with the Employer after adjusting the amounts appropriated under the provisions of Clause 7.5.2 and the amounts refunded under the provisions of Clause 7.5.3.
- 7.5.5 The Parties agree that in the event of Termination of this Agreement, the Retention Money and the bank guarantees specified in this Clause 7.5 shall be treated as if they are Performance Security and shall be reckoned as such for the purposes of Termination Payment under Clause 23.6.

## **ARTICLE-8**

### **RIGHT OF WAY**

#### **8.1 The Site**

The site of the Terminal (the "Site") shall comprise the site described in Schedule-A in respect of which the Right of Way shall be provided by the Employer to the Contractor. The Employer shall be responsible for:

- a) Acquiring and providing Right of Way on the Site in accordance with the alignment finalised by the Employer, free from all encroachments and encumbrances, and free access thereto for the execution of this Agreement; and
- b) Deleted.

#### **8.2 Procurement of the Site**

8.2.1 The Employer Representative and the Contractor shall, within 15 (fifteen) days of the date of this Agreement, inspect the Site and prepare a memorandum containing an inventory of the Site including the vacant and unencumbered land, buildings, structures, road works, trees and any other immovable property on or attached to the Site. Subject to the provisions of Clause 8.2.3, such memorandum shall have appended thereto an appendix (the "Appendix") specifying in reasonable detail those parts of the Site to which vacant access and Right of Way has not been given to the Contractor. Signing of the memorandum, in two counterparts (each of which shall constitute an original), by the authorised representatives of the Parties shall be deemed to constitute a valid evidence of giving the Right of Way to the Contractor for discharging its obligations under and in accordance with the provisions of this Agreement and for no other purpose whatsoever.

Whenever the Employer is ready to hand over any part or parts of the Site included in the Appendix, it shall inform the Contractor, by notice, the proposed date and time such of handing over. The Employer Representative and the Contractor shall, on the date so notified, inspect the specified parts of the Site, and prepare a memorandum containing an inventory of the vacant and unencumbered land, buildings, structures, road works, trees and any other immovable property on or attached to the Site so handed over. Signing of the memorandum, in two counterparts (each of which shall constitute an original), by the authorised representatives of the Parties shall be deemed to constitute a valid evidence of giving the relevant Right of Way to the Contractor.

8.2.2 The Employer shall provide the Right of Way to the Contractor in respect of all land included in the Appendix by the date specified in Schedule-A for those parts of the Site referred to therein, or no later than 90 (ninety) days of the Appointed Date for those parts of the Site which have not been specified in Schedule-A, and in the event of delay for any reason other than Force Majeure or breach of this Agreement by the Contractor, it shall pay to the Contractor, Damages in a sum calculated in accordance with Clause 8.3.

8.2.3 Notwithstanding anything to the contrary contained in this Clause 8.2, the Employer shall specify the parts of the Site, if any, for which Right of Way shall be provided to the Contractor on the dates specified in Schedule-A. Such parts shall also be included in the Appendix prepared in pursuance of Clause 8.2.1. For the avoidance of doubt, the Parties expressly agree that the Damages specified hereunder and the Time Extension specified in Clause 10.5 shall be restricted only to failure of the Employer to provide the Right of Way for and in respect of the width of the roadway and its embankment.

### **8.3 Damages for delay in handing over the Site**

8.3.1 In the event the Right of Way to any part of the Site is not provided by the Employer on or before the date(s) specified in Clause 8.2 for any reason other than Force Majeure or breach of this Agreement by the Contractor, the Employer shall pay Damages to the Contractor in a sum calculated in accordance with the following formula for and in respect of those parts of the Site to which the Right of Way has not been provided:

Amount of Damages in Rs. per day per running metre =  $0.05 \times C \times 1/L \times 1/N$

Where

C = the Contract Price; L = length of the terminal in metres; and

N = Completion period in days (Appointed Date to Scheduled Completion Date)

In the event that any Damages are due and payable to the Contractor under the provisions of this Clause 8.3.1 for delay in providing the Right of Way, the Contractor shall, subject to the provisions of Clause 10.5, be entitled to Time Extension equal to the period for which the Damages have become due and payable under this Clause 8.3.1, save and except that:

- a) If any delays involve time overlaps, the overlaps shall not be additive; and
- b) Such Time Extension shall be restricted only to the Works which are affected by the delay in providing the Right of Way.

For the avoidance of doubt, the Parties expressly agree that the Damages specified hereunder and the Time Extension specified in Clause 10.5 shall be restricted only to failure of the Employer to provide the Right of Way required for construction work.

8.3.2 Notwithstanding anything to the contrary contained in this Agreement, the Contractor expressly agrees that Works on all parts of the Site for which Right of Way is granted within 90 (ninety) days of the Appointed Date, or with respect to the parts of the Site provided in Schedule-A, no later than the date(s) specified therein as per Schedule A, as the case may be, shall be completed before the Scheduled Completion Date and shall not qualify for any Time Extension under the provisions of Clause 8.3.1.

8.3.3 Notwithstanding anything to the contrary contained in this Agreement, the Employer may at any time withdraw any Works forming part of this Agreement, subject to such Works not exceeding an aggregate value, such value to be determined in accordance with Schedule-H, equal to 10(ten) percent of the Contract Price.

Provided that if any Works cannot be undertaken within the municipal limits of a town or within any area falling in a reserved forest or wildlife sanctuary, as the case may be, because the requisite clearances or approvals for commencing construction of Works therein have not been given within 240 (two hundred and forty) days of the Appointed date, the affected Works shall be deemed to be withdrawn under the provisions of this Clause 8.3.3 unless the Parties agree to the contrary, and such Works shall not be computed for the purposes of the aforesaid ceiling of 10% (ten per cent) hereunder.

8.3.4 In the event of withdrawal of Works under Clause 8.3.3, the Contract Price shall be reduced by an amount equal to 90 (ninety) per cent of the value of the Works withdrawn and the Contractor shall not be entitled to any other compensation or Damages for the withdrawal of Works.

Provided that if any Works are withdrawn after commencement of the Construction of such works, the Employer shall pay to the Contractor 110% (one hundred and ten per



cent) of the fair value of the work done, as assessed by the Employer's Engineer in accordance with Article 13.2.3 (a).

#### **8.4 Site to be free from Encumbrances**

Subject to the provisions of Clause 8.2, the Site shall be made available by the Employer to the Contractor pursuant hereto free from all Encumbrances and occupations and without the Contractor being required to make any payment to the Employer on account of any costs, compensation, expenses and charges for the acquisition and use of such Site for the duration of the Project Completion Schedule. For the avoidance of doubt, it is agreed that the existing rights of way, easements, privileges, liberties and appurtenances to the Site shall not be deemed to be Encumbrances. It is further agreed that, unless otherwise specified in this Agreement, the Contractor accepts and undertakes to bear any and all risks arising out of the inadequacy or physical condition of the Site.

#### **8.5 Protection of Site from encroachments**

On and after signing the memorandum and/or subsequent memorandum referred to in Clause 8.2.1, and until the issue of the Completion Certificate, the Contractor shall maintain a round-the-clock vigil over the Site and shall ensure and procure that no encroachment thereon takes place. During the Construction Period, the Contractor shall protect the Site from any and all occupations, encroachments or Encumbrances, and shall not place or create nor permit any Sub-contractor or other person claiming through or under the Agreement to place or create any Encumbrance or security threat over all or any part of the Site or the Project Assets, or on any rights of the Contractor therein or under this Agreement, save and except as otherwise expressly set forth in this Agreement. In the event of any encroachment or occupation on any part of the Site, the Contractor shall report such encroachment or occupation forthwith to the Employer and undertake its removal at its own cost and expenses.

#### **8.6 Special / temporary Right of Way**

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

#### **8.7 Access to the Employer and the Employer's Engineer**

8.7.1 The Right of Way given to the Contractor hereunder shall always be subject to the right of access of the Employer and the Employer's Engineer and their employees and agents for inspection, viewing and exercise of their rights and performance of their obligations under this Agreement.

8.7.2 The Contractor shall ensure, subject to all relevant safety procedures, that the Employer has un-restricted access to the Site during any emergency situation, as decided by the Employer's Engineer.

#### **8.8 Geological and archaeological finds**

It is expressly agreed that mining, geological or archaeological rights do not form part of this Agreement with the Contractor for the Works, and the Contractor hereby acknowledges that it shall not have any mining rights or interest in the underlying minerals, fossils, antiquities, structures or other remnants or things either of particular geological or archaeological interest and that such rights, interest and property on or under the Site shall vest in and belong to the Employer or the concerned Government

Instrumentality. The Contractor shall take all reasonable precautions to prevent its workmen or any other person from removing or damaging such interest or property and shall inform the Employer forthwith of the discovery thereof and comply with such instructions as the concerned Government Instrumentality may reasonably give for the removal of such property. For the avoidance of doubt, it is agreed that any reasonable expenses incurred by the Contractor hereunder shall be reimbursed by the Employer. It is also agreed that the Employer shall procure that the instructions hereunder are issued by the concerned Government Instrumentality within a reasonable period.

## ARTICLE-9

### UTILITIES AND TREES

#### 9.1 Existing Utilities and Roads

Notwithstanding anything to the contrary contained herein, the Contractor shall ensure that the respective entities owning the existing roads, right of way, level crossings, structures, or utilities on, under or above the Site are enabled by it to keep them in continuous satisfactory use, if necessary, by providing suitable temporary diversions with the Employer of the controlling body of that road, right of way or utility.

#### 9.2 Shifting of Obstructing Utilities

The Contractor shall, in accordance with Applicable Laws and with assistance of the Employer, shift any utility (including electric lines, water pipes, telephone cables etc.) to an appropriate location or alignment, if such utility or obstruction adversely affects the execution of Works or Maintenance of the terminal in accordance with this Agreement. The Contractor shall engage registered contractors of concerned utility Agency for such shifting. For the purpose contractors enlisted as class A or B shall be employed. The actual cost of such shifting, based on executed BOQ basis on rates estimated and corrected by the utility agency, less supervision charges of Agency plus 10% towards Contractor's overhead shall be paid by the Employer to the Contractor separately in addition to the Contract Price. However, the Employer will assist in obtaining required permissions for such shifting from the concerned utility Agency including submission of application on Employer name. The works shall be carried out in close coordination with utility agency and all precaution / conditions stipulated by the agency shall be diligently followed.

#### 9.3 New Utilities

- 9.3.1 The Contractor shall allow, subject to such conditions as the Employer may specify, access to, and use of the Site for laying telephone lines, water pipes, electric cables or other public utilities. Where such access or use causes any financial loss to the Contractor, it may require the user of the Site to pay compensation or damages as per Applicable Laws. For the avoidance of doubt, it is agreed that use of the Site under this Clause 9.3 shall not in any manner relieve the Contractor of its obligation to construct and maintain the Terminal in accordance with this Agreement and any damage caused by such use shall be restored forthwith at the cost of the Employer.
- 9.3.2 The Employer may, by notice, require the Contractor to connect any adjoining road to the Terminal, and the connecting portion thereof falling within the Site shall be constructed by the Contractor at the Employer's cost in accordance with Article 10.
- 9.3.3 The Employer may by notice require the Contractor to connect, through a paved road, any adjoining service station, hotel, motel or any other public facility or amenity to the Terminal, whereupon the connecting portion thereof that falls within the Site shall be constructed by the Contractor on payment of the cost. The cost to be paid by the Employer to the Contractor shall be determined by the Employer's Engineer. For the avoidance of doubt, in the event such road is to be constructed for the benefit of any entity, the Employer may require such entity to make an advance deposit with the Contractor or the Employer, as the case may be, of an amount equal to the estimated cost as determined by the Employer's Engineer and such advance shall be adjusted against the cost of construction as determined by the Employer's Engineer hereunder.

9.3.4 In the event the construction of any Works is affected by a new utility or works undertaken in accordance with this Clause 9.3, the Contractor shall be entitled to a reasonable Time Extension as determined by the Employer's Engineer.

**9.4 Felling of Trees**

The Employer shall assist the Contractor in obtaining the Applicable Permits for felling and disposal of trees to be identified by the Contractor for this purpose if and only if such trees cause a Material Adverse Effect on the construction or maintenance of the Terminal. The cost of such felling and disposal shall be included in the Contract price. The Parties hereto agree that the felled trees shall be deemed to be owned by the Contractor after depositing the required amount to the concerned Department at the rates estimated by the Forest Department, Government of Uttar Pradesh and shall be disposed in such manner and subject to such conditions of the concerned Department. However, the Employer will assist in obtaining applicable permits for felling of trees.

## ARTICLE-10

### DESIGN AND CONSTRUCTION OF THE TERMINAL

#### 10.1 Obligations prior to Commencement of Works

10.1.1 Within 20 (twenty) days of the Appointed Date, the Contractor shall:

- a) Appoint its representative, duly authorised to deal with the Employer in respect of all matters under or arising out of or relating to this Agreement;
- b) Appoint a design director (the "Design Director") who will head the Contractor's design unit and shall be responsible for surveys, investigations, collection of data, and preparation of preliminary and detailed designs;
- c) Undertake and perform all such acts, deeds and things as may be necessary or required before commencement of Works under and in accordance with this Agreement, the Applicable Laws and Applicable Permits; and
- d) Make its own arrangements for quarrying of materials needed for the Terminal under and in accordance with the Applicable Laws and Applicable Permits.
- e) Prepare construction zone and Camp Site safety checklist.
- f) Prepare updated Environmental Management Plan (EMP) including the action plan and checklist.

10.1.2 The Employer shall, within 15 (fifteen) days of the date of this Agreement, appoint an engineer (the "Employer's Engineer") to discharge the functions and duties specified in this Agreement, and shall notify to the Contractor the name, address and the date of appointment of the Employer's Engineer forthwith.

10.1.3 Within 30 (thirty) days of the Appointed Date, the Contractor shall submit to the Employer and the Employer's Engineer a programme (the "Programme") for the Works, developed using networking techniques (like Ms-Project / Primavera) giving the following details:

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

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

- The order in which the Contractor intends to carry out the Works, including the anticipated timing of design and stages of Works;
- The periods for reviews under Clause 10.2;
- The sequence and timing of inspections and tests specified in this Agreement.
- The Contractor shall submit a revised programme whenever the previous programme is inconsistent with the actual progress or with the Contractor's obligations

**Part-III** Monthly Cash Flow Forecast

10.1.4 The Contractor shall compute, on the basis of the Drawings prepared in accordance with Clause 10.2.4, and provide to the Employer's Engineer, the length, area and numbers, as

the case may be, in respect of the various items of work specified in Schedule-H and comprising the Scope of the Project. The Parties expressly agree that these details shall form the basis for estimating the interim payments for the Works in accordance with the provisions of Clause 19.3. For the avoidance of doubt, the sum of payments to be computed in respect of all the items of work shall not exceed the Contract Price, as may be adjusted in accordance with the provisions of this Agreement.

- 10.1.5 Within 20 (twenty) days of the appointment date, the Contractor shall appoint a safety consultant (the "Safety Consultant") to carry out safety audit at the design stage of the Terminal in accordance with the Applicable Laws and Good Industry Practice. The Safety Consultant shall be appointed after proposing to the Employer a panel of three names of qualified and experienced firms from whom the Employer may choose one to be the Safety Consultant. Provided, however, that if the panel is not acceptable to the Employer and the reasons for the same are furnished to the Contractor, the Contractor shall propose to the Employer a revised panel of three names for obtaining the consent of the Employer. The Contractor shall also obtain the consent of the Employer for the key personnel of the Safety Consultant who shall have adequate experience and qualifications in safety audit of the highway projects. The Employer shall, within 15 (fifteen) days of receiving a proposal from the Contractor hereunder, convey its decision, with reasons, to the Contractor, and if no such decision is conveyed within the said period, the Contractor may proceed with engaging of the Safety Consultant.
- 10.1.6 The safety audit pursuant to Clause 10.1.5 shall be carried out by the Safety Consultant in respect of all such design details that have a bearing on safety of Users as well as pedestrians and animals involved in or associated with accidents. The recommendations of the Safety Consultant shall be incorporated in the design of the Terminal and the Contractor shall forward to the Employer's Engineer a certificate to this effect together with the recommendations of the Safety Consultant. In the event that any works required by the Safety Consultant shall fall beyond the scope of Schedule-B, Schedule-C or Schedule-D, the Contractor shall make a report thereon and seek the instructions of the Employer for Change in Scope. For the avoidance of doubt, the Safety Consultant to be engaged by the Contractor shall be independent of the design and implementation team of the Contractor.

## **10.2 Design and Drawings**

- 10.2.1 Design and Drawings shall be developed in conformity with the Specifications & Standards set forth in Schedule-D. In the event, the Contractor requires any relaxation in design standards due to restricted Right of Way in any section, the alternative design criteria for such section shall be provided for review of the Employer's Engineer.
- 10.2.2 Within 20 (twenty) days of appointment date, the Contractor shall appoint a proof check consultant (the "Proof Consultant") after proposing to the Employer a panel of three names of qualified and experienced firms from whom the Employer may choose one to be the Proof Consultant. Provided, however, that if the panel is not acceptable to the Employer and the reasons for the same are furnished to the Contractor, the Contractor shall propose to the Employer a revised panel of three names for obtaining the consent of the Employer. The Contractor shall also obtain the consent of the Employer for two key personnel of the Proof Consultant who shall have adequate experience and qualifications in highways and bridges respectively. The Employer shall, within 15 (fifteen) days of receiving a proposal from the Contractor hereunder, convey its decision, with reasons, to the Contractor, and if no such decision is conveyed within the said period, the Contractor may proceed with engaging of the Proof Consultant.

**10.2.3 The Proof Consultant shall:**

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

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

- a) The Contractor shall prepare and submit, with reasonable promptness and in such sequence as is consistent with the Project Completion Schedule, three copies each of the design and Drawings, duly certified by the Proof Consultant, to the Employer's Engineer for review. Provided, however, that in respect of Major Bridges and Structures, the Employer's Engineer may require additional drawings for its review in accordance with Good Industry Practice.
- b) By submitting the Drawings for review to the Employer's Engineer, the Contractor shall be deemed to have represented that it has determined and verified that the design and engineering, including field construction criteria related thereto, are in conformity with the Scope of the Project, the Specifications and Standards and the Applicable Laws;
- c) Within 15 (fifteen) days of the receipt of the Drawings, the Employer's Engineer shall review the same and convey its observations to the Contractor with particular reference to their conformity or otherwise with the Scope of the Project and the Specifications and Standards. The Contractor shall not be obliged to await the observations of the Employer's Engineer on the Drawings submitted pursuant hereto beyond the said period of 15 (fifteen) days and may begin or continue Works at its own discretion and risk; Provided, however that in case of a Major Bridge or Structure, the aforesaid period of 15 (fifteen) days may be extended upto 30 (thirty) days;
- d) If the aforesaid observations of the Employer's Engineer indicate that the Drawings are not in conformity with the Scope of the Project or the Specifications & Standards, such Drawings shall be revised by the Contractor in conformity with the provisions of this Agreement and resubmitted to the Employer's Engineer for review. The Employer's Engineer shall give its observations, if any, within 10 (ten) days of receipt of the revised Drawings. In the event the Contractor fails to revise and resubmit such Drawings to the Employer's Engineer for review as aforesaid, the Employer's Engineer may withhold the payment for the affected works in accordance with the provisions of Clause 19.5.4. If the Contractor disputes any decision, direction or determination of the Employer's Engineer hereunder, the Dispute shall be resolved in accordance with the Dispute Resolution Procedure;
- e) No review and/or observation of the Employer's Engineer and/or its failure to review and/or convey its observations on any Drawings shall relieve the Contractor of its obligations and liabilities under this Agreement in any manner nor shall the Employer's Engineer or the Employer be liable for the same in any manner; and if errors, omissions, ambiguities, inconsistencies, inadequacies or other Defects are found in the Drawings, they and the construction works shall be corrected at the Contractor's cost, notwithstanding any review under this Article 10;
- f) The Contractor shall be responsible for delays in submitting the Drawing as set forth in Schedule-I caused by reason of delays in surveys and field investigations, and shall not

be entitled to seek any relief in that regard from the Employer; and

- g) The Contractor warrants that its designers, including any third parties engaged by it, shall have the required experience and capability in accordance with Good Industry Practice and it shall indemnify the Employer against any damage, expense, liability, loss or claim, which the Employer might incur, sustain or be subject to arising from any breach of the Contractor's design responsibility and/or warranty set out in this Clause.
- 10.2.5 Any cost or delay in construction arising from review by the Employer's Engineer shall be borne by the Contractor.
- 10.2.6 Works shall be executed in accordance with the Drawings provided by the Contractor in accordance with the provisions of this Clause 10.2 and the observations of the Employer's Engineer thereon as communicated pursuant to the provisions of Clause 10.2.4 (d). Such Drawings shall not be amended or altered without prior written notice to the Employer's Engineer. If a Party becomes aware of an error or defect of a technical nature in the design or Drawings, that Party shall promptly give notice to the other Party of such error or defect.
- 10.2.7 Within 90 (ninety) days of the Project Completion Date, the Contractor shall furnish to the Employer and the Employer's Engineer a complete set of as-built Drawings at scales 1:2500 horizontal and 1:200 vertical for road and other alignment and other appropriate scale for other items of work as approved by the Employer's Engineer in 2 (two) hardcopies in A 2 size sheet on polyester film of quality to be approved by the Employer's Engineer and soft copy in electronic format(CD/DVD-ROM) or in such other medium as may be acceptable to the Employer, reflecting the Terminal as actually designed, engineered and constructed, including an as-built survey illustrating the layout of the Terminal and setback lines, if any, of the buildings and structures forming part of Project Facilities. As-built drawings shall indicate position of the kilometer stones.

