



भारतीय अन्तर्देशीय जलमार्ग प्राधिकरण

(पत्तन, पोत परिवहन और जलमार्ग मंत्रालय, भारत सरकार)

मुख्यालय : जलमार्ग भवन, ए-13, सेक्टर-1, नौएडा-201 301, (उ० प्र०)

INLAND WATERWAYS AUTHORITY OF INDIA

(Ministry of Ports, Shipping and Waterways, Govt. of India)

Head Office : Jalmarg Bhawan, A-13, Sector-1, Noida-201 301 (U.P.)

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Tel. : +91-120-2544036, 2543972, 2527667, 2448101 Fax : +91-120-2544009, 2544041, 2543973, 2521764

(By email)

No. IWAI/NW5/2019-22/Traffic Study

Dated: 07.11.2022

To,

As per the list of DEA empanelled Transaction Advisor (s)

Sub: Engagement of DEA empanelled "Transaction Advisory Service" (TAS) for providing advisory services for the development and operationalization of NW-5 & NW-64 through PPP model- reg.

Ref: IWAI RFP No. IWAI/NW-5/Traffic Study/ 2019-22.

Sir / Madam,

Inland Waterways Authority of India (IWAI/Authority) is a statutory body under the Ministry of Ports, Shipping and Waterways Government of India. IWAI was set up in 1986 with a mandate to develop and regulate the inland waterways of the country primarily declared as National Waterways. In March, 2016, the Government of India has declared 106 new National Waterways in addition to the existing five National Waterways by the National Waterway Act, 2016.

2. NW-5- The Talcher- Dhamra stretch of river Brahmani, Geonkhali-Charbatia stretch of East Coast Canal, Charbatia- Dhamra stretch of Matai River and Mangalgadi-Paradip stretch of Mahanadi delta rivers (588 km) have been declared as National Waterway – 5 ("NW-5").

3. NW-5, by virtue of its unique location, presents a complementary transport route connecting cargo dense regions (including mines and manufacturing facilities) with ports at Paradip and Dhamra. Since select stretches in proximity to ports at Paradip and Dhamra offer readily available navigability conditions, IWAI proposes to adopt a phase-wise development of NW-5 and initiate operationalization of NW-5 through the stretches to be decided as a part of the said assignment.

4. NW-64- The 425 km long Mahanadi River from Sambalpur to Paradip sea mouth constitutes NW-64. It meets NW-5 near Paradip and has some of the important industrial clusters of Cuttack and Sambalpur along its bank. Since both these Waterways (NW-5 and NW-64) are interconnected thus can be used as a supplementary mode of transportation which can further facilitate in decongesting the existing rail and road network for the cargo originated or destined at Paradip port by shifting part of the traffic onto the waterways.

cont..2..

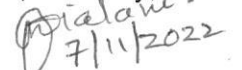
5. Thus, IWAI (Authority) intends to develop and operationalize the NW-5 and part of NW-64 from Marshaghai to Paradip Port through private sector participation in phase manner. ~~Accordingly~~, Accordingly, a copy of the request for proposal (RFP) for engagement of the DEA Transaction Advisor for providing advisory services for the development and operationalization of select stretches of NW-5 and NW-64 through PPP mode is attached for perusal and participation by your firm. The detailed terms of reference are provided at Section V of tender documents.

6. In this regard, given the immense scope of cargo movement along NW-5 and NW-64, IWAI is evaluating the potential to undertake development of NW-5 and part of NW-64 (Paradip Port- Marshaghai) as a reliable mode of transport with the involvement of private sector parties through the suitable mode. IWAI intends to engage a suitable Consultant (DEA enpanelled) as transaction advisors to assist IWAI in project structuring, preparation of transaction documents and running the transaction process for development of NW-5 and NW-64 through PPP mode.

7. Therefore, you are requested to submit the proposal in the **hard copy** and delivered to the office of Chairman, IWAI on or before proposal closing Date & Time, as per the term & condition of the tender document / ToR.

This issues with the approval of Competent Authority.

