

Expression of Interest

For

Operation and Maintenance of IWAI Terminal at Aluva, Maradu and Alappuzha

JANUARY 2024



भारतीय अन्तर्देशीय जलमार्ग प्राधिकरण
पत्तन, पोत परिवहन और जलमार्ग मंत्रालय, भारत सरकार
Inland Waterways Authority of India
Ministry of Ports, Shipping and Waterways, Government of India

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Disclaimer

The information contained in this Expression of Interest (the “**EOI**”) or subsequently provided to Applicant(s), whether verbally or in documentary or any other form, by the Bidding Authority, on behalf of the Concessioneing Authority, or any of their employees or advisors, is provided to Applicant(s) on the terms and conditions set out in this EOI and such other terms and conditions subject to which such information is provided.

This EOI is not an agreement and is neither an offer nor invitation by the Bidding Authority to the prospective Applicants or any other person. The purpose of this EOI is to provide interested parties with information that may be useful to them in the formulation of their application for qualification pursuant to this EOI (the “**Application**”). This EOI includes statements, which reflect various assumptions and assessments arrived at by the Bidding Authority in relation to the Project. Such assumptions, assessments and statements do not purport to contain all the information that each Applicant may require. This EOI may not be appropriate for all persons, and it is not possible for the Bidding Authority, its employees or advisors to consider the investment objectives, financial situation and particular needs of each party who reads or uses this EOI. The assumptions, assessments, statements and information contained in this EOI may not be complete, accurate, adequate or correct. Each Applicant should therefore, conduct its own investigations and analysis and should check the accuracy, adequacy, correctness, reliability and completeness of the assumptions, assessments, statements and information contained in this EOI and obtain independent advice from appropriate sources.

Information provided in this EOI to the Applicant(s) is on a wide range of matters, some of which may depend upon interpretation of law. The information given is not intended to be an exhaustive account of statutory requirements and should not be regarded as a complete or authoritative statement of law. The Bidding Authority accepts no responsibility for the accuracy or otherwise for any interpretation or opinion on law expressed herein.

The Bidding Authority, its employees and advisors make no representation or warranty and shall have no liability to any person, including any Applicant or Bidder, under any law, statute, rules or regulations or tort, principles of restitution or unjust enrichment or otherwise for any loss, damages, cost or expense which may arise from or be incurred or suffered on account of anything contained in this EOI or otherwise, including the accuracy, adequacy, correctness, completeness or reliability of the EOI and any assessment, assumption, statement or information contained therein or deemed to form part of this EOI or arising in any way with pre-qualification of Applicants for participation in the Bidding Process.

The Bidding Authority also accepts no liability of any nature whether resulting from negligence or otherwise howsoever caused arising from reliance of any Applicant upon the statements contained in this EOI.

The Bidding Authority may, in its absolute discretion but without being under any obligation to do so, update, amend or supplement the information, assessment or assumptions contained in this EOI.

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The issue of this EOI does not imply that the Concessioneing Authority/Bidding Authority is bound to select and short-list pre-qualified Applications for Bid Stage or to appoint the selected Bidder or Concessionaire, as the case may be, for the Project and the Concessioneing Authority/Bidding Authority reserves the right to reject all or any of the Applications or Bids without assigning any reasons whatsoever.

The Applicant shall bear all its costs associated with or relating to the preparation and submission of its Application including but not limited to preparation, copying, postage, delivery fees, expenses associated with any demonstrations or presentations which may be required by the Bidding Authority or any other costs incurred in connection with or relating to its Application. All such costs and expenses will remain with the Applicant and the Bidding Authority shall not be liable in any manner whatsoever for the same or for any other costs or other expenses incurred by an Applicant in preparation or submission of the Application, regardless of the conduct or outcome of the Bidding Process.

Invitation for Qualification

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1 INTRODUCTION

1.1 Background

- 1.1.1 The Authority has resolved to develop navigable waterways as a reliable mode of transport to complement traditional modes of transport. In order to achieve the said objective, the Authority is keen to increase the usage and improve productivity of the existing inland water transport terminals at Aluva, Maradu and Alappuzha. The Authority is keen to bring on board a private partner on an O&M basis for the Aluva, Maradu and Alappuzha
- 1.1.2 In order to undertake the Project as a reliable mode of transport on O&M basis, the Authority has decided to carry out the bidding process for selection of a private developer to whom the Project may be awarded.

Sl.No.	Facility	Approx. Land area available (In acres)	Annual Premium payable per acre (In Lakhs)
1	IWAI Terminal at Alappuzha	5.50	4
2	IWAI Terminal at Maradu	5.00 (Office Building & its premises are not for leasing)	12
3	IWAI Terminal at Aluva	3.30	2.5

- 1.1.3 The Bidding Authority intends to pre-qualify and short-list suitable Applicants (the “Bidders”) who will be eligible for participation in the Bid Stage, for awarding the Project through an open competitive bidding process in accordance with the procedure set out herein.
- 1.1.4 The selected Bidder, will be provided the land and other equipment (Details are attached as Annexure IX) for an annual lease mode where as they need to give annual lease amount (mentioned above) with 5% escalation
- 1.1.5 The scope of work will broadly include equipping, operating, managing, financing and maintaining the Project under the Applicable Law
- 1.1.6 The Bidding Authority shall receive Applications pursuant to this EOI in accordance with the terms set forth herein as modified, altered, amended and clarified from time to time by the Bidding Authority, and all Applications shall be prepared and submitted in accordance with such terms on or before the date specified in Clause 1.4 for submission of Applications (the “**Application Due Date**”).

1.2 Indicative provisions of the Project

- 1.2.1 The Project envisages the optimum utilization of the terminal by any permissible options preferably to inland cargo movement. In the absence of such projects the same can be allotted to other projects
- 1.2.2 The Successful Bidder will develop and maintain the systems for uninterrupted power supply, potable drinking water, sewage treatment, drainage, solid waste collection and disposal, etc. The Successful Bidder shall be responsible for the upkeep and maintenance of entire premises under sound, neat, clean and hygienic condition during the concession period, at his cost. The details shall be dealt with in the RFP Document.
- 1.2.3 The land ownership will remain with the Authority and the land will be provided to the Successful Bidder under development and concession rights for seeking financial assistance from any institutions but only for Thirty (30) years from the date of commencement of the Concession.
- 1.2.4 On expiry of the Concession Period, the Project facilities, the land along with created infrastructure and all the equipment erected or installed as a part of the Project shall stand transferred free from all encumbrances and free of cost to the Authority in good working condition as per the specified transfer procedure of the Contract agreement.

1.3 Brief description of Bidding Process

- 1.3.1 The Bidding Authority has adopted a two-stage bidding process (collectively referred to as the “**Bidding Process**”) for selection of the Bidder for award of the Project. The first stage (the “**Qualification Stage**”) of the process involves qualification (the “**Qualification**”) of interested parties/consortia who make an Application in accordance with the provisions of this EOI (the “**Applicant**”, which expression shall, unless repugnant to the context, include the Members of the Consortium). At the end of this stage, the Bidding Authority expects to announce a short-list of up to 8 (eight) suitable pre-qualified Applicants who shall be eligible for participation in the second stage of the Bidding Process (the “**Bid Stage**”) comprising Request for Proposals (the “**Request for Proposals**” or “**RFP**”).
- 1.3.2 The Bidding Authority shall be entitled to disqualify an Applicant in accordance with the aforesaid guidelines at any stage of the Bidding Process. Applicants must satisfy themselves that they are qualified to bid, and should give an undertaking to this effect in the form at Annexure
- 1.3.3 Applicants can download the EOI document from the website of the Bidding Authority and <https://eprocure.gov.in/eprocure/app>.
- 1.3.4 In the Qualification Stage, Applicants would be required to furnish all the information specified in this EOI. Only those Applicants that are pre-qualified and short-listed by the Bidding Authority shall be invited to submit their Bids for the Project. The Bidding Authority is likely to provide a comparatively short time span for submission of the Bids for the Project. The Applicants are, therefore, advised to visit the proposed site(s) and familiarize themselves with the Project.
- 1.3.5 In the Bid Stage, the Bidders will be called upon to submit their [technical proposals and] financial offers (the “**Bids**”) in accordance with the RFP and other documents to be provided by the Bidding Authority (collectively the “**Bidding Documents**”). The Bidding Documents for the Project will be provided to every Bidder on payment of a process fee for RFP. The Bid shall be valid for a period of not less than 120 (one hundred and twenty) days from the date specified in Clause 1.4 for submission of of Bids (the “**Bid Due Date**”).

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- 1.3.6 In terms of the RFP, a Bidder will be required to deposit, along with its Bid, a bid security equals to the annual lease amount to IWAI (the “**Bid Security**”), refundable no later than 60 (sixty) days from the Bid Due Date, except in the case of the selected Bidder whose Bid Security shall be retained till it has provided a Performance Security under the Concession Agreement. The Bidders will have an option to provide Bid Security in the form of a demand draft or a bank guarantee acceptable to the Bidding Authority^s. In case a bank guarantee is provided, its validity period shall not be less than 180 (one hundred and eighty) days from the Bid Due Date, inclusive of a claim period of 60 (sixty) days, and may be extended as per the written instruction given by the Bidding Authority from time to time. Where a demand draft is provided, its validity shall not be less than 80 (eighty) days from the Bid Due Date for the purposes of encashment thereof by the Bidding Authority. The Bid shall be summarily rejected if it is not accompanied by the Bid Security.
- 1.3.6.1 Mode of Transaction: The amount mentioned above shall be deposited to IWAI Fund through NEFT / RTGS in the following account:
- Account No. : 39360627884
Name of Account: Inland Waterways Authority of India
Name of the bank: State Bank of India, Vytilla Branch
IFSC CODE : SBIN0008694
- For Demand Draft : In favor of “ Inland Waterways Authority of India” payable at Kochi.
For Bank Guarantee: In accordance with the form prescribed **Annexure-IX**.
- 1.3.7 Generally, the Highest Bidder shall be the selected Bidder. The remaining Bidders shall be kept in reserve and may, in accordance with the process specified in the RFP, be invited, in the order of next Highest Bidder and so on, to match the Bid submitted by the Highest Bidder in case such Highest Bidder withdraws or is not selected for any reason whatsoever. In the event that none of the other Bidders match the Bid of the Highest Bidder, the Bidding Authority may, in its discretion, invite fresh Bids from the remaining Bidders or annul the Bidding Process, as the case may be.
- 1.3.8 During the Bid Stage, Bidders are invited to examine the Project in greater detail, and to carry out, at their cost, such studies as may be required for submitting their respective Bids for award of the concession including implementation of the Project.
- 1.3.9 As part of the Bidding Documents, the Bidding Authority will provide a draft Contract Agreement containing project requirements.
- 1.3.10 Bids will be invited for the Project on the basis of a premium in the form of revenue share (the “**Premium**”) payable to the Concessioneing Authority for award of the concession. The concession period shall be pre-determined, and will be indicated in the draft Concession Agreement forming part of the Bidding Documents. The Premium amount shall constitute the sole criteria for evaluation of Bids. The Project shall be awarded to the Bidder quoting the highest Premium.
- 1.3.11 In this EOI, the term “Highest Bidder” shall mean the Bidder who is offering the highest Premium to the authority
- 1.3.12 The payment by the Concessionaire to the Concessioneing Authority comprises of (i) Annual Concession Fee, (ii) One time upfront premium and (iii) the Premium. The Annual Concession Fee shall be initially fixed at the rate of 2% (two per cent) of the prevailing fair value of the land notified by the Competent Authority. The Annual Concession Fee shall be paid by the Selected Bidder in advance on the date of signing of Concession Agreement. The Annual Concession Fee will be realized on subsequent anniversaries of such a date with an annual adjustment with reference to the variation in the Wholesale Price Index with 60% (sixty percent) neutralization for the entire Concession Period.

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1.3.13 Details of the process to be followed at the Bid Stage and the terms thereof will be spelt out in the Bidding Documents.

1.3.14 Any queries or request for additional information concerning this EOI shall be submitted in writing by speed post/ courier/ special messenger and by e-mail so as to reach the officer designated in Clause 2.13.3 by the specified date. The envelopes/ communications shall clearly bear the following identification/ title:

“Queries/ Request for Additional Information: EOI for “[Name of the Project]”

1.4 Schedule of Bidding Process

The Bidding Authority shall endeavor to adhere to the following schedule:

Event Description		Date
Notice For Publication of RFQ		27.01.2024
<u>Qualification Stage</u>		
1	Last date for receiving queries	-04.02.2024
2	Pre-Application Conference	- 12.02.2024
3	Response to queries latest by	- 27.02.2024
4	Application Due Date	- 02.03.2024
5	Announcement of short-list	Within 15 days of Application Due Date
<u>Bid Stage</u>		Date
1	Sale of Bid Documents	} To be notified later
2	Last date for receiving queries	
3	Pre-Bid Conference	
4	Response to queries latest by	
5	Bid Due Date	
6	Opening of Bids	On Bid Due Date
7	Letter of Award (LOA)	Within 30 days of Bid Due Date
8	Validity of Bids	120 days of Bid Due Date
9	Signing of Concession Agreement	Within 30 days of award of LOA

1.5 Pre-Application Conference

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

Date: 12.02.2024

Time: 11:00 AM

Venue: IWAI Regional Office Kochi

2 INSTRUCTIONS TO APPLICANTS

A. GENERAL

2.1 Scope of Application

- 2.1.1 The Bidding Authority wishes to receive Applications for Qualification in order to short-list experienced and capable Applicants for the Bid Stage.
- 2.1.2 Short-listed Applicants may be subsequently invited to submit the Bids for the Project.