### **10.3 Construction of the Terminal**

- 10.3.1 The Contractor shall construct the Terminal as specified in Schedule-B and Schedule-C, and in conformity with the Specifications and Standards set forth in Schedule-D. The Contractor shall be responsible for the correct positioning of all parts of the Works, and shall rectify any error in the positions, levels, dimensions or alignment of the Works. The scheduled completion period shall be 30 (Thirty) Months from the Appointed Date (the "Scheduled Completion Period") and the Contractor agrees and undertakes that the construction shall be completed on or before the Scheduled Completion Period, including any extension thereof.
- 10.3.2 The Contractor shall construct the Terminal in accordance with the Project Completion Schedule set forth in Schedule-J. In the event that the Contractor fails to achieve any Project Milestone or the Scheduled Completion Date within a period of 30 (thirty) days from the date set forth in Schedule-J, unless such failure has occurred due to Force Majeure or for reasons solely attributable to the Employer, it shall pay Damages to the Employer of a sum calculated at the rate of 0.05% (zero point zero five percent) of the Contract Price for delay of each day reckoned from the date specified in Schedule-J and until such Project Milestone is achieved or the Works are completed; provided that if the period for any or all Project Milestones or the Scheduled Completion Date is extended in accordance with the provisions of this Agreement, the dates set forth in Schedule-J shall be deemed to be modified accordingly and the provisions of this Agreement shall apply as if Schedule-J has been amended as above; provided further that in the event the Works are completed within or before the Scheduled Completion Date including any Time Extension,



applicable for that work or section, the Damages paid under this Clause 10.3.2 shall be refunded by the Employer to the Contractor, but without any interest thereon. For the avoidance of doubt, it is agreed that recovery of Damages under this Clause 10.3.2 shall be without prejudice to the rights of the Employer under this Agreement including the right of Termination thereof. The Parties further agree that Time Extension hereunder shall only be reckoned for and in respect of the affected works as specified in Clause 10.5.2.

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

#### **10.4 Maintenance during Construction Period**

During the Construction Period, the Contractor shall maintain, at its cost, the existing lane(s) of the terminal so that the traffic worthiness and safety thereof are at no time materially inferior as compared to their condition 10 (ten) days prior to the date of this Agreement, and shall undertake the necessary repair and maintenance works for this purpose; provided that the Contractor may, at its cost, interrupt and divert the flow of traffic if such interruption and diversion is necessary for the efficient progress of Works and conforms to Good Industry Practice; provided further that such interruption and diversion shall be undertaken by the Contractor only with the prior written approval of the Employer's Engineer which approval shall not be unreasonably withheld. For the avoidance of doubt, it is agreed that the Contractor shall at all times be responsible for ensuring safe operation of the terminal. It is further agreed that in the event the Project includes construction of a bypass or tunnel and realignment of the existing carriageway, the Contractor shall maintain the existing way in such sections until the new Works are open to traffic.

#### **10.5 Extension of time for completion**

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

- a) Delay in providing the Right of Way, environmental clearances, specified in Clause 4.1.4;
- b) Change of Scope (unless an adjustment to the Scheduled Completion Date has been agreed under Article 13);
- c) Occurrence of a Force Majeure Event;
- d) Any delay, impediment or prevention caused by or attributable to the Employer, the Employer's personnel or the Employer's other contractors if any on the Site; and
- (e) Any other cause or delay which entitles the Contractor to Time Extension in accordance with the provisions of this Agreement.

- 10.5.2 The Contractor shall, no later than 15 (fifteen) business days from the occurrence of an event or circumstance specified in Clause 10.5.1, inform the Employer's Engineer by notice

in writing, with a copy to the Employer, stating in reasonable detail with supporting particulars, the event or circumstances giving rise to the claim for Time Extension in accordance with the provisions of this Agreement. Provided that the period of 15 (fifteen) business days shall be calculated from the date on which the Contractor became aware, or should have become aware, of the occurrence of such an event or circumstance.

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

10.5.3 In the event of the failure of the Contractor to issue to the Employer's Engineer a notice in accordance with the provisions of Clause 10.5.2 within the time specified therein, the Contractor shall not be entitled to any Time Extension and shall forfeit its right for any such claims in future. For the avoidance of doubt, in the event of failure of the Contractor to issue notice as specified in this clause 10.5.3, the Employer shall be discharged from all liability in connection with the claim.

10.5.4 The Employer's Engineer shall, on receipt of the claim in accordance with the provisions of Clause 10.5.2, examine the claim expeditiously within the time frame specified herein. In the event the Employer's Engineer requires any clarifications to examine the claim, the Employer's Engineer shall seek the same within 15 (fifteen) days from the date of receiving the claim. The Contractor shall, on receipt of the communication of the Employer's Engineer requesting for clarification, furnish the same to the Employer's Engineer within 10 (ten) days thereof. The Employer's Engineer shall, within a period of 60 (sixty) days from the date of receipt of such clarifications, forward in writing to the Contractor its determination of Time Extension.

Provided that when determining each extension of time under this Clause 10.5, the Employer's Engineer shall review previous determinations and may increase, but shall not decrease, the total Time Extension.

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

- A fully detailed claim shall be considered as interim;
- The Contractor shall, no later than 10 (ten) days after the close of each month, send further interim claims specifying the accumulated delay, the extension of time claimed, and such further particulars as the Employer's Engineer may reasonably require; and
- The Contractor shall send a final claim within 30 (thirty) days after the effect of the event or the circumstance ceases.

Upon receipt of the claim hereunder, the Employer's Engineer shall examine the same in accordance with the provisions of Clause 10.5.4 within a period of 60 (sixty) days of the receipt thereof.

## **10.6 Incomplete Works**

In the event the Contractor fails to complete the Works in accordance with the Project Completion Schedule, including any Time Extension granted under this Agreement, the Contractor shall endeavour to complete the balance work expeditiously and shall pay Damages to the Employer in accordance with the provisions of Clause 10.3.2 for delay of each day until the Works are completed in accordance with the provisions of this

Agreement. Recovery of Damages under this Clause shall be without prejudice to the rights of the Employer under this Agreement including the right to termination under Clause 23.1.

#### **10.7 Maintenance Manual**

No later than 60 (sixty) days prior to the Project Completion Date, the Contractor shall, in consultation with the Employer's Engineer, evolve a maintenance manual (the "Maintenance Manual") for the regular and preventive maintenance of the terminal in conformity with the Specifications and Standards, safety requirements and Good Industry Practice, and shall provide 5 (five) copies thereof to the Employer's Engineer. The Employer's Engineer shall review the Maintenance Manual within 15 (fifteen) days of its receipt and communicate its comments to the Contractor for necessary modifications, if any.

#### **10.8 Reports of Unusual occurrence**

The Contractor shall, during the Construction Period, prior to the close of each day, send to the Authority and the Authority's Engineer, by facsimile or e-mail, a report stating accidents and unusual occurrences on the Terminal relating to the safety and security of the Users and terminal. A monthly summary of such reports shall also be sent within 3 (three) business days of the closing of month. For the purposes of the terminal shall include:

- (a) accident, death or severe injury to any person;
- (b) damaged or dislodged fixed equipment;
- (c) flooding of terminal and
- (d) any other unusual occurrence.

## ARTICLE-11

### QUALITY ASSURANCE, MONITORING AND SUPERVISION

#### 11.1 Quality of Materials and Workmanship

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

#### 11.2 Quality Control System

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

11.2.2 The Contractor shall, within 30 (thirty) days of the Appointed Date, submit to the Employer's Engineer its Quality Assurance Plan which shall include the following:

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

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

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

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

#### 11.3 Methodology

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

#### 11.4 Inspection and Technical Audit by the Employer

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

## **11.5 External Technical Audit**

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

## **11.6 Inspection of Construction Records**

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

### **11.6.1 Inspection and Audit by the World Bank**

The World Bank and/or persons appointed by the World Bank shall have the right to inspect the Site and all accounts and records of the Contractor, its sub-contractors and sub-consultants relating to the performance of the Contract and the submission of the bid, and to have such accounts and records audited by auditors appointed by the World Bank if requested by the World Bank. The Contractor's and its Subcontractors' and sub-consultants' attention is drawn to Clause 3.9 [Corrupt or Fraudulent Practices] which provides, inter alia, that acts intended to materially impede the exercise of the World Bank's inspection and audit rights provided under this Clause 11.6.1 constitute a prohibited practice subject to contract termination (as well as to a determination of ineligibility pursuant to the World Bank's prevailing sanctions procedures).

## **11.7 Monthly Progress Reports**

During the Construction Period, the Contractor shall, no later than 10 (ten) days after the close of each month, furnish to the Employer and the Employer's Engineer a monthly report on progress of the Works and shall promptly give such other relevant information as may be required by the Employer's Engineer.

## **11.8 Inspection**

11.8.1 The Employer's Engineer and its authorised representative shall at all reasonable times:

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

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

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

## **11.9 Samples**

The Contractor shall submit the following samples of Materials and relevant information to the Employer's Engineer for pre-construction review:

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

## **11.10 Tests**

11.10.1 For determining that the Works conform to the Specifications and Standards, the Employer's Engineer shall require the Contractor to carry out or cause to be carried out tests, at such time and frequency and in such manner as specified in this Agreement, and in accordance with Good Industry Practice for quality assurance. The checks by the Employer's Engineer shall comprise of 100% (hundred percent) of all the quantity or number of tests prescribed for each category or type of test for quality control by the Contractor.

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

## **11.11 Examination of Work before Covering-up**

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

## **11.12 Rejection**

If, as a result of an examination, inspection, measurement or testing, any Plant, Materials, design or workmanship is found to be defective or otherwise not in accordance with the provisions of this Agreement, the Employer's Engineer shall reject the Plant, Materials, design or workmanship by giving notice to the Contractor, with reasons. The Contractor shall then promptly make good the Defect and ensure that the rejected item complies with the requirements of this Agreement.

If the Employer's Engineer requires the Plant, Materials, design or workmanship to be retested, the tests shall be repeated under the same terms and conditions, as applicable in each case. If the rejection and retesting cause the Employer to incur any additional costs, such cost shall be recoverable by the Employer from the Contractor; and may be deducted by the Employer from any monies due to be paid to the Contractor.

### **11.13 Remedial Work**

11.13.1 Notwithstanding any previous test or certification, the Employer's Engineer may instruct the Contractor to:

- a) Remove from the Site and replace any Plant or Materials which are not in accordance with the provisions of this Agreement;
- b) Remove and re-execute any work which is not in accordance with the provisions of this Agreement and the Specification and Standards; and
- c) Execute any work which is urgently required for the safety of the terminal, whether because of an accident, unforeseeable event or otherwise; provided that in case of any work required on account of a Force Majeure Event, the provisions of Clause 21.6 shall apply.

11.13.2 If the Contractor fails to comply with the instructions issued by the Employer's Engineer under Clause 11.13.1, within the time specified in the Employer's Engineer's notice or as mutually agreed, the Employer's Engineer may advise the Employer to have the work executed by another agency. The cost so incurred by the Employer for undertaking such work shall, without prejudice to the rights of the Employer to recover Damages in accordance with the provisions of this Agreement, be recoverable from the Contractor and may be deducted by the Employer from any monies due to be paid to the Contractor.

### **11.14 Delays during Construction**

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

### **11.15 Quality Control Records and Documents**

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

### **11.16 Video Recording**

During the Construction Period, the Contractor shall provide to the Employer for every calendar quarter, a video recording, which will be compiled into a 3 (three)-hour compact disc or digital video disc, as the case may be, covering the status and progress of Works in that quarter. The video recording shall be provided to the Employer no later than 15 (fifteen) days after the close of each quarter after the Appointed Date.

### **11.17 Suspension of Unsafe Construction Works**

- 11.17.1 Upon recommendation of the Employer's Engineer to this effect, the Employer may by notice require the Contractor to suspend forthwith the whole or any part of the Works if, in the reasonable opinion of the Employer's Engineer, such work threatens the safety of the Users and pedestrians.
- 11.17.2 The Contractor shall, pursuant to the notice under Clause 11.17.1, suspend the Works or any part thereof for such time and in such manner as may be specified by the Employer and thereupon carry out remedial measures to secure the safety of suspended works, the Users and pedestrians. The Contractor may by notice require the Employer's Engineer to inspect such remedial measures forthwith and make a report to the Employer recommending whether or not the suspension hereunder may be revoked. Upon receiving the recommendations of the Employer's Engineer, the Employer shall either revoke such suspension or instruct the Contractor to carry out such other and further remedial measures as may be necessary in the reasonable opinion of the Employer, and the procedure set forth in this Clause 11.17 shall be repeated until the suspension hereunder is revoked.
- 11.17.3 Subject to the provisions of Clause 21.6, all reasonable costs incurred for maintaining and protecting the Works or part thereof during the period of suspension (the "Preservation Costs"), shall be borne by the Contractor; provided that if the suspension has occurred as a result of any breach of this Agreement by the Employer, the Preservation Costs shall be borne by the Employer.
- 11.17.4 If suspension of Works is for reasons not attributable to the Contractor, the Employer's Engineer shall determine any Time Extension to which the Contractor is reasonably entitled.

#### **11.18 Protection of Environment**

The Contractor shall ensure that during continuance of the contract, the Contractor and his Subcontractor(s) shall abide at all times by all existing enactments on environmental protection and rules made thereunder, regulations, latest notifications and bye-laws of the State or Central Government, or local authorities and any other law, bye-law, regulations that may be passed or notification that may be issued in this respect in future by the State or Central Government or the local Employer. Salient features of some of the major laws that are applicable are given below:

The Water (Prevention and Control of Pollution) Act, 1974

This provides for the prevention and control of water pollution and the maintaining and restoring of wholesomeness of water. Pollution means such contamination of water or such alteration of the physical, chemical or biological properties of water or such discharge of any sewage or trade effluent or of any other liquid, gaseous or solid substance into water (whether directly or indirectly) as may, or is likely to, create a nuisance or render such water harmful or injurious to public health or safety, or to domestic, commercial, industrial, agricultural or other legitimate uses, or to the life and health of animals or plants or of aquatic organisms.

The Air (Prevention and Control of Pollution) Act, 1981

This provides for prevention, control and abatement of air pollution. 'Air Pollution' means the presence in the atmosphere of any 'air pollutant', which means any solid, liquid or gaseous substance (including noise) present in the atmosphere in such concentration as may be or tend to be injurious to human beings or other living creatures or plants or property or environment.



The Environment (Protection) Act, 1986

This provides for the protection and improvement of environment and for matters connected therewith, and the prevention of hazards to human beings, other living creatures, plants and property. 'Environment' includes water, air and land and the inter-relationship which exists among and between water, air and land, and human beings, other living creatures, plants, micro-organism and property.

The Public Liability Insurance Act, 1991

This provides for public liability insurance for the purpose of providing immediate relief to the persons affected by accident occurring while handling hazardous substances and for matters connected herewith or incidental thereto. Hazardous substance means any substance or preparation which is defined as hazardous substance under the Environment (Protection) Act 1986, and exceeding such quantity as maybe specified by notification by the Central Government.

The Contractor shall take all reasonable steps to implement the environmental mitigation measures, Environmental Management Plan, in accordance with objective, procedures, and other provisions set forth therein and shall not take any action which would prevent or interfere with such implementation. Further, he shall adhere to all environmental requirements of the contract.

The reference to above mentioned Acts is only indicative.

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.

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.

#### **11.19 Labour Laws**

The Contractor and its Subcontractors shall abide at all times by all existing labour enactments and rules made there under, regulations, notifications and bye laws of Government and Government Instrumentality and any other labour law (including rules), regulations, byelaws that may be passed or notification that may be issued under any labour law in future either by the Government and Government Instrumentality.

The Contractor shall keep the Employer indemnified in case any action is taken against the Employer by the competent Employer on account of contravention of any of the provisions of any Act or rules made there under, regulations or notifications including amendments. 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 in the notifications / bye-laws / acts / rules / regulations including amendments, if any, on the part of the Contractor, the Employer shall also have right to recover from the Contractor any sum required or estimated to be required for making good the loss or damage suffered by the Employer.

The Contractor is expected to be acquainted with all the latest applicable Laws, including those concerning safety at work.



## ARTICLE-12

### COMPLETION CERTIFICATE

#### 12.1 Tests on Completion

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

#### 12.2 Provisional Certificate

- 12.2.1 Subject to the provisions of Clause 12.2.5, upon completion of all Works forming part of the Terminal, save and except the Works for which Time Extension has been granted under Clause 10.5, the Employer's Engineer shall, at the request of the Contractor, issue a provisional certificate of completion substantially in the form set forth in Schedule-L (the "Provisional Certificate") if the Tests for and in respect of the completed Works are successful. The Provisional Certificate shall have appended thereto a list of outstanding items of work (the "Punch List") that need to be completed in accordance with the provisions of this Agreement. The Contractor undertakes to complete the minor outstanding items of works in respect of those Sections of the Terminal for which the Provisional Certificate has been issued, within a period of 30 (thirty) days of the date of Provisional Certificate, and those parts of the Works in respect of which Time Extension has been granted, within the extended period thereof. For the avoidance of doubt, the Parties agree that the Punch List shall include all Works for which Time Extension has been granted and shall also include any minor outstanding items of work forming part of the completed Sections if such works do not materially affect the use of the completed Sections for their intended purpose. The Parties further agree that Provisional Certificate shall not be issued if the completed Works cannot be safely and reliably placed in service of the Users thereof.

- 12.2.2 Upon issue of Provisional Certificate, the provisions of Articles 14 and 17 shall apply to the completed parts of the terminal and the property and ownership of all such completed Works shall vest in the Employer.
- 12.2.3 If the Employer's Engineer determines that the terminal or any completed part thereof does not conform to the provisions of this Agreement and cannot be safely and reliably placed in operation, it shall forthwith make a report in this behalf and send copies thereof to the Employer and the Contractor and withhold issuance of the Provisional Certificate until the Defects or deficiencies are rectified by the Contractor and Tests are successful in accordance with this Article 12.
- 12.2.4 Notwithstanding anything to the contrary contained in Clause 12.2.3, the Employer may, at any time after receiving a report from the Employer's Engineer under that Clause, direct the Employer's Engineer to issue a Provisional Certificate under Clause 12.2.1 and such direction shall be complied forthwith.
- 12.2.5 No Provisional Certificate shall be issued under the provisions of this Clause 12.2 until the Contractor has submitted valid claims for payment of at least 80% (eighty per cent) of the amount arrived at after reducing the lump sum price specified in Clause 19.1.1 by the amount attributable to works which have been withdrawn under the provisions of Clause 8.3.3.

### **12.3 Completion of Remaining Works**

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

### **12.4 Completion Certificate**

- 12.4.1 Upon completion of all Works, including the items specified in the Punch List, and the Employer's Engineer determining the Tests to be successful, it shall forthwith issue to the Contractor and the Employer a certificate substantially in the form set forth in Schedule-L (the "Completion Certificate").
- 12.4.2 Upon receiving the Completion Certificate, the Contractor shall remove its equipment, materials, debris and temporary works from the Site within a period of 30 (thirty) days thereof, failing which the Employer may remove or cause to be removed, such equipment, materials, debris and temporary works and recover from the Contractor an amount equal to 120% (one hundred and twenty per cent) of the actual cost of removal incurred by the Employer.
- 12.4.3 Without prejudice to the obligations of the Contractor specified in Articles 14 and 17, the property and ownership of all the completed Works forming part of the Terminal shall vest in the Employer.

### **12.5 Rescheduling of Tests**

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

## **ARTICLE-13**

### **CHANGE OF SCOPE**

#### **13.1 Change of Scope**

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

#### **13.1.2 Change of Scope shall mean:**

- a) Change in specifications of any item of Works;
- b) Omission of any work from the Scope of the Project except under Clause 8.3.3; provided that, subject to Clause 13.5, the Employer shall not omit any work under this Clause in order to get it executed by any other Employer; and / or
- c) Any additional work, Plant, Materials or services which are not included in the Scope of the Project, including any associated Tests on completion of construction.

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

#### **13.2 Procedure for Change of Scope**

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

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

- a) The impact, if any, which the Change of Scope is likely to have on the Project Completion Schedule if the works or services are required to be carried out during the Construction Period; and
- b) The options for implementing the proposed Change of Scope and the effect, if any, each such option would have on the costs and time thereof, including the following details:
  - i) Break down of the quantities, unit rates and cost for different items of work;

- ii) Proposed design for the Change of Scope; and
- iii) proposed modifications, if any, to the Project Completion Schedule of the terminal.

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

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

- a) the cost of work shall be derived on the basis of Civil Works Standard Data Book and the applicable schedule of rates for the relevant circle, as published by the respective State Government, i.e. PWD / HD and such rates shall be indexed with reference to the WPI once every year if current rates are not available, with the base being the month and year of the publication of the said schedule of rates; provided, however, that for any item not included in the schedule of rates, the prevailing market rates as determined by the Employer's Engineer shall apply, and for any item in respect of which Civil Works Standard Data Book does not provide the requisite details, the Employer's Engineer shall determine the rate in accordance with Good Industry Practice.

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

- a) Issue a Change of Scope Order requiring the Contractor to proceed with the performance thereof at the rates and conditions approved by the Employer till the matter is resolved in accordance with Article 26; or
- b) Proceed in accordance with Clause 13.5.

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

### **13.3 Payment for Change of Scope**

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

### **13.4 Restrictions on Change of Scope**

13.4.1 No Change of Scope shall be executed unless the Employer has issued the Change of Scope Order save and except any Works necessary for meeting any Emergency.

13.4.2 Unless the Parties mutually agree to the contrary, the total value of all Change of Scope Orders shall not exceed 10 (ten) per cent of the Contract Price.

13.4.3 Notwithstanding anything to the contrary in this Article 13, no change made necessary because of any default of the Contractor in the performance of its obligations under this Agreement shall be deemed to be Change of Scope, and shall not result in any adjustment of the Contract Price or the Project Completion Schedule.

### **13.5 Power of the Employer to undertake works**

13.5.1 In the event the Parties are unable to agree to the proposed Change of Scope Orders in accordance with Clause 13.2, the Employer may, after giving notice to the Contractor and considering its reply thereto, award such works or services to any person on the basis of open competitive bidding from amongst bidders who are pre-qualified for undertaking the

additional work; provided that the Contractor shall have the option of matching the first ranked bid in terms of the selection criteria, subject to payment of 2% (two per cent) of the bid amount to the Employer and thereupon securing the award of such works or services. For the avoidance of doubt, it is agreed that the Contractor shall be entitled to exercise such option only if it has participated in the bidding process and its bid does not exceed the first ranked bid by more than 10% (ten percent) thereof. It is also agreed that the Contractor shall provide assistance and cooperation to the person who undertakes the works or services hereunder, but shall not be responsible for rectification of any Defects and/ or maintenance of works carried out by other agencies.

13.5.2 The works undertaken in accordance with this Clause 13.5 shall conform to the Specifications and Standards and shall be carried out in a manner that minimises the disruption in operation of the Terminal. The provisions of this Agreement, insofar as they relate to Works and Tests, shall apply mutatis mutandis to the works carried out under this Clause 13.5.