Yours faithfully,

 7/11/2022

(V. C. Dialani)

Director (MM)

Email. vc dialani.iwai@nic.in

Encl: Annex-1: List of DEA enpanelled Transaction Advisor (s)
Annex-2: RFP document.

Copy to (By-email):

1. The Member (Finance), IWAI, Noida - for favour of information.
2. The Member (Technical), IWAI, Noida - for favour of information.
3. The Director, IWAI BBSR- for information.

Copy also for kind information to:

1. The Chairman, IWAI, Noida.
2. The Vice Chairman, IWAI, Noida.

Annex-1: List of DEA empanelled Transaction Advisor (s)

Sl. No	Name of Empanelled Firm	Address	Contact Person	Email ID & Contact No.
1.	Almondz Global Securities Ltd.	F-33/3, Okhla Industrial Area, Phase - II. New Delhi- 110020	Sh. Ashwini Ghai	ashwini.ghai@almondz.com 011-43500700
2.	CRISIL	CRISIL House. Plot no.46, Sector-44. Gurgaon. Haryana - 122003	Sh. Akshay Purkayastha	1. akshay.Purkayastha@crisil.com 2. Jagannarayan.padmanabhan@Crisil.com Ph. (0124) 6722491
3.	Darashaw & Company Private Ltd.	1205-06 Regent Chambers, 208 Nariman Point. Mumbai 400 021	Sh. Ketan Mandani	1. consultancy@darashaw.com 2. yogendra-naik@darashaw.com Mob. No. 9819466876
4.	Deloitte Touche Tohmatsu India LLP	7th Floor. Building 10, Tower B DLF Cyber City Complex DLF City Phase-II Gurgaon - 122002. Haryana India	Sh. Kushal Kumar Singh	kksingh@deloitte.com 9811552899
5.	Ernst & Young LLP	Ernst & Young LLP	Sh. Abhaya Agarwal	abhaya.agarwal@in.ey.com 9871693342
6.	Feedback Infra	Feedback Infra. 311, 3 rd Floor. Vardhaman Plaza, Pocket 7. Plot No. 6 Sector 12 Dwarka, New Delhi - 110078	Shri Mohit Sinha	1. mohit.sinha@feedbackinfra.com 2. bdcentral@feedbackinfra.com Mob No. 9810417398
7.	iDeck	# 9/7, K.C.N.Bhavan. Yamunabai Road. Madhav Nagar Extension, Off Race Course Road, Bangalore 560001, Karnataka	Sh. T Paul Koshy	1. Paul.koshy@ideck.in 2. sudha@idfc.com Mob No. 9886339775
8.	KPMG	KPMG Advisory Services Private Limited. Building	Sh. Vivek Agarwal	1. Vivekagarwal1@kpmg.com 2. sameerbhatnagar@kpmg.com

		No. 10, 4 th Floor, Tower B & C. DLF Cyber City. Phase II. Gurugram - 122002		<u>Mob No. 9811705760</u>
3.	Mazars Advisory LLP	Registered Address: 101- 103, Mercantile House, K G Marg. New Delhi - 110001 Correspondence Address: 3 rd Floor.421, Udyog Vihar, Phase-IV, Gurgaon -122 016	Sh. Gul Basantani	<u>gul.basantani@mazars.co.in</u> 9810666478
10.	PwC	PricewaterhouseCoopers Private Limited, Building No. 10, 17 th Floor. Tower C. DLF Cyber City. Phase II, Gurugram 122002	Sh. Shivanshu Chauhan	1. <u>shivanshu.chauhan@pwc.com</u> 2. <u>manish.r.sharma@in.pwc.com</u> <u>Mob No. 9820134239</u>
11.	rites Ltd.	rites BHAWAN, 1, Sector 29. Gurgaon, Haryana, India-122001	Sh. Anjeev Kr. Jain	1. <u>Anjeev.jain@rites.com</u> 2. <u>anjeev.jain@rites.com</u> <u>Mob No. 9819458838</u>
12.	Tandon Urban Solution Private Limited	701. Harbhaajan Building, CST Road, Kalina, Santacruz (East), Mumbai -400 098	Sh. Amit Kumar Rajhans	<u>tandonandassociates@gmail.com</u> +91 9867687797