2.2 Eligibility of Applicants

- 2.2.1 For determining the eligibility of Applicants for their pre-qualification hereunder, the following shall apply:
- (a) The Applicant for pre-qualification may be a single entity or a group of entities (the “**Consortium**”), coming together to implement the Project. However, no applicant applying individually or as a member of a Consortium, as the case may be, can be member of another Applicant. The term Applicant used herein would apply to both a single entity and a Consortium.
- (b) An Applicant may be a natural person (including proprietorship concern), private entity (a company incorporated under the Indian Companies Act, 1956/2013, or a duly registered partnership firm under Indian Partnership Act, 1932 or a Limited Liability Partnership (LLP) registered under the Limited Liability Partnership Act, 2008 or a government company or any of the aforementioned entities from outside India under equivalent law), including its successors and permitted assigns, OR any combination of them formed as a Consortium with a Joint Bidding Agreement. A Consortium shall be eligible for consideration subject to the conditions set out in Clause 2.2.5 below.
- (c) An Applicant shall not have a conflict of interest (the “**Conflict of Interest**”) that affects the Bidding Process. Any Applicant found to have a Conflict of Interest shall be disqualified. An Applicant shall be deemed to have a Conflict of Interest affecting the Bidding Process, if:
- (i) the Applicant, its Member or Associate (or any constituent thereof) and any other Applicant, its Member or any Associate thereof (or any constituent thereof) have common controlling shareholders or other ownership interest; provided that this disqualification shall not apply in cases where the direct or indirect shareholding of an Applicant, its Member or an Associate thereof (or any shareholder thereof having a shareholding of more than 5% (five per cent) of the paid up and subscribed share capital of such Applicant, Member or Associate, as the case may be) in the other Applicant, its Member or Associate is less than 5% (five per cent) of the subscribed and paid up equity share capital thereof;

provided further that this disqualification shall not apply to any ownership by a bank, insurance company, pension fund or a public financial institution referred to in subsection (72) of section 2 of the Companies Act, 2013. For the purposes of this Clause 2.2.1(c), indirect shareholding held through one or more intermediate persons shall be computed as follows: (aa) where any intermediary is controlled by a person through management control or otherwise, the entire shareholding held by such controlled intermediary in any other person (the “**Subject Person**”) shall be taken into account for computing the shareholding of such controlling person in the Subject Person; and (bb) subject always to sub-clause (aa) above, where a person does not exercise control over an intermediary, which has shareholding in the Subject Person, the

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computation of indirect shareholding of such person in the Subject Person shall be undertaken on a proportionate basis;

provided, further, that no such shareholding shall be reckoned under this sub-clause (bb) if the shareholding of such person in the intermediary is less than 26% (twenty six percent) of the subscribed and paid up equity shareholding of such intermediary; or

- (ii) a constituent of such Applicant is also a constituent of another Applicant; or
 - (iii) such Applicant, or any Associate thereof receives or has received any direct or indirect subsidy, grant, concessional loan or subordinated debt from any other Applicant, or any Associate thereof or has provided any such subsidy, grant, concessional loan or subordinated debt to any other Applicant, its Member or any Associate thereof; or
 - (iv) such Applicant has the same legal representative for purposes of this Application as any other Applicant; or
 - (v) such Applicant, or any Associate thereof has a relationship with another Applicant, or any Associate thereof, directly or through common third party/ parties, that puts either or both of them in a position to have access to each other's information about, or to influence the Application of either or each other; or
 - (vi) such Applicant, or any Associate thereof has participated as a consultant to the Bidding Authority in the preparation of any documents, design or technical specifications of the Project.
- (d) an Applicant shall be liable for disqualification if any legal, financial or technical adviser of the Bidding Authority in relation to the Project is engaged by the Applicant, its Member or any Associate thereof, as the case may be, in any manner for matters related to or incidental to the Project. For the avoidance of doubt, this disqualification shall not apply where such adviser was engaged by the Applicant, its Member or Associate in the past but its assignment expired or was terminated prior to the Application Due Date. Nor will this disqualification apply where such adviser is engaged after a period of 3 (three) years from the date of commercial operation of the Project.

Explanation: In case an Applicant is a Consortium, then the term Applicant as used in this Clause 2.2.1, shall include each Member of such Consortium.

2.2.2 To be eligible for pre-qualification and short-listing, an Applicant shall fulfill the following conditions of eligibility:

(A) **Technical Capacity:** For demonstrating technical capacity and experience (the “**Technical Capacity**”), the Applicant should be in the following business over the past 3 (Three) financial years preceding the Application Due Date,

- Inland Container Depots and Container Freight Stations
- Logistics players such as coastal flight forwarders, agents and distributors
- Housing, commercial/institutional buildings, Office spaces
- Hospitality including hotels, resorts, convention centers
- Tourism & Tourism related infrastructure
- Healthcare & Healthcare related infrastructure
- Special Economic Zones and Industrial parks
- Transport hubs and transit centers including bus terminals, bus stands, and railway stations

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- Urban Transportation entities such as Road, Rail, Air and Metro operations
- Any Government Department and agencies etc.

(B) **Financial Capacity:** The Applicant shall have a minimum Net Worth (the “**Financial Capacity**”) of Rs.1,00,00,000 (Rupees.one Crore only) at the close of the preceding financial year.

In case of a Consortium, the combined technical capacity and Net Worth of those Members, who shall have an equity share of at least 26% (twenty-six per cent) each in the SPV, should satisfy the above conditions of eligibility;

provided that each such Member shall, for a period of 2 (two) years from the date of commercial operation of the Project, hold equity share capital not less than: (i) 26% (twenty-six per cent) of the subscribed and paid up equity of the SPV; and (ii) 5% (five per cent) of the Total Project Cost specified in the Concession Agreement.

2.2.3 The Applicant shall enclose with its Application, to be submitted as per the format at Annexure, in the following⁵:

(i) a) Certificate(s) from statutory auditors (for companies)/practicing chartered accountant (for others) of the Applicant or its Associates, stating the payments made and/or received during the past 3 (three) years in respect of the projects under Category 1 experience specified in paragraph 2.2.2 (A) above, shareholding of the Applicant in the Company owning the Eligible Project during the year(s) for which the Eligible Experience is being claimed and the capital cost of the project.

and/or

b) Certificate(s) from statutory auditors (for companies)/practicing chartered accountant (for others) of the Applicant or its Associates, or the concerned client(s) stating the works executed, fully or partially, during the past 3 (three) years in respect of the projects under Category 2 experience specified in paragraph 2.2.2 (A) above. In case a particular work/ contract has been jointly executed by the Applicant (as part of a partnership/joint venture/ consortium), it should further support its claim for the share in work done for that particular work/ contract by producing a certificate from its statutory auditor (for companies)/practicing chartered accountant (for others) or the client;

and/or

c) Certificate(s) from statutory auditors (for companies)/practicing chartered accountant (for others) of the Applicant or its Associates stating the cumulative effect of the Net profit over the past 3 (three) years, cumulative annual turnover from business with details of contributions to annual turnover from the Specified Sectors during the past 3 (three) years in respect of the business under Category 3 experience specified in clause 2.2.2 (A) above and the minimum shareholding of the Applicant in the Company owning the Eligible Business during each of the year(s) for which the Eligible Experience is being claimed.

and

d) certificate(s) from statutory auditors (for companies)/practicing chartered accountant (for others) of

⁵In jurisdictions that do not have statutory auditors, the firm of auditors which audits the annual accounts of the Applicant or its Associate may provide the certificates required under this RFQ.

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the Applicant or its Associates specifying the Net Worth of the Applicant, as at the close of the preceding financial year, and also specifying that the methodology adopted for calculating such Net Worth conforms to the provisions of this Clause 2.2.3.

- (ii) For the purposes of this EOI, net worth (**the “Net Worth”**) for the Company shall mean the sum of subscribed and paid up equity and reserves from which shall be deducted the sum of revaluation reserves, miscellaneous expenditure not written off and reserves not available for distribution to equity shareholders and Net Worth for other form of Applicants shall mean Total Assets Less Total Liabilities.

2.2.4 The Applicant should submit a Power of Attorney as per the format at Annexure authorizing the signatory of the Application to commit the Applicant. In the case of a Consortium, the Members should submit a Power of Attorney in favour of the Lead Member as per format at Annexure. For the avoidance of doubt, in case the Applicant is a natural person, submission of Power of Attorney is optional.

2.2.5 The Applicant shall form an appropriate Special Purpose Vehicle, incorporated under the Indian Companies Act, 2013 (the **“SPV”**), to execute the Concession Agreement In case the Applicant is a Consortium, it shall, in addition to forming an SPV, comply with the following additional requirements:

- (a) Number of members in a consortium shall not exceed 4 (four).
- (b) subject to the provisions of sub-clause (a) above, the Application should contain the information required for each member of the Consortium;
- (c) members of the Consortium shall nominate one member as the lead member (the **“Lead Member”**), who shall have an equity share holding of at least 26% (twenty-six per cent) of the paid up and subscribed equity of the SPV. The nomination(s) shall be supported by a Power of Attorney, as per the format at Annexure, signed by all the other members of the Consortium;
- (d) the Application should include a brief description of the roles and responsibilities of individual members, particularly with reference to financial, technical and O&M obligations;
- (e) an individual Applicant cannot at the same time be member of a Consortium applying for pre-qualification. Further, a member of a particular Applicant Consortium cannot be member of any other Applicant Consortium applying for pre-qualification;
- (f) the members of a Consortium shall form an appropriate SPV to execute the Project, if awarded to the Consortium;
- (g) members of the Consortium shall enter into a binding Joint Bidding Agreement, substantially in the form specified at Annexure (the **“Joint Bidding Agreement”**), for the purpose of making the Application and submitting a Bid in the event of being short-listed. The Joint Bidding Agreement, to be submitted along with the Application, shall, inter alia:
- (i) convey the intent to form an SPV with shareholding/ownership equity commitment(s) in accordance with this EOI, which would enter into the Concession Agreement and subsequently perform all the obligations of the Concessionaire in terms of the Concession Agreement, in case the concession to undertake the Project is awarded to the Consortium;

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- (ii) clearly outline the proposed roles and responsibilities, if any, of each member;
- (iii) commit the minimum equity stake to be held by each member;
- (iv) commit that each of the members, whose experience and/or Net Worth will be evaluated for the purposes of this EOI, shall subscribe to 26% (twenty six per cent) or more of the paid up and subscribed equity of the SPV and shall further commit that each such member shall, for a period of 2 (two) years from the date of commercial operation of the Project, hold equity share capital not less than: (i) 26% (twenty six per cent) of the subscribed and paid up equity share capital of the SPV; and (ii) 5% (five per cent) of the Total Project Cost specified in the Concession Agreement;
- (v) commit that members of the Consortium shall collectively hold at least 51% (fifty-one per cent) of the subscribed and paid up equity of the SPV at all times until the second anniversary of the commercial operation date of the Project; and
- (vi) commit that members of the Consortium shall comply with all equity lock-in requirements set forth in the Concession Agreement.
- (vii) include a statement to the effect that all members of the Consortium shall be liable jointly and severally for all obligations of the Concessionaire in relation to the Project until the Financial Close of the Project is achieved in accordance with the Concession Agreement; and
- (h) except as provided under this EOI and the Bidding Documents, there shall not be any amendment to the Joint Bidding Agreement without the prior written consent of the Bidding Authority.

2.2.6 Any entity which has been barred by the Central/ State Government, or any entity controlled by it, from participating in any project, and the bar subsists as on the date of Application, would not be eligible to submit an Application, either individually or as member of a Consortium.

2.2.7 An Applicant including any Consortium Member or Associate should, in the last 3 (three) years, have neither failed to perform on any contract, as evidenced by imposition of a penalty by an arbitral or judicial authority or a judicial pronouncement or arbitration award against the Applicant, Consortium Member or Associate, as the case may be, nor has been expelled from any project or contract by any public entity nor have had any contract terminated by any public entity for breach by such Applicant, Consortium Member or Associate.

Provided, however, that where an Applicant claims that its disqualification arising on account of any cause or event specified in this Clause 2.2.7 is such that it does not reflect (a) any malfeasance on its part in relation to such cause or event; (b) any willful default or patent breach of the material terms of the relevant contract; (c) any fraud, deceit or misrepresentation in relation to such contract; or (d) any rescinding or abandoning of such contract, it may make a representation to this effect to the Bidding Authority for seeking a waiver from the disqualification hereunder and the Bidding Authority may, in its sole discretion and for reasons to be recorded in writing, grant such waiver if it is satisfied with the grounds of such representation and is further satisfied that such waiver is not in any manner likely to cause a material adverse impact on the Bidding Process or on the implementation of the Project.

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2.2.8 In computing the Technical Capacity and Net Worth of the Applicant/ Consortium Members under Clauses 2.2.2, 2.2.3, 2.2.5 and 3.2, the Technical Capacity and Net Worth of their respective Associates would also be eligible hereunder.

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

2.2.9 The following conditions shall be adhered to while submitting an Application:

- (a) Applicants should attach clearly marked and referenced continuation sheets in the event that the space provided in the prescribed forms in the Annexes is insufficient. Alternatively, Applicants may format the prescribed forms making due provision for incorporation of the requested information;
- (b) information supplied by an Applicant (or other constituent Member if the Applicant is a Consortium) must apply to the Applicant, Member or Associate named in the Application and not, unless specifically requested, to other associated companies or firms. Invitation to submit Bids will be issued only to Applicants whose identity and/ or constitution is identical to that at pre-qualification;
- (c) in responding to the pre-qualification submissions, Applicants should demonstrate their capabilities in accordance with Clause 3.1 below; and
- (d) in case the Applicant is a Consortium, each Member should substantially satisfy the pre-qualification requirements to the extent specified herein.

2.2.10 Notwithstanding anything to the contrary contained herein, in the event that the Application Due Date falls within 3 (three) months of the closing of the latest financial year of an Applicant, it shall ignore such financial year for the purposes of its Application and furnish all its information and certification with reference to the 3 (three) years or 1 (one) year, as the case may be, preceding its latest financial year. For the avoidance of doubt, financial year shall, for the purposes of an Application hereunder, mean the accounting year followed by the Applicant in the course of its normal business.

2.3 Change in composition of the Consortium

2.3.1 Change in the composition of a Consortium will not be permitted by the Bidding Authority during the Qualification Stage.

2.3.2 Where the Bidder[§] is a Consortium, change in the composition of a Consortium may be permitted by the Bidding Authority during the Bid Stage, only where:

- (a) the application for such change is made not later than 15 (fifteen) days prior to the Bid Due Date;
- (b) the Lead Member continues to be the Lead Member of the Consortium;

[§]The option of change in composition of the Consortium which is available under Clause 2.3.2 may be exercised by any Applicant who is pre-qualified either as a Consortium or as a single entity. In the case of a single entity Applicant adding a Consortium Member at the Bid Stage, the single entity Applicant shall be the Lead Member of the Consortium. Provided, however, that no member of such Consortium shall be an Applicant or the member of a Consortium which has been pre-qualified.