- ***The Employer shall transfer 75% (seventy five percent) of the amount so received to the first ranked bidder whose bid shall have been matched by the Contractor.***

**ARTICLE-14**  
**MAINTENANCE**

**DELETED**



**ARTICLE-15**

**SUPERVISION AND MONITORING DURING MAINTENANCE**

**DELETED**

## ARTICLE-16

### TRAFFIC REGULATION

#### **16.1 Traffic Regulation by the Contractor**

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

## **ARTICLE-17**

### **DEFECTS LIABILITY**

#### **17.1 Defects Liability Period**

17.1.1 The Contractor shall be responsible for all the Defects and deficiencies, except usual wear and tear in the terminal or any Section thereof, till the expiry of a period of 1 (One) year commencing from the date of Provisional Certificate (the "Defects Liability Period"). Provided that the Defects Liability Period shall in no case be less than 12 (Twelve) months from the date of Completion Certificate for and in respect of works for which Time Extension was granted. Provided further that in the event no Provisional Certificate is issued, the Defects Liability Period shall commence from the date of the Completion Certificate.

#### **17.1.2 Deleted**

#### **17.2 Remediating Defects**

Save and except as provided in Clause 14.1.2, the Contractor shall repair or rectify all Defects and deficiencies observed by the Employer's Engineer during the Defects Liability Period within a period of 15 (fifteen) days from the date of notice issued by the Employer's Engineer in this behalf, or within such reasonable period as may be determined by the Employer's Engineer at the request of the Contractor, in accordance with Good Industry Practice.

#### **17.3 Cost of Remediating Defects**

For the avoidance of doubt, any repair or rectification undertaken in accordance with the provisions of Clause 17.2, including any additional testing, shall be carried out by the Contractor at its own risk and cost, to the extent that such rectification or repair is attributable to:

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

#### **17.4 Contractor's Failure to Rectify Defects**

In the event that the Contractor fails to repair or rectify such Defect or deficiency within the period specified in Clause 17.2, the Employer shall be entitled to get the same repaired, rectified or remedied at the Contractor's cost so as to make the terminal conform to the Specifications and Standards and the provisions of this Agreement. All costs consequent thereon shall, after due consultation with the Employer and the Contractor, be determined by the Employer's Engineer. The cost so determined and an amount equal to twenty percent of the cost as Damages shall be recoverable by the Employer from the Contractor and may be deducted by the Employer from any monies due to the Contractor.

**17.5 Contractor to Search Cause**

- 17.5.1 The Employer's Engineer may instruct the Contractor to examine the cause of any Defect in the Works or part thereof before the expiry of the Defects Liability Period.
- 17.5.2 In the event any Defect identified under Clause 17.5.1 is attributable to the Contractor, the Contractor shall rectify such Defect within the period specified by the Employer's Engineer, and shall bear the cost of the examination and rectification of such Defect.
- 17.5.3 In the event such Defect is not attributable to the Contractor, the Employer's Engineer shall, after due consultation with the Employer and the Contractor, determine the costs incurred by the Contractor on such examination and notify the same to the Contractor, with a copy to the Employer, and the Contractor shall be entitled to payment of such costs by the Employer.

**17.6. Extension of Defects Liability Period**

The Defects Liability Period shall be deemed to be extended till the identified Defects under Clause 17.2 have been remedied.

**17.7 Performance Certificate**

- 17.7.1 Performance of the Contractor's obligations shall not be considered to have been completed until the Employer's Engineer has issued the Performance Certificate to the Contractor, stating the date on which the Contractor completed its obligations with regard to any remedial or other work required as a result of any defect in the Works, as identified under Clause 17.1, to the satisfaction of the Employer's Engineer.
- 17.7.2 The Employer's Engineer shall issue the Performance Certificate substantially in the format set forth in Schedule-S within 28 days after the latest of the expiry dates of the Defects Liability Period, or as soon thereafter as the Contractor has supplied all the Contractor's documents, completed and tested all the Works, including remedying any defects.

## ARTICLE-18

### EMPLOYER'S ENGINEER

#### 18.1 Appointment of the Employer's Engineer

- 18.1.1 The Employer shall appoint a consulting engineering firm substantially in accordance with the selection criteria set forth in Schedule-N, to be the engineer under this Agreement (the "Employer's Engineer").
- 18.1.2 The appointment of the Employer's Engineer shall be made no later than 15 (fifteen) days from the date of this Agreement. The Employer shall notify the appointment or replacement of the Employer's Engineer to the Contractor. In the event of any replacement or termination of Employer's Engineer, the Employer shall appoint its representative to act as Employer's Engineer till such replacement.
- 18.1.3 The staff of the Employer's Engineer shall include suitably qualified engineers and other professionals who are competent to assist the Employer's Engineer to carry out its duties.

#### 18.2 Duties and Employer of the Employer's Engineer

- 18.2.1 The Employer's Engineer shall perform the duties and exercise the Employer in accordance with the provisions of this Agreement, and substantially in accordance with the terms of reference ("Terms of Reference" or "TOR") set forth in Annex 1 of Schedule N, but subject to obtaining prior written approval of the Employer before determining:
- a) Any Time Extension;
  - b) Any additional cost to be paid by the Employer to the Contractor;
  - c) The Termination Payment; or
  - d) Any other matter which is not specified in (a), (b) or (c) above and which creates an obligation or liability on either Party for a sum exceeding 0.2% of Contract price.
- 18.2.2 No decision or communication of the Employer's Engineer shall be effective or valid unless it is accompanied by an attested true copy of the approval of the Employer for and in respect of any matter specified in Clause 18.2.1.
- 18.2.3 The Employer's Engineer shall submit regular periodic reports, at least once every month, to the Employer in respect of its duties and functions under this Agreement. Such reports shall be submitted by the Employer's Engineer within 10 (ten) days of the beginning of every month. For the avoidance of doubt, the Employer's Engineer shall include in its report, compliance of the recommendations of the Safety Consultant.

#### 18.3 Delegation by the Employer's Engineer

- 18.3.1 The Employer's Engineer may, by order in writing, delegate any of his duties and responsibilities to suitably qualified and experienced personnel who are accountable to Employer's Engineer, or may revoke any such delegation, under intimation to the Employer and the Contractor. Provided, however, that the Employer's Engineer shall be responsible and liable for all actions and omissions of such personnel.
- 18.3.2 Any failure of the Employer's Engineer to disapprove any work, Plant or Materials shall not constitute approval, and shall therefore not prejudice the right of the Employer to reject the work, Plant or Materials, which is not in accordance with the provisions of this Agreement and the Specifications and Standards.

18.3.3 Notwithstanding anything stated in Clause 18.3.1 above, the Employer's Engineer shall not delegate the Employer to refer any matter for the Employer's prior approval wherever required in accordance with the provisions of Clause 18.2.

#### **18.4 Instructions of the Employer's Engineer**

18.4.1 The Employer's Engineer may issue to the Contractor instructions for remedying any Defect. The Contractor shall take such instructions from the Employer's Engineer, or from an assistant to whom appropriate Employer has been delegated under Clause 18.3.

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

18.4.3 In case the Contractor does not receive the confirmation of the oral instruction within the time specified in Clause 18.4.2, the Contractor shall seek the written confirmation of the oral instructions from the Employer's Engineer. The Contractor shall obtain acknowledgement from the Employer's Engineer of the communication seeking written confirmation. In case of failure of the Employer's Engineer or its delegated assistant to reply to the Contractor within 2 (two) days of the receipt of the communication from the Contractor, the Contractor may not carry out the instruction.

18.4.4 In case of any dispute on any of the instructions issued by the delegated assistant, the Contractor may refer the dispute to the Employer's Engineer, who shall then confirm, reverse or vary the instructions within 7 (seven) business days of the dispute being referred.

#### **18.5 Determination by the Employer's Engineer**

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

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

#### **18.6 Remuneration of the Employer's Engineer**

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

#### **18.7 Termination of the Employer's Engineer**

The Employer may, in its discretion, replace the Employer's Engineer at any time, but only after appointment of another Employer's Engineer in accordance with Clause 18.1.

### **18.8 Resolution of issues between Employer's Engineer and Contractor**

If the Contractor has reasons to believe that the Employer's Engineer is not discharging its duties and functions in accordance with the provisions of this Agreement, it may make a written representation to the Employer. Upon receipt of such representation, the Employer shall hold a tripartite meeting with the Contractor and Employer's Engineer and make best efforts for an amicable resolution of the representation. If the issue is not resolved at this stage, then the Employer shall take up this matter to the top management of the Employer's Engineer and the Contractor for resolution. If still remains unresolved, then the decision of the Employer in this regard is final and binding.

## **Part IV - Financial Covenants**



## ARTICLE-19

### PAYMENTS

#### 19.1 Contract Price

- 19.1.1 The Employer shall make payments to the Contractor for the Works on the basis of the lump sum price accepted by the Employer in consideration of the obligations specified in this Agreement for an amount of Rs. ... .. (Rs. ... ..) (the "Contract Price"), which shall be subject to adjustments in accordance with the provisions of this Agreement. The Parties agree that save and except as provided in this Agreement, the Contract Price shall be valid and effective until issue of Completion Certificate.
- 19.1.2 The Contract Price includes all duties, taxes, royalty, and fees that may be levied in accordance with the laws and regulations in force as on the Base Date on the Contractor's equipment, Plant, Materials and supplies acquired for the purpose of this Agreement and on the services performed under this Agreement. Nothing in this Agreement shall relieve the Contractor from its responsibility to pay any tax including any tax that may be levied in India on profits made by it in respect of this Agreement.
- 19.1.3 The Contract Price shall not be adjusted for any change in costs stated in Clause 19.1.2 above, except as stated in Clauses 19.10 and 19.17.
- 19.1.4 The Contract Price shall not be adjusted to take account of any unforeseen difficulties or costs, unless otherwise provided for in this Agreement.
- 19.1.5 Unless otherwise stated in this Agreement, the Contract Price covers all the Contractor's obligations for the Works under this Agreement and all things necessary for the Construction and the remedying of any Defects in the Terminal.
- 19.1.6 The Contract Price shall be paid in the currency or currencies as agreed by both the parties of this Agreement. The proportions or amounts of the Local and Foreign Currencies, and the fixed rates of exchange to be used for calculating the payments. Payments for Change of Scope, Damages by the Employer and any other requirements as per this Agreement shall be paid in Indian Rupees. All deductions under this Agreement, payment of Damages by the Contractor and repayment of Advance by the Contractor shall be made in Indian Rupees.

#### 19.2 Advance Payment

- 19.2.1 The Employer shall make an interest-free advance payment (the "Advance Payment"), equal in amount to 10 (ten) percent of the Contract Price, for mobilisation expenses and for acquisition of equipment. The Advance Payment shall be made in three instalments. The first instalment shall be an amount equal to 2% (two percent) of the Contract Price, the second instalment shall be equal to 3% (three percent) of the Contract Price, and the third instalment shall be equal to 5% (five percent) of the Contract Price.
- 19.2.2 The Contractor may apply to the Employer for the first instalment of the Advance Payment at any time after the Appointed Date, along with an irrevocable and unconditional guarantee from a Bank for an amount equivalent to 110% (one hundred and ten per cent) of such instalment, substantially in the form provided at Annex-III of Schedule-G, to remain effective till the complete and full repayment thereof.
- 19.2.3 At any time after 60 (sixty) days from the Appointed Date, the Contractor may apply for the second instalment of the Advance Payment along with an irrevocable and unconditional guarantee from a Bank for an amount equivalent to 110% (one hundred and

ten per cent) of such instalment, substantially in the form provided at Annex-III of Schedule-G, to remain effective till the complete and full repayment thereof. The application shall also include the details of utilization of earlier advances. 19.2.4 At any time, after 120 (one hundred and twenty) days from the Appointed Date, the Contractor may apply to the Employer for the third instalment of the Advance Payment along with an irrevocable and unconditional guarantee from a Bank for an amount equivalent to 110% (one hundred and ten per cent) of such instalment, substantially in the form provided at Annex-III of Schedule-G, to remain effective till the complete and full repayment thereof. The application shall also include the details of utilization of earlier advances.

- 19.2.4 At any time, after 120 (one hundred and twenty) days from the Appointed Date, the Contractor may apply to the Employer for the third instalment of the Advance Payment along with an irrevocable and unconditional guarantee from a Bank for an amount equivalent to 110% (one hundred and ten per cent) of such instalment, substantially in the form provided at Annex-III of Schedule-G, to remain effective till the complete and full repayment thereof. The application shall also include the details of utilization of earlier advances.
- 19.2.5 The first, second and the third instalments shall be paid by the Employer to the Contractor within 15 (fifteen) days of the receipt of its respective requests in accordance with the provisions of this Clause 19.2.
- 19.2.6 Each instalment of Advance Payment shall be repaid by the Contractor to the Employer no later than 365 (three hundred and sixty five) days from the respective date of Advance Payment.
- 19.2.7 The Contractor shall repay each instalment of the Advance Payment on or before the due date of repayment. In the event of the Contractor's failure to make the repayment on time, the Employer shall be entitled to encash the Bank guarantee for Advance Payment. The Parties expressly agree that for any delay in repayment of the Advance Payment, the Contractor shall pay interest to the Employer for each day of delay, such interest to be calculated at the rate of 18% (eighteen per cent) per annum.
- 19.2.8 If the Advance Payment has not been fully repaid prior to Termination under Clause 21.7 or Article 23, as the case may be, the whole of the balance then outstanding shall immediately become due and payable by the Contractor to the Employer. Without prejudice to the provisions of Clause 19.2.7, in the event of Termination for Contractor Default, the Advance Payment shall be deemed to carry interest at the rate of 10% (ten per cent) per annum from the date of Advance Payment to the date of recovery by encashment of the Bank Guarantee for the Advance Payment. For the avoidance of doubt, the aforesaid interest shall be payable on each instalment of the Advance Payment, regardless of whether the instalment or any part thereof has been repaid to the Employer prior to Termination.

### **19.3 Procedure for estimating the payment for the Works**

- 19.3.1 The Employer shall make interim payments to the Contractor as certified by the Employer's Engineer on completion of a stage, in a length, number or area as specified, and valued in accordance with the proportion of the Contract Price assigned to each item as per Volume III of BOQ.
- 19.3.2 The Contractor shall base its claim for interim payment for the stages completed till the end of the month for which the payment is claimed, valued in accordance with Clause 19.3.1, supported with necessary particulars and documents in accordance with this Agreement.

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

#### **19.4 Stage Payment Statement for Works**

The Contractor shall submit a statement (the "Stage Payment Statement"), in 3 copies, by the 7th (seventh) day of the month to the Employer's Engineer in the form set forth in monthly RA Bill of Volume III, showing the amount calculated in accordance with Clause 19.3 to which the Contractor considers himself entitled for completed stage(s) of the Works. The Stage Payment Statement shall be accompanied with the progress reports and any other supporting documents. The Contractor shall not submit any claim for payment of incomplete stages of work.

#### **19.5 Stage Payment for Works**

19.5.1 Within 10 (ten) days of receipt of the Stage Payment Statement from the Contractor pursuant to Clause 19.4, the Employer's Engineer shall broadly determine the amount due to the Contractor and recommend the release of 75 (seventy five) percent of the amount so determined as part payment against the Stage Payment Statement, pending issue of the Interim Payment Certificate by the Employer's Engineer. Within 10 (ten) days of the receipt of recommendation of the Employer's Engineer, the Employer shall make electronic payment directly to the Contractor's bank account.

19.5.2 Within 15 (fifteen) days of the receipt of the Stage Payment Statement referred to in Clause 19.4, the Employer's Engineer shall determine and shall deliver to the Employer and the Contractor an IPC certifying the amount due and payable to the Contractor, after adjusting the payments already released to the Contractor against the said statement. For the avoidance of doubt, the Parties agree that the IPC shall specify all the amounts that have been deducted from the Stage Payment Statement and the reasons therefor.

19.5.3 In cases where there is a difference of opinion as to the value of any stage, the Employer's Engineer's view shall prevail and interim payments shall be made to the Contractor on this basis; provided that the foregoing shall be without prejudice to the Contractor's right to raise a Dispute.

19.5.4 The Employer's Engineer may, for reasons to be recorded, withhold from payment:

- a) The estimated value of work or obligation that the Contractor has failed to perform in accordance with this Agreement and the Employer's Engineer had notified the Contractor; and
- b) The estimated cost of rectification of work done being not in accordance with this Agreement.

19.5.5 Payment by the Employer shall not be deemed to indicate the Employer's acceptance, approval, consent or satisfaction with the work done.

#### **19.6 Monthly Maintenance Statement of the Terminal - Deleted**

#### **19.7 Payment for Maintenance of the Terminal - Deleted**

#### **19.8 Payment of Damages**

19.8.1 The Contractor may claim Damages due and payable to it in accordance with the provisions of this Agreement.

19.8.2 The Employer's Engineer shall issue the IPC within 15 (fifteen) days of the receipt of the claim under Clause 19.8.1, after making adjustments in accordance with the provisions of this Agreement. The Employer shall pay to the Contractor the amount due under any IPC within a period of 30 (thirty) days from the date of the submission of the claim under this Clause 19.8. In the event of the failure of the Employer to make payment to the Contractor within the specified time, the Employer shall be liable to pay to the Contractor interest thereon and the provisions of Clause 19.9 shall apply mutatis mutandis thereto.

**19.9 Time of payment and interest**

19.9.1 The Employer shall pay to the Contractor any amount due under any payment certificate issued by the Employer's Engineer in accordance with the provisions of this Article 19, or in accordance with any other clause of this Agreement as follows:

a) payment shall be made no later than 30 (thirty) days from the date of submission of the Stage Payment Statement by the Contractor to the Employer's Engineer for certification in accordance with the provisions of Clause 19.4 for an IPC; provided that, in the event the IPC is not issued by the Employer's Engineer within the aforesaid period of 30 (thirty) days, the Employer shall pay the amount shown in the Contractor's Stage Payment Statement and any discrepancy therein shall be added to, or deducted from, the next payment certificate issued to the Contractor; and

b) payment shall be made no later than 45 (forty five) days from the date of submission of the Final Payment Certificate for Works along with the discharge submitted to the Employer's Engineer in accordance with the provisions of Clause 19.15 for certification.

19.9.2 In the event of the failure of the Employer to make payment to the Contractor within the time period stated in this Clause 19.9, the Employer shall be liable to pay to the Contractor interest at 12% (twelve percent) per annum simple interest, calculated at quarterly rests, on all sums remaining unpaid from the date on which the same should have been paid, calculated in accordance with the provisions of Clause 19.9.1(a) and (b) and till the date of actual payment.

**19.10. Price adjustment for the Works - Deleted**

**19.11 Restrictions on price adjustment - Deleted**

**19.12. Price adjustment for Maintenance of Terminal - Deleted**

**19.13 Final Payment Statement**

19.13.1 Within 60 (sixty) days after receiving the Completion Certificate under Clause 12.4, the Contractor shall submit to the Employer's Engineer for consideration six copies of a Final Payment Statement (the "Final Payment Statement") for Works, with supporting documents showing in detail, in the form prescribed by the Employer's Engineer:

a) The summary of Contractor's Stage Payment claims for Works as submitted in accordance with Clause 19.4;

b) The amounts received from the Employer against each claim; and

c) Any further sums which the Contractor considers due to it from the Employer.

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

- An IPC for those parts of the Final Payment Statement which are not in dispute, along with a list of disputed items which shall then be settled in accordance with the provisions of Article 26; or
- A Final Payment Certificate in accordance with Clause 19.15 if there are no disputed items.

19.13.2 If the Employer's Engineer does not prescribe the form referred to in Clause 19.13.1 within 15 (fifteen) of the date of issue of the Completion Certificate, the Contractor shall submit the statement in such form as it deems fit.

#### **19.14 Discharge**

Upon submission of the Final Payment Statement for Works under Clause 19.13, the Contractor shall give to the Employer, with a copy to the Employer's Engineer, a written discharge confirming that the total of the Final Payment Statement represents full and final settlement of all monies due to the Contractor in respect of this Agreement for all the Works arising out of this Agreement, except for any monies due to either Party on account of any Defect. Provided that such discharge shall become effective only after the payment due has been made in accordance with the Final Payment Certificate issued pursuant to Clause 19.15.

#### **19.15 Final Payment Certificate**

19.15.1 Within 30 (thirty) days after receipt of the Final Payment Statement for Works under Clause 19.13, and the written discharge under Clause 19.14, and there being no disputed items of claim, the Employer's Engineer shall deliver to the Employer, with a copy to the Contractor, a final payment certificate (the "Final Payment Certificate") stating the amount which, in the opinion of the Employer's Engineer, is finally due under this Agreement or otherwise. For the avoidance of doubt, before issuing the Final Payment Certificate, the Employer's Engineer shall ascertain from the Employer all amounts previously paid by the Employer and for all sums to which the Employer is entitled, the balance, if any, due from the Employer to the Contractor or from the Contractor to the Employer, as the case may be.

19.15.2 The Employer shall, in accordance with the provisions of Clause 19.9, pay to the Contractor the amount which is stated as being finally due in the Final Payment Certificate.

#### **19.16 Final payment statement for Maintenance - Deleted**

#### **19.17 Change in Law**

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

19.17.2 If as a result of Change in Law, the Contractor benefits from any reduction in costs for the execution of this Agreement or in accordance with the provisions of this Agreement, either Party shall, within 15 (fifteen) days from the date it becomes reasonably aware of such

reduction in cost, notify the other Party with a copy to the Employer's Engineer of such reduction in cost due to Change in Law.

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

**19.18 Correction of Interim Payment Certificates**

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

**19.19 Employer's Claims**

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

**19.20 Bonus for Early Completion**

In the event that the Project Completion Date occurs prior to the Scheduled Completion Date, the Contractor shall be entitled to receive a payment of bonus equivalent to 0.03% (zero point zero three per cent) of the Contract Price for each day by which the Project Completion Date precedes the Scheduled Completion Date, but subject to a maximum of 3% (three per cent) of the Contract Price. Provided, however, that the payment of bonus, if any, shall be made only after the issue of the Completion Certificate. For the avoidance of the doubt, the Parties agree that for the purpose of determining the bonus payable hereunder, the Contract Price shall always be deemed to be the amount specified in Clause 19.1.1, and shall exclude any revision thereof for any reason. The Parties also agree that bonus shall be payable only if each work for which Extension of Time has been granted is completed within respective Extended Time

## ARTICLE-20

### INSURANCE

#### 20.1 Insurance for Works

20.1.1 The Contractor shall effect and maintain at its own cost the insurances specified in Schedule-P and as per the requirements under the Applicable Laws.