Annex-2



**REQUEST FOR PROPOSAL FOR ENGAGEMENT OF
DEA EMPANLED TRANSACTION ADVISOR FOR
PROVIDING ADVISORY SERVICES FOR THE
DEVELOPMENT AND OPERATIONALIZATION OF
NW-5 and NW-64 THROUGH PPP MODE**

**(Brahmani River & Mahanadi delta system alongwith East Coast Canal (NW-5) &
Mahanadi River from Sambalpur to Paradip sea mouth constitutes NW-64)**

Tender No. IWAI/NW-5/Traffic Study/ 2019-22

Inland Waterways Authority of India

(Ministry of Port, Shipping & Waterways, Govt. of India)

Noida, Uttar Pradesh

November, 2022

Disclaimer

The information contained in this Request for Proposal document (“**RFP**”) or subsequently provided to Applicants, whether verbally or in documentary or any other form by or on behalf of the Authority or any of its employees or advisers, is provided to Applicants on the terms and conditions set out in this RFP and such other terms and conditions subject to which such information is provided.

This RFP is not an agreement or an offer by the Authority to the prospective Applicants or any other person. The purpose of this RFP is to provide interested parties with information that may be useful to them in the formulation of their Proposals pursuant to this RFP. This RFP includes statements, which reflect various assumptions and assessments arrived at by the Authority in relation to the Consultancy. Such assumptions, assessments and statements do not purport to contain all the information that each Applicant may require. This RFP may not be appropriate for all persons, and it is not possible for the Authority, its employees or advisers to consider the objectives, technical expertise and particular needs of each party who reads or uses this RFP. The assumptions, assessments, statements and information contained in this RFP, 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 and information contained in this RFP and obtain independent advice from appropriate sources.

Information provided in this RFP to the Applicants may be 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 Authority accepts no responsibility for the accuracy or otherwise for any interpretation or opinion on the law expressed herein.

The Authority, its employees and advisers make no representation or warranty and shall have no liability to any person including any Applicant 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 RFP or otherwise, including the accuracy, adequacy, correctness, reliability or completeness of the RFP and any assessment, assumption, statement or information contained therein or deemed to form part of this RFP or arising in any way in the selection process of Transaction Advisor .

The 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 RFP.

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

The issue of this RFP does not imply that the Authority is bound to select an Applicant or to appoint the Selected Applicant, as the case may be, for the Consultancy and the Authority reserves the right to reject all or any of the Proposals without assigning any reasons whatsoever.

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

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SECTION - I: NOTICE INVITING E-TENDER

INLAND WATERWAYS AUTHORITY OF INDIA

(Ministry of Port, Shipping & Waterways , Government of India)

A-13, Sector-1, Gautam Buddha Nagar, NOIDA, U.P. - 201301

Tel (0120) 2543931: Fax (0120) 2544009

Email: vcidialani@iwai.gov.in , vijaykumardialani@gmail.com

Website: <https://www.iwai.nic.in> & <https://eprocure.gov.in/eprocure/app>

NOTICE INVITING E-TENDER

1. Introduction

Inland Waterways Authority of India (IWAI) invites Tenders / Bids from reputed & eligible **Consulting firms** in two cover systems (Cover – I: Technical Bid and Cover – II: Financial Bid) for “Proposal for engagement of DEA empaneled Transaction Advisor for providing Advisory Services for the development and Operationalization of National Waterway-5 & National Waterway -64 through PPP model.