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- (c) the substitute is at least equal, in terms of Technical Capacity or Financial Capacity as the case may be, to the Consortium Member who is sought to be substituted and the modified Consortium shall continue to meet the pre-qualification and short-listing criteria for Applicants; and
 - (d) the new Member(s) expressly adopt(s) the Application already made on behalf of the Consortium as if it were a party to it originally, and is not an Applicant/Member/Associate of any other Consortium bidding for this Project.
- 2.3.3 Approval for change in the composition of a Consortium shall be at the sole discretion of the Bidding Authority and must be approved by the Bidding Authority in writing.
- 2.3.4 The modified/reconstituted Consortium shall submit a revised Joint Bidding Agreement and revised Power of Attorney for Lead Member of Consortium before the Bid Due Date.
- 2.3.5 Notwithstanding anything to the contrary contained in sub-clause (c) (i) of Clause 2.2.1, an Applicant may, within 10 (ten) days after the Application Due Date, remove from its Consortium any Member who suffers from a Conflict of Interest, and such removal shall be deemed to cure the Conflict of Interest arising in respect thereof.

2.4 Number of Applications and costs thereof

- 2.4.1 No Applicant shall submit more than one Application for the Project. An applicant applying individually or as a member of a Consortium shall not be entitled to submit another Application either individually or as a member of any Consortium, as the case may be.
- 2.4.2 The Applicants shall be responsible for all of the costs associated with the preparation of their Applications and their participation in the Bidding Process. The Bidding Authority will not be responsible or in any way liable for such costs, regardless of the conduct or outcome of the Bidding Process.

2.5 Site visit and verification of information

Applicants are encouraged to submit their respective Applications after visiting the Project site and ascertaining for themselves the site conditions, traffic, location, surroundings, climate, availability of power, water and other utilities for construction, access to site, handling and storage of materials, weather data, applicable laws and regulations, and any other matter considered relevant by them.

2.6 Acknowledgement by Applicant

- 2.6.1 It shall be deemed that by submitting the Application, the Applicant has:
- (a) made a complete and careful examination of the EOI;
 - (b) received all relevant information requested from the Bidding Authority;
 - (c) accepted the risk of inadequacy, error or mistake in the information provided in the EOI or furnished by or on behalf of the Bidding Authority relating to any of the matters referred to in Clause 2.5 above; and
 - (d) agreed to be bound by the undertakings provided by it under and in terms hereof.
- 2.6.2 The Bidding Authority shall not be liable for any omission, mistake or error in respect of any of the

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above or on account of any matter or thing arising out of or concerning or relating to the EOI or the Bidding Process, including any error or mistake therein or in any information or data given by the Bidding Authority.

2.7 Right to accept or reject any or all Applications/ Bids

2.7.1 Notwithstanding anything contained in this EOI, the Bidding Authority reserves the right to accept or reject any Application and to annul the Bidding Process and reject all Applications/ Bids, at any time without any liability or any obligation for such acceptance, rejection or annulment, and without assigning any reasons therefor. In the event that the Bidding Authority rejects or annuls all the Bids, it may, in its discretion, invite all eligible Bidders to submit fresh Bids hereunder.

2.7.2 The Bidding Authority reserves the right to reject any Application and/ or Bid if:

- (a) at any time, a material misrepresentation is made or uncovered, or
- (b) the Applicant does not provide, within the time specified by the Bidding Authority, the supplemental information sought by the Bidding Authority for evaluation of the Application.

If the Applicant/Bidder is a Consortium, then the entire Consortium may be disqualified/ rejected. If such disqualification/ rejection occurs after the Bids have been opened and the Highest Bidder gets disqualified/ rejected, then the Bidding Authority reserves the right to:

- (i) invite the remaining Bidders to match the Highest Bidder/ submit their Bids in accordance with the RFP; or
- (ii) take any such measure as may be deemed fit in the sole discretion of the Bidding Authority, including annulment of the Bidding Process.

2.7.3 In case it is found during the evaluation or at any time before signing of the Concession Agreement or after its execution and during the period of subsistence thereof, including the concession thereby granted by the Concessing Authority, that one or more of the pre-qualification conditions have not been met by the Applicant, or the Applicant has made material misrepresentation or has given any materially incorrect or false information, the Applicant shall be disqualified forthwith if not yet appointed as the Concessionaire either by issue of the LOA or entering into of the Concession Agreement, and if the Applicant/SPV has already been issued the LOA or has entered into the Concession Agreement, as the case may be, the same shall, notwithstanding anything to the contrary contained therein or in this EOI, be liable to be terminated, by a communication in writing by the Bidding Authority to the Applicant, without the Bidding Authority being liable in any manner whatsoever to the Applicant and without prejudice to any other right or remedy which the Bidding Authority may have under this EOI, the Bidding Documents, the Concession Agreement or under applicable law.

2.7.4 The Bidding Authority reserves the right to verify all statements, information and documents submitted by the Applicant in response to the EOI. Any such verification or lack of such verification by the Bidding Authority shall not relieve the Applicant of its obligations or liabilities hereunder nor will it affect any rights of the Bidding Authority thereunder.

B. DOCUMENTS

2.8 Contents of the EOI

This EOI comprises the disclaimer set forth hereinabove, the contents as listed below, and will additionally include any Addenda issued in accordance with Clause 2.10.

Invitation for Qualification

Section 1.	Introduction
Section 2.	Instructions to Applicants
Section 3.	Criteria for Evaluation
Section 4.	Fraud & Corrupt Practices
Section 5.	Pre-Application Conference
Section 6.	Miscellaneous

Appendices

Annexure – I	Letter comprising the Application
Annexure – II	Particulars of the Applicant
Annexure – III	Technical Capacity of Applicant
Annexure – IV	Financial Capacity of Applicant
Annexure – V	Statement of Legal Capacity
Annexure – VI	Power of Attorney for signing of Application
Annexure – VII	Power of Attorney for Lead Member of Consortium
Annexure – VIII	Joint Bidding Agreement for Consortium
Aneexure -IX	- Format of Bank Guarantee Form for Performance Security
Annexure – X	Site and Existing Infrastructure analysis

2.9 Clarifications

- 2.9.1 Applicants requiring any clarification on the EOI may notify the Bidding Authority in writing by speed post/ courier/ special messenger and by e-mail in accordance with Clause 1.3.14. They should send in their queries before the date specified in the schedule of Bidding Process contained in Clause 1.3. The Bidding Authority shall endeavor to respond to the queries within the period specified therein, but no later than 10 (ten) days prior to the Application Due Date. The responses will be sent by e-mail. The Bidding Authority will forward all the queries and its responses thereto, to all purchasers of the EOI without identifying the source of queries and will also publish the same in the website of the Bidding Authority <http://iwai.nic.in/>
- 2.9.2 The Bidding Authority shall endeavor to respond to the questions raised or clarifications sought by the Applicants. However, the Bidding Authority reserves the right not to respond to any question or provide any clarification, in its sole discretion, and nothing in this Clause shall be taken or read as compelling or requiring the Bidding Authority to respond to any question or to provide any clarification.
- 2.9.3 The Bidding Authority may also on its own motion, if deemed necessary, issue interpretations and clarifications to all Applicants. All clarifications and interpretations issued by the Bidding Authority shall be deemed to be part of the EOI. Verbal clarifications and information given by Bidding Authority or its employees or representatives shall not in any way or manner be binding on the Bidding Authority.

2.10 Amendment of EOI

- 2.10.1 At any time prior to the deadline for submission of Application, the Bidding Authority may, for any reason, whether at its own initiative or in response to clarifications requested by an Applicant, modify the EOI by the issuance of Addenda.
- 2.10.2 Any Addendum thus issued will be sent in writing to all those who have purchased the EOI and also will be published in the website of the Bidding Authority <http://iwai.nic.in/>
- 2.10.3 In order to afford the Applicants a reasonable time for taking an Addendum into account, or for any other reason, the Bidding Authority may, in its sole discretion, extend the Application Due Date⁵.

C. PREPARATION AND SUBMISSION OF APPLICATION

2.11 Language

The Application and all related correspondence and documents in relation to the Bidding Process shall be in English language. Supporting documents and printed literature furnished by the Applicant with the Application may be in any other language provided that they are accompanied by translations of all the pertinent passages in the English language, duly authenticated and certified by the Applicant. Supporting materials, which are not translated into English, may not be considered. For the purpose of interpretation and evaluation of the Application, the English language translation shall prevail.

⁵While extending the Application Due Date on account of an addendum, the Bidding Authority shall have due regard for the time required by Applicants to address the amendments specified therein. .

2.12 Format and signing of Application

- 2.12.1 The Applicant shall provide all the information sought under this EOI. The Bidding Authority will evaluate only those Applications that are received in the required formats and complete in all respects. Incomplete and /or conditional Applications shall be liable to rejection.
- 2.12.2 The Applicant shall prepare 1 (one) original set of the Application (together with the documents required to be submitted pursuant to this EOI) and clearly marked as “ORIGINAL”. In addition, the Applicant shall submit 3 (three) copies of such Application and documents, which shall be marked as “COPY-1, COPY-2 and COPY-3”. The Applicant shall also provide 2 (two) soft copies thereof on a Compact Disc (CD). In the event of any discrepancy between the original and the copy, the original shall prevail.
- 2.12.3 The Application and its copies shall be typed or written in indelible ink. It shall be signed by the authorized signatory of the Applicant who shall also initial each page of the Application in blue ink. In case of printed and published documents, only the cover shall be initialed. All the while extending the Application Due Date on account of an addendum, the Bidding Authority shall have due regard for the time required by Applicants to address the amendments specified therein. In the case of significant amendments, at least 15 (fifteen) days shall be provided between the date of amendment and the Application Due Date, and in the case of minor amendments, at least 7 (seven) days shall be provided. All the alterations, omissions, additions or any other amendments made to the Application shall be initialed by the person(s) signing the Application. The Application shall contain page numbers and shall be bound together in a manner that does not allow replacement of any page.

2.13 Sealing and Marking of Applications

- 2.13.1 The Applicant shall submit the Application in the format specified at Annexure together with the documents specified in Clause 2.13.2, and seal it in an envelope and mark the envelope as “APPLICATION”. The Applicant shall seal the original and the copies of the Application, together with their respective enclosures, in separate envelopes duly marking the envelopes as “ORIGINAL”, “COPY-1”, “COPY-2” and “COPY 3”. The envelopes shall then be sealed in an outer envelope which shall also be marked in accordance with Clauses 2.13.2 and 2.13.3.
- 2.13.2 Each envelope shall contain:
- (i) Application in the prescribed format along with Annexes and supporting documents;
 - (ii) Power of Attorney for signing the Application as per the format ;
 - (iii) if applicable, the Power of Attorney for Lead Member of Consortium as per the format
 - (iv) copy of the Joint Bidding Agreement, in case of a Consortium, substantially in the format
 - (v) copy of Memorandum and Articles of Association, if the Applicant is a company, if a partnership firm then a copy of its Partnership Deed and if a Limited Liability Partnership (LLP), then a copy of its LLP agreement;
 - (vi) copies of Applicant’s duly Audited Balance Sheet and Profit and Loss account for the preceding three years; [and]
 - (vii) 2 (two) soft copies of the Application on a Compact Disc (CD); and

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- (viii) any other sector or project-specific requirement that may be specified by the Bidding Authority].

Each of the envelopes shall clearly bear the following identification:

“Application for Qualification: “[Name of the Project]”

and shall clearly indicate the name and address of the Applicant. In addition, the Application Due Date should be indicated on the right hand corner of each of the envelopes.

- 2.13.3 Each of the envelopes shall be addressed to:

Inland Waterways Authority Of India,
National Waterway Road, Kannadikkadu,
Maradu P.O, NH 47 Bypass, Ernakulam, Kerala.
PIN: 682 304.

- 2.13.4 If the envelopes are not sealed and marked as instructed above, the Bidding Authority assumes no responsibility for the misplacement or premature opening of the contents of the Application and consequent losses, if any, suffered by the Applicant.

- 2.13.5 Applications submitted by fax, telex, telegram or e-mail shall not be entertained and shall be rejected.

2.14 Application Due Date

- 2.14.1 Applications should be submitted before 1500 hours IST on the Application Due Date, at the address provided in Clause 2.13.3 in the manner and form as detailed in this EOI. If the Application Due Date is declared as a holiday, the next working day would be the Application Due Date. A receipt thereof should be obtained from the person specified in Clause 2.13.3.

- 2.14.2 The Bidding Authority may, in its sole discretion, extend the Application Due Date by issuing an Addendum in accordance with Clause 2.10 uniformly for all Applicants.

2.15 Late Applications

2.16 Rejection of Application

- 2.16.1 Applications received by the Bidding Authority after the specified time on the Application Due Date shall not be eligible for consideration and shall be summarily rejected. Modifications/ substitution/ withdrawal of Applications

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

- 2.16.3 The modification, substitution or withdrawal notice shall be prepared, sealed, marked, and delivered in accordance with Clause 2.13, with the envelopes being additionally marked “MODIFICATION”, “SUBSTITUTION” or “WITHDRAWAL”, as appropriate.

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

D. EVALUATION PROCESS

2.17 Opening and Evaluation of Applications

- 2.17.1 The Bidding Authority shall open the Applications at 16:00 hours IST on the Application Due Date, at the place specified in Clause 2.13.3 and in the presence of the Applicants who choose to attend.
- 2.17.2 Applications for which a notice of withdrawal has been submitted in accordance with Clause 2.16 shall not be opened.
- 2.17.3 The Bidding Authority will subsequently examine and evaluate Applications in accordance with the provisions set out in Section 3.
- 2.17.4 Applicants are advised that pre-qualification of Applicants will be entirely at the discretion of the Bidding Authority. Applicants will be deemed to have understood and agreed that no explanation or justification on any aspect of the Bidding Process or selection will be given.
- 2.17.5 Any information contained in the Application shall not in any way be construed as binding on the Bidding Authority, its agents, successors or assigns, but shall be binding against the Applicant if the Project is subsequently awarded to it on the basis of such information.
- 2.17.6 The Bidding Authority reserves the right not to proceed with the Bidding Process at any time without notice or liability and to reject any or all Application(s) without assigning any reasons.
- 2.17.7 If any information furnished by the Applicant is found to be incomplete, or contained in formats other than those specified herein, the Bidding Authority may, in its sole discretion, exclude the relevant project from computation of the Experience Score of the Applicant.
- 2.17.8 In the event that an Applicant claims credit for an Eligible Project/ Eligible Business/ Net Worth, and such claim is determined by the Bidding Authority as incorrect or erroneous, the Bidding Authority shall reject such claim and exclude the same from computation of the Capacity Score. Where any information is found to be patently false or amounting to a material misrepresentation, the Bidding Authority reserves the right to reject the Application and/ or Bid in accordance with the provisions of Clauses 2.7.2 and 2.7.3.