20.1.2 Subject to the provisions of Clause 21.6, the Employer and the Contractor shall, in accordance with its obligations as provided for in this Agreement, be liable to bear the cost of any loss or damage that does not fall within the scope of this Article 20 or cannot be recovered from the insurers.

20.1.3 Subject to the exceptions specified in Clause 20.1.4 below, the Contractor shall, save and except as provided for in this Agreement, fully indemnify, hold harmless and defend the Employer from and against any and all losses, damages, costs, charges and/or claims with respect to:

- a) The death of or injury to any person; or
- b) The loss of or damage to any property (other than the Works);

That may arise out of or in consequence of any breach by the Contractor of this Agreement during the execution of the Works or the remedying of any Defects therein.

20.1.4 Notwithstanding anything stated above in Clause 20.1.3, the Employer shall fully indemnify the Contractor from and against any and all losses, damages, costs, charges, proceedings and/or claims arising out of or with respect to

- a) The use or occupation of land or any part thereof by the Employer;
- b) The right of the Employer to execute the Works, or any part thereof, on, over, under, in or through any land;
- c) The damage to property which is the unavoidable result of the execution and completion of the Works, or the remedying of any Defects therein, in accordance with this Agreement; and
- d) The death of or injury to persons or loss of or damage to property resulting from any act or neglect of the Employer, its agents, servants or other contractors, not being employed by the Contractor.

Provided that, in the event of any injury or damage as a result of the contributory negligence of the Contractor, the Employer shall be liable to indemnify the Contractor from and against any and all losses, damages, costs, charges, proceedings and/or claims to the extent as may be proportionately determined to be the liability of the Employer, its servants or agents or other contractors not associated with the Contractor in such injury or damage.

20.1.5 Without prejudice to the obligations of the Parties as specified under Clauses 20.1.3 and 20.1.4, the Contractor shall maintain or effect such third party insurances as may be required under the Applicable Laws.

20.1.6 The Contractor shall provide to the Employer, within 30 days of the Appointed Date, evidence of professional liability insurance maintained by its Design Director and/or consultants to cover the risk of professional negligence in the design of Works. The

professional liability coverage shall be for a sum of not less than [3% (three per cent)] of the Contract Price and shall be maintained until the end of the Defects Liability Period.

## **20.2 Notice to the Employer**

No later than 15 (fifteen) days after the date of this Agreement, the Contractor shall by notice furnish to the Employer, in reasonable detail, information in respect of the insurances that it proposes to effect and maintain in accordance with this Article 20. Within 15 (fifteen) days of receipt of such notice, the Employer may require the Contractor to effect and maintain such other insurances as may be necessary pursuant hereto, and in the event of any difference or disagreement relating to any such insurance, the Dispute Resolution Procedure shall apply.

## **20.3 Evidence of Insurance Cover**

20.3.1 All insurances obtained by the Contractor in accordance with this Article 20 shall be maintained with insurers on terms consistent with Good Industry Practice. Within 10 (ten) days from the Appointed Date, the Contractor shall furnish to the Employer notarised true copies of the certificate(s) of insurance, copies of insurance policies and premia payment receipts in respect of such insurance, and no such insurance shall be cancelled, modified, or allowed to expire or lapse until the expiration of at least 45 (forty-five) days after notice of such proposed cancellation, modification or non-renewal has been delivered by the Contractor to the Employer. The Contractor shall act in accordance with the directions of the Employer. Provided that the Contractor shall produce to the Employer the insurance policies in force and the receipts for payment of the current premia.

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

## **20.4 Remedy for Failure to Insure**

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

## **20.5 Waiver of Subrogation**

All insurance policies in respect of the insurance obtained by the Contractor pursuant to this Article 20 shall include a waiver of any and all rights of subrogation or recovery of the insurers thereunder against, inter alia, the Employer, and its assigns, successors, undertakings and their subsidiaries, Affiliates, employees, insurers and underwriters, and of any right of the insurers to any set-off or counterclaim or any other deduction, whether by attachment or otherwise, in respect of any liability of any such person insured under any such policy or in any way connected with any loss, liability or obligation covered by such policies of insurance.

## **20.6 Contractor's Waiver**

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



insurance policies) or because of deductible clauses in or inadequacy of limits of any such policies of insurance.

#### **20.7 Cross Liabilities**

Any such insurance maintained or effected in pursuance of this Article 20 shall include a cross liability clause such that the insurance shall apply to the Contractor and to the Employer as separately insured.

#### **20.8 Accident or injury to Workmen**

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

#### **20.9 Insurance against Accident to Workmen**

The Contractor shall effect and maintain during the Agreement such insurances as may be required to insure the Contractor's personnel and any other persons employed by it on the Terminal from and against any liability incurred in pursuance of this Article 20. Provided that for the purposes of this Clause 20.9, the Contractor's personnel/any person employed by the Contractor shall include the Sub-contractor and its personnel. It is further provided that, in respect of any persons employed by any Sub-contractor, the Contractor's obligations to insure as aforesaid under this Clause 20.9 shall be discharged if the Sub-contractor shall have insured against any liability in respect of such persons in such manner that the Employer is indemnified under the policy. The Contractor shall require such Sub-contractor to produce before the Employer, when required, such policy of insurance and the receipt for payment of the current premium within 10 (ten) days of such demand being made by the Employer.

#### **20.10 Application of Insurance Proceeds**

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

#### **20.11 Compliance with Policy Conditions**

Each Party hereby expressly agrees to fully indemnify the other Party from and against all losses and claims arising from its failure to comply with conditions imposed by the insurance policies effected in accordance with this Agreement.

## **Part V - Force Majeure and Termination**

## ARTICLE-21

### FORCE MAJEURE

#### 21.1 Force Majeure

As used in this Agreement, the expression “Force Majeure” or “Force Majeure Event” shall mean occurrence in India of any or all of Non-Political Event, Indirect Political Event and Political Event, as defined in Clauses 21.2, 21.3 and 21.4 respectively, if it affects the performance by the Party claiming the benefit of Force Majeure (the “Affected Party”) of its obligations under this Agreement and which act or event (i) is beyond the reasonable control of the Affected Party, and (ii) the Affected Party could not have prevented or overcome by exercise of due diligence and following Good Industry Practice, and (iii) has Material Adverse Effect on the Affected Party.

#### 21.2 Non-Political Event

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

- a) Act of God, epidemic, extremely adverse weather conditions, lightning, earthquake, landslide, cyclone, flood, volcanic eruption, chemical or radioactive contamination or ionising radiation, fire or explosion (to the extent of contamination or radiation or fire or explosion originating from a source external to the Site);
- b) Strikes or boycotts (other than those involving the Contractor, Sub-contractors or their respective employees/representatives, or attributable to any act or omission of any of them) interrupting supplies and services to the Terminal for a continuous period of 24 (twenty-four) hours and an aggregate period exceeding 10 (ten) days in an Accounting Year, and not being an Indirect Political Event set forth in Clause 21.3;
- c) Any failure or delay of a Sub-contractor but only to the extent caused by another Non-Political Event;
- d) Any judgement or order of any court of competent jurisdiction or statutory Employer made against the Contractor in any proceedings for reasons other than (i) failure of the Contractor to comply with any Applicable Law or Applicable Permit, or (ii) on account of breach of any Applicable Law or Applicable Permit or of any contract, or (iii) enforcement of this Agreement, or (iv) exercise of any of its rights under this Agreement by the Employer;
- e) The discovery of geological conditions, toxic contamination or archaeological remains on the Site that could not reasonably have been expected to be discovered through a site inspection; or
- f) Any event or circumstances of a nature analogous to any of the foregoing.

#### 21.3 Indirect Political Event

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

- a) An act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo, riot, insurrection, terrorist or military action, civil commotion or politically motivated sabotage;
- b) Industry-wide or State-wide strikes or industrial action for a continuous period of 24 (twenty-four) hours and exceeding an aggregate period of 10 (ten) days in an Accounting Year;

- c) Any civil commotion, boycott or political agitation which prevents construction of the Terminal by the Contractor for an aggregate period exceeding 10 (ten) days in an Accounting Year;
- d) Any failure or delay of a Sub-contractor to the extent caused by any Indirect Political Event;
- e) Any Indirect Political Event that causes a Non-Political Event; or
- f) Any event or circumstances of a nature analogous to any of the foregoing.

#### **21.4 Political Event**

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

- a) Change in Law, only if consequences thereof cannot be dealt with under and in accordance with the provisions of Clause 19.17;
- b) Compulsory acquisition in national interest or expropriation of any Project Assets or rights of the Contractor or of the Sub-Contractors;
- c) Unlawful or unauthorised or without jurisdiction revocation of, or refusal to renew or grant without valid cause, any clearance, licence, permit, authorisation, no objection certificate, consent, approval or exemption required by the Contractor or any of the Sub-contractors to perform their respective obligations under this Agreement; provided that such delay, modification, denial, refusal or revocation did not result from the Contractor's or any Sub-contractor's inability or failure to comply with any condition relating to grant, maintenance or renewal of such clearance, licence, authorisation, no objection certificate, exemption, consent, approval or permit;
- d) Any failure or delay of a Sub-contractor but only to the extent caused by another Political Event; or
- e) Any event or circumstances of a nature analogous to any of the foregoing.

#### **21.5 Duty to Report Force Majeure Event**

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

- a) The nature and extent of each Force Majeure Event which is the subject of any claim for relief under this Article 21 with evidence in support thereof;
- b) The estimated duration and the effect or probable effect which such Force Majeure Event is having or will have on the Affected Party's performance of its obligations under this Agreement;
- c) The measures which the Affected Party is taking or proposes to take for alleviating the impact of such Force Majeure Event; and
- d) Any other information relevant to the Affected Party's claim.

21.5.2 The Affected Party shall not be entitled to any relief for or in respect of a Force Majeure Event unless it shall have notified the other Party of the occurrence of the Force Majeure Event as soon as reasonably practicable, and in any event no later than 10 (ten) days after the Affected Party knew, or ought reasonably to have known, of its occurrence, and shall

have given particulars of the probable material effect that the Force Majeure Event is likely to have on the performance of its obligations under this Agreement.

- 21.5.3 For so long as the Affected Party continues to claim to be materially affected by such Force Majeure Event, it shall provide the other Party with regular (and not less than weekly) reports containing information as required by Clause 21.5.1, and such other information as the other Party may reasonably request the Affected Party to provide.

## **21.6 Effect of Force Majeure Event on the Agreement**

- 21.6.1 Upon the occurrence of any Force Majeure after the Appointed Date, the costs incurred and attributable to such event and directly relating to this Agreement (the "Force Majeure costs") shall be allocated and paid as follows:

- a) Upon occurrence of a Non-Political Event, the Parties shall bear their respective Force Majeure costs and neither Party shall be required to pay to the other Party any costs thereof;
- b) Upon occurrence of an Indirect Political Event, all Force Majeure costs attributable to such Indirect Political Event, and not exceeding the Insurance Cover for such Indirect Political Event, shall be borne by the Contractor, and to the extent Force Majeure costs exceed such Insurance Cover, one half of such excess amount shall be reimbursed by the Employer to the Contractor for the Force Majeure events; and
- c) Upon occurrence of a Political Event, all Force Majeure costs attributable to such Political Event shall be reimbursed by the Employer to the Contractor.

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

- 21.6.2 Save and except as expressly provided in this Article 21, neither Party shall be liable in any manner whatsoever to the other Party in respect of any loss, damage, cost, expense, claims, demands and proceedings relating to or arising out of occurrence or existence of any Force Majeure Event or exercise of any right pursuant hereto.

- 21.6.3 Upon the occurrence of any Force Majeure Event during the Construction Period, the Project Completion Schedule for and in respect of the affected Works shall be extended on a day for day basis for such period as performance of the Contractor's obligations is affected on account of the Force Majeure Event or its subsisting effects.

## **21.7 Termination Notice for Force Majeure Event**

- 21.7.1 If a Force Majeure Event subsists for a period of 60 (sixty) days or more within a continuous period of 120 (one hundred and twenty) days, either Party may in its discretion terminate this Agreement by issuing a Termination Notice to the other Party without being liable in any manner whatsoever, save as provided in this Article 21, and upon issue of such Termination Notice, this Agreement shall, notwithstanding anything to the contrary contained herein, stand terminated forthwith; provided that before issuing such Termination Notice, the Party intending to issue the Termination Notice shall inform the other Party of such intention and grant 15 (fifteen) days' time to make a representation, and may after the expiry of such 15 (fifteen) days period, whether or not it is in receipt of such representation, in its sole discretion issue the Termination Notice.

## 21.8 Termination Payment for Force Majeure Event

21.8.1 In the event of this Agreement being terminated on account of a Non-Political Event, the Termination Payment shall be an amount equal to the sum payable under Clause 23.5.

Provided that in the event Termination occurs during the Maintenance Period, the Employer's Engineer shall only determine the value of Works associated with Maintenance.

21.8.2 If Termination is on account of an Indirect Political Event, the Termination Payment shall include:

- a) Any sums due and payable under Clause 23.5; and
- b) The reasonable cost, as determined by the Employer's Engineer, of the Plant and Materials procured by the Contractor and transferred to the Employer for use in Construction or Maintenance, only if such Plant and Materials are in conformity with the Specifications and Standards;

Provided that in the event Termination occurs during the Maintenance Period, the Employer's Engineer shall only determine the value of Works associated with Maintenance.

21.8.3 If Termination is on account of a Political Event, the Employer shall make a Termination Payment to the Contractor in an amount that would be payable under Clause 23.6.2 as if it were an Employer Default.

## 21.9 Dispute Resolution

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

## 21.10 Excuse from Performance of Obligations

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

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

## **ARTICLE-22**

### **SUSPENSION OF CONTRACTOR'S RIGHTS**

#### **22.1 Suspension upon Contractor Default**

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

#### **22.2 Employer to act on behalf of Contractor**

During the period of Suspension hereunder, all rights and liabilities vested in the Contractor in accordance with the provisions of this Agreement shall continue to vest therein and all things done or actions taken, including expenditure incurred by the Employer for discharging the obligations of the Contractor under and in accordance with this Agreement shall be deemed to have been done or taken for and on behalf of the Contractor and the Contractor undertakes to indemnify the Employer for all costs incurred during such period. The Contractor hereby licences and sub-licences respectively, the Employer or any other person authorised by it under Clause 22.1 to use during Suspension, all Intellectual Property belonging to or licenced to the Contractor with respect to the Terminal and its design, engineering, construction and maintenance, and which is used or created by the Contractor in performing its obligations under the Agreement.

#### **22.3 Revocation of Suspension**

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

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

#### **22.4 Termination**

22.4.1 At any time during the period of Suspension under this Article 22, the Contractor may by notice require the Employer to revoke the Suspension and issue a Termination Notice. The Employer shall, within 15 (fifteen) days of receipt of such notice, terminate this Agreement under and in accordance with Article 23.

22.4.2 Notwithstanding anything to the contrary contained in this Agreement, in the event that Suspension is not revoked within 90 (ninety) days from the date of Suspension hereunder, the Agreement shall, upon expiry of the aforesaid period, be deemed to have been terminated by mutual agreement of the Parties and all the provisions of this Agreement

shall apply, mutatis mutandis, to such Termination as if a Termination Notice had been issued by the Employer upon occurrence of a Contractor Default.



## ARTICLE-23

### TERMINATION

#### 23.1 Termination for Contractor Default

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

- a) The Contractor fails to provide, extend or replenish, as the case may be, the Performance Security in accordance with this Agreement;
- b) Subsequent to the replenishment or furnishing of fresh Performance Security in accordance with Clause 7.3, the Contractor fails to cure, within a Cure Period of 30 (thirty) days, the Contractor Default for which the whole or part of the Performance Security was appropriated;
- c) The Contractor does not achieve the latest outstanding Project Milestone due in accordance with the provisions of Schedule-J, subject to any Time Extension, and continues to be in default for 45 (forty five) days;
- d) The Contractor abandons or manifests intention to abandon the construction or Maintenance of the Terminal without the prior written consent of the Employer;
- e) The Contractor fails to proceed with the Works in accordance with the provisions of Clause 10.1 or stops Works and/or the Maintenance for 30 (thirty) days without reflecting the same in the current programme and such stoppage has not been authorised by the Employer's Engineer;
- f) The Project Completion Date does not occur within the period specified in Schedule-J for the Scheduled Completion Date, or any extension thereof;
- g) Failure to complete the Punch List items within the periods stipulated therefor in Clause 12.2.1;
- h) The Contractor fails to rectify any Defect, the non-rectification of which shall have a Material Adverse Effect on the Project, within the time specified in this Agreement or as directed by the Employer's Engineer;
- i) The Contractor subcontracts the Works or any part thereof in violation of this Agreement or assigns any part of the Works or the Maintenance without the prior approval of the Employer;
- j) The Contractor creates any Encumbrance in breach of this Agreement;
- k) An execution levied on any of the assets of the Contractor has caused a Material Adverse Effect;
- l) The Contractor is adjudged bankrupt or insolvent, or if a trustee or receiver is appointed for the Contractor or for the whole or material part of its assets that has a material bearing on the Project;
- m) The Contractor has been, or is in the process of being liquidated, dissolved, wound-up,

amalgamated or reconstituted in a manner that would cause, in the reasonable opinion of the Employer, a Material Adverse Effect;

- n) A resolution for winding up of the Contractor is passed, or any petition for winding up of the Contractor is admitted by a court of competent jurisdiction and a provisional liquidator or receiver is appointed and such order has not been set aside within 90 (ninety) days of the date thereof or the Contractor is ordered to be wound up by court except for the purpose of amalgamation or reconstruction; provided that, as part of such amalgamation or reconstruction, the entire property, assets and undertaking of the Contractor are transferred to the amalgamated or reconstructed entity and that the amalgamated or reconstructed entity has unconditionally assumed the obligations of the Contractor under this Agreement; and provided that:
- The amalgamated or reconstructed entity has the capability and experience necessary for the performance of its obligations under this Agreement; and
  - The amalgamated or reconstructed entity has the financial standing to perform its obligations under this Agreement and has a credit worthiness at least as good as that of the Contractor as at the Appointed Date;
- o) Any representation or warranty of the Contractor herein contained which is, as of the date hereof, found to be materially false or the Contractor is at any time hereafter found to be in breach thereof;
- p) The Contractor submits to the Employer any statement, notice or other document, in written or electronic form, which has a material effect on the Employer's rights, obligations or interests and which is false in material particulars;
- q) The Contractor has failed to fulfill any obligation, for which failure Termination has been specified in this Agreement; or
- r) The Contractor commits a default in complying with any other provision of this Agreement if such a default causes a Material Adverse Effect on the Project or on the Employer.
- s) Gives or offers to give (directly or indirectly) to any person any bribe, gift, gratuity, commission or other thing of value, as an inducement or reward:
- For doing or forbearing to do any action in relation to the Contract, or
  - For showing or forbearing to show favour or disfavour to any person in relation to the Contract, or
  - If any of the Contractor's personnel, agents or subcontractors gives or offers to give (directly or indirectly) to any person any such inducement or reward as is described in this sub-paragraph (s). However, lawful inducements and rewards to Contractor's Personnel shall not entitle termination

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

23.1.3 After termination of this Agreement for Contractor Default, the Employer may complete the Works and/or arrange for any other entities to do so. The Employer and these entities may then use any Materials, Plant and equipment, Contractor's documents and other design documents made by or on behalf of the Contractor.

### **23.2 Termination for Employer Default**

23.2.1 Deleted

23.2.2 If the Employer determines, based on reasonable evidence, that the Contractor has engaged in corrupt, fraudulent, collusive or coercive practices, in competing for or in executing the Contract, then the Employer may, after giving 14 days' notice to the Contractor, terminate the Contract and expel him from the Site, and the provisions of Article 23 shall apply as if such termination had been made under Clause 23.1

Should any employee of the Contractor be determined, based on reasonable evidence, to have engaged in corrupt, fraudulent or coercive practice during the execution of the work then that employee shall be removed from the site or works. If appropriate, the Contractor shall then appoint (or cause to be appointed) a suitable replacement person.

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

If on the consideration of the Employer's representation or otherwise, the contractor does not issue the Termination Notice on such 15th day and prefers to continue with the project, it is deemed that the cause of action of the Termination Notice has been condoned by the Contractor. Hence he forfeits his right to any other remedy on that count.

### **23.3 Termination for Employer's convenience**

Notwithstanding anything stated hereinabove, the Employer may terminate this Agreement for convenience. The termination shall take effect 30 (thirty) days from the date of notice hereunder.

23.4 Requirements after Termination

Upon Termination of this Agreement in accordance with the terms of this Article 23, the Contractor shall comply with and conform to the following:

- a) Deliver to the Employer all Plant and Materials which shall have become the property of the Employer under this Article 23;
- b) Deliver all relevant records, reports, Intellectual Property and other licences pertaining to the Works, Maintenance, other design documents and in case of Termination occurring after the Provisional Certificate has been issued, the "as built" Drawings for the Works;
- c) Transfer and/or deliver all Applicable Permits to the extent permissible under Applicable Laws; and
- d) Vacate the Site within 15 (fifteen) days.

### **23.5 Valuation of Unpaid Works**

23.5.1 Within a period of 45 (forty-five) days after Termination under Clause 23.1, 23.2 or 23.3, as the case may be, has taken effect, the Employer's Engineer shall proceed in accordance with Clause 18.5 to determine as follows the valuation of unpaid Works (the "Valuation of Unpaid Works"):

- a) Value of the completed stage of the Works, less payments already made;
- b) Reasonable value of the partially completed stages of works as on the date of Termination, only if such works conform with the Specifications and Standards; and
- c) Value of Maintenance, if any, for completed months, less payments already made, and shall adjust from the sum thereof (i) any other amounts payable or recoverable, as the case may be, in accordance with the provisions of this Agreement; and (ii) all taxes due to be deducted at source.

23.5.2 The Valuation of Unpaid Works shall be communicated to the Employer, with a copy to the Contractor, within a period of 30 (thirty) days from the date of Termination.