Critical Data Sheet

- (a) Interested parties may download / participate the Tender document available at the site <https://eprocure.gov.in/eprocure/appand> or IWAI's website "www.iwai.nic.in" and pay INR 5,900/- including GST (Rupees Five Thousand Nine Hundred only) as the cost of tender document / tender fee deposited to IWAI fund through RTGS / NEFT.
- (b) Some important dates for this tender process are as follows:

S.No.	Event Description	Date
1	Issue of RFP	09.11.2022
2	Last date for receiving queries/ clarifications	18.11.2022
3	Pre-Proposal Conference	25.11.2022
4	Authority response to queries	09.12.2022
5	Submission of Technical PPT + Financial Quote	16.12.2022
6	Invitation for Presentation	22.12.2022
7	Letter of Award (LOA)	30.12.2022

2. Brief Scope of the Work

In brief, the scope of work for the appointed DEA Empaneled firm shall be providing Transaction Advisory Services for selecting Concessionaire for Operationalizing select stretches of NW-5 and NW- 64, Odisha on Design, Building Finance, Operate and transfer (DBFOT) basis. The detailed Terms of Reference (ToR) shall be as described in Section - V of this Tender Document.

3. Method of Selection

The successful Bidder will be selected under Quality and Cost Based Selection (QCBS) method and procedures described in this Tender Document.

4. **Clarifications**

Clarification / Query, if any, on the Tender Document can be obtained from the following address:

The Director (Mech Marine)

Inland Waterways Authority of India,

(Ministry of Port, Shipping & Waterways, Govt. of India)

A-13, Sector – 1, Noida-201301, U. P.

Tel. Nos. 0120 - 2543931

Fax No. 0120 – 2544009

E-Mail: vcddialani@iwai.gov.in , vijaykumardialani@gmail.com

Website: <http://www.iwai.nic.in>

5. IWAI reserves the right to accept or reject any or all Tenders / proposal without assigning any reason and no correspondence shall be entertained in this regard.

Director (Mech. Marine)

IWAI, Noida

SECTION-I: INSTRUCTION TO BIDDERS

1 Background

- 1.1 Inland Waterways Authority of India (IWAI/Authority) is a statutory body under the Ministry of Ports, Shipping and Waterways Government of India. IWAI was set up in 1986 with a mandate to develop and regulate the inland waterways of the country primarily declared as National Waterways. In March, 2016, the Government of India has declared 106 new National Waterways in addition to the existing five National Waterways by the National Waterway Act, 2016.
- 1.2 NW-5- The Talcher- Dhamra stretch of river Brahmani, Geonkhali- Charbatia stretch of East Coast Canal, Charbatia- Dhamra stretch of Matai River and Mangalgadi-Paradip stretch of Mahanadi delta rivers (588 km) have been declared as National Waterway – 5 (“NW-5”).
- 1.3 NW-5, by virtue of its unique location, presents a complementary transport route connecting cargo dense regions (including mines and manufacturing facilities) with ports at Paradip and Dhamra. Since select stretches in proximity to ports at Paradip and Dhamra offer readily available navigability conditions, IWAI proposes to adopt a phase-wise development of NW-5 and initiate operationalization of NW-5 through the stretches to be decided as a part of the said assignment.
- 1.4 NW-64- The 425 km long Mahanadi River from Sambalpur to Paradip sea mouth constitutes NW-64. It meets NW-5 near Paradip and has some of the important industrial clusters of Cuttack and Sambalpur along its bank. Since both these Waterways (NW-5 and NW-64) are interconnected thus can be used as a supplementary mode of transportation which can further facilitate in decongesting the existing rail and road network for the cargo originated or destined at Paradip port by shifting part of the traffic onto the waterways.
- 1.5 Thus, IWAI (Authority) intends to develop and operationalize the NW-5 and part of NW-64 from Marshaghai to Paradip Port through private sector participation in phase manner. The detailed terms of reference are provided at Section V.

2 Studies so far undertaken on NW-5

- 2.1 The following studies have been undertaken by IWAI in the past with respect to NW-5
 - (a) Detailed Project Report on National Waterways-5.
 - (b) Study for PPP viability on National Waterway-5.
 - (c) Detailed Project Report cum Front End Engineering Design Report.