2.18 Confidentiality

Information relating to the examination, clarification, evaluation, and recommendation for the short-listed pre-qualified Applicants shall not be disclosed to any person who is not officially concerned with the process or is not a retained professional advisor advising the Bidding Authority in relation to, or matters arising out of, or concerning the Bidding Process. The Bidding Authority will treat all information, submitted as part of Application, in confidence and will require all those who have access to such material to treat the same in confidence. The Bidding Authority may not divulge any such information unless it is directed to do so by any statutory entity that has the power under law to require its disclosure or is to enforce or assert any right or privilege of the statutory entity and/ or the Bidding Authority or as may be required by law or in connection with any legal process.

2.19 Tests of responsiveness

- 2.19.1 Prior to evaluation of Applications, the Bidding Authority shall determine whether each Application is responsive to the requirements of the EOI. An Application shall be considered responsive if:
- (a) it is received as per format

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- (b) it is received by the Application Due Date including any extension thereof pursuant to Clause 2.14.2;
- (c) it is signed, sealed, bound together in hard cover, and marked as stipulated in Clauses 2.12 and 2.13;
- (d) it is accompanied by the Power of Attorney as specified in Clause 2.2.4, and in the case of a Consortium, the Power of Attorney as specified in Clause 2.2.5(c);
- (e) it contains all the information and documents (complete in all respects) as requested in this EOI;
- (f) it contains information in formats same as those specified in this EOI;
- (g) it contains certificates from its statutory auditors[§](for companies)/practicing chartered accountant (for others) in the formats specified in the EOI for each Eligible Project and/or Eligible Business;
- (h) it contains an attested copy of the receipt of the Bidding Authority towards the cost of the EOI process as specified in Clause 1.3.3;
- (i) it is accompanied by the Joint Bidding Agreement (for Consortium), specific to the Project, as stipulated in Clause 2.2.5(g);
- (j) it does not contain any condition or qualification; and
- (k) it is not non-responsive in terms hereof.

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

Provided, however, that the Bidding Authority may, in its discretion, allow the Applicant to rectify any infirmities or omissions if the same do not constitute a material modification of the Application.

2.20 Clarifications

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

2.20.2 If an Applicant does not provide clarifications sought under Clause 2.20.1 above within the prescribed time, its Application shall be liable to be rejected. In case the Application is not rejected, the Bidding Authority may proceed to evaluate the Application by construing the particulars requiring clarification to the best of its understanding, and the Applicant shall be barred from subsequently questioning such interpretation of the Bidding Authority.

E. QUALIFICATION AND BIDDING

2.21 Short-listing and notification

After the evaluation of Applications, the Bidding Authority would announce a list of short-listed pre-qualified Applicants (Bidders) who will be eligible for participation in the Bid Stage. At the same

[§]In jurisdictions that do not have statutory auditors, the firm of auditors which audits the annual accounts of the Applicant may provide the certificates required under this RFQ.

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time, the Bidding Authority would notify the other Applicants that they have not been short-listed. The Bidding Authority will not entertain any query or clarification from Applicants who fail to qualify.

2.22 Submission of Bids

The Bidders will be requested to submit a Bid in the form and manner to be set out in the Bidding Documents.

Only pre-qualified Applicants shall be invited by the Bidding Authority to submit their Bids for the Project. The Bidding Authority is likely to provide a comparatively short time span for submission of the Bids for the Project. The Applicants are therefore advised to visit the site(s) and familiarize themselves with the Project by the time of submission of the Application. No extension of time is likely to be considered for submission of Bids pursuant to invitation that may be issued by the Bidding Authority.

2.23 Proprietary data

All documents and other information supplied by the Bidding Authority or submitted by an Applicant to the Bidding Authority shall remain or become the property of the Bidding Authority. Applicants are to treat all information as strictly confidential and shall not use it for any purpose other than for preparation and submission of their Application. The Bidding Authority will not return any Application or any information provided along therewith.

2.24 Correspondence with the Applicant

Save and except as provided in this EOI, the Bidding Authority shall not entertain any correspondence with any Applicant in relation to the acceptance or rejection of any Application.

3 CRITERIA FOR EVALUATION

3.1 Evaluation parameters

- 3.1.1 Only those Applicants who meet the eligibility criteria specified in Clauses 2.2 shall qualify for evaluation under this Section 3. Applications of firms/ consortia who do not meet these criteria shall be rejected.
- 3.1.2 The Applicant's competence and capability is proposed to be established by the following parameters:
- (a) Technical Capacity; and
 - (b) Financial Capacity.

3.2 Technical Capacity for purposes of evaluation

- 3.2.1 Subject to the provisions of Clause 2.2, the following categories of experience would qualify as Technical Capacity and eligible experience (the "**Eligible Experience**") in relation to eligible projects/business as stipulated below for the purpose of this EOI, the experience in Business in the following sectors (the "**Specified Sectors**") shall only be considered as Eligible Experience.
- Inland Container Depots and Container Freight Stations
 - Logistics players such as coastal flight forwarders, agents and distributors
 - Housing[§], commercial/institutional buildings, Office spaces
 - Hospitality including hotels, resorts, convention centers
 - Tourism & Tourism related infrastructure
 - Healthcare & Healthcare related infrastructure
 - Special Economic Zones and Industrial parks
 - Transport hubs and transit centers including bus terminals, bus stands, railway stations
 - Urban Transportation entities such as Road, Rail, Air and Metro operations
 - Any Government Department and agencies etc.

3.3 Details of Experience

- 3.3.1 The Applicant should furnish the details of Eligible Experience for the last 3 (three) financial years immediately preceding the Application Due Date.
- 3.3.2 The Applicants must provide the necessary information relating to Technical Capacity as per format
- 3.3.3 The Applicant should furnish the required Project/Business-specific information and evidence in support of its claim of Technical Capacity, as per format in Annexure.

3.4 Financial information for purposes of evaluation

- 3.4.1 The Application must be accompanied by the Audited Annual Reports of the Applicant (of each Member in case of a Consortium) for the last 3 (three) financial years, preceding the year in which the Application is made.

[§]Housing shall not include residential flats unless they form part of a housing complex or township which has been built by the Applicant

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- 3.4.2 In case the annual accounts for the latest financial year are not audited and therefore the Applicant cannot make it available, the Applicant shall give an undertaking to this effect and the statutory auditor shall certify the same. In such a case, the Applicant shall provide the Audited Annual Reports for 3 (three) years preceding the year for which the Audited Annual Report is not being provided.
- 3.4.3 The Applicant must establish the minimum Net Worth specified in Clause 2.2.2 (B), and provide details as per format

3.5 Short-listing of Applicants

The entities meeting both the Technical Capacity and Financial Capacity will be called for RFP stage.

4 FRAUD AND CORRUPT PRACTICES

- 4.1 The Applicants and their respective officers, employees, agents and advisers shall observe the highest standard of ethics during the Bidding Process. Notwithstanding anything to the contrary contained herein, the Bidding Authority may reject an Application without being liable in any manner whatsoever to the Applicant if it determines that the Applicant has, directly or indirectly or through an agent, engaged in corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice in the Bidding Process.
- 4.2 Without prejudice to the rights of the Bidding Authority under Clause 4.1 hereinabove, if an Applicant is found by the Bidding Authority to have directly or indirectly or through an agent, engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice during the Bidding Process, such Applicant shall not be eligible to participate in any tender or EOI issued by the Bidding Authority during a period of 2 (two) years from the date such Applicant is found by the Bidding Authority to have directly or indirectly or through an agent, engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice, as the case may be.
- 4.3 For the purposes of this Clause 4, the following terms shall have the meaning hereinafter respectively assigned to them:
- (a) **“corrupt practice”** means (i) the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence the actions of any person connected with the Bidding Process (for avoidance of doubt, offering of employment to, or employing, or engaging in any manner whatsoever, directly or indirectly, any official of the Bidding Authority/Concessions Authority who is or has been associated in any manner, directly or indirectly, with the Bidding Process or the LOA or has dealt with matters concerning the Concession Agreement or arising therefrom, before or after the execution thereof, at any time prior to the expiry of one year from the date of such official resigns or retires from or otherwise ceases to be in the service of the Bidding Authority/Concessions Authority, shall be deemed to constitute influencing the actions of a person connected with the Bidding Process); or (ii) save and except as permitted under sub clause (d) of Clause 2.2.1, engaging in any manner whatsoever, whether during the Bidding Process or after the issue of the LOA or after the execution of the Concession Agreement, as the case may be, any person in respect of any matter relating to the Project or the LOA or the Concession Agreement, who at any time has been or is a legal, financial or technical adviser of the Bidding Authority/Concessions Authority in relation to any matter concerning the Project;
- (b) **“fraudulent practice”** means a misrepresentation or omission of facts or suppression of facts or disclosure of incomplete facts, in order to influence the Bidding Process;
- (c) **“coercive practice”** means impairing or harming or threatening to impair or harm, directly or indirectly, any person or property to influence any person’s participation or action in the Bidding Process;
- (d) **“undesirable practice”** means (i) establishing contact with any person connected with or employed or engaged by the Bidding Authority/Concessions Authority with the objective of canvassing, lobbying or in any manner influencing or attempting to influence the Bidding Process; or (ii) having a Conflict of Interest; and

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- (e) “**restrictive practice**” means forming a cartel or arriving at any understanding or arrangement among Applicants with the objective of restricting or manipulating a full and fair competition in the Bidding Process.

5 PRE-APPLICATION CONFERENCE

- 5.1 A Pre-Application Conference of the interested parties shall be convened at the designated date, time and place. A maximum of three representatives of each Applicant shall be allowed to participate.

- 5.2 During the course of Pre-Application Conference, the Applicants will be free to seek clarifications and make suggestions for consideration of the Bidding Authority. The Bidding Authority shall endeavor to provide clarifications and such further information as it may, in its sole discretion, consider appropriate for facilitating a fair, transparent and competitive Bidding Process.

6 MISCELLANEOUS

- 6.1 The Bidding Process shall be governed by, and construed in accordance with, the laws of India and the courts in the State in which the Bidding Authority has its headquarters shall have exclusive jurisdiction over all disputes arising under, pursuant to and/ or in connection with the Bidding Process.
- 6.2 The Bidding Authority, in its sole discretion and without incurring any obligation or liability, reserves the right, at any time, to;
- (a) suspend and/ or cancel the Bidding Process and/ or amend and/ or supplement the Bidding Process or modify the date(s) or other terms and conditions relating thereto;
 - (b) consult with any Applicant in order to receive clarification or further information;
 - (c) pre-qualify or not to pre-qualify any Applicant and/ or to consult with any Applicant in order to receive clarification or further information;
 - (d) retain any information and/ or evidence submitted to the Bidding Authority by, on behalf of, and/ or in relation to any Applicant; and/ or
 - (e) independently verify, disqualify, reject and/ or accept any and all submissions or other information and/ or evidence submitted by or on behalf of any Applicant.
- 6.3 It shall be deemed that by submitting the Application, the Applicant agrees and releases the Bidding Authority, its employees, agents and advisers, irrevocably, unconditionally, fully and finally from any and all liability for claims, losses, damages, costs, expenses or liabilities in any way related to or arising from the exercise of any rights and/ or performance of any obligations hereunder and the Bidding Documents, pursuant hereto, and/ or in connection with the Bidding Process, to the fullest extent permitted by applicable law, and waives any and all rights and/or claims it may have in this respect, whether actual or contingent, whether present or in future.

APPENDICES

ANNEXURE I - Letter Comprising the Application for Pre-Qualification

(Refer Clause 2.13.2)

Dated:

To

.....

Sub: Application for pre-qualification for the Project

Dear Sir,

With reference to your EOI document dated, I/ We, having examined the EOI document and understood its contents, hereby submit my/our Application for Qualification for the aforesaid project. The Application is unconditional and unqualified.

2. I/ We acknowledge that the Bidding Authority will be relying on the information provided in the Application and the documents accompanying such Application for pre-qualification of the Applicants for the aforesaid project, and we certify that all information provided in the Application and in Annexes I to V is true and correct; nothing has been omitted which renders such information misleading; and all documents accompanying such Application are true copies of their respective originals.

3. This statement is made for the express purpose of qualifying as a Bidder for the design, financing, construction, completion, commissioning, operation & maintenance of the aforesaid Project.

4. I/ We shall make available to the Bidding Authority any additional information it may find necessary or require to supplement or authenticate the Qualification statement.

5. I/ We acknowledge the right of the Bidding Authority to reject our Application without assigning any reason or otherwise and hereby waive, to the fullest extent permitted by applicable law, our right to challenge the same on any account whatsoever.

6. I/ We certify that in the last three years, we/ any of the Consortium Members or our/ their Associates have neither failed to perform on any contract, as evidenced by imposition of a penalty by an arbitral or judicial authority or a judicial pronouncement or arbitration award, nor been expelled from any project or contract by any public authority nor have had any contract terminated by any public authority for breach on our part.

7. I/ We declare that:

- (a) I/ We have examined and have no reservations to the EOI document, including any Addendum issued by the Bidding Authority;
- (b) I/ We do not have any conflict of interest in accordance with Clauses 2.2.1(c) and 2.2.1(d) of the EOI document;

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- (c) I/We have not directly or indirectly or through an agent engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice, as defined in Clause 4.3 of the EOI document, in respect of any tender or request for proposal issued by Bidding Authority or any agreement entered into with the Concessioneing Authority or any other public sector enterprise or any Government, Central or State; and
- (d) I/ We hereby certify that we have taken steps to ensure that in conformity with the provisions of Section 4 of the EOI document, no person acting for us or on our behalf has engaged or will engage in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice.