### **23.6 Termination Payment**

23.6.1 Upon Termination on account of Contractor's Default under Clause 23.1, the Employer shall:

- a) Encash and appropriate the Performance Security and Retention Money, or in the event the Contractor has failed to replenish or extend the Performance Security, claim the amount stipulated in Clause 7.1.1, as agreed pre-determined compensation to the Employer for any losses, delays and cost of completing the Works and Maintenance, if any;
- b) Encash and appropriate the bank guarantee, if any, for and in respect of the outstanding Advance Payment and interest thereon; and
- c) Pay to the Contractor, by way of Termination Payment, an amount equivalent to the Valuation of Unpaid Works after adjusting any other sums payable or recoverable, as the case may be, in accordance with the provisions of this Agreement.

23.6.2 Upon Termination on account of an Employer Default under Clause 23.2 or for Employer's convenience under Clause 23.3, the Employer shall:

- a) Return the Performance Security and Retention Money forthwith;
- b) Encash and appropriate the bank guarantee, if any, for and in respect of the outstanding Advance Payment; and
- c) Pay to the Contractor, by way of Termination Payment, an amount equal to:
  - i) Valuation of Unpaid Works;
  - ii) the reasonable cost, as determined by the Employer's Engineer, of the Plant and Materials procured by the Contractor and transferred to the Employer for its use, only if such Plant and Materials are in conformity with the Specifications and Standards;
  - iii) The reasonable cost of temporary works, as determined by the Employer's Engineer; and
  - iv) 10% (ten per cent) of the cost of the Works and Maintenance that are not commenced or not completed, and shall adjust from the sum thereof (i) any other amounts payable or recoverable, as the case may be, in accordance with the provisions of this

Agreement, and (ii) all taxes due to be deducted at source.

23.6.3 Termination Payment shall become due and payable to the Contractor within 30 (thirty) days of a demand being made by the Contractor to the Employer with the necessary particulars, and in the event of any delay, the Employer shall pay simple interest at 12% (twelve percent) per annum, calculated at quarterly rests, on the amount of Termination Payment remaining unpaid; provided that such delay shall not exceed 90 (ninety) days. For the avoidance of doubt, it is expressly agreed that Termination Payment shall constitute full discharge by the Employer of its payment obligations in respect thereof hereunder.

23.6.4 The Contractor expressly agrees that Termination Payment under this Article 23 shall constitute a full and final settlement of all claims of the Contractor on account of Termination of this Agreement and that it shall not have any further right or claim under any law, treaty, convention, contract or otherwise.

### **23.7 Other rights and obligations of the Parties**

Upon Termination for any reason whatsoever

- a) Property and ownership in all Materials, Plant and Works and the Terminal shall, as between the Contractor and the Employer, vest in the Employer in whole; provided that the foregoing shall be without prejudice to Clause 23.6
- b) Risk of loss or damage to any Materials, Plant or Works and the care and custody thereof shall pass from the Contractor to the Employer; and
- c) The Employer shall be entitled to restrain the Contractor and any person claiming through or under the Agreement from entering upon the Site or any part of the Project except for taking possession of materials, stores, implements, construction plants and equipment of the Contractor, which have not been vested in the Employer in accordance with the provisions of this Agreement.

### **23.8 Survival of Rights**

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

## **Part VI - Other Provisions**

## **ARTICLE-24**

### **ASSIGNMENT AND CHARGES**

#### **24.1 Restrictions on Assignment and Charges**

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

#### **24.2 Hypothecation of Materials or Plant**

Notwithstanding the provisions of Clause 24.1, the Contractor may pledge or hypothecate to its lenders, any Materials or Plant prior to their incorporation in the Works. Further, the Contractor may, by written notice to the Employer, assign its right to receive payments under this Agreement either absolutely or by way of charge, to any person providing financing to the Contractor in connection with the performance of the Contractor's obligations under this Agreement. The Contractor acknowledges that any such assignment by the Contractor shall not relieve the Contractor from any obligations, duty or responsibility under this Agreement.

## **ARTICLE-25**

### **LIABILITY AND INDEMNITY**

#### **25.1 General Indemnity**

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

#### **25.2 Indemnity by the Contractor**

25.2.1 Without limiting the generality of Clause 25.1, the Contractor shall fully indemnify, hold harmless and defend the Employer and the Employer Indemnified Persons from and against any and all loss and/or damages arising out of or with respect to:

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

25.2.2 Without limiting the generality of the provisions of this Article 25, the Contractor shall fully indemnify, hold harmless and defend the Employer Indemnified Persons from and against any and all suits, proceedings, actions, claims, demands, liabilities and damages which the Employer Indemnified Persons may hereafter suffer, or pay by reason of any demands, claims, suits or proceedings arising out of claims of infringement of any domestic or foreign patent rights, copyrights or other intellectual property, proprietary or confidentiality rights with respect to any materials, information, design or process used by the Contractor or by the Sub-contractors in performing the Contractor's obligations or in any way incorporated in or related to the Project. If in any such suit, action, claim or proceedings, a temporary restraint order or preliminary injunction is granted, the Contractor shall make every reasonable effort, by giving a satisfactory bond or otherwise, to secure the revocation or suspension of the injunction or restraint order. If, in any such suit, action, claim or proceedings, the Terminal, or any part thereof or comprised therein, is held to constitute an infringement and its use is permanently enjoined, the Contractor shall promptly make every reasonable effort to secure for the Employer a licence, at no cost to the Employer, authorising continued use of the infringing work. If the Contractor is unable to secure such licence within a reasonable time, the Contractor shall, at its own expense, and without impairing the Specifications and Standards, either replace the affected work, or part, or process thereof with non-infringing work or part or process, or modify the same so that it becomes non-infringing.

#### **25.3 Notice and Contest of Claims**



In the event that either Party receives a claim or demand from a third party in respect of which it is entitled to the benefit of an indemnity under this Article 25 (the “Indemnified Party”) it shall notify the other Party (the “Indemnifying Party”) within 15 (fifteen) days of receipt of the claim or demand and shall not settle or pay the claim without the prior approval of the Indemnifying Party, which approval shall not be unreasonably withheld or delayed. In the event that the Indemnifying Party wishes to contest or dispute the claim or demand, it may conduct the proceedings in the name of the Indemnified Party, subject to the Indemnified Party being secured against any costs involved, to its reasonable satisfaction.

#### **25.4 Defence of Claims**

- 25.4.1 The Indemnified Party shall have the right, but not the obligation, to contest, defend and litigate any claim, action, suit or proceeding by any third party alleged or asserted against such Party in respect of, resulting from, related to or arising out of any matter for which it is entitled to be indemnified hereunder, and reasonable costs and expenses thereof shall be indemnified by the Indemnifying Party. If the Indemnifying Party acknowledges in writing its obligation to indemnify the Indemnified Party in respect of loss to the full extent provided by this Article 25, the Indemnifying Party shall be entitled, at its option, to assume and control the defence of such claim, action, suit or proceeding, liabilities, payments and obligations at its expense and through the counsel of its choice; provided it gives prompt notice of its intention to do so to the Indemnified Party and reimburses the Indemnified Party for the reasonable cost and expenses incurred by the Indemnified Party prior to the assumption by the Indemnifying Party of such defence. The Indemnifying Party shall not be entitled to settle or compromise any claim, demand, action, suit or proceeding without the prior written consent of the Indemnified Party, unless the Indemnifying Party provides such security to the Indemnified Party as shall be reasonably required by the Indemnified Party to secure the loss to be indemnified hereunder to the extent so compromised or settled.
- 25.4.2 If the Indemnifying Party has exercised its rights under Clause 25.3, the Indemnified Party shall not be entitled to settle or compromise any claim, action, suit or proceeding without the prior written consent of the Indemnifying Party (which consent shall not be unreasonably withheld or delayed).
- 25.4.3 If the Indemnifying Party exercises its rights under Clause 25.3, the Indemnified Party shall nevertheless have the right to employ its own counsel, and such counsel may participate in such action, but the fees and expenses of such counsel shall be at the expense of the Indemnified Party, when and as incurred, unless:
- a) The employment of counsel by such party has been authorised in writing by the Indemnifying Party; or
  - b) The Indemnified Party shall have reasonably concluded that there may be a conflict of interest between the Indemnifying Party and the Indemnified Party in the conduct of the defence of such action; or
  - c) The Indemnifying Party shall not, in fact, have employed independent counsel reasonably satisfactory to the Indemnified Party, to assume the defence of such action and shall have been so notified by the Indemnified Party; or
  - d) The Indemnified Party shall have reasonably concluded and specifically notified the Indemnifying Party either:
    - i) That there may be specific defences available to it which are different from or

additional to those available to the Indemnifying Party; or

- ii) That such claim, action, suit or proceeding involves or could have a material adverse effect upon it beyond the scope of this Agreement:

Provided that if Sub-clauses (b), (c) or (d) of this Clause 25.4.3 shall be applicable, the counsel for the Indemnified Party shall have the right to direct the defence of such claim, demand, action, suit or proceeding on behalf of the Indemnified Party, and the reasonable fees and disbursements of such counsel shall constitute legal or other expenses hereunder.

#### **25.5 No Consequential Claims**

Notwithstanding anything to the contrary contained in this Article 25, the indemnities herein provided shall not include any claim or recovery in respect of any cost, expense, loss or damage of an indirect, incidental or consequential nature, including loss of profit, except as expressly provided in this Agreement.

#### **25.6 Survival on Termination**

The provisions of this Article 25 shall survive Termination.

## ARTICLE-26

### DISPUTE & CONCILIATION

#### 26.1 Dispute Resolution

26.1.1 Any dispute, difference or controversy of whatever nature howsoever arising under or out of or in relation to this Agreement (including its interpretation) between the Parties, and so notified in writing by either Party to the other Party (the "Dispute") shall, in the first instance, be attempted to be resolved amicably in accordance with the conciliation procedure set forth in Clause 26.2.

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

#### 26.2 Conciliation

##### 26.2.1 Contractor's Claims

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 this Agreement, the Contractor shall give notice to the Employer's Engineer, describing the event or circumstance giving rise to the claim. The notice shall be given as soon as practicable, and not later than 28 days after the Contractor became aware, or should have become aware, of the event or circumstance. If the Contractor fails to give notice of a claim within such period of 28 days, the Time for Completion shall not be extended, the Contractor shall not be entitled to additional payment, and the Employer shall be discharged from all liability in connection with the claim. Otherwise, the following provisions of this Clause shall apply. The Contractor shall also submit any other notices which are required by the Contract, and supporting particulars for the claim, all as relevant to such event or circumstance. The Contractor shall keep such contemporary records as may be necessary to substantiate any claim, either on the Site or at another location acceptable to the Employer's Engineer. Without admitting the Employer's liability, the Employer's Engineer may, after receiving any notice under this Clause, monitor the record-keeping and/or instruct the Contractor to keep further contemporary records. The Contractor shall permit the Employer's Engineer to inspect all these records, and shall (if instructed) submit copies to the Employer's Engineer. Within 42 days after the Contractor became aware (or should have become aware) of the event or circumstance giving rise to the claim, or within such other period as may be proposed by the Contractor and approved by the Employer's Engineer, the Contractor shall send to the Employer's Engineer a fully detailed claim which includes full supporting particulars of the basis of the claim and of the extension of time and/or additional payment claimed. If the event or circumstance giving rise to the claim has a continuing effect:

- This fully detailed claim shall be considered as interim;
- The Contractor shall send further interim claims at monthly intervals, giving the accumulated delay and/or amount claimed, and such further particulars as the Employer's Engineer may reasonably require; and
- The Contractor shall send a final claim within 28 days after the end of the effects resulting from the event or circumstance, or within such other period as may be

proposed by the Contractor and approved by the Employer's Engineer. Within 42 days after receiving a claim or any further particulars supporting a previous claim, or within such other period as may be proposed by the Employer's Engineer and approved by the Contractor, the Employer's Engineer shall respond with approval, or with disapproval and detailed comments. He may also request any necessary further particulars, but shall nevertheless give his response on the principles of the claim within the above defined time period. Within the above defined period of 42 days, the Employer's Engineer shall to agree or determine (i) the extension (if any) of the Time for Completion (before or after its expiry), and/or (ii) the additional payment (if any) to which the Contractor is entitled under the Contract. Each Payment Certificate shall include such additional payment for any claim as has been reasonably substantiated as due under the relevant provision of the Contract. Unless and until the particulars supplied are sufficient to substantiate the whole of the claim, the Contractor shall only be entitled to payment for such part of the claim as he has been able to substantiate. If the Employer's Engineer does not respond within the timeframe defined in this Clause, either Party may consider that the claim is rejected by the Employer's Engineer and any of the Parties may refer to the Dispute Board in accordance with Clause 26.2.2. The requirements of this Clause are in addition to those of any other Clause which may apply to a claim. If the Contractor fails to comply with this or another Sub-Clause in relation to any claim, any extension of time and/or additional payment shall take account of the extent (if any) to which the failure has prevented or prejudiced proper investigation of the claim, unless the claim is excluded for reasons under this Clause.

#### **26.2.2 Appointment of the Dispute Resolution Board**

Disputes shall be referred to a DB for decision in accordance with this Clause. The Parties shall appoint a DB within 3 months of signing of Agreement. The DB shall comprise of three suitably qualified persons (the members), each of whom shall be a professional experienced in the type of construction involved in the Works and with the interpretation of contractual documents. The DB is to comprise of three persons, each Party shall nominate one member for the approval of the other Party. The first two members shall recommend and the Parties shall agree upon the third member, who shall act as chairman. The terms of the remuneration of each of the three members, including the remuneration of any expert whom the DB consults, shall be mutually agreed upon by the Parties. Each Party shall be responsible for paying one-half of this remuneration. If at any time the Parties so agree, they may jointly refer a matter to the DB for it to give its opinion. Neither Party shall consult the DB on any matter without the agreement of the other Party. If a member declines to act or is unable to act as a result of death, disability, resignation or termination of appointment, a replacement shall be appointed in the same manner as the replaced person was required to have been nominated or agreed upon, as described in this Clause. The appointment of any member may be terminated by mutual agreement of both Parties, but not by the Employer or the Contractor acting alone. Unless otherwise agreed by both Parties, the appointment of the DB (including each member) shall expire when the Performance Certificate is issued by the Employer.

#### **26.2.3 Obtaining Dispute Board's Decision**

If a dispute (of any kind whatsoever) arises between the Parties in connection with, or arising out of, the Contract or the execution of the Works, including any dispute as to any certificate, determination, instruction, opinion or valuation of the Employer's Engineer, either Party may refer the dispute in writing to the DB for its decision, with copies to the

other Party and the Employer's Engineer. Such reference shall state that it is given under this Clause. The DB shall be deemed to have received such reference on the date when it is received by the chairman of the DB. Both Parties shall promptly make available to the DB all such additional information, further access to the Site, and appropriate facilities, as the DB may require for the purposes of making a decision on such dispute. The DB shall be deemed to be not acting as arbitrator(s). Within 84 days after receiving such reference, or within such other period as may be proposed by the DB and approved by both Parties, the DB shall give its decision, which shall be reasoned and shall state that it is given under this Sub-Clause. The decision shall be binding on both Parties, who shall promptly give effect to it unless and until it shall be revised in an amicable settlement or an arbitral award as described below. Unless the Contract has already been abandoned, repudiated or terminated, the Contractor shall continue to proceed with the Works in accordance with the Contract. If either Party is dissatisfied with the DB's decision, then either Party may, within 28 days after receiving the decision, give a Notice of Dissatisfaction to the other Party indicating its dissatisfaction and intention to commence arbitration. If the DB fails to give its decision within the period of 84 days (or as otherwise approved) after receiving such reference, then either Party may, within 28 days after this period has expired, give a Notice of Dissatisfaction to the other Party. In either event, this Notice of Dissatisfaction shall state that it is given under this Clause, and shall set out the matter in dispute and the reason(s) for dissatisfaction. Neither Party shall be entitled to commence arbitration of a dispute unless a Notice of Dissatisfaction has been given in accordance with this Clause. If the DB has given its decision as to a matter in dispute to both Parties, and no Notice of Dissatisfaction has been given by either Party within 28 days after it received the DB's decision, then the decision shall become final and binding upon both Parties.

### **26.3 Arbitration**

26.3.1 Any Dispute which is not resolved amicably by conciliation, as provided in Clause 26.2, shall be finally decided by reference to arbitration by a Board of Arbitrators appointed in accordance with Clause 26.3.2. Such arbitration shall be held in accordance with the Arbitration & Conciliation Act, 1996 of India. Provided, however, arbitration shall be held in accordance with UNCITRAL Rules in case Contractor is registered outside India. The venue of such arbitration shall be Chennai. The language of arbitration proceedings shall be English.

26.3.2 Disputes shall be settled by arbitration in accordance with the following provisions:

1. Selection of Arbitrators. Each dispute submitted by a Party to arbitration shall be heard by an arbitration tribunal composed of three (3) arbitrators, in accordance with the following provisions:
  - a) The Employer and the Contractor shall each appoint one (1) arbitrator, and these two arbitrators shall jointly appoint a third arbitrator, who shall chair the arbitration tribunal. If the arbitrators named by the Parties do not succeed in appointing a third arbitrator within thirty (30) days after the latter of the two (2) arbitrators named by the Parties has been appointed, the third arbitrator shall, at the request of either Party, be appointed by Secretary, the Indian Council of Arbitration, New Delhi
  - b) If, in a dispute subject to paragraph (a) above, one Party fails to appoint its arbitrator within thirty (30) days after the other Party has appointed its arbitrator, the Party which has named an arbitrator may apply to the Secretary, the Indian Council of Arbitration, New Delhi to appoint a arbitrator for the matter in dispute, and the arbitrator appointed pursuant to such application shall be the arbitrator of the other party for that dispute.

2. Rules of Procedure. Arbitration proceedings shall be conducted in accordance with procedure of the Arbitration & Conciliation Act 1996, of India.
3. Substitute Arbitrators. If for any reason an arbitrator is unable to perform his/her function, a substitute shall be appointed in the same manner as the original arbitrator.
4. Nationality and Qualifications of Arbitrators. The arbitrators appointed pursuant to paragraphs 1(a) through 1(b) above shall be a legal or technical expert with extensive experience in relation to the matter in dispute.
5. Miscellaneous. In any arbitration proceeding hereunder:
  - a) Proceedings shall be held in New Delhi
  - b) The English language shall be the official language for all purposes; and
  - c) The decision of the majority of the arbitrators shall be final and binding and shall be enforceable in any court of competent jurisdiction, and the Parties hereby waive any objections to or claims of immunity in respect of such enforcement.
  - d) The expenses incurred by each party in connection with the dispute preparation, presentation etc. of its proceedings as also the fees and expenses paid to the Arbitrator appointed by such party or on its behalf shall be borne by each party itself. Fees and expenses for the Presiding Arbitrator including the cost of proceedings shall be shared equally by both the parties.
  - e) Court Jurisdiction: New Delhi

## ARTICLE-27

### MISCELLANEOUS

#### 27.1 Governing Law and Jurisdiction

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

#### 27.2 Waiver of Immunity

Each Party unconditionally and irrevocably:

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

#### 27.3 Delayed Payments

The Parties hereto agree that payments due from one Party to the other Party under the provisions of this Agreement shall be made within the period set forth therein, and if no such period is specified, within 30 (thirty) days of receiving a demand along with the necessary particulars. In the event of delay beyond such period, the defaulting Party shall pay simple interest for the period of delay calculated at a rate equal to 12% (twelve percent) per annum, calculated at quarterly rests, and recovery thereof shall be without prejudice to the rights of the Parties under this Agreement including Termination thereof.

#### 27.4 Waiver

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

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

27.4.2 Neither the failure by either Party to insist on any occasion upon the performance of the terms, conditions and provisions of this Agreement or any obligation thereunder nor time or other indulgence granted by a Party to the other Party shall be treated or deemed as waiver of such breach or acceptance of any variation or the relinquishment of any such right hereunder.

#### 27.5 Liability for review of Documents and Drawings

Except to the extent expressly provided in this Agreement:

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

#### 27.6 Exclusion of implied warranties etc.

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

#### 27.7 Survival

##### 27.7.1 Termination shall:

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

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

#### 27.8 Entire Agreement

This Agreement and the Schedules together constitute a complete and exclusive statement of the terms of the agreement between the Parties on the subject hereof, and no amendment or modification hereto shall be valid and effective unless such modification or amendment is agreed to in writing by the Parties and duly executed by persons especially empowered in this behalf by the respective Parties. All prior written or oral understandings, offers or other communications of every kind pertaining to this Agreement are abrogated and withdrawn. For the avoidance of doubt, the Parties hereto agree that any obligations of the Contractor arising from the IFB as the case may be, shall not be deemed to form part of this Agreement and treated as such.

#### 27.9 Severability

If for any reason whatever, any provision of this Agreement is or becomes invalid, illegal or unenforceable or is declared by any court of competent jurisdiction or any other



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

**27.10 No partnership**

This Agreement shall not be interpreted or construed to create an association, joint venture or partnership between the Parties, or to impose any partnership obligation or liability upon either Party, and neither Party shall have any right, power or Employer to enter into any agreement or undertaking for, or act on behalf of, or to act as or be an agent or representative of, or to otherwise bind, the other Party.

**27.11 Third parties**

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

**27.12 Successors and assigns**

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

**27.13 Notices**

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

- a) in the case of the Contractor, be given by facsimile or e-mail and by letter delivered by hand to the address given and marked for attention of the person set out below or to such other person as the Contractor may from time to time designate by notice to the Employer; provided that notices or other communications to be given to an address outside Lucknow may, if they are subsequently confirmed by sending a copy thereof by registered acknowledgement due, air mail or by courier, be sent by facsimile or e-mail to the person as the Contractor may from time to time designate by notice to the Employer;
- b) in the case of the Employer, be given by facsimile or e-mail and by letter delivered by hand and be addressed to the Employer with a copy delivered to the Employer Representative or such other person as the Employer may from time to time designate by notice to the Contractor; provided that if the Contractor does not have an office in Lucknow it may send such notice by facsimile or e-mail and by registered acknowledgement due, air mail or by courier; and
- c) any notice or communication by a Party to the other Party, given in accordance herewith, shall be deemed to have been delivered when in the normal course of post it ought to have been delivered and in all other cases, it shall be deemed to have been delivered on the actual date and time of delivery; provided that in the case of facsimile

or e-mail, it shall be deemed to have been delivered on the working day following the date of its delivery.

**27.14 Language**

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

**27.15 Counterparts**

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

**27.16 Confidentiality**

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

**27.17 Copyright and Intellectual Property Rights**

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

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

27.17.2 The Contractor's Documents and other design documents made by (or on behalf of) the Contractor shall not, without the Contractor's consent, be used, copied or communicated to a third party by (or on behalf of) the Employer for purposes other than those permitted under this Clause 27.17.