2.2 Brief about the National Waterway-5 and National Waterway-64

National Waterway-5

- (a) Total length of NW-5 is 588 km (across Odisha and West Bengal) of which a stretch of 371 km which includes the following stretches in Odisha is proposed to be taken up by IWAI initially

(i) **Stretch-I: comprising of total – 201 km**

(A) Jokadia / Pankapal to Pandanipal	- 84 km
(B) Padanipal to Mangalgadi	- 22km
(C) Mangalgadi to Dhamra	- 28 km
(D) Mangalgadi to Paradip	- 67 km

(ii) **Stretch-II: comprising of total 131 km**

(A) Talcher to Jokadia/Pankapal - 131 km

(iii) **Stretch-III: comprising total 39 km**

(A) Charbatia to Dhamra - 39 km

- (b) As per aforesaid feasibility studies conducted by IWAI, apart from terminals/cargo handling facilities, multiple structural interventions shall be essential to enable navigability of the natural fairway demarcated as NW-5. These structural interventions for Stretch II of NW-5 is more extensive and capital intensive than that for Stretch I (which is connected to ports at Paradip and Dhamra). Therefore, IWAI envisages phase-wise approach for developing different stretches of NW-5 such that the financial and knowledge returns of developing the initial stretch can be re-invested for development of subsequent stretches.
- (c) The indicative development cost of NW-5 from Pankapal to Dhamra / Paradip, referred as Stretch I, is provided hereunder:

S.No	Asset Type	No. of unit	Estimated Capital Expenditure (in cr)
1	Terminal	1	426
2	Weir with Navigational Lock	3	1797
3	Weir (1) and Check Dam (2) + rubber dam (1)	4	587
4	Bridges and cross structure	9	879
5	Raising Bank		4
6	Protection measure	-	468
7	Navigational Aids		22
Total			4,183

National Waterway-64

The 425 km long Mahanadi river from Sambalpur to Paradip sea mouth constitutes NW-64. It meets NW-5 near Paradip and has some of the important industrial clusters of Cuttack and Sambalpur along its bank. This geographical setup along with the inter-connectivity of NW-5 and NW-64 could work as an elaborate IWT network and prove beneficial in serving a broader market base.

IWAI intends to include the stretch between **Paradip port and Marshaghai** as a part of the said assignment (**“hereinafter referred as NW-64”**) as there is readily availability of natural fairway with no/limited requirements for Engineering interventions.

3 Objective of the Assignment

- 3.1 Given the immense scope of cargo movement along NW-5 and NW-64, IWAI is evaluating the potential to undertake development of NW-5 and part of NW-64 (Paradip Port- Marshaghai) as a reliable mode of transport with the involvement of private sector parties through the suitable mode.
- 3.2 IWAI intends to engage a suitable Consultant as transaction advisors to assist IWAI in project structuring, preparation of transaction documents and running the transaction process for development of NW-5 and NW-64 through PPP mode.

4 Detailed Scope of Work for the services

4.1 Module 1: Preparation of tender documents for NW-5 and NW-64 development through PPP mode

- (i) Undertake the Market assessment (through stakeholder consultation and/or secondary data) of the existing cargo movement in and around the immediate catchment area of the NW-5 and NW-64
 - (A) Estimation of the cargo potential in the region including both domestic and EXIM cargo
 - (B) Existing mode of transportation and its cost thereof
 - (C) Identify the volume of cargo which can be diverted to IWT mode and provide the cargo projection for next 20 years.
- (ii) Revalidation of the earlier studies and review the cost estimates and likely revenues
- (iii) Documenting finalized PPP project structure for NW-5 and NW-64 development through PPP mode as per revalidation of the earlier studies undertaken by IWAI and in consultation with IWAI.
- (iv) Assisting the Authority in identification of project risks and in allocation of the same in an efficient and economic manner.
- (v) Assisting client in conducting roadshows/workshops for development and operationalizing of assets on PPP mode.
- (vi) Identification and quantification of estimated financial impact of the Project on Government resources.
- (vii) Preparation of a consolidated list of approvals/consents/clearances required from Government Authority
- (viii) Preparing draft RFQ, draft RFP and draft Concession Agreement (DCA) for identified PPP project structure.
- (ix) Incorporating feedback from relevant authorities (such as IWAI Board, various departments during Inter-Ministerial Consultation and Competent Authority for project appraisal) for PPP approval.
- (x) Preparing final draft RFQ, draft RFP and DCA to be published pursuant to procurement process for NW-5 and NW-64 development through PPP mode.
- (xi) Assisting in preparing tariff structure for assets along NW-5 and NW-64.