8. I/ We understand that you may cancel the Bidding Process at any time and that you are neither bound to accept any Application that you may receive nor to invite the Applicants to Bid for the Project, without incurring any liability to the Applicants, in accordance with Clause 2.17.6 of the EOI document.

9. I/ We believe that we/ our Consortium/ proposed Consortium satisfy(s) the Net Worth criteria and meet(s) all the requirements as specified in the EOI document and am/ are qualified to submit a Bid.

10. I/ We declare that we/ any Member of the Consortium, or our/ its Associates are not a Member of a/ any other Consortium applying for pre-qualification.

11. I/ We certify that in regard to matters other than security and integrity of the country, we/ any Member of the Consortium or any of our/ their Associates have not been convicted by a court or indicted or adverse orders passed by a regulatory authority which could cast a doubt on our ability to undertake the Project or which relates to a grave offence that outrages the moral sense of the community.

12. I/ We further certify that in regard to matters relating to security and integrity of the country, we/ any Member of the Consortium or any of our/ their Associates have not been charge-sheeted by any agency of the Government or convicted by a court.

13. I/ We further certify that no investigation by a regulatory authority is pending either against us/ any Member of the Consortium or against our/ their Associates or against our CEO or any of our directors/ managers/ employees[‡].

14. I/We further certify that we/ any Member of the Consortium or any of our/ their Associates are not barred by the Central Government/ State Government/Local Self Government or any entity controlled by it, from participating in any project (BOT or otherwise), and no bar subsists as on the date of Application.

15. I/ We undertake that in case due to any change in facts or circumstances during the Bidding Process, we are attracted by the provisions of disqualification in terms of the provisions of this EOI,

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

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we shall intimate the Bidding Authority of the same immediately.

16. The Statement of Legal Capacity as per format provided at Annexure of the EOI document, and duly signed, is enclosed. The power of attorney for signing of Application [and the power of attorney for Lead Member of consortium], as per format provided at Annexure of the EOI, is/are also enclosed.

17. I/ We understand that the Selected Bidder shall form an appropriate Special Purpose Vehicle, incorporated under the Indian Companies Act, 2013, as per Clause 2.2.5, to execute the Concession Agreement and implement the Project.

18. I/ We hereby irrevocably waive any right or remedy which we may have at any stage at law or howsoever otherwise arising to challenge or question any decision taken by the Bidding Authority in connection with the selection of Applicants, selection of the Bidder, or in connection with the selection/ Bidding Process itself, in respect of the above mentioned Project and the terms and implementation thereof.

19. I/ We agree and undertake to abide by all the terms and conditions of the EOI document.

20. I/ We certify that in terms of the EOI, my/our Net Worth is Rs. (Rupees) and the Aggregate Experience Score is (in figures) (in words).

21. We agree and undertake to be jointly and severally liable for all the obligations of the Concessionaire under the Concession Agreement till occurrence of Financial Close in accordance with the Concession Agreement[§].

In witness thereof, I/ We submit this Application under and in accordance with the terms of the EOI document.

Yours faithfully,

Date: (Signature, name and designation of the Authorised Signatory)

Place: Name and seal of the Applicant/ Lead Member

[§]This Paragraph 21 shall be omitted if the Applicant is not a Consortium.

ANNEXURE-II - Particulars of the Applicant

1. In the case of natural person[¥]

- (a) Name:
- (b) Address

OR

In the case of Proprietary Firm[¥]

- (a) Name of the firm:
- (b) Address of the firm:
- (c) Date of registration and/ or commencement of business:
- (d) Name of the owner
- (e) Address of the owner

OR

In the case of Partnership Firm[¥]

- (a) Name of the Partnership firm:
- (b) Address of the Partnership firm:
- (c) Date of registration and/ or commencement of business:
- (d) Names of the Partners

OR

In the case of company registered in India[¥]

- (a) Name:
- (b) Address of the corporate headquarters
- (c) Date of incorporation and/ or commencement of business:

OR

In the case of company registered abroad[¥]

- (a) Name:
- (b) Country of incorporation:
- (c) Address of the corporate headquarters and its branch office(s), if any, in India:
- (d) Date of incorporation and/ or commencement of business:

2. In case of natural person, brief description of main lines of business/activities and proposed role and

[¥]Select the applicable one and delete other(s)

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responsibilities in this Project. For others, brief description of the firm/company including details of its main lines of business and proposed role and responsibilities in this Project:

3. Particulars of individual(s) who will serve as the point of contact/ communication for the Applicant:

- (a) Name:
- (b) Designation:
- (c) Company:
- (d) Address:
- (e) Telephone Number:
- (f) E-Mail Address:

4. Particulars of the Authorised Signatory of the Applicant:

- (a) Name:
- (b) Designation:
- (c) Address:
- (d) Phone Number:

5. In case of a Consortium:

- (a) The information above (1-4) should be provided for all the Members of the Consortium.
- (b) A copy of the Joint Bidding Agreement, as envisaged in Clause 2.2.5(g) should be attached to the Application.
- (c) Information regarding the role of each Member should be provided as per table below:

Sl.No.	Name of member	Role	Percentage of equity in the Consortium\$\$
1			
2			
3			

6. The following information shall also be provided for the Applicant, including each Member of the Consortium

Name of Applicant/ member of Consortium:

Sl.No.	Criteria	Yes	No.
1	Has the Applicant/ constituent of the Consortium been barred by the Central/ State/Local Government, or any entity controlled by it, from participating in any project (BOT or otherwise)?		
2	If the answer to 1 is yes, does the bar subsist as on the date of Application?		
3	Has the Applicant/ constituent of the Consortium paid liquidated damages of more than 5% of the contract value in a contract due to delay or has been penalised due to any other reason in relation to execution of a contract, in the last three years?		

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[§] The role of each Member, as may be determined by the Applicant, should be indicated in accordance with Clause 2.2.5 (d) and instruction 4 at Annex-VIII.

^{§§} The percentage of equity should be in accordance with Clause 2.2.5 (a), (c) and (g).

7. A statement by the Applicant and each of the Members of its Consortium (where applicable) or any of their Associates disclosing material non-performance or contractual non-compliance in past projects, contractual disputes and litigation/ arbitration in the recent past is given below (Attach extra sheets, if necessary):

ANNEXURE-III – Technical Capacity of the Applicant

SI No	Area of Business	Commencement year	Supportive Documents

Signature:

Name & Address of Authorized signatory:

Applicant or its Associate may provide the certificates required under this EOI.

⁶Refer instruction no. 8 in this Annex-IV.

Φ Provide Certificate as per this format only. Attach explanatory notes to the Certificate, if necessary. In jurisdictions that do not have statutory auditors, the firm of auditors which audits the annual accounts of the Applicant or its Associate may provide the certificates required under this EOI.

ANNEXURE-IV - Financial Capacity of the Applicant

(Refer to Clauses 2.2.2(B), 2.2.3 and 3.4 of the EOI)
(inRs. Crore\$)

Applicant type ^{\$\$}	Member Code [£]	Net Cash Accruals			Net Worth ^{££}
		Year 1	Year 2	Year 3	
1	2	3	4	5	6
Single entity Applicant					
Consortium Member 1					
Consortium Member 2					
Consortium Member 3					

Signature:

Name & address of Statutory Auditor:

Signature:

Name & address of Authorized Signatory:

^{\$\$}An Applicant consisting of a single entity should fill in details as per the row titled Single entity Applicant and ignore the rows titled Consortium Members. In case of a Consortium, row titled Single entity Applicant may be ignored.

^{££}The Applicant should provide details of its own Financial Capacity or of an Associate specified in Clause 2.2.8.

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Instructions:

1. The Applicant/ its constituent Consortium Members shall attach copies of the balance sheets, financial statements and Annual Reports for 3 (three) years preceding the Application Due Date. The financial statements shall:
 - (a) reflect the financial situation of the Applicant or Consortium Members and its/ their Associates where the Applicant is relying on its Associate's financials;
 - (b) be audited by a statutory auditor (for companies)/practicing chartered accountant (for others);
 - (c) be complete, including all notes to the financial statements; and
 - (d) correspond to accounting periods already completed and audited (no statements for partial periods shall be requested or accepted).
2. Net Cash Accruals shall mean Profit after Tax + Depreciation.
3. Net Worth for a company shall mean (Subscribed and Paid-up Equity + Reserves) less (Revaluation reserves + miscellaneous expenditure not written off + reserves not available for distribution to equity shareholders). Net Worth for other form of Applicants shall mean Total Assets Less Total Liabilities.
4. Year 1 will be the latest completed financial year, preceding the bidding. Year 2 shall be the year immediately preceding Year 1 and so on. In case the Application Due Date falls within 3 (three) months of the close of the latest financial year, refer to Clause 2.2.10.
5. In the case of a Consortium, a copy of the Joint Bidding Agreement shall be submitted in accordance with Clause 2.2.5 (g) of the EOI document.
6. The Applicant shall provide an Auditor's Certificate specifying the Net Worth of the Applicant and also specifying the methodology adopted for calculating such Net Worth in accordance with Clause 2.2.3 (ii) of the EOI document. Absence of any detail in the above certificates, the information would be considered inadequate and could lead to exclusion of such amount in computation of Net Worth Score.

ANNEXURE-V - Statement of Legal Capacity

(To be forwarded on the letterhead of the Applicant/ Lead Member of Consortium)

Ref. Date:

To,

.....
.....
.....

Dear Sir,

I/We hereby confirm that I/we/ our members in the Consortium (constitution of which has been described in the Application) satisfy the terms and conditions laid out in the EOI document.

We have agreed that (insert member's name) will act as the Lead Member of our consortium.[§]

I/We have agreed that (insert individual's name) will act as my/our representative/ will act as the representative of the consortium on its behalf[§] and has been duly authorized to submit the EOI.

Further, the authorised signatory is vested with requisite powers to furnish such letter and authenticate the same.

Thanking you,

Yours faithfully,

(Signature, name and designation[¥] of the authorised signatory)

Date:

For and on behalf of.....[¥]

[§]Please strike out whichever is not applicable.

[¥]May be DELETED in the case of natural person

ANNEXURE VI - Power of Attorney for signing of Application and Bid[§]
(Refer Clause 2.2.4)

Know all men by these presents, I/We..... (name of the person and address/name of the firm and address of the registered office) do hereby irrevocably constitute, nominate, appoint and authorize Mr/ Ms (name), son/daughter of and presently residing at, who is presently employed with me/us/ the Lead Member of our Consortium and holding the position of, as my/our true and lawful attorney (hereinafter referred to as the “Attorney”) to do in my/our name and on my/our behalf, all such acts, deeds and things as are necessary or required in connection with or incidental to submission of my/ our application for pre-qualification and submission of my/our bid for the Project proposed or being developed by the (the “Concessing Authority”) including but not limited to signing and submission of all applications, bids and other documents and writings, participate in Pre-Applications and other conferences and providing information/ responses to the Bidding Authority, representing me/us in all matters before the Bidding Authority, signing and execution of all contracts and undertakings consequent to acceptance of my/our bid, and generally dealing with the Bidding Authority/Concessing Authority in all matters in connection with or relating to or arising out of my/our bid for the said Project and/ or upon award thereof to me/us till entering into of the Concession Agreement with the Concessing Authority.

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

IN WITNESS WHEREOF I/WE, THE ABOVE NAMED PRINCIPAL HAVE EXECUTED THIS POWER OF ATTORNEY ON THIS DAY OF 2.....

For[¥].

(Signature, name, designation[¥] and address) Witnesses:

1.
(Signature, name, designation and address)

(Notarised)

2.
(Signature, name, designation and address)

Accepted

.....
(Signature, Name, Title and Address of the Attorney)

[§]To be submitted in original.

[¥]May be DELETED in the case of natural person

Notes:

The mode of execution of the Power of Attorney should be in accordance with the procedure, if any, laid down by the applicable law and the charter documents of the executant(s) and when it is so required, the same should be under common seal affixed in accordance with the required procedure.

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- *The Applicant should submit for verification the extract of the charter documents and documents such as a board or shareholders' resolution/ power of attorney in favour of the person executing this Power of Attorney for the delegation of power hereunder on behalf of the Applicant.*
- *For a Power of Attorney executed and issued overseas, the document will also have to be legalised by the Indian Embassy and notarised in the jurisdiction where the Power of Attorney is being issued. However, the Power of Attorney provided by Applicants from countries that have signed the Hague Legislation Convention 1961 are not required to be legalised by the Indian Embassy if it carries a conforming Appostille certificate.*

ANNEXURE VII - Power of Attorney for Lead Member of Consortium^{\$}

(Refer Clause 2.2.4)

WHEREAS the (“the Bidding Authority”) on behalf of the (“the Concessioneing Authority”) has invited applications from interested parties for the Project (the “Project”).

WHEREAS,,,and (collectively the “Consortium”) being Members of the Consortium are interested in bidding for the Project in accordance with the terms and conditions of the Expression of Intrest (EOI), Request for Proposal (RFP) and other connected documents in respect of the Project, and

WHEREAS, it is necessary for the Members of the Consortium to designate one of them as the Lead Member with all necessary power and Lead Member to do for and on behalf of the Consortium, all acts, deeds and things as may be necessary in connection with the Consortium’s bid for the Project and its execution.

NOW THEREFORE KNOW ALL MEN BY THESE PRESENTS

We,

- (1) Mr/Ms....., son/daughter of, aged.....years, residing at.....(address) ^{\$\$}/M/s. having our registered office at^{\$\$},
- (2) Mr/Ms....., son/daughter of, aged.....years, residing at.....(address) ^{\$\$}/M/s. having our registered office at^{\$\$},
- (3) Mr/Ms....., son/daughter of, aged.....years, residing at.....(address) ^{\$\$}/M/s. having our registered office at^{\$\$}, and
- (4) Mr/Ms....., son/daughter of, aged.....years, residing at.....(address) ^{\$\$}/ M/s. having our registered office at^{\$\$},

(hereinafter collectively referred to as the “Principals”) do hereby irrevocably designate, nominate, constitute, appoint and authorize Mr/Ms....., son/daughter of,

^{\$}To be submitted in original.