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

### **27.18 Limitation of Liability**

27.18.1 Neither Party shall be liable to the other Party for loss of use of any Works, loss of profit, loss of any contract or for any indirect or consequential loss or damage which may be suffered by the other Party in connection with this Agreement, save and except as provided under Articles 23 and 25.

27.18.2 The total liability of one Party to the other Party under and in accordance with the provisions of this Agreement, save and except as provided in Articles 23 and 25, shall not exceed the Contract Price. For the avoidance of doubt, this Clause shall not limit the liability in any case of fraud, deliberate default or reckless misconduct by the defaulting Party.

### **27.19 Precedence Clause**

27.19.1 The order of precedence for bid document which would prevail over others in case of contradictions in interpretation of any issue mentioned in two or more documents will be in the following order:

- Drawings would prevail over BOQ
- Technical Specifications (TS) would prevail over Drawing
- General Conditions of the Contract (GCC) would prevail over TS
- Special Conditions of Contract (SCC) would prevail over GCC
- Particular Conditions of Contract (PCC) would prevail over SCC

## ARTICLE-28

### DEFINITIONS

#### 28.1 Definitions

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

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

**“Advance Payment”** shall have the meaning set forth in Clause 19.2;

**“Affected Party”** shall have the meaning set forth in Clause 21.1;

**“Affiliate”** means, in relation to either Party {and/or Members}, a person who controls, is controlled by, or is under the common control with such Party {or Member} (as used in this definition, the expression “control” means, with respect to a person which is a company or corporation, the ownership, directly or indirectly, of more than 50% (fifty per cent) of the voting shares of such person, and with respect to a person which is not a company or corporation, the power to direct the management and policies of such person, whether by operation of law or by contract or otherwise);

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

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

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

**“Appointed Date”** means that date which is later of the 15th day of the date of this Agreement, the date on which the Contractor has delivered the Performance Security in accordance with the provisions of Article 7 and the date on which the Employer has provided in stretches the Right of Way on first Section as per Schedule A;

**“Arbitration Act”** means the Arbitration and Conciliation Act, 1996 and shall include modifications to or any re-enactment thereof, as in force from time to time;

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

**“Employer Default”** shall have the meaning set forth in Clause 23.2;

**“Employer’s Engineer”** shall have the meaning set forth in Clause 18.1;

**“Employer Representative”** means such person or persons as may be authorised in writing by the Employer to act on its behalf under this Agreement and shall include any

person or persons having Employer to exercise any rights or perform and fulfill any obligations of the Employer under this Agreement;

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

**“Base Rate”** means the floor rate of interest announced by the State Bank of India for all its lending operations;

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

**“Bid”** means the documents in their entirety comprised in the bid submitted by the (selected bidder/Consortium) in response to the Request for Qualification (RFQ) and Request for Proposals (RFP) in accordance with the provisions thereof;

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

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

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

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

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

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

**“Completion Certificate”** shall have the meaning set forth in Clause 12.4;

**“Consortium”** means the consortium of entities which have formed a joint venture for implementation of this Project;

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

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

**“Contract Price”** means the amount specified in Clause 19.1.1;

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

**“Contractor Default”** shall have the meaning set forth in Clause 23.1;

**“Culvert”** means a cross drainage structure having a total length of 6 (six) metres or less between the inner faces of the dirt walls or extreme ventway boundaries measured at right angles thereto as specified in IRC: 5-1998;

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

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

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

**"Defect"** means any defect or deficiency in Construction of the Works or any part thereof, which does not conform with the Specifications and Standards, and in the case of Maintenance, means any defect or deficiency which is specified in Schedule-E;

**"Defects Liability Period"** shall have the meaning set forth in Clause 17.1; **"Dispute"** shall have the meaning set forth in Clause 26.1.1;

**"Dispute Resolution Procedure"** means the procedure for resolution of Disputes set forth in Article 26;

**"Drawings"** means all of the drawings, calculations and documents pertaining to the Terminal as set forth in Schedule-I, and shall include 'as built' drawings of the Terminal;

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

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

**"Encumbrances"** means, in relation to the Terminal, any encumbrances such as mortgage, charge, pledge, lien, hypothecation, security interest, assignment, privilege or priority of any kind having the effect of security or other such obligations, and shall include any designation of loss payees or beneficiaries or any similar arrangement under any insurance policy pertaining to the Terminal, where applicable herein but excluding utilities referred to in Clause 9.1;

**"EPC"** means engineering, procurement and construction;

**"Final Payment Certificate"** shall have the meaning set forth in Clause 19.15.1;

**"Final Payment Statement"** shall have the meaning set forth in Clause 19.13.1;

**"Force Majeure" or "Force Majeure Event"** shall have the meaning ascribed to it in Clause 21.1;

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

**"GOI/GOJ" or "Government"** means the Government of India / Government of Jharkhand as the case may be;

**"Good Industry Practice"** means the practices, methods, techniques, designs, standards, skills, diligence, efficiency, reliability and prudence which are generally and reasonably expected from a reasonably skilled and experienced contractor engaged in the same type

of undertaking as envisaged under this Agreement and which would be expected to result in the performance of its obligations by the Contractor in accordance with this Agreement, Applicable Laws and Applicable Permits in reliable, safe, economical and efficient manner;

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

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

**“Indemnified Party”** means the Party entitled to the benefit of an indemnity pursuant to Article 25;

**“Indemnifying Party”** means the Party obligated to indemnify the other Party pursuant to Article 25;

**“Indirect Political Event”** shall have the meaning set forth in Clause 21.3;

**“Insurance Cover”** means the aggregate of the maximum sums insured under the insurances taken out by the Contractor pursuant to Article 20, and includes all insurances required to be taken out by the Contractor under Clauses 20.1 and 20.9 but not actually taken, and when used in the context of any act or event, it shall mean the aggregate of the maximum sums insured and payable or deemed to be insured and payable in relation to such act or event;

**“Intellectual Property”** means all patents, trademarks, service marks, logos, get-up, trade names, internet domain names, rights in designs, blue prints, programmes and manuals, drawings, copyright (including rights in computer software), database rights, semiconductor, topography rights, utility models, rights in know-how and other intellectual property rights, in each case whether registered or unregistered and including applications for registration, and all rights or forms of protection having equivalent or similar effect anywhere in the world;

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

**“Lead Member”** shall, in the case of a consortium, mean the member of such consortium who shall have the Employer to bind the contractor and each member of the Consortium; and shall be deemed to be the Contractor for the purposes of this Agreement;

**“LOA” or “Letter of Acceptance”** means the letter of acceptance referred to in Recital (E);

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

**“Materials”** are all the supplies used by the Contractor for incorporation in the Works or for the maintenance of the Terminal;

**“MoS”** means the Ministry of Shipping or any substitute dealing with Inland Waterways;

**“Non-Political Event”** shall have the meaning set forth in Clause 21.2;

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

**“Performance Security”** shall have the meaning set forth in Clause 7.1;

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

**“Political Event”** shall have the meaning set forth in Clause 21.4;

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

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

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

**“Project Completion Date”** means the date on which the Provisional Certificate is issued and in the event no Provisional Certificate is issued, the date on which the Completion Certificate is issued;

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

**“Project Facilities”** means all the amenities and facilities situated on the Site, as described in Schedule-C;

**“Terminal”** means the Site comprising the entire site earmarked for the construction of terminal and all Project Assets, and its subsequent development and augmentation in accordance with this Agreement;

**“Project Milestone”** means the project milestone set forth in Schedule-J;

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

**“Provisional Certificate”** shall have the meaning set forth in Clause 12.2;

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

**“Quality Assurance Plan” or “QAP”** shall have the meaning set forth in Clause 11.2;

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

**“Request for Proposals” or “RFP”** shall have the meaning set forth in Recital ‘D’;

**“Request for Qualification” or “RFQ”** shall have the meaning set forth in Recital ‘C’;

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

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

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



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

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

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

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

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

**“Stage Payment Statement”** shall have the meaning set forth in Clause 19.4;

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

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

**“Suspension”** shall have the meaning set forth in Article 22;

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

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

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

**“Termination Payment”** means the amount payable by either Party to the other upon Termination in accordance with Article 23;

**“Terms of Reference” or “TOR”** shall have the meaning set forth in Clause 18.2.1;

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

**“Time Extension”** shall have the meaning set forth in Clause 10.5.1;

**“User”** means a person who travels or intends to travel on the Terminal or any part thereof in/on any vehicle;

**“Valuation of Unpaid works”** shall have the meaning set forth in Clause 23.5.1;

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

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

IN WITNESS WHEREOF THE PARTIES HAVE EXECUTED AND DELIVERED THIS AGREEMENT AS OF THE DAY, MONTH AND YEAR FIRST ABOVE WRITTEN.

SIGNED, SEALED AND DELIVERED

SIGNED, SEALED AND DELIVERED

For and on behalf of Inland Waterway Employer of India  
by:

For and on behalf of THE  
CONTRACTOR by:

Project Manager & Member (Finance),  
Inland Waterways Authority of India, Ministry of  
Shipping, Government of India

(Signature)

(Signature)

(Name)

(Name)

(Designation)

(Designation)

In the presence of:

1.

2.

## APPENDIX TO CONDITIONS OF CONTRACT

### Bank's Policy- Corrupt and Fraudulent Practices

*(Text in this Appendix shall not be modified)*

Guidelines for Procurement of Goods, Works, and Non-Consulting Services under IBRD Loans and IDA Credits & Grants by World Bank Borrowers, dated January 2011:

“Fraud and Corruption:

- It is the Bank's policy to require that Borrowers (including beneficiaries of Bank loans), bidders, suppliers, contractors and their agents (whether declared or not), sub-contractors, sub-consultants, service providers or suppliers, and any personnel thereof, observe the highest standard of ethics during the procurement and execution of Bank-financed contracts In pursuance of this policy, the Bank:
  - a) Defines, for the purposes of this provision, the terms set forth below as follows:
    - i) “Corrupt practice” is the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another party;
    - ii) “Fraudulent practice” is any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation;
    - iii) “Collusive practice” is an arrangement between two or more parties designed to achieve an improper purpose, including to influence improperly the actions of another party;
    - iv) “Coercive practice” is impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party;
  - v) “Obstructive practice” is
    - aa) Deliberately destroying, falsifying, altering, or concealing of evidence material to the investigation or making false statements to investigators in order to materially impede a Bank investigation into allegations of a corrupt, fraudulent, coercive or collusive practice; and/or threatening, harassing or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation, or
    - bb) Acts intended to materially impede the exercise of the Bank's inspection and audit rights provided for under paragraph 1.16(e) below.
  - b) Will reject a proposal for award if it determines that the bidder recommended for award, or any of its personnel, or its agents, or its sub-consultants, sub-contractors, service providers, suppliers and/or their employees, has, directly or indirectly, engaged in corrupt, fraudulent, collusive, coercive, or obstructive practices in competing for the contract in question;
  - c) Will declare mis-procurement and cancel the portion of the loan allocated to a contract if it determines at any time that representatives of the Borrower or of a recipient of any part of the proceeds of the loan engaged in corrupt, fraudulent, collusive, coercive, or obstructive practices during the procurement or the implementation of the contract in question, without the Borrower having taken timely and appropriate action satisfactory to the Bank

to address such practices when they occur, including by failing to inform the Bank in a timely manner at the time they knew of the practices;

- d) Will sanction a firm or individual, at any time, in accordance with the prevailing Bank's sanctions procedures, including by publicly declaring such firm or individual ineligible, either indefinitely or for a stated period of time: (i) to be awarded a Bank-financed contract; and (ii) to be a nominated;
- e) Will require that a clause be included in bidding documents and in contracts financed by a Bank loan, requiring bidders, suppliers and contractors, and their sub-contractors, agents, personnel, consultants, service providers, or suppliers, to permit the Bank to inspect all accounts, records, and other documents relating to the submission of bids and contract performance, and to have them audited by auditors appointed by the Bank.

**NOTES:**

- *In this context, any action to influence the procurement process or contract execution for undue advantage is improper.*
- *For the purpose of this sub-paragraph, "another party" refers to a public official acting in relation to the procurement process or contract execution. In this context, "public official" includes World Bank staff and employees of other organizations taking or reviewing procurement decisions.*
- *For the purpose of this sub-paragraph, "party" refers to a public official; the terms "benefit" and "obligation" relate to the procurement process or contract execution; and the "act or omission" is intended to influence the procurement process or contract execution.*
- *For the purpose of this sub-paragraph, "parties" refers to participants in the procurement process (including public officials) attempting either themselves, or through another person or entity not participating in the procurement or selection process, to simulate competition or to establish bid prices at artificial, non-competitive levels, or are privy to each other's bid prices or other conditions.*
- *For the purpose of this sub-paragraph, "party" refers to a participant in the procurement process or contract execution.*

## **SCHEDULES**

## SCHEDULE-A

### PROJECT SITE DETAILS

(See Clauses 2.1 and 8.1)

#### 1. Project Site Location

The site for proposed terminal is located in Sahibganj district which is in the state of Jharkhand. It is situated on the right bank of river Ganga in Rajmahal-Bhagalpur stretch of National Waterway-1 and is about 74 km upstream of Farakka.

Location plan of the project site is shown below:



#### 2. Access to Project Site

The site is well accessible from rail and road route:

- Nearest Highway : NH-80 (appx. 1 km)
- Nearest Railway Station : Station- Sakrigali (appx. 1 km)
- Nearest Railway Junction : Sahibganj JN. (appx. 8 km)
- Nearest Airport : Patna (appx. 350 km)

### 3. Compilation of Site Data

#### 3.1 Rainfall

The rainfall data for Bhagalpur, which is close to Sahibganj, is given below:

**Rainfall Data for the Project Site**

Month	Monthly Total (mm)	Number of Rainy Days	Heaviest Fall in 24 Hours (mm)	Year
January	13.7	1.0	91.2	1957
February	13.5	1.5	26.7	1972
March	10.9	1.1	27.9	1998
April	20.8	1.8	172	1971
May	68.7	4.8	70.3	1960
June	211.9	9.5	181.5	1984
July	315.4	14.5	147.8	1969
August	272.1	12.4	237.2	1987
September	211.3	10.1	352.8	1965
October	90.4	3.7	196.0	1987
November	6.8	0.7	37.1	1956
December	9.5	0.8	32.8	1981

#### 3.2 Wind

The mean wind speed at the project site is found to be in the range of 3 to 6 km/h.

#### 3.3 Temperature

The highest and lowest temperature recorded at the Project Site are furnished below:

### Highest and Lowest Temperature at the Project Site

Month	Highest (Deg. Centigrade)	Lowest (Deg. Centigrade)
January	28.2	9.0
February	32.4	10.4
March	39.1	14.9
April	42.1	19.7
May	42.6	20.5
June	41.9	23.2
July	37.3	24.0
August	36.8	23.9
September	36.7	23.5
October	35.6	19.8
November	33.2	14.4
December	29.2	10.2

#### 3.4 Water Level

The high water level and low water level observed at Sahibganj is 30.91m and 21.06m respectively with reference to the mean sea level.

#### 3.5 Current

The current in river Ganga at Sahibganj varies from 1m/s to 4 m/s.



## **SCHEDULE-B**

### **DEVELOPMENT OF THE TERMINAL**

*(See Clause 2.1)*

The development of the Terminal for Phase-1 shall include but not limited to the following items:

- Berthing Structures including all associated facilities
- Approach trestles connecting the berth with river bank
- Site Grading and Capital Dredging
- Shore protection works
- Ramp connecting Approach Trestles to Stockyard and Retaining Walls
- Stockyard development
- Buildings viz. Terminal Administration building, Worker's Amenity building , Security office, Electrical Substation and Weigh Bridge building
- Storage shed
- Conveyor System with Fixed Hoppers
- Electrical works
- Mobile Harbour crane
- Barge loader
- Internal Roads
- Vehicle parking area
- Water supply
- Storm water drainage
- Sewerage system
- Fire-fighting system
- Dust suppression system
- Communication & IT
- Navigational Aids

The detailed technical specifications for the above mentioned items are provided in Volume-II of Bidding Document.

## **SCHEDULE-C**

### **PROJECT FACILITIES**

*(See Clause 2.1)*

The Employer shall provide the following facilities to the Contractor:

- Subject to availability, space for office accommodation / site office shall be provided.
- The other facilities such as like power supply, water supply and other requirements for construction of IWT Terminal for Phase-1 at Sahibganj in accordance with the terms and conditions of Bidding Document shall be arranged by Contractor.

**SCHEDULE-D**

**SPECIFICATIONS AND STANDARDS**

*(See Clause 2.1)*

**DELETED**

## SCHEDULE-E

### MAINTENANCE REQUIREMENTS

*(See Clause 2.1 and 14.2)*

#### **1 Maintenance Requirements**

- 1.1 The Contractor shall, at all times maintain the Terminal in accordance with the provisions of this Agreement, Applicable Laws and Applicable Permits.
- 1.2 The Contractor shall repair or rectify any Defect or deficiency set forth in Paragraph 2 of this Schedule-E within the time limit specified therein and any failure in this behalf shall constitute non-fulfillment of the Maintenance obligations by the Contractor. Upon occurrence of any breach hereunder, the Authority shall be entitled to effect reduction in monthly lump sum payment as set forth in Clause 14.6 of this Agreement, without prejudice to the rights of the Authority under this Agreement, including Termination thereof.
- 1.3 All Materials, works and construction operations shall conform to the relevant specifications mentioned in the Volume II of the bid document. Where the specifications for a work are not given, Good Industry Practice shall be adopted.

#### **2 Repair / rectification of Defects and deficiencies**

The obligations of the Contractor in respect of Maintenance Requirements shall include repair and rectification of the Defects and deficiencies specified in Annex – I of this Schedule-E within the time limit set forth therein.

#### **3 Other Defects and deficiencies**

In respect of any Defect or deficiency not specified in Annex - I of this Schedule-E, the Authority's Engineer may, in conformity with Good Industry Practice, specify the permissible limit of deviation or deterioration with reference to the Specifications and Standards, and any deviation or deterioration beyond the permissible limit shall be repaired or rectified by the Contractor within the time limit specified by the Authority's Engineer.

#### **4 Extension of time limit**

Notwithstanding anything to the contrary specified in this Schedule-E, if the nature and extent of any Defect or deficiency justifies more time for its repair or rectification than the time specified herein, the Contractor shall be entitled to additional time in conformity with Good Industry Practice. Such additional time shall be determined by the Authority's Engineer and conveyed to the Contractor and the Authority with reasons thereof.

#### **5 Emergency repairs/restoration**

Notwithstanding anything to the contrary contained in this Schedule-E, if any Defect, deficiency or deterioration in the Terminal poses a hazard to safety or risk

of damage to property, the Contractor shall promptly take all reasonable measures for eliminating or minimizing such danger.

**6 Daily inspection by the Contractor**

The Contractor shall, through its engineer, undertake a daily visual inspection of the Terminal and maintain a record thereof in a register to be kept in such form and manner as the Authority's Engineer may specify. Such record shall be kept in safe custody of the Contractor and shall be open to inspection by the Authority and the Authority's Engineer at any time during office hours.

**7. Pre-monsoon inspection / Post-monsoon inspection**

The Contractor shall carry out a detailed pre-monsoon inspection of all bridges, culverts and drainage system before 15th May every year in accordance with the guidelines contained in IRC: SP35. Report of this inspection together with details of proposed maintenance works as required on the basis of this inspection shall be sent to the Authority's Engineer before the 25th May every year. The Contractor shall complete the required repairs before the onset of the monsoon and send to the Authority's Engineer a compliance report. Post monsoon inspection shall be done by the 20th October and the inspection report together with details of any damages observed and proposed action to remedy the same shall be sent to the Authority's Engineer.

**8. Repairs on account of natural calamities**

All damages occurring to the Terminal on account of a Force Majeure Event or default or neglect of the Authority shall be undertaken by the Authority at its own cost. The Authority may instruct the Contractor to undertake the repairs at the rates agreed between the Parties.

Annex - I  
(Schedule-E)

**Repair/rectification of Defects and deficiencies**

**DELETED**

## SCHEDULE-F

### APPLICABLE PERMITS

*(See Clause 3.1.7(a))*

#### **1 Applicable Permits**

1.1 The Contractor shall obtain, as required under the Applicable Laws, the following Applicable Permits:

- Permission of the State Government for extraction of boulders from quarry;
- Permission of Village Panchayats and NOC from Jharkhand Pollution Control Board (JPPCB) for installation and operation of stone crushers;
- Licence for use of explosives from concerned DC office;
- Permission for storage of hazardous chemical from CPCB/JPCB
- Permission of the Irrigation Department, Govt. of Jharkhand for drawing water from river/reservoir for construction;
- Permission of Ground Water Employer for establishment of borewell for drawing ground water for construction.
- Licence from inspector of factories or other competent Employer for setting up batching plant;
- NOC from Jharkhand Pollution Control Board for setting up batching plant;
- Clearance of Village Panchayats and NOC from State Pollution Control Board for setting up asphalt plant;
- Permission of Village Panchayats and for borrow earth
- Environmental Clearance from SEIAA for borrow area for earth;
- Environmental Clearance from SEIAA for new stone quarry
- Labour license from Labour Commissioner Office and
- Any other permits or clearances required under Applicable Laws.

1.2 Applicable Permits, as required, relating to environmental protection and conservation shall have been procured by the Employer in accordance with the provisions of this Agreement.

## SCHEDULE-G

### FORM OF BANK GUARANTEE

#### Annex-I

#### Performance Security

*(See Clauses 7.1.1, 7.5.3 and 19.2)*

Inland Waterways Authority of India  
(Ministry of Shipping, Road Transport and Highways, Govt. of India)  
A-13, Sector-1, Noida-201301 (U.P.)  
Website: [www.iwai.nic.in](http://www.iwai.nic.in)

#### WHEREAS:

- A) \_\_\_\_\_ [name and address of contractor] (hereinafter called the "Contractor") and [name and address of the Employer], (hereinafter called the "Employer") have entered into an agreement (hereinafter called the "Agreement") for the construction of the "IWT Terminal for Phase-1 at Sahibganj in Jharkhand on River Ganga (National Waterway-1)" on Engineering, Procurement and Construction (the "EPC") basis, subject to and in accordance with the provisions of the Agreement
- B) The Agreement requires the Contractor to furnish a Performance Security for due and faithful performance of its obligations, under and in accordance with the Agreement, during the (Construction Period/Defects Liability Period) (as defined in the Agreement) in a sum of Rs..... cr. (Rupees ..... crore) (the "Guarantee Amount").
- C) We, ..... through our branch at ..... (the "Bank") have agreed to furnish this bank guarantee (hereinafter called the "Guarantee") by way of Performance Security.