4.2 Module 2: Facilitating procurement process for NW-5 and NW-64 development through PPP mode

- (i) Facilitating preparation of responses to queries/clarifications/comments raised by market participants during pre-application and pre-bid stages.
- (ii) Facilitating evaluation of RFQ applications and RFP bids received.
- (iii) Facilitating bid process up till Letter of Award stage.
- (iv) Contract signing with concessionaires.

5 Eligibility Criteria for the Project

- 5.1 For consideration of proposal's evaluation, the Bidder must necessarily satisfy the following Eligible conditions.
- 5.2 To be eligible for evaluation of its proposal, the Bidder shall fulfil the following Technical Criteria (Domestic & International)

S.No.	Minimum Qualification Criteria	Documentary Evidence to be provided
A	Average Annual financial turnover of related services during the last three years, ending 31st March of the previous financial year, should be at least 30% (thirty percent) of the estimated cost.	Certificate signed by Statutory Auditor
B	Bidder should have undertaken transaction advisory for atleast One (1) projects in inland waterways sector/Ports/ infrastructure sector in the past 7 years	Completion Certificate/Certificate signed by Statutory Auditor
C	Bidder should have undertaken feasibility analysis and PPP project structuring for atleast three (3) Projects in ports/inland waterways / infrastructure sector in the past 7 years	Completion Certificate/Certificate signed by Statutory Auditor
D	Bidder should have undertaken tariff structuring for atleast three (3) projects for Central Government/ State Government for Ports / inland waterway sector/ infrastructure sector in the past 7 years	Completion Certificate/Certificate signed by Statutory Auditor/any other relevant document

- 5.3 Bidder(s) will submit the responses with respect to clause 5.2 in the format provided as Form-3C and Form-3D).
- 5.4 Any entity which has been barred by the Central Government, any State Government, a statutory authority, or public sector undertaking, as the case may be, from participating in any project, and the bar subsists as on the date of Proposal, would not be eligible to submit a Proposal either by itself or through its Associates.
- 5.5 A Bidder or its Associate should have, during the last three years, neither failed to perform on any agreement, as evidenced by imposition of a penalty by an arbitral or judicial Authority or a judicial pronouncement or arbitration award against the Applicant or its Associates, nor been expelled from any project or agreement nor have had any agreement terminated for breach by such Applicant or its Associates.

6 Pre-Proposal Meeting and Communication

- 6.1 Pre-Proposal meeting is scheduled to be held on date and time as mentioned in Proposal Data Sheet and the last date for the submission of Pre-Proposal queries is as mentioned in Proposal Data Sheet.
- 6.2 Bidders to send their requests to vc dialani@iwai.gov.in for receipt of the web-link for participation in the Pre-Proposal Conference.

6.3 All queries by prospective Bidders must be sent to the following email Id: vc dialani@iwai.gov.in

- 6.4 The official website of the IWAI is: www.iwai.nic.in. Bidders are advised to visit the Authority's website mentioned above to keep them updated, for any changes/modifications related to this RFP. All communications pertaining to the RFP should contain the following information, to be marked at the top in bold letters:

RFP No. IWAI/NW5/2019-22/Traffic study
Sh. V.C Dialani, Director (MM), IWAI,

7 Clarification and Addendums

7.1 Bidder may request a clarification on any clause of the document up to the date indicated in Proposal Data Sheet in Section-II. Any request for clarification must be sent in writing, or by e-mail to mentioned in the Clause 6.3 of this ITB.