^{\$\$} Please strike out whichever is not applicable.

aged.....years, residing at.....(address) ^{\$\$}/ M/s having its registered office at^{\$\$}, being one of the Members of the Consortium, as the Lead Member and true and lawful attorney of the Consortium (hereinafter referred to as the “Attorney”). We hereby irrevocably authorise the Attorney (with power to sub-delegate) to conduct all business for and on behalf of the Consortium and any one of us during the bidding process and, in the event the Consortium is awarded the concession/contract, during the execution of the Project and in this regard, to do on our

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behalf and on behalf of the Consortium, all or any of such acts, deeds or things as are necessary or required or incidental to the pre-qualification of the Consortium and submission of its bid for the Project, including but not limited to signing and submission of all applications, bids and other documents and writings, accept the Letter of Award, participate in bidders' and other conferences, respond to queries, submit information/ documents, sign and execute contracts and undertakings consequent to acceptance of the bid of the Consortium and generally to represent the Consortium in all its dealings with the Bidding Authority, Concessions Authority and/ or any other Government Agency or any person, in all matters in connection with or relating to or arising out of the Consortium's bid for the Project and/ or upon award thereof to our consortium till the Concession Agreement is entered into with the Concessions Authority.

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

IN WITNESS WHEREOF WE THE PRINCIPALS ABOVE NAMED HAVE EXECUTED THIS POWER OF ATTORNEY ON THIS DAY OF 2.....

For[¥]
.....
(Signature) (Name)
.....
(Title[¥])

For[¥]
.....
(Signature)
..... (Name)
.....
(Title[¥])

[¥]May be DELETED in the case of natural person

For[¥]
.....
(Signature)
..... (Name)
.....
(Title[¥])

(Executants)

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(To be executed by all the Members of the Consortium)

Witnesses:

1.
(Signature, name, designation and address)

(Notarised)

2.
(Signature, name, designation and address)

Accepted

.....
(Signature, Name, Title and Address of the Attorney)

Notes:

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

ANNEXURE VIII - Joint Bidding Agreement

(Refer Clause 2.2.1 & 2.2.5)

(To be executed on Stamp paper of appropriate value)

THIS JOINT BIDDING AGREEMENT is entered into on this the day of20...

AMONGST

1. (hereinafter referred to as the “**FIRST PART**” which expression shall, unless repugnant to the context include its successors and permitted assigns)

AND

2. (hereinafter referred to as the “**SECOND PART**” which expression shall, unless repugnant to the context include its successors and permitted assigns)

AND

3. (hereinafter referred to as the “**THIRD PART**” which expression shall, unless repugnant to the context include its successors and permitted assigns)}

AND

4. (hereinafter referred to as the “**FOURTH PART**” which expression shall, unless repugnant to the context include its successors and permitted assigns)}^s

The above mentioned parties of the **FIRST, SECOND, {THIRD and FOURTH} PART** are collectively referred to as the “**Parties**” and each is individually referred to as a “**Party**”

WHEREAS, On Behalf of authority (hereinafter referred to as the “**Concessioneing Authority**” which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and assigns),the IWAI, represented by its and having its principal office at

WHEREAS, The Authority has resolved to develop navigable waterways as a reliable mode of transport to complement traditional modes of transport. In order to achieve the said objective, the Authority is keen to increase the usage and improve productivity of the existing inland water transport terminals at Aluva, Maradu and Alappuzha. The Authority is keen to bring on board a private partner on an O&M basis for the Aluva, Maradu and Alappuzha. In order to undertake the Project as a reliable mode of transport on O&M basis, the Authority has decided to carry out the bidding process for

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selection of a private developer to whom the Project may be awarded.

AND WHEREAS, the Parties are interested in jointly bidding for the Project as members of a Consortium and in accordance with the terms and conditions of the EOI document and other bid documents in respect of the Project, and

AND WHEREAS, it is a necessary condition under the EOI document that the members of the Consortium shall enter into a Joint Bidding Agreement and furnish a notarized copy thereof with the Application.

NOW IT IS HEREBY AGREED as follows:

1. Definitions and Interpretations

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

2. Consortium

2.1 The Parties do hereby irrevocably constitute a consortium (the “**Consortium**”) for the purposes of jointly participating in the Bidding Process for the Project.

2.2 The Parties hereby undertake to participate in the Bidding Process only through this Consortium and not individually and/ or through any other consortium constituted for this Project, either directly or indirectly or through any of their Associates.

3. Covenants

The Parties hereby undertake that in the event the Consortium is declared the Selected Bidder and awarded the Project, it shall incorporate a Special Purpose Vehicle (the “**SPV**”) under the Indian Companies Act, 2013 for entering into a Concession Agreement with the Concessions Authority and for performing all its obligations as the Concessionaire in terms of the Concession Agreement for the Project.

4. Role of the Parties

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

- (a) Party of the First Part shall be the Lead member of the Consortium and [Technical Member/ Financial Member/ Operation and Maintenance Member/Other Member of the Consortium;] and shall have the power of attorney from all Parties for conducting all business for and on behalf of the Consortium during the Bidding Process and until the Appointed Date under the Concession Agreement when all the obligations of the SPV shall become effective;
- (b) Party of the Second Part shall be the [Technical Member/ Financial Member/ Operation and Maintenance Member/Other Member of the Consortium;]

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{(c) Party of the Third Part shall be the [Technical Member/ Financial Member/ Operation and Maintenance Member/Other Member] of the Consortium;}

{(d) Party of the Fourth Part shall be the [Technical Member/ Financial Member/ Operation and Maintenance Member/Other Member] of the Consortium}

5. Joint and Several Liability

The Parties do hereby undertake to be jointly and severally responsible for all obligations and liabilities relating to the Project and in accordance with the terms of the EOI, RFP and the Concession Agreement, till such time as the Financial Close for the Project is achieved under and in accordance with the Concession Agreement.

6. Shareholding in the SPV

6.1 The Parties agree that the proportion of shareholding among the Parties in the SPV shall be as follows:

First Party:

Second Party:

{Third Party:}

{Fourth Party:}

6.2 The Parties undertake that a minimum of 26% (twenty six per cent) of the subscribed and paid up equity share capital of the SPV shall, at all times till the second anniversary of the date of commercial operation of the Project, be held by the Parties of the First, {Second and Third} Part whose experience and Net Worth have been reckoned for the purposes of qualification and short-listing of Applicants for the Project in terms of the EOI.

6.3 The Parties undertake that each of the Parties specified in Clause 6.2 above shall, at all times between the commercial operation date of the Project and the second anniversary thereof, hold subscribed and paid up equity share capital of SPV equivalent to at least 5% (five per cent) of the Total Project Cost.

6.4 The Parties undertake that they shall collectively hold at least 51% (fifty one per cent) of the subscribed and paid up equity share capital of the SPV at all times until the second anniversary of the commercial operation date of the Project.

6.5 The Parties undertake that they shall comply with all equity lock-in requirements set forth in the Concession Agreement.

7. Representation of the Parties

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

(a) Such Party is duly organized, validly existing and in good standing under the law and has all requisite power and authority to enter into this Agreement;

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- (b) The execution, delivery and performance by such Party of this Agreement has been authorised by all necessary and appropriate corporate or governmental action and a certified copy of the extract of the charter documents and board resolution/ power of attorney (original/notarized) in favour of the person executing this Agreement for the delegation of power and authority to execute this Agreement on behalf of the Consortium Member is annexed to this Agreement, and will not, to the best of its knowledge:
- (i) require any consent or approval not already obtained;
 - (ii) violate any Applicable Law presently in effect and having applicability to it;
 - (iii) violate the memorandum and articles of association/partnership deed/ LLP agreement, by-laws or other applicable organizational/governing documents thereof;
 - (iv) violate any clearance, permit, concession, grant, license or other governmental authorisation, approval, judgement, order or decree or any mortgage agreement, indenture or any other instrument to which such Party is a party or by which such Party or any of its properties or assets are bound or that is otherwise applicable to such Party; or
 - (v) create or impose any liens, mortgages, pledges, claims, security interests, charges or encumbrances or obligations to create a lien, charge, pledge, security interest, encumbrances or mortgage in or on the property of such Party, except for encumbrances that would not, individually or in the aggregate, have a material adverse effect on the financial condition or prospects or business of such Party so as to prevent such Party from fulfilling its obligations under this Agreement;
- (c) this Agreement is the legal and binding obligation of such Party, enforceable in accordance with its terms against it; and
- (d) there is no litigation pending or, to the best of such Party's knowledge, threatened to which it or any of its Associates is a party that presently affects or which would have a material adverse effect on the financial condition or prospects or business of such Party in the fulfillment of its obligations under this Agreement.

8. Termination

This Agreement shall be effective from the date hereof and shall continue in full force and effect until the Financial Close of the Project is achieved under and in accordance with the Concession Agreement, in case the Project is awarded to the Consortium. However, in case the Consortium is either not pre-qualified for the Project or does not get selected for award of the Project, the Agreement will stand terminated in case the Applicant is not pre-qualified or upon return of the Bid Security by the Bidding Authority to the Bidder, as the case may be.

9. Miscellaneous

- 9.1 This Joint Bidding Agreement shall be governed by laws of India.
- 9.2 The Parties acknowledge and accept that this Agreement shall not be amended by the Parties without the prior written consent of the Bidding Authority.

**ANNEXURE - IX: FORMAT OF BANK GUARANTEE FORM FOR PERFORMANCE
SECURITY**

To
The Chairman
Inland waterways Authority of India
Ministry of Shipping, Govt. of India
A-13, Sector-1,
Noida (U.P.)
Pin- 201301

In consideration of the (Hereinafter called “**Employer**”) having to enter into an Agreement with M/s (hereinafter called the “**Contractor**”) as a follow up to the Letter of Acceptance no.....dated..... issued by the Employer for “**Works contract for deployment of Security Personnel at IWT terminals, dredgers under Regional Office of IWAI at Kochi in NW-3**”, on production of Performance security in the form of Bank Guarantee for INR (Rupees.....only), at the request of **Contractor**, We, (**Bank**) do hereby undertake to pay to the Employer an amount not exceeding INR..... (Rupees-----only) against any default or failure on the part of Contractor to perform the contract in accordance with terms & conditions or any breach of the said Agreement.

1. We, (**Bank**) do hereby undertake to pay the amount due and payable under this Guarantee without any demur, merely on a demand from the Employer stating that the amount claimed is due by way of loss or damage caused to or would be caused to or suffered by the Employer by reason of breach by the said **Contract** or any of the terms or conditions contained in the said time frame or by reason of the **Contractor’s** failure to perform the said Agreement. Any such demand made on the Bank shall be conclusive as regards the amount due and payable by the Bank under this guarantee. However, our liability under this guarantee shall be restricted to an amount not exceeding INR (Rupees.....only).
2. We, (**Bank**) undertake to pay the Employer any money so demanded notwithstanding any dispute or disputes raised by the **Contractor** in any suit or proceeding pending before any court or Tribunal relating thereto, liability under this present being absolute and unequivocal. The payment so made by us under this guarantee shall be valid discharge of our liability for payment there under and the **Contractor** shall have no claim against us for making such payment.

3. We, **(Bank)** further agree that the guarantee herein contained shall remain in full force and effect till completion of project work to the complete satisfaction of the Employer in terms of conditions of contract and Letter of Acceptance and that it shall continue to be enforceable till all the dues of the Employer under or by virtue of the said Agreement have been fulfilled and its claim satisfied or till the scheduled date of completion of Works as per the Agreement. We(Bank) shall consider that the terms and conditions of the said Agreement have been fully and properly carried out by the said Contractor and accordingly discharge this Guarantee after 90 days beyond the completion period of the said contract unless a demand or claim under this Guarantee is served by the Employer in writing on the bank but before the expiry of the said period in which case it shall be enforceable against the bank notwithstanding the fact that the same is enforced after the expiry of the said period or after the extended period as the case may be.
4. We **(Bank)** further agree with the Employer that the Employer shall have fullest liberty without our consent and without affecting in any manner our obligations hereunder to vary any of the terms and conditions of the said Agreement or to extend time or performance by the said **Contractor** from time to time or to postpone for any time or from time to time any of the powers exercisable by the Employer against the said **Contractor** and to forbear or enforce any of the terms and conditions relating to the said Agreement and we shall not be relieved from our liability by reason of any such variation, or extension being granted to the said **Contractor** or for any forbearance, act or omission on the part of the Employer or any indulgence by the Employer to the said **Contractor** or by any such matter or thing whatsoever which under the law relating to sureties would, but for the provision, have effect of so relieving us.
5. It shall not be necessary for the Employer to proceed against the **Contractor** before proceeding against the Bank and the guarantee herein contained shall be enforceable against the bank notwithstanding any security which the Employer may have obtained or obtain from the **Contractor** at the time when proceedings are taken against the bank hereunder be outstanding or unrealized.
6. Notwithstanding anything contained herein above our liability under the guarantee is restricted to INR.....(Rupees..... only) and shall remain in force until or otherwise until the extended date by the Employer. Unless a claim or suit under this guarantee is filed with us on or before or the extended date ALL YOUR RIGHTS UNDER THE GUARANTEE SHALL BE FORFEITED and the bank shall be relieved and discharged from all liabilities therein.
7. This Guarantee will not be discharged due to the change in the constitution of the Bank or the **Contractor**.

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8. We, **(Bank)** lastly undertake not to revoke this Guarantee during its currency except with the previous consent of the Employer in writing.

Dated the of 2023

for

(Indicate the name of bank)

Signature.....

Name of the Officer

(In Block Capitals)

Designation

Code No.

Name of the bank and Branch (SEAL)

ANEEXURE X - SITE & EXISTING INFARSTRUCTURE ANALYSIS

There are three project sites, two in Ernakulam district and one in Alappuzha district. In Ernakulam, one site is located in Maradu across 2.02 Ha in Maradu Municipality. Second site is also located in Aluva across 1.33 Ha in Edayar village in Eloor municipality. The third site is located in Alappuzha across 2.25 Ha in Alappuzha municipality.

Project Site in Maradu

Site Analysis

The regional office of IWAI is in Maradu. IWAI has terminal along Champakkara Canal to ease cargo movement through it. The below figure shows the location of the site.