NOW, THEREFORE, the Bank hereby, unconditionally and irrevocably, guarantees and affirms as follows:

1. The Bank hereby unconditionally and irrevocably guarantees the due and faithful performance of the Contractor's obligations during the (Construction Period/Defects Liability Period) under and in accordance with the Agreement, and agrees and undertakes to pay to the Employer, upon its mere first written demand, and without any demur, reservation, recourse, contest or protest, and without any reference to the Contractor, such sum or sums up to an aggregate sum of the Guarantee Amount as the Employer shall claim, without the Employer being required to prove or to show grounds or reasons for its demand and/or for the sum specified therein.
2. A letter from the Employer that the Contractor has committed default in the due and faithful performance of all or any of its obligations under and in accordance with the Agreement shall be conclusive, final and binding on the Bank. The Bank further agrees that the Employer shall be the sole judge as to whether the Contractor is in default in due and faithful performance of its obligations during and under the Agreement and its decision that the Contractor is in default shall be final and binding on the Bank, notwithstanding any differences between the Employer and the Contractor, or any dispute between them



pending before any court, tribunal, arbitrators or any other Employer or body, or by the discharge of the Contractor for any reason whatsoever.

3. In order to give effect to this Guarantee, the Employer shall be entitled to act as if the Bank were the principal debtor and any change in the constitution of the Contractor and/or the Bank, whether by their absorption with any other body or corporation or otherwise, shall not in any way or manner affect the liability or obligation of the Bank under this Guarantee.
4. It shall not be necessary, and the Bank hereby waives any necessity, for the Employer to proceed against the Contractor before presenting to the Bank its demand under this Guarantee.
5. The Employer shall have the liberty, without affecting in any manner the liability of the Bank under this Guarantee, to vary at any time, the terms and conditions of the Agreement or to extend the time or period for the compliance with, fulfilment and/ or performance of all or any of the obligations of the Contractor contained in the Agreement or to postpone for any time, and from time to time, any of the rights and powers exercisable by the Employer against the Contractor, and either to enforce or forbear from enforcing any of the terms and conditions contained in the Agreement and/or the securities available to the Employer, and the Bank shall not be released from its liability and obligation under these presents by any exercise by the Employer of the liberty with reference to the matters aforesaid or by reason of time being given to the Contractor or any other forbearance, indulgence, act or omission on the part of the Employer or of any other matter or thing whatsoever which under any law relating to sureties and guarantors would but for this provision have the effect of releasing the Bank from its liability and obligation under this Guarantee and the Bank hereby waives all of its rights under any such law.
6. This Guarantee is in addition to and not in substitution of any other guarantee or security now or which may hereafter be held by the Employer in respect of or relating to the Agreement or for the fulfilment, compliance and/or performance of all or any of the obligations of the Contractor under the Agreement.
7. Notwithstanding anything contained hereinbefore, the liability of the Bank under this Guarantee is restricted to the Guarantee Amount and this Guarantee will remain in force for the period specified in paragraph 8 below and unless a demand or claim in writing is made by the Employer on the Bank under this Guarantee all rights of the Employer under this Guarantee shall be forfeited and the Bank shall be relieved from its liabilities hereunder.
8. The Guarantee shall cease to be in force and effect on .....\* Unless a demand or claim under this Guarantee is made in writing before expiry of the Guarantee, the Bank shall be discharged from its liabilities hereunder.
9. The Bank undertakes not to revoke this Guarantee during its currency, except with the previous express consent of the Employer in writing, and declares and warrants that it has the power to issue this Guarantee and the undersigned has full powers to do so on behalf of the Bank.
10. Any notice by way of request, demand or otherwise hereunder may be sent by post addressed to the Bank at its above referred branch, which shall be deemed to have been duly authorised to receive such notice and to effect payment thereof forthwith, and if sent by post it shall be deemed to have been given at the time when it ought to have been delivered in due course of post and in proving such notice, when given by post, it shall be sufficient to prove that the envelope containing the notice was posted and a certificate signed by an officer of the Employer that the envelope was so posted shall be conclusive.

11. This Guarantee shall come into force with immediate effect and shall remain in force and effect for up to the date specified in paragraph 8 above or until it is released earlier by the Employer pursuant to the provisions of the Agreement.
12. This guarantee is subject to the Uniform Rules for Demand Guarantees (URDG) 2010 Revision, ICC Publication No. 758, except that the supporting statement under Article 15(a) is hereby excluded.

Signed and sealed this ..... day of ....., 2015... at .....

SIGNED, SEALED AND DELIVERED

For and on behalf of the Bank by:

(Signature)

(Name)

(Designation)

(Code Number)

(Address)

**NOTES:**

- *Insert date being 60 (sixty) days from the Defects Liability Period*
- *The bank guarantee should contain the name, designation and code number of the officer(s) signing the guarantee.*
- *The address, telephone number and other details of the head office of the Bank as well as of issuing branch should be mentioned on the covering letter of issuing branch.*

## SCHEDULE-G

### Annex-II

#### Form for Guarantee for Withdrawal of Retention Money

(See Clause 7.5.3)

Inland Waterways Authority of India  
(Ministry of Shipping, Road Transport and Highways, Govt. of India)  
A-13, Sector-1, Noida-201301 (U.P.)  
Website: [www.iwai.nic.in](http://www.iwai.nic.in)

#### WHEREAS:

- A) [name and address of contractor] (hereinafter called the "Contractor") has executed an agreement (hereinafter called the "Agreement") with the [name and address of the Employer], (hereinafter called the "Employer") for the construction of the "IWT Terminal for Phase-1 at Sahibganj in Jharkhand on River Ganga (National Waterway-1)" on Engineering, Procurement and Construction (the "EPC") basis, subject to and in accordance with the provisions of the Agreement.
- B) In accordance with Clause 7.5.3 of the Agreement, the Contractor may withdraw the retention money (hereinafter called the "Retention Money") after furnishing to the Employer a bank guarantee for an amount equal to the proposed withdrawal.
- C) We, ..... through our branch at ..... (the "Bank") have agreed to furnish this bank guarantee (hereinafter called the "Guarantee") for the amount of Rs. ----- cr. (Rs.-----crore) (the "Guarantee Amount").

NOW, THEREFORE, the Bank hereby unconditionally and irrevocably guarantees and affirms as follows:

1. The Bank hereby unconditionally and irrevocably undertakes to pay to the Employer, upon its mere first written demand, and without any demur, reservation, recourse, contest or protest, and without any reference to the Contractor, such sum or sums up to an aggregate sum of the Guarantee Amount as the Employer shall claim, without the Employer being required to prove or to show grounds or reasons for its demand and/or for the sum specified therein.
2. A letter from the Employer, that the Contractor has committed default in the due and faithful performance of all or any of its obligations for under and in accordance with the Agreement shall be conclusive, final and binding on the Bank. The Bank further agrees that the Employer shall be the sole judge as to whether the Contractor is in default in due and faithful performance of its obligations during and under the Agreement and its decision that the Contractor is in default shall be final, and binding on the Bank, notwithstanding any differences between the Employer and the Contractor, or any dispute between them pending before any court, tribunal, arbitrators or any other Employer or body, or by the discharge of the Contractor for any reason whatsoever.
3. In order to give effect to this Guarantee, the Employer shall be entitled to act as if the Bank were the principal debtor and any change in the constitution of the Contractor and/or the Bank, whether by their absorption with any other body or corporation or otherwise, shall

not in any way or manner affect the liability or obligation of the Bank under this Guarantee.

4. It shall not be necessary, and the Bank hereby waives any necessity, for the Employer to proceed against the Contractor before presenting to the Bank its demand under this Guarantee.
5. The Employer shall have the liberty, without affecting in any manner the liability of the Bank under this Guarantee, to vary at any time, the terms and conditions of the Retention Money and any of the rights and powers exercisable by the Employer against the Contractor, and either to enforce or forbear from enforcing any of the terms and conditions contained in the Agreement and/or the securities available to the Employer, and the Bank shall not be released from its liability and obligation under these presents by any exercise by the Employer of the liberty with reference to the matters aforesaid or by reason of time being given to the Contractor or any other forbearance, indulgence, act or omission on the part of the Employer or of any other matter or thing whatsoever which under any law relating to sureties and guarantors would but for this provision have the effect of releasing the Bank from its liability and obligation under this Guarantee and the Bank hereby waives all of its rights under any such law.
6. This Guarantee is in addition to and not in substitution of any other guarantee or security now or which may hereafter be held by the Employer in respect of or relating to the Retention Money.
7. Notwithstanding anything contained hereinbefore, the liability of the Bank under this Guarantee is restricted to the Guarantee Amount and this Guarantee will remain in force for the period specified in paragraph 8 below and unless a demand or claim in writing is made by the Employer on the Bank under this Guarantee all rights of the Employer under this Guarantee shall be forfeited and the Bank shall be relieved from its liabilities hereunder.
8. The Guarantee shall cease to be in force and effect 90 (ninety) days after the date of the Completion Certificate specified in Clause 12.4 of the Agreement.
9. The Bank undertakes not to revoke this Guarantee during its currency, except with the previous express consent of the Employer in writing, and declares and warrants that it has the power to issue this Guarantee and the undersigned has full powers to do so on behalf of the Bank.
10. Any notice by way of request, demand or otherwise hereunder may be sent by post addressed to the Bank at its above referred branch, which shall be deemed to have been duly authorised to receive such notice and to effect payment thereof forthwith, and if sent by post it shall be deemed to have been given at the time when it ought to have been delivered in due course of post and in proving such notice, when given by post, it shall be sufficient to prove that the envelope containing the notice was posted and a certificate signed by an officer of the Employer that the envelope was so posted shall be conclusive.
11. This Guarantee shall come into force with immediate effect and shall remain in force and effect up to the date specified in paragraph 8 above or until it is released earlier by the Employer pursuant to the provisions of the Agreement.
12. This guarantee is subject to the Uniform Rules for Demand Guarantees (URDG) 2010 Revision, ICC Publication No. 758, except that the supporting statement under Article 15(a) is hereby excluded.

Signed and sealed this ..... day of ....., 2015..... at .....

SIGNED, SEALED AND DELIVERED

For and on behalf of the Bank by:

(Signature)

(Name)

(Designation)

(Code Number)

(Address)

**NOTES:**

- *The bank guarantee should contain the name, designation and code number of the officer(s) signing the guarantee.*
- *The address, telephone number and other details of the head office of the Bank as well as of issuing branch should be mentioned on the covering letter of issuing branch.*

## SCHEDULE-G

### Annex-III

#### Form for Guarantee for Advance Payment

(See Clause 19.2)

Inland Waterways Authority of India  
(Ministry of Shipping, Road Transport and Highways, Govt. of India)  
A-13, Sector-1, Noida-201301 (U.P.)  
Website: [www.iwai.nic.in](http://www.iwai.nic.in)

#### WHEREAS:

- A) [name and address of contractor] (hereinafter called the "Contractor") has executed an agreement (hereinafter called the "Agreement") with the [name and address of the Employer], (hereinafter called the "Employer") for the construction of the "IWT Terminal for Phase-1 at Sahibganj in Jharkhand on River Ganga (National Waterway-1)" on Engineering, Procurement and Construction (the "EPC") basis, subject to and in accordance with the provisions of the Agreement
- B) In accordance with Clause 19.2 of the Agreement, the Employer shall make to the Contractor an interest free advance payment (herein after called "Advance Payment") equal to 10% (ten per cent) of the Contract Price; and that the Advance Payment shall be made in three instalments subject to the Contractor furnishing an irrevocable and unconditional guarantee by a scheduled bank for an amount equivalent to 110% (one hundred and ten percent) of such instalment to remain effective till the complete and full repayment of the instalment of the Advance Payment as security for compliance with its obligations in accordance with the Agreement. The amount of {first/second/third} instalment of the Advance Payment is Rs. ----- cr. (Rupees ----- crore) and the amount of this Guarantee is Rs. ----- cr. (Rupees ----- crore) (the "Guarantee Amount").
- C) We, ..... through our branch at ..... (the "Bank") have agreed to furnish this bank guarantee (hereinafter called the "Guarantee") for the Guarantee Amount.

NOW, THEREFORE, the Bank hereby, unconditionally and irrevocably, guarantees and affirms as follows:

1. The Bank hereby unconditionally and irrevocably guarantees the due and faithful repayment on time of the aforesaid instalment of the Advance Payment under and in accordance with the Agreement, and agrees and undertakes to pay to the Employer, upon its mere first written demand, and without any demur, reservation, recourse, contest or protest, and without any reference to the Contractor, such sum or sums up to an aggregate sum of the Guarantee Amount as the Employer shall claim, without the Employer being required to prove or to show grounds or reasons for its demand and/or for the sum specified therein.
2. A letter from the Employer that the Contractor has committed default in the due and faithful performance of all or any of its obligations for the repayment of the instalment of the Advance Payment under and in accordance with the Agreement shall be conclusive, final and binding on the Bank. The Bank further agrees that the Employer shall be the sole

judge as to whether the Contractor is in default in due and faithful performance of its obligations during and under the Agreement and its decision that the Contractor is in default shall be final and binding on the Bank, notwithstanding any differences between the Employer and the Contractor, or any dispute between them pending before any court, tribunal, arbitrators or any other Employer or body, or by the discharge of the Contractor for any reason whatsoever.

3. In order to give effect to this Guarantee, the Employer shall be entitled to act as if the Bank were the principal debtor and any change in the constitution of the Contractor and/or the Bank, whether by their absorption with any other body or corporation or otherwise, shall not in any way or manner affect the liability or obligation of the Bank under this Guarantee.
4. It shall not be necessary, and the Bank hereby waives any necessity, for the Employer to proceed against the Contractor before presenting to the Bank its demand under this Guarantee.
5. The Employer shall have the liberty, without affecting in any manner the liability of the Bank under this Guarantee, to vary at any time, the terms and conditions of the Advance Payment or to extend the time or period of its repayment or to postpone for any time, and from time to time, any of the rights and powers exercisable by the Employer against the Contractor, and either to enforce or forbear from enforcing any of the terms and conditions contained in the Agreement and/or the securities available to the Employer, and the Bank shall not be released from its liability and obligation under these presents by any exercise by the Employer of the liberty with reference to the matters aforesaid or by reason of time being given to the Contractor or any other forbearance, indulgence, act or omission on the part of the Employer or of any other matter or thing whatsoever which under any law relating to sureties and guarantors would but for this provision have the effect of releasing the Bank from its liability and obligation under this Guarantee and the Bank hereby waives all of its rights under any such law.
6. This Guarantee is in addition to and not in substitution of any other guarantee or security now or which may hereafter be held by the Employer in respect of or relating to the Advance Payment.
7. Notwithstanding anything contained hereinbefore, the liability of the Bank under this Guarantee is restricted to the Guarantee Amount and this Guarantee will remain in force for the period specified in paragraph 8 below and unless a demand or claim in writing is made by the Employer on the Bank under this Guarantee all rights of the Employer under this Guarantee shall be forfeited and the Bank shall be relieved from its liabilities hereunder.
8. The Guarantee shall cease to be in force and effect on ..... Unless a demand or claim under this Guarantee is made in writing on or before the aforesaid date, the Bank shall be discharged from its liabilities hereunder.
9. The Bank undertakes not to revoke this Guarantee during its currency, except with the previous express consent of the Employer in writing, and declares and warrants that it has the power to issue this Guarantee and the undersigned has full powers to do so on behalf of the Bank.
10. Any notice by way of request, demand or otherwise hereunder may be sent by post addressed to the Bank at its above referred branch, which shall be deemed to have been duly authorised to receive such notice and to effect payment thereof forthwith, and if sent by post it shall be deemed to have been given at the time when it ought to have been delivered in due course of post and in proving such notice, when given by post, it shall be

sufficient to prove that the envelope containing the notice was posted and a certificate signed by an officer of the Employer that the envelope was so posted shall be conclusive.

11. This Guarantee shall come into force with immediate effect and shall remain in force and effect up to the date specified in paragraph 8 above or until it is released earlier by the Employer pursuant to the provisions of the Agreement.
12. This guarantee is subject to the Uniform Rules for Demand Guarantees (URDG) 2010 Revision, ICC Publication No. 758, except that the supporting statement under Article 15(a) is hereby excluded.

Signed and sealed this ..... day of ....., 20..... at .....

SIGNED, SEALED AND DELIVERED

For and on behalf of the Bank by:

(Signature)

(Name)

(Designation)

(Code Number)

(Address)

**NOTES:**

- *The Guarantee Amount should be equivalent to 110% of the value of the applicable instalment.*
- *The bank guarantee should contain the name, designation and code number of the officer(s) signing the guarantee.*
- *The address, telephone number and other details of the head office of the Bank as well as of issuing branch should be mentioned on the covering letter of issuing branch.*
- *Insert a date being 90 (ninety) days after the end of one year from the date of payment of the Advance payment to the Contractor (in accordance with Clause 19.2 of the Agreement)*



**SCHEDULE-H**

**CONTRACT PRICE WEIGHTAGES**

*(See Clause 10.1.4 and 19.3)*

**DELETED**

## **SCHEDULE-I**

### **DRAWINGS**

*(See Clause 10.2.4)*

#### **1 Drawings**

In compliance of the obligations set forth in Clause 10.2 of this Agreement, the Contractor shall furnish to the Employer's Engineer, free of cost, all Drawings listed in Annex-I of this Schedule-F.

#### **2 Additional Drawings**

If the Employer's Engineer determines that for discharging its duties and functions under this Agreement, it requires any drawings other than those listed in Annex-I, it may by notice require the Contractor to prepare and furnish such drawings forthwith. Upon receiving a requisition to this effect, the Contractor shall promptly prepare and furnish such drawings to the Employer's Engineer, as if such drawings formed part of Annex-I of this Schedule-F.

## SCHEDULE-I

### Annex-I

#### LIST OF DRAWINGS

S. N.	DRAWING No.	TITLE
1	I-521/ST/1001	Layout of Terminal in Phase-1
2	I-521/ST/1002	Topographic Survey of Proposed IWT terminal at Sahibganj
3	I-521/ST/1003	Location of Boreholes
4	I-521/ST/1004	General Arrangement of Jetty and Approach Trestle for Phase-1
5	I-521/ST/1005	Cross Section of Jetty and Approach Trestle for Phase-1
6	I-521/ST/1006	Details of Shore Protection Work
7	I-521/ST/1007	Onshore Layout of Terminal Facilities in Phase-1
8	I-521/ST/1008	Typical Layout of Terminal Administration Building
9	I-521/ST/1009	Elevations of Terminal Administration Building
10	I-521/ST/1010	Typical Details of Worker's Amenity Building
11	I-521/ST/1011	Typical Layout & Elevations of Security Office
12	I-521/ST/1012	Typical Details of Storage Shed
13	I-521/ST/1013	Typical Cross Sections of Roads in Phase-1
14	I-521/ST/1014	Schematic Layout of Water Supply System in Phase-1
15	I-521/ST/1015	Layout of Storm Water Drainage in Phase-1
16	I-521/ST/1016	Power Single Line Diagram for Phase-1
17	I-521/ST/1017	High Mast and Cable Layout
18	I-521/ST/1018	Sub-station Equipment Layout
19	I-521/ST/1019	General Arrangement of Firefighting System in Phase-1
20	I-521/ST/1020	Schematic Layout of Dust Suppression System in Phase-1
21	I-521/ST/1021	Basic Control Architecture

**SCHEDULE-J**

**PROJECT COMPLETION SCHEDULE**

*(See Clause 10.3.2)*

**1. Project Completion Schedule**

During Construction period, the Contractor shall comply with the requirements set forth in this Schedule-G for each of the Project Milestones and the Scheduled Completion Date as shown below Within 15 (fifteen) days of the date of each Project Milestone, the Contractor shall notify the Employer of such compliance along with necessary particulars thereof.

S.No.	Item	Year 1												Year 2												Year 3					
		Month	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29
	Zero Date	ⓐ																													
1	Detailed Design																														
2	Site Development Works including Site Grading																														
3	Dredging & Aids to Navigation																														
4	Jetty Construction																														
5	Buildings and Sheds																														
6	Internal Roads, Ramps and Paved Areas																														
7	Mechanical Equipments																														
8	Water Supply, Electrical Works, Drainage and Other Utilities																														

**2. Scheduled Completion Period**

- 2.1 The Scheduled Completion Period shall be 30 (Thirty) Months from the Appointed Date.
- 2.2 On or before the Scheduled Completion Period, the Contractor shall have completed construction in accordance with this Agreement.

**3. Extension of time**

Upon extension of any or all of the aforesaid Project Milestones or the Scheduled Completion Date, as the case may be, under and in accordance with the provisions of this Agreement, the Project Completion Schedule shall be deemed to have been amended accordingly.

## SCHEDULE-K

### TESTS ON COMPLETION

*(See Clause 12.1.2)*

#### **1 Schedule for Tests**

- 1.1 The Contractor shall, no later than 30 (thirty) days prior to the likely completion of construction, notify the Employer's Engineer and the Employer of its intent to subject the Terminal to Tests, and no later than 10 (ten) days prior to the actual date of Tests, furnish to the Employer's Engineer and the Employer detailed inventory and particulars of all works and equipment forming part of Works.
- 1.2 The Contractor shall notify the Employer's Engineer of its readiness to subject the Terminal to Tests at any time after 10 (ten) days from the date of such notice, and upon receipt of such notice, the Employer's Engineer shall, in consultation with the Contractor, determine the date and time for each Test and notify the same to the Employer who may designate its representative to witness the Tests. The Employer's Engineer shall thereupon conduct the Tests itself or cause any of the Tests to be conducted in accordance with Article 12 and this Schedule-H.