7.2 The Authority will reply the responses (including an explanation of the query but without identifying the source of query) on the website of IWAI. Should the Authority deem it necessary to amend the RFP document as a result of a clarification, it shall do so following the procedure mentioned hereunder:

- (i) At any time before the submission of Bids, the Authority may amend the RFP document by issuing an addendum/corrigendum (amendment) and the information of issue of such amendment will be uploaded on the Authority's website and will be binding on the Bidders. The Bidders shall acknowledge receipt of all amendments. To give reasonable time to the bidders to take an amendment into account, the Authority may, if the amendment is substantial, extend the deadline for the submission of Proposals. The amendment / clarification, if any, to the document will be available on <https://eprocure.gov.in/eprocure/app> and IWAI's website www.iwai.nic.in.

8 Preparation of Proposals

In preparing their Proposals, Bidders are expected to examine in detail the documents comprising the RFP document. Material deficiencies in providing the requested information may result in rejection of the Bidder's Proposal.

Bidders shall adhere to the requirements mentioned below:

8.1 EMD

8.1.1 Bidders shall furnish EMD as mentioned in Section II Proposal Data Sheet. In case of a JV, the EMD shall be furnished by the Lead Member. EMD for the mentioned amount shall be deposited to IWAI Fund through RTGS in the following account

- (i) Name of bank account: IWAI FUND
- (ii) Bank name and address: Union Bank of India, Sector 15 Noida
- (iii) Bank account Number: 513202050000007
- (iv) IFSC: UBIN0551325

8.1.2 Proposals not accompanied by EMD shall be rejected as non-responsive.

8.1.3 No interest shall be payable by the Authority for the sum deposited as Earnest Money Deposit.

8.1.4 The EMD of the unsuccessful bidders would be returned within one month of signing of the contract.

8.1.5 The EMD shall be forfeited by the Authority in the following events:

- (i) If Proposal is withdrawn during the validity period or any extension agreed by the Bidder thereof.
- (ii) If the Proposal is varied or modified in a manner not acceptable to the Authority after opening of Proposal during the validity period or any extension thereof.
- (iii) If the Bidder tries to influence the evaluation process.

- (iv) If the First ranked Bidder withdraws his proposal during negotiations (failure to arrive at consensus by both the parties shall not be construed as withdrawal of Proposal by the Consultant)
- (v) In case the Bidder, submits false certificate in terms of any documents supported to such RFP.
- (vi) If the Bidder fails to sign the contract in accordance with conditions of contract on receipt of award of work.
- (vii) If the Bidder fails to furnish the Performance security deposit (*e- Bank Guarantee*) in accordance with conditions of contract.
- (viii) In case of a Bidder revoking or withdrawing his Proposal or varying any terms in regard thereof without the consent of the Authority in writing, his earnest money paid along with the RFP shall be forfeited.

8.2 Cost of RFP Document

All Bidders are required to pay the cost of RFP Document as mentioned in Section-II of Proposal Data Sheet through RTGS, to be deposited in the following account,

- (i) Name of bank account: IWAI FUND
- (ii) Bank name and address: Canara Bank, Sector-18, Noida Branch Morna
- (iii) Bank account Number: 90622150000086
- (iv) IFSC: CNRB0018778

The cost of RFP Document is Non-Refundable.

8.3 Deleted

8.4 Taxes

The Bidders shall fully familiarise themselves with the applicability of all types of taxes (such as inter alia Income Taxes, custom duties, fees, levies, GST and any other taxes). All such taxes, as prevailing on date of submission of the proposals, must be included by the Applicant in the Financial Proposal along with the conditions mentioned therein, except for GST which will be quoted separately by the Bidder as per Form –4B. It may be noted that the bidder shall have to be registered with GST and shall submit the proof of the same. The reimbursement shall be made as per the applicable taxation rules and regulations.

8.5 Currency

Bidders shall express the price of the consultancy work in Indian Rupees.

8.6 Language

The Proposal as well as all related correspondence exchanged between the Bidders and the Authority shall be in English language and shall be strictly as per the formats attached in this RFP Document. The Authority will evaluate only those proposals that are received in the specified formats and are complete in all respects. Any supporting documents submitted by the Bidder with its Proposal or subsequently, in response to any query/ clarification from the Authority shall be in English and in case any of these documents is in another language, it must be accompanied by an accurate translation of all the relevant

passages in English, and in such case, for all purposes of interpretation of the Proposal, the translation in English shall prevail.