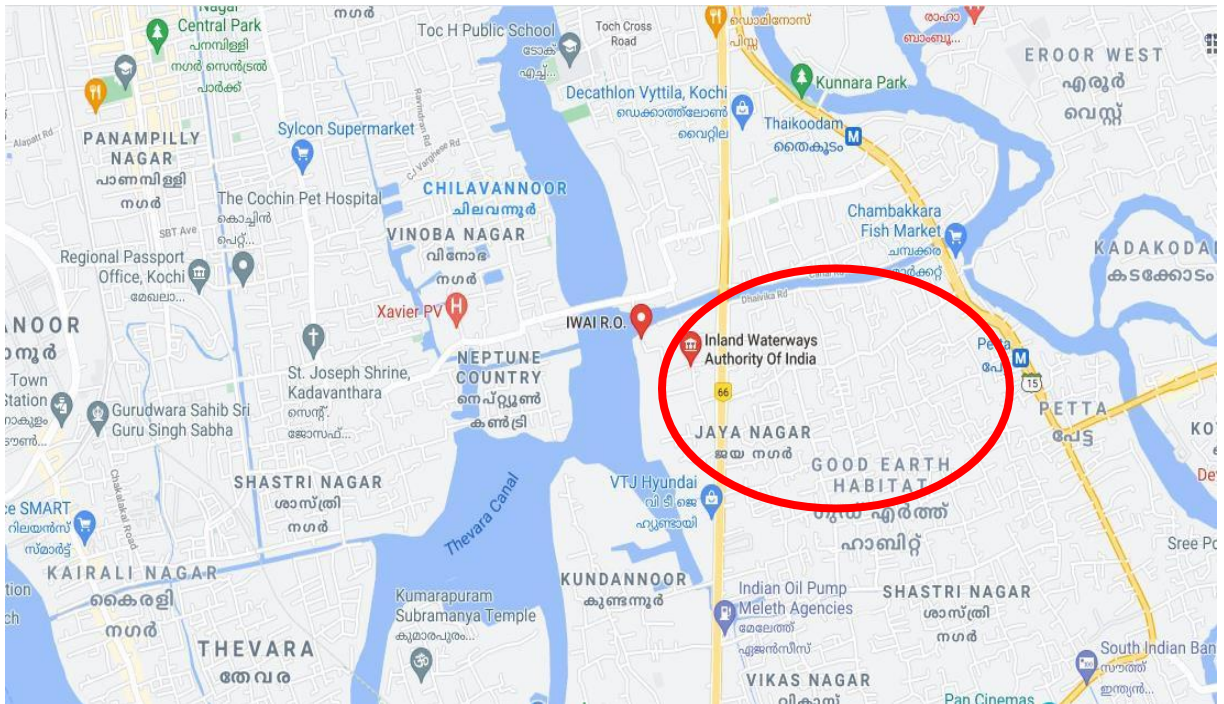


Figure 1 – Location Sketch of IWAI in Maradu

Operation and Maintenance of IWAI Terminal at Aluva, Maradu and Alappuzha

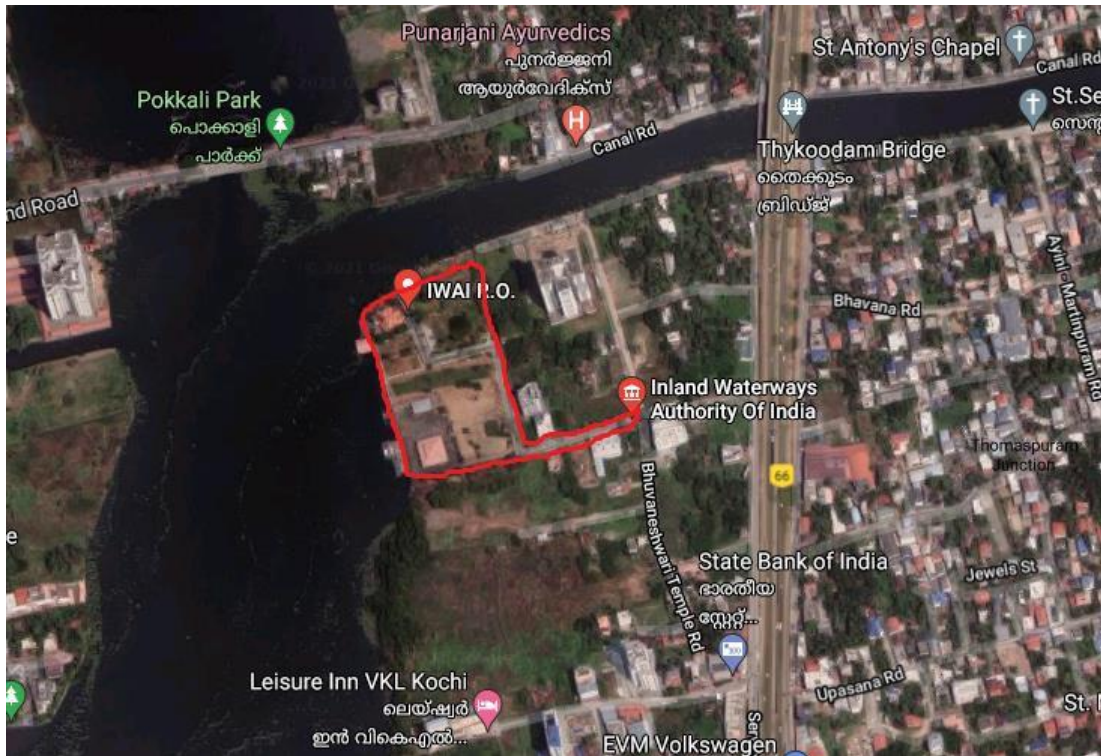


Figure 2: Google Image of Project Site

The exhibit below shows the location sketch of the proposed site.

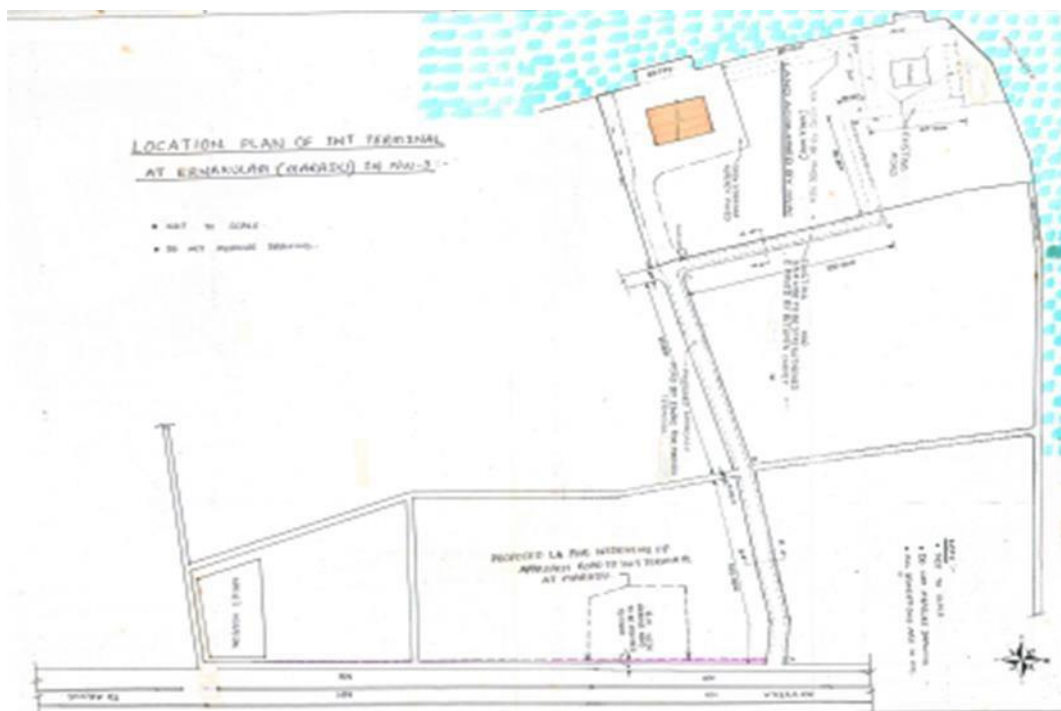


Figure 3: Location of the Project Site

Operation and Maintenance of IWAI Terminal at Aluva, Maradu and Alappuzha

The table below gives details of some of the important parameters relating to the project site.

Table 1: Site Analysis

Parameter	Project Site (Maradu)
Location	Kannadikadavu.,Maradu Municipality, Ernakulam, Kerala
Area	2.02 Ha
Distance from City	Maradu is a suburban region of the city of Kochi. The location is 8 km away from Kochi.
Distance from Airport	30 Km from Cochin International Airport (CIAL)
Distance from Seaport	Cochin Port :- 11 km International Container Transshipment Terminal (ICTT) :- 15.5 km
Distance from Railway Line	Tripunitura Railway Station :- 3.5 km Ernakulam Jn. Railway Station :- 5.8 km
Road Connectivity	National Highway 47 :- 500 m
Climate	The climate is Tropical monsoon Average summer temperature :- 35 °C (95 °F) Average winter temperature :- 20 °C (68 °F)
Power Availability	Available
Water Availability	Available

6.1.1 Existing Infrastructure Analysis

The below table shows the existing infrastructure in Maradu Terminal.

Table 2: Existing Infrastructure Analysis

Terminal Location	Maradu
Length & Type of Jetty	30 m Long Berth (RCC Jetty)
Storage Facilities	Office Space : 100Sq.m Covered Storage Facilities: 300Sq.m Open Storage Facilities : 2000Sq.m
Mechanical Handling Equipment / Facilities	One 18T Capacity Mobile Hydraulic Crane One 3 T Capacity Forklift

Site Photos



Dredging & Surveying Vessels



Survey Monitoring House



Storage Facility



Equipments



Inside Storage Facility



Open Storage Area

Project Site in Aluva

Site Analysis

IWAI in Aluva is near to Periyar Chemicals in Edayar. IWAI has developed terminal along Udyogamandal Canal to ease cargo movement through it. The below figure shows the location of the site.

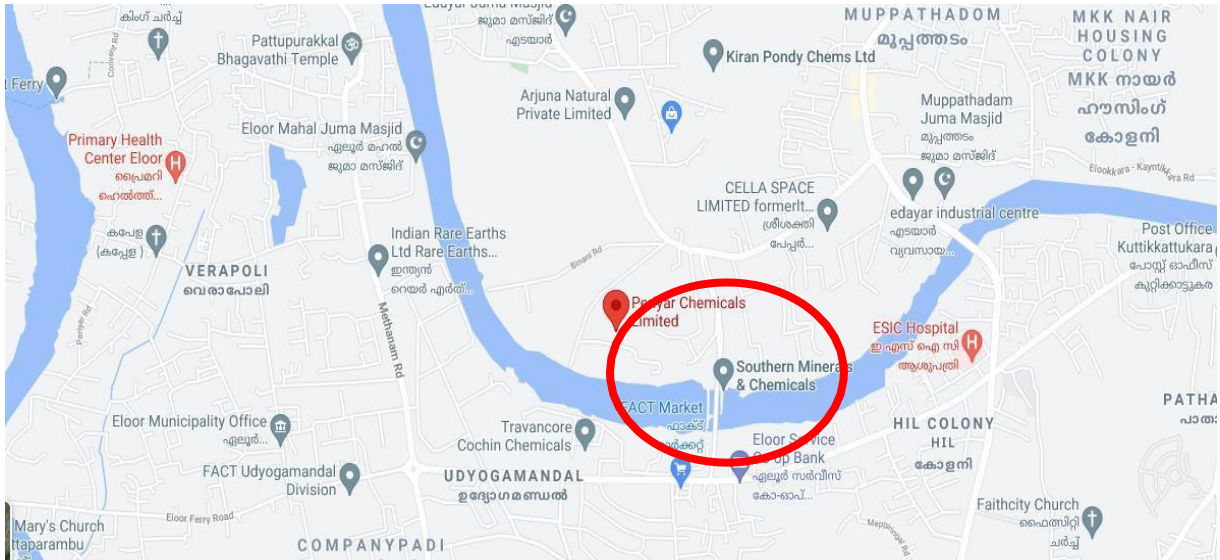


Figure 4: Location Sketch of IWAI in Aluva

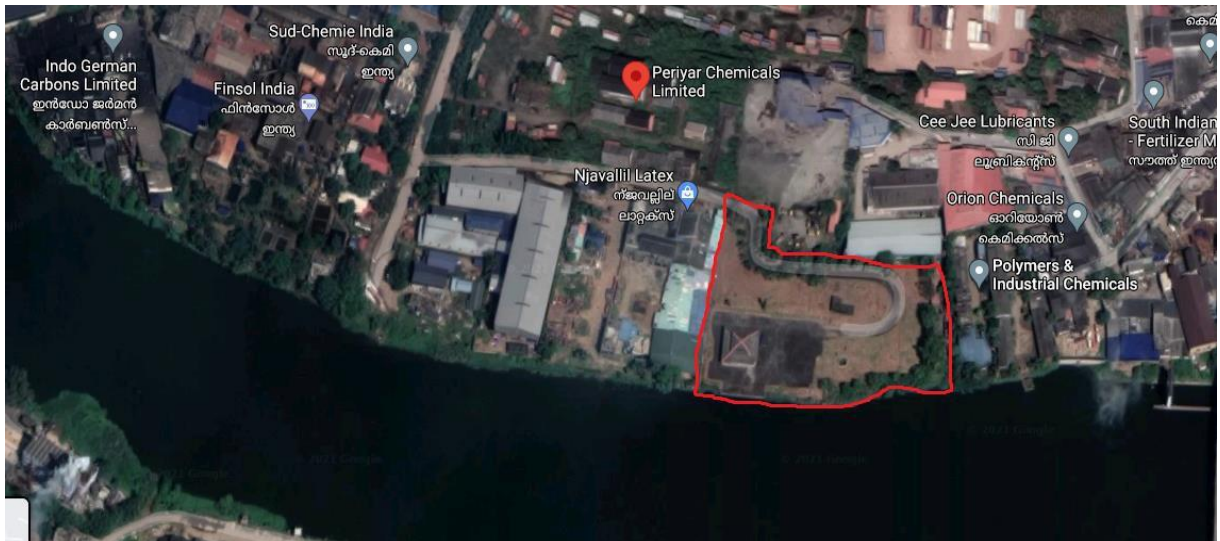


Figure 5: Google Image of Project Site

The exhibit below shows the location sketch of the proposed site.