#### **2 Tests**

- 2.1 Visual and physical test: The Employer's Engineer shall conduct a visual and physical check of construction to determine that all works and equipment forming part thereof conform to the provisions of this Agreement. The physical tests shall include measurement of crack, rutting area, area of potholes, depressions, shoving and settlement and upheaval, shoulder drop, erosion of soil from embankment,
- 2.2 Riding quality test: Riding quality of each lane of the carriageway shall be checked with the help of a calibrated bump integrator and the maximum permissible roughness for purposes of this Test shall be 2,000 (two thousand) mm for each kilometre.
- 2.3 Tests for bridges: All major and minor bridges shall be subjected to the rebound hammer and ultrasonic pulse velocity tests, to be conducted in accordance with the procedure described in Special Report No. 17: 1996 of the IRC Highway Research Board on Non-destructive Testing Techniques, at two spots in every span, to be chosen at random by the Employer's Engineer. Bridges with an individual span length of 15 (fifteen) meters or more shall also be subjected to load testing.  
  
Tests on jetty, Electromechanical and IT equipment: The Employer's Engineer shall require the Contractor to carry out test on jetty works, electromechanical equipment and IT equipment etc. in accordance with good industrial practice for determining the compliance of terminal with specifications and standards.
- 2.4 Other tests: The Employer's Engineer may require the Contractor to carry out or cause to be carried additional tests, in accordance with Good Industry Practice, for determining the compliance of the Terminal with Specifications and Standards.
- 2.5 Environmental audit: The Employer's Engineer shall carry out a check to determine conformity of the Terminal with the environmental requirements set forth in Applicable Laws and Applicable Permits. The Employer's Engineer shall audit for the compliance to the safeguard provisions stipulated in EMP as per Contract documents.

2.6 Safety Audit: The Employer's Engineer shall carry out, or cause to be carried out, a safety audit to determine conformity of the Terminal with the safety requirements and Good Industry Practice.

**3 Agency for conducting Tests**

All Tests set forth in this Schedule-K shall be conducted by the Employer's Engineer or such other agency or person as it may specify in consultation with the Employer.

**4 Completion Certificate**

Upon successful completion of Tests, the Employer's Engineer shall issue the Completion Certificate in accordance with the provisions of Article 12.

**SCHEDULE-L**

**PROVISIONAL CERTIFICATE**

*(See Clause 12.2 and 12.4)*

I, ..... (Name of the Employer’s Engineer), acting as the Employer’s Engineer, under and in accordance with the Agreement dated ..... (the “Agreement”), for construction of the "IWT Terminal for Phase-1 at Sahibganj in Jharkhand on River Ganga (National Waterway-1)" on Engineering, Procurement and Construction (EPC) basis through ..... (Name of Contractor), hereby certify that the Tests in accordance with Article 12 of the Agreement have been undertaken to determine compliance of the Terminal with the provisions of the Agreement.

Works that are incomplete on account of Time Extension have been specified in the Punch List appended hereto, and the Contractor has agreed and accepted that it shall complete all such works in the time and manner set forth in the Agreement. In addition, certain minor works are incomplete and these are not likely to cause material inconvenience to the Users of the Terminal or affect their safety. The Contractor has agreed and accepted that as a condition of this Provisional Certificate, it shall complete such minor works within 30 (thirty) days hereof. These minor works have also been specified in the aforesaid Punch List.

In view of the foregoing, I am satisfied that the Terminal can be safely and reliably placed in service of the Users thereof, and in terms of the Agreement, the Terminal is hereby provisionally declared fit for entry into operation on this the ..... day of ..... 2015

ACCEPTED, SIGNED, SEALED

SIGNED, SEALED

AND DELIVERED

AND DELIVERED

For and on behalf of

For and on behalf of

CONTRACTOR by:

EMPLOYER’S ENGINEER by:

(Signature)

(Signature)

## COMPLETION CERTIFICATE

- 1 I, ..... (Name of the Employer's Engineer), acting as the Employer's Engineer, under and in accordance with the Agreement dated ..... (the "Agreement"), for "Construction of the IWT Terminal for Phase-1 at Sahibganj in Jharkhand on River Ganga (National Waterway-1)" on Engineering, Procurement and Construction (EPC) basis through ..... (Name of Contractor), hereby certify that the Tests in accordance with Article 12 of the Agreement have been successfully undertaken to determine compliance of the Terminal with the provisions of the Agreement, and I am satisfied that the Terminal can be safely and reliably placed in service of the Users thereof.
- 2 It is certified that, in terms of the aforesaid Agreement, all works forming part of Terminal have been completed, and the Terminal is hereby declared fit for entry into operation on this the ..... day of ..... 2015

SIGNED, SEALED AND DELIVERED

For and on behalf of the Employer's Engineer by:

(Signature)

(Name)

(Designation)

(Address)



**SCHEDULE-M**

**PAYMENT REDUCTION FOR NON COMPLIANCE**

*(See Clause 14.6, 15.2 and 19.7)*

**DELETED**

## SCHEDULE-N

### SELECTION OF EMPLOYER'S ENGINEER

*(See Clause 18.1.1)*

#### **1 Selection of Employer's Engineer**

- 1.1 The provisions of the "World Bank Procurement Guidelines, Selection and Employment of Consultants – January, 2011" shall apply for selection of an experienced firm to discharge the functions and duties of an Employer's Engineer.
- 1.2 In the event of termination of the Technical Consultants appointed in accordance with the provisions of Paragraph 1.1, the Employer shall appoint another firm of Technical Consultants forthwith and may engage a government-owned entity in accordance with the provisions of Paragraph 3 of this Schedule-J.

#### **2 Terms of Reference**

The Terms of Reference for the Employer's Engineer (the "TOR") shall substantially conform with Annex 1 to this Schedule J.

#### **3 Appointment of Government entity as Employer's Engineer**

Notwithstanding anything to the contrary contained in this Schedule, the Employer may in its discretion appoint a government-owned entity as the Employer's Engineer; provided that such entity shall be a body corporate having as one of its primary functions the provision of consulting, advisory and supervisory services for engineering projects; provided further that a government-owned entity which is owned or controlled by the Employer shall not be eligible for appointment as Employer's Engineer.

## (SCHEDULE-N)

### Annex-I

#### TERMS OF REFERENCE FOR EMPLOYER'S ENGINEER

##### **1 Scope**

1.1 These Terms of Reference (the "TOR") for the Employer's Engineer are being specified pursuant to the EPC Agreement dated ..... (the "Agreement"), which has been entered into between the [name and address of the Employer] (the "Employer") and ..... (the "Contractor") for "IWT Terminal for Phase-1 at Sahibganj in Jharkhand on River Ganga (National Waterway-1)" on Engineering, Procurement, Construction (EPC) basis, and a copy of which is annexed hereto and marked as Annex-A to form part of this TOR.

**1.2 The TOR shall apply to construction and maintenance of the Terminal.**

##### **2 Definitions and interpretation**

2.1 The words and expressions beginning with or in capital letters and not defined herein but defined in the Agreement shall have, unless repugnant to the context, the meaning respectively assigned to them in the Agreement.

2.2 References to Articles, Clauses and Schedules in this TOR shall, except where the context otherwise requires, be deemed to be references to the Articles, Clauses and Schedules of the Agreement, and references to Paragraphs shall be deemed to be references to Paragraphs of this TOR.

2.3 The rules of interpretation stated in Clauses 1.2, 1.3 and 1.4 of the Agreement shall apply, mutatis mutandis, to this TOR.

##### **3. General**

3.1 The Employer's Engineer shall discharge its duties in a fair, impartial and efficient manner, consistent with the highest standards of professional integrity and Good Industry Practice.

3.2 The Employer's Engineer shall perform the duties and exercise the Employer in accordance with the provisions of this Agreement, but subject to obtaining prior written approval of the Employer before determining:

- a) Any Time Extension;
- b) Any additional cost to be paid by the Employer to the Contractor;
- c) The Termination Payment; or
- d) Any other matter which is not specified in (a), (b) or (c) above and which creates an obligation or liability on either Party for a sum exceeding 0.2% of Contract price.

3.3 The Employer's Engineer shall submit regular periodic reports, at least once every month, to the Employer in respect of its duties and functions under this Agreement. Such reports shall be submitted by the Employer's Engineer within 10 (ten) days of the beginning of every month.

3.4 The Employer's Engineer shall inform the Contractor of any delegation of its duties and responsibilities to its suitably qualified and experienced personnel; provided, however, that it shall not delegate the Employer to refer any matter for the Employer's prior approval in accordance with the provisions of Clause 18.2.

- 3.5 The Employer's Engineer shall aid and advise the Employer on any proposal for Change of Scope under Article 13.
- 3.6 In the event of any disagreement between the Parties regarding the meaning, scope and nature of Good Industry Practice, as set forth in any provision of the Agreement, the Employer's Engineer shall specify such meaning, scope and nature by issuing a reasoned written statement relying on good industry practice and authentic literature.

#### **4 Construction Period**

- 4.1 During the Construction Period, the Employer's Engineer shall review the Drawings furnished by the Contractor along with supporting data, including the geo-technical and hydrological investigations, characteristics of materials from borrow areas and quarry sites, topographical surveys, and the recommendations of the Safety Consultant in accordance with the provisions of Clause 10.1.6. The Employer's Engineer shall complete such review and send its observations to the Employer and the Contractor within 15 (fifteen) days of receipt of such Drawings; provided, however that in case of a Major Bridge or Structure, the aforesaid period of 15 (fifteen) days may be extended upto 30 (thirty) days. In particular, such comments shall specify the conformity or otherwise of such Drawings with the Scope of the Project and Specifications and Standards.
- 4.2 The Employer's Engineer shall review any revised Drawings sent to it by the Contractor and furnish its comments within 10 (ten) days of receiving such Drawings.
- 4.3 The Employer's Engineer shall review the Quality Assurance Plan submitted by the Contractor and shall convey its comments to the Contractor within a period of 21 (twenty-one) days stating the modifications, if any, required thereto.
- 4.4 The Employer's Engineer shall complete the review of the methodology proposed to be adopted by the Contractor for executing the Works, and convey its comments to the Contractor within a period of 10 (ten) days from the date of receipt of the proposed methodology from the Contractor.
- 4.5 The Employer's Engineer shall grant written approval to the Contractor, where necessary, for interruption and diversion of the flow of traffic in the existing lane(s) of the Terminal for purposes of maintenance during the Construction Period in accordance with the provisions of Clause 10.4.
- 4.6 The Employer's Engineer shall review the monthly progress report furnished by the Contractor and send its comments thereon to the Employer and the Contractor within 7 (seven) days of receipt of such report.
- 4.7 The Employer's Engineer shall inspect the Construction Works and the Terminal and shall submit a monthly Inspection Report bringing out the results of inspections and the remedial action taken by the Contractor in respect of Defects or deficiencies. In particular, the Employer's Engineer shall include in its Inspection Report, the compliance of the recommendations made by the Safety Consultant.
- 4.8 The Employer's Engineer shall conduct the pre-construction review of manufacturer's test reports and standard samples of manufactured Materials, and such other Materials as the Employer's Engineer may require.
- 4.9 For determining that the Works conform to Specifications and Standards, the Employer's Engineer shall require the Contractor to carry out, or cause to be carried out, tests at such time and frequency and in such manner as specified in the Agreement and in accordance with Good Industry Practice for quality assurance. For purposes of this Paragraph 4.9, the tests specified in the IRC Special Publication-11 (Handbook of Quality Control for

Construction of Roads and Runways) and the Specifications for Road and Bridge Works issued by MORTH (the "Quality Control Manuals") or any modification/substitution thereof shall be deemed to be tests conforming to Good Industry Practice for quality assurance.

- 4.10 The Employer's Engineer shall test check all the quantity or number of tests prescribed for each category or type of test for quality control by the Contractor.
- 4.11 The timing of tests referred to in Paragraph 4.9, and the criteria for acceptance/ rejection of their results shall be determined by the Employer's Engineer in accordance with the Quality Control Manuals. The tests shall be undertaken on a random sample basis and shall be in addition to, and independent of, the tests that may be carried out by the Contractor for its own quality assurance in accordance with Good Industry Practice.
- 4.12 In the event that results of any tests conducted under Clause 11.10 establish any Defects or deficiencies in the Works, the Employer's Engineer shall require the Contractor to carry out remedial measures.
- 4.13 The Employer's Engineer may instruct the Contractor to execute any work which is urgently required for the safety of the Terminal, whether because of an accident, unforeseeable event or otherwise; provided that in case of any work required on account of a Force Majeure Event, the provisions of Clause 21.6 shall apply.
- 4.14 In the event that the Contractor fails to achieve any of the Project Milestones, the Employer's Engineer shall undertake a review of the progress of construction and identify potential delays, if any. If the Employer's Engineer shall determine that completion of the Terminal is not feasible within the time specified in the Agreement, it shall require the Contractor to indicate within 15 (fifteen) days the steps proposed to be taken to expedite progress, and the period within which the Project Completion Date shall be achieved. Upon receipt of a report from the Contractor, the Employer's Engineer shall review the same and send its comments to the Employer and the Contractor forthwith.
- 4.15 The Employer's Engineer shall obtain from the Contractor a copy of all the Contractor's quality control records and documents before the Completion Certificate is issued pursuant to Clause 12.4.
- 4.16 Employer's Engineer may recommend to the Employer suspension of the whole or part of the Works if the work threatens the safety of the Users and pedestrians. After the Contractor has carried out remedial measure, the Employer's Engineer shall inspect such remedial measures forthwith and make a report to the Employer recommending whether or not the suspension hereunder may be revoked.
- 4.17 In the event that the Contractor carries out any remedial measures to secure the safety of suspended works and Users, and requires the Employer's Engineer to inspect such works, the Employer's Engineer shall inspect the suspended works within 3 (three) days of receiving such notice, and make a report to the Employer forthwith, recommending whether or not such suspension may be revoked by the Employer.
- 4.18 The Employer's Engineer shall carry out, or cause to be carried out, all the Tests specified in Schedule-H and issue a Completion Certificate or Provisional Certificate, as the case may be. For carrying out its functions under this Paragraph 4.18 and all matters incidental thereto, the Employer's Engineer shall act under and in accordance with the provisions of Article 12 and Schedule-H.

## **5 Determination of Costs and Time**

- 5.1 The Employer's Engineer shall determine the costs, and/or their reasonableness, that are required to be determined by it under the Agreement.

- 5.2 The Employer's Engineer shall determine the period of Time Extension that is required to be determined by it under the Agreement.
- 5.3 The Employer's Engineer shall consult each Party in every case of determination in accordance with the provisions of Clause 18.5.

## **6. Payments**

- 6.1 The Employer's Engineer shall withhold payments for the affected works for which the Contractor fails to revise and resubmit the Drawings to the Employer's Engineer in accordance with the provisions of Clause 10.2.4 (d).
- 6.2 Employer's Engineer shall:
- a) Within 10 (ten) days of receipt of the Stage Payment Statement from the Contractor pursuant to Clause 19.4, determine the amount due to the Contractor and recommend the release of 90 (ninety) percent of the amount so determined as part payment, pending issue of the Interim Payment Certificate; and
  - b) Within 15 (fifteen) days of the receipt of the Stage Payment Statement referred to in Clause 19.4, deliver to the Employer and the Contractor an Interim Payment Certificate certifying the amount due and payable to the Contractor, after adjustments in accordance with the provisions of Clause 19.10.
- 6.3 The Employer's Engineer shall certify final payment within 30 (thirty) days of the receipt of the final payment statement of Maintenance in accordance with the provisions of Clause 19.16.

## **7. Other duties and functions**

The Employer's Engineer shall perform all other duties and functions as specified in the Agreement.

## **8 Miscellaneous**

- 8.1 A copy of all communications, comments, instructions, Drawings or Documents sent by the Employer's Engineer to the Contractor pursuant to this TOR, and a copy of all the test results with comments of the Employer's Engineer thereon, shall be furnished by the Employer's Engineer to the Employer forthwith.
- 8.2 The Employer's Engineer shall retain at least one copy each of all Drawings and Documents received by it, including 'as-built' Drawings, and keep them in its safe custody.
- 8.3 Within 90 (ninety) days of the Project Completion Date, the Employer's Engineer shall obtain a complete set of as-built Drawings, in 2 (two) hard copies and in micro film form or in such other medium as may be acceptable to the Employer, reflecting the Terminal as actually designed, engineered and constructed, including an as-built survey illustrating the layout of the Terminal and setback lines, if any, of the buildings and structures forming part of Project Facilities; and shall hand them over to the Employer against receipt thereof.
- 8.4 The Employer's Engineer, if called upon by the Employer or the Contractor or both, shall mediate and assist the Parties in arriving at an amicable settlement of any Dispute between the Parties.
- 8.5 The Employer's Engineer shall inform the Employer and the Contractor of any event of Contractor's Default within one week of its occurrence.

## SCHEDULE-O

### FORMS OF PAYMENT STATEMENTS

*(See Clauses 19.4.1, 19.6.1, and 19.8.1)*

#### **1. Stage Payment Statement for Works**

The Stage Payment Statement for Works shall state:

- a) The estimated amount for the Works executed in accordance with Clause 19.3.1 subsequent to the last claim;
- b) Amounts reflecting adjustments in price for the aforesaid claim;
- c) The estimated amount of each Change of Scope Order executed subsequent to the last claim;
- d) Amounts reflecting adjustment in price, if any, for (c) above in accordance with the provisions of Clause 13.2.3 (a);
- e) Total of (a), (b), (c) and (d) above;
- f) Deductions:
  - i) Any amount to be deducted in accordance with the provisions of the Agreement except taxes;
  - ii) Any amount towards deduction of taxes; and
  - iii) Total of (i) and (ii) above.
- g) Net claim: (e) – (f) (iii);
- h) The amounts received by the Contractor upto the last claim:
  - For the Works executed (excluding Change of Scope orders);
  - For Change of Scope Orders, and
  - Taxes Deducted

#### **2. Contractor's Claim for Damages**

***Note: The Contractor shall submit its claims in a form acceptable to the Employer.***

## SCHEDULE-P

### INSURANCE

*(See Clause 20.1)*

#### **1. Insurance during Construction Period**

1.1 The Contractor shall effect and maintain at its own cost, from the Appointed Date till the date of issue of the Completion Certificate, the following insurances for any loss or damage occurring on account of Non Political Event of Force Majeure, malicious act, accidental damage, explosion, fire and terrorism:

- a) Insurance of Works, Plant and Materials and an additional sum of 15 (fifteen) per cent of such replacement cost to cover any additional costs of and incidental to the rectification of loss or damage including professional fees and the cost of demolishing and removing any part of the Works and of removing debris of whatsoever nature; and
- b) Insurance for the Contractor's equipment and Documents brought onto the Site by the Contractor, for a sum sufficient to provide for their replacement at the Site.

1.2 The insurance under paragraph 1.1 (a) and (b) above shall cover the Employer and the Contractor against all loss or damage from any cause arising under paragraph 1.1 other than risks which are not insurable at commercial terms.

#### **2. Insurance for Contractor's Defects Liability**

The Contractor shall effect and maintain insurance cover for the Works from the date of issue of the Completion Certificate until the end of the Defects Liability Period for any loss or damage for which the Contractor is liable and which arises from a cause occurring prior to the issue of the Completion Certificate. The Contractor shall also maintain other insurances for maximum sums as may be required under the Applicable Laws and in accordance with Good Industry Practice.

#### **3. Insurance against Injury to persons and damage to Property**

3.1 The Contractor shall insure against its liability for any loss, damage, death or bodily injury, or damage to any property (except things insured under Paragraphs 1 and 2 of this Schedule or to any person (except persons insured under Clause 20.9), which may arise out of the Contractor's performance of this Agreement. This insurance shall be for a limit per occurrence of not less than the amount stated below with no limit on the number of occurrences. The insurance cover shall be not less than: Rs. 2 lakhs

3.2 The insurance shall be extended to cover liability for all loss and damage to the Employer's property arising out of the Contractor's performance of this Agreement excluding:

- a) The Employer's right to have the construction works executed on, over, under, in or through any land, and to occupy this land for the Works; and
- b) Damage which is an unavoidable result of the Contractor's obligations to execute the Works.

#### **4. Insurance to be in Joint Names**

The insurance under paragraphs 1 to 3 above shall be in the joint names of the Contractor and the Employer.



## SCHEDULE-Q

### TESTS ON COMPLETION OF DEFECT LIABILITY PERIOD

*(See Clause 14.10)*

#### 1. Crane Test

The tests shall comprise the following:

- a) Equipment / unit assembly test.
- b) Contractor(s)' adjustments and settings.
- c) Satisfactory completion of no load tests for each equipment.
- d) Final Operational Tests such as Commissioning and Performance Guarantee Test of each equipment.

Before any electrical system is put to use, the Contractor(s) shall carry out the following tests at site in presence of and to the satisfaction of the Engineer.

- Insulation resistance tests on cables, motors, switchgears and generators.
- Polarity tests wherever applicable.

#### 2. Area Lighting Level Test

Contractor shall in the presence of client representative measure lux level through lux meters at various points in the following areas and ensure lux levels as mentioned are achieved:

- i) Jetty Area: Minimum 20 lux
- ii) Road: Minimum 20 lux
- iii) Worker's Amenity Block: Minimum 200 lux
- iv) Electrical sub-station: Minimum 200 lux

**SCHEDULE-R**

**TAKING OVER CERTIFICATE**

*(See Clause 14.10)*

I, ..... (Name and designation of the Employer's representative) under and in accordance with the Agreement dated ..... (the "Agreement"), for [construction of the "IWT Terminal for Phase-1 at Sahibganj in Jharkhand on River Ganga (National Waterway-1)" on Engineering, Procurement and Construction (EPC) basis through ..... (Name of Contractor), hereby certify that the Tests on completion of Defects Liability Period in accordance with Article 17 of the Agreement have been successfully undertaken to determine compliance of the Terminal with the provisions of the Agreement and I hereby certify that the Employer has taken over the Terminal from the Contractor on this day.....

SIGNED, SEALED AND DELIVERED

(Signature)

(Name and designation of Employer's Representative)

(Address)

**SCHEDULE-S**

**PERFORMANCE CERTIFICATE**

*(See Clause 17.7.2)*

I, ..... (Name and designation of the Employer's representative) under and in accordance with the Agreement dated ..... (the "Agreement"), for Construction of the "IWT Terminal for Phase-1 at Sahibganj in Jharkhand on River Ganga (National Waterway-1)" on Engineering, Procurement and Construction (EPC) basis through ..... (Name of Contractor), hereby certify that the Contractor has discharged all its obligations under the Agreement and in accordance with Article 17 of the Agreement I hereby issue Performance Certificate to the Contractor on this day.....

SIGNED, SEALED AND DELIVERED

(Signature)

(Name and designation of Employer's Representative)

(Address)