8.7 Proposal Validity

The Section – II: Proposal Data Sheet indicates for how long the Proposals submitted by the Bidders must remain valid after the submission date. During this period, Bidders shall maintain the availability of Key Personnel staff nominated in the Proposal and also the amount quoted for the services in the Financial Proposal shall remain unchanged. Should the need arise, the Authority may request Bidders to extend the validity period of their Proposals. Bidders who agree to such extension shall confirm that they will maintain the availability of the Key Personnel staff proposed in the Proposal and that their financial Proposal will remain unchanged. Also, in their confirmation of extension of validity of the Proposals, Bidders could submit new staff in replacement, which would be considered in the final evaluation for Contract award. The Bidders have the right to refuse to extend the validity of the Proposals and Proposals of such Bidders, who do not extend the validity of their Proposals, shall not be considered for further evaluation.

8.8 Number of Proposals

A Bidder can submit one bid only either as a single entity or in the form of a JV/consortium. In case a Bidder submits or participates in more than one Proposal, the application of the Bidder shall be rejected summarily.

8.9 Proposals by Joint venture/consortium

- 8.9.1 The Joint Venture/consortium can be entered between two or more firms and limited to maximum three firms.
- 8.9.2 The Proposal should contain the information required for each member of the consortium
- 8.9.3 Member of the consortium shall nominate one member as the Lead Member/Member in Charge (**“the Lead Member”**) as per the terms stipulated in this RFP. The nomination(s) shall be supported by a Power of Attorney, as per the format provided at Form 3K, signed by all the other members of the Consortium
- 8.9.4 An individual Bidder cannot at the same time be member of Consortium applying for this RFP Proposal. Further, a member of a particular Bidder Consortium cannot be member of any other Bidder Consortium applying for this proposal;
- 8.9.5 Members of the Consortium need to execute the Joint Bidding Agreement and submit the Agreement as a part of their Technical Proposal. The format of Joint Bidding Agreement is provided as Form-3L. The Joint Bidding Agreement to be submitted along with the proposal shall inter alia include:
 - (a) Include a statement to the effect that all members of Consortium shall be liable jointly and severally for all obligations under the assignment.
 - (b) Clearly outline the roles and responsibility of the individual members, particularly with reference to financial and technical obligations.
- 8.9.6 Lead Member shall be authorized to incur liabilities and to receive instructions for and on behalf of the Members of the Consortium, whether jointly or severally and entire execution of the contract (including

payment) shall be carried out exclusively through the “Lead Member/Member in charge” as per Form 3L – Joint Bidding Agreement.

- 8.9.7 Consortium should have to meet all the Qualification (both Technical and Financial capacity) as stipulated in clause 5.2 and clause 18.1 of this ITB.
- 8.9.8 In event of default by any member in the execution of his part of the contract, the Lead Member has an option to appoint an equally competent party after obtaining a written confirmation of the Client, to ensure the execution of that part of contract, however in the event of Lead Member being defaulter then Client may terminate the contract as per terms of the contract.
- 8.9.9 In case of award of work to Consortium, contract will be signed by the Lead Member/Member in Charge of the Consortium
- 8.9.10 Notwithstanding the permission to assigning the responsibilities of the defaulting partner to any other equally competent party acceptable to the Authority as mentioned in sub clause 8.9.7 above, all the partners of the Joint Venture/consortium will retain the full and undivided responsibility for the performance of their obligations under the Contract and/ or for satisfactory completion of the Works.

9 Conflict of Interest

- 9.1 Authority requires that selected bidder (Consultant) provides professional, objective, and impartial advice and at all times holds the Authority's interests paramount, strictly avoids conflicts with other assignment(s) / job(s) or his own corporate interests and act without any consideration for future work.
- 9.2 Without limitation on the generality of