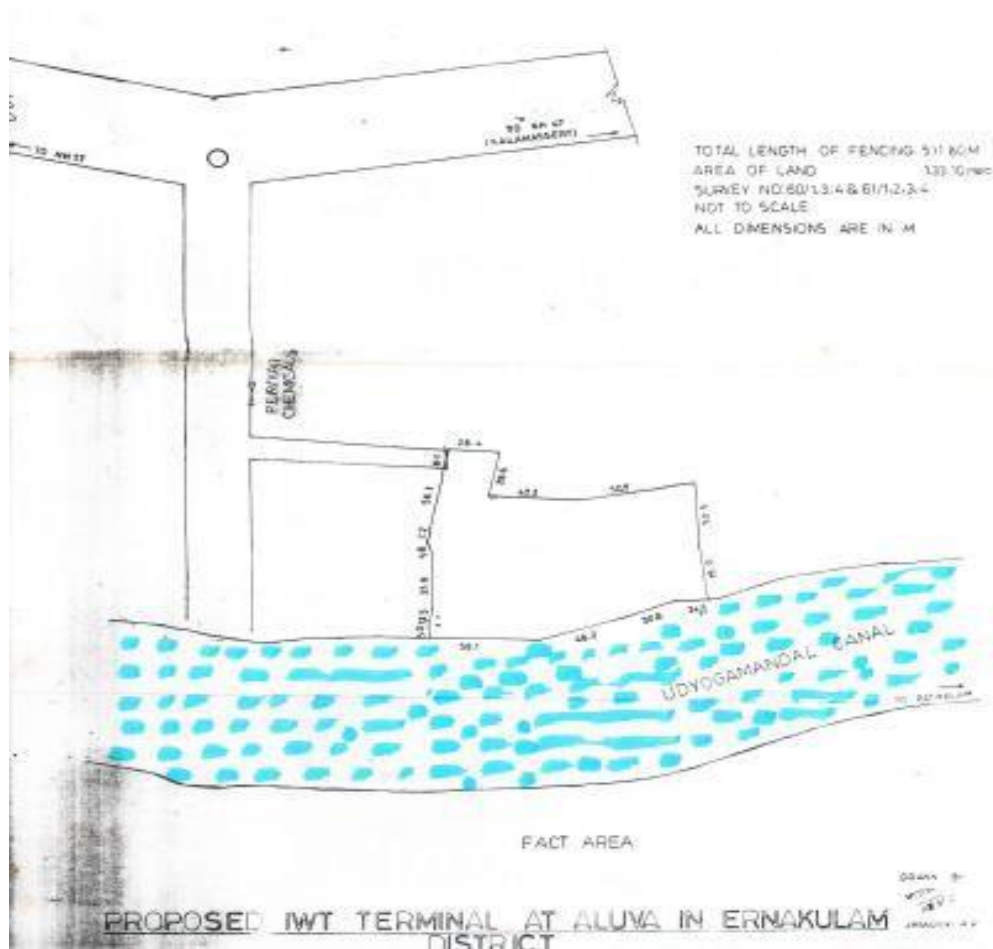


Figure 6: Location of the Project Site



IWAI at Aluva

Operation and Maintenance of IWAI Terminal at Aluva, Maradu and Alappuzha

The table below gives details of some of the important parameters relating to the project site.

Table 3: Site Analysis

The below table shows the existing infrastructure in Aluva Terminal.

Parameter	Project Site (Aluva)
Location	Edayar, Eloor Municipality, Ernakulam, Kerala
Area	1.33 Ha
Distance from City	Edayar is a suburban region of the city of Kochi. The location is 25 km away from Kochi.
Distance from Airport	17.8 Km from Cochin International Airport (CIAL)
Distance from Seaport	Cochin Port :- 26 km International Container Transshipment Terminal (ICTT) :- 19.5 km
Distance from Railway Line	Kalamaserry Railway Station :- 3.9 km Aluva Railway Station :- 6.8 km
Road Connectivity	International Container Terminal Road: 2.8 km National Highway 66 : 4.7 km
Climate	The climate is Tropical monsoon Average summer temperature :- 35 °C (95 °F) Average winter temperature :- 20 °C (68 °F)
Power Availability	Available
Water Availability	Available
Flood Level	High Flood Level is marked in the storage building.

Table 4: Existing Infrastructure Analysis

Terminal Location	
Length & Type of Jetty	30 m Long Berth (RCC Jetty)
Storage Facilities	Office Space : 100Sq.m Covered Storage Facilities: 300Sq.m

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	Open Storage Facilities : 2000Sq.m
Mechanical Handling Equipment / Facilities	One 18T Capacity Mobile Hydraulic Crane One 3 T Capacity Forklift available

Site Photos



Storage Facility



Equipments



High Flood Level Marked



Open Storage Area

Project Site in Alappuzha

Site Analysis

IWAI in Alappuzha is near to Alappuzha KSRTC Bus Stand. The below figure shows the location of the site.

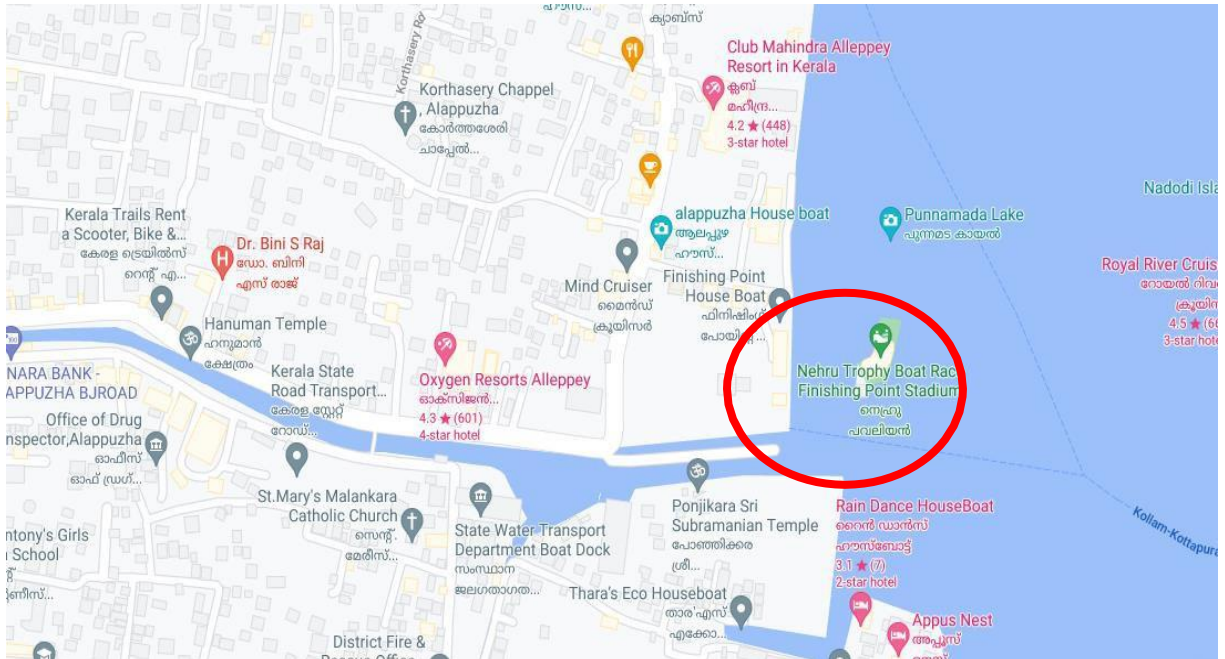


Figure 7: Location Sketch of IWAI in Alappuzha

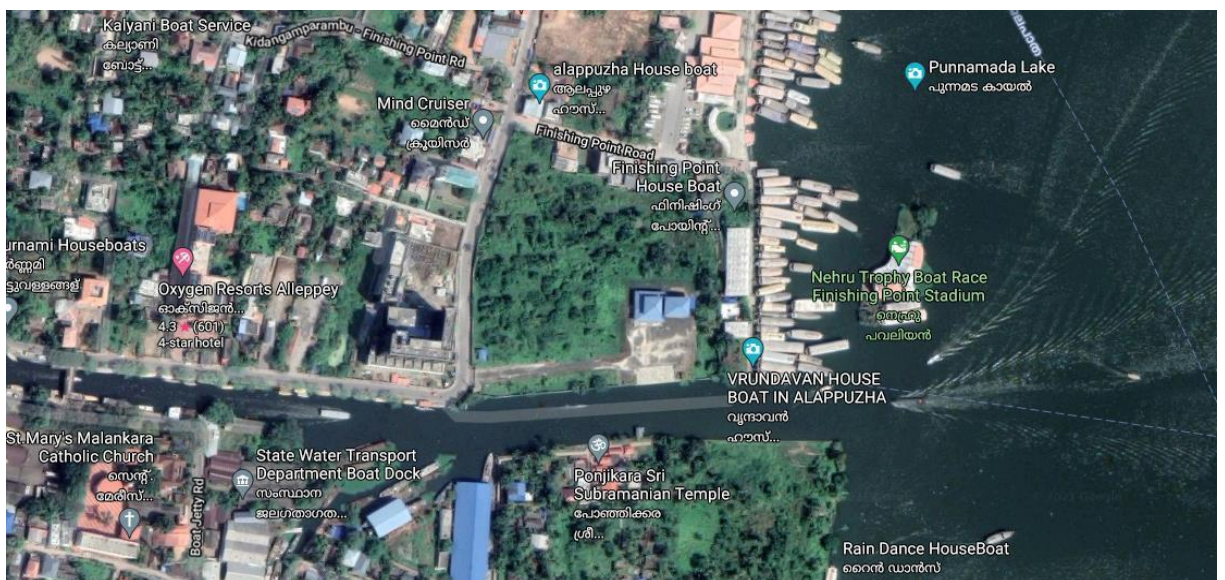


Figure 8: Google Image of Project Site

The exhibit below shows the location sketch of the proposed site.

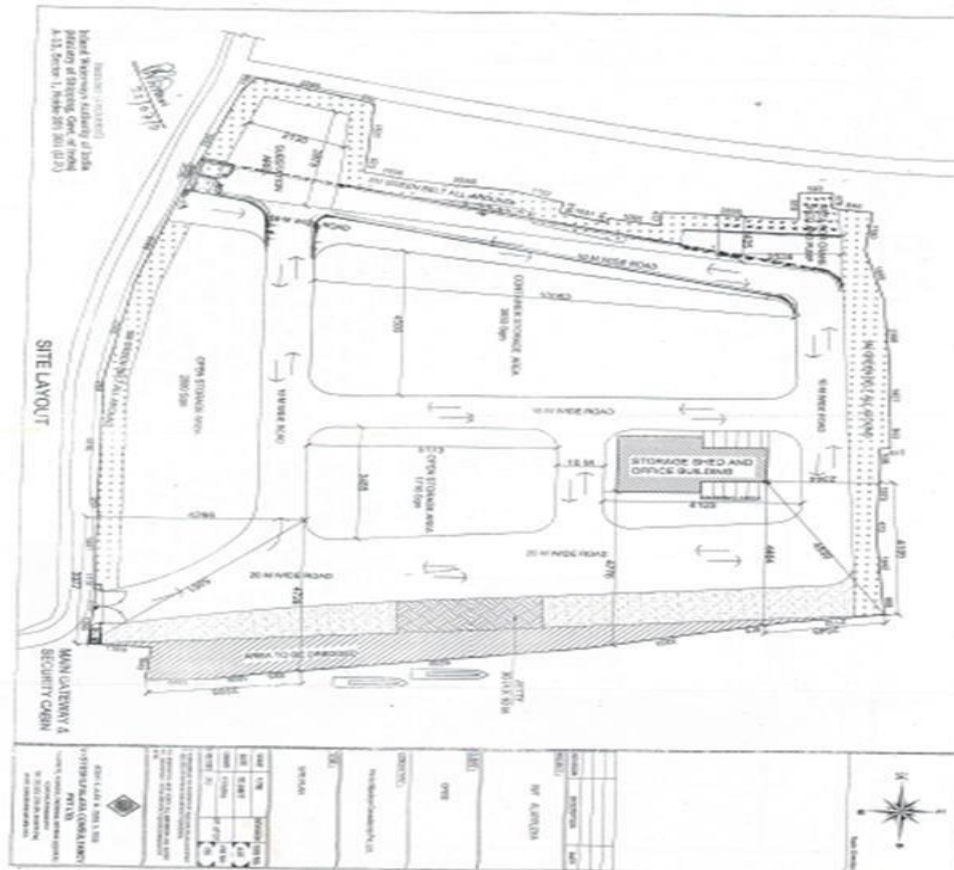


Figure 9: Location of the Project Site



Figure 10: IWAI at Alappuzha

The table below gives details of some of the important parameters relating to the project site.

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Table 5: Site Analysis

Existing Infrastructure Analysis

Parameter	Project Site (Alappuzha)
Location	Alappuzha Municipality, Alappuzha, Kerala
Area	2.25 Ha
Distance from City	The Site is in Alappuzha Town itself.
Distance from Airport	83 Km from Cochin International Airport (CIAL)
Distance from Seaport	Cochin Port :- 56 km International Container Transshipment Terminal (ICTT) :- 68 km
Distance from Railway Line	Alappuzha Railway Station :- 2 km
Road Connectivity	Alappuzha- Veliyanad SH 40 : 2 km
Climate	The climate is Tropical monsoon Average summer temperature :- 35 °C (95 °F) Average winter temperature :- 20 °C (68 °F)
Power Availability	Available
Water Availability	Available

The below table shows the existing infrastructure in Alappuzha Terminal.

Table 6: Existing infrastructure analysis

Terminal Location	Alappuzha
Length & Type of Jetty	30 m Long Berth (RCC Jetty)
Storage Facilities	Office Space : 100Sq.m Covered Storage Facilities: 300Sq.m Open Storage Facilities : 2000Sq.m
Mechanical Handling Equipment / Facilities	One 18T Capacity Mobile Hydraulic Crane One 3 T Capacity Forklift available

Operation and Maintenance of IWAI Terminal at Aluva, Maradu and Alappuzha

Site Photos



Figure 11: Storage Facility



Figure 12: Entry Road



Boat Jetty



Open Storage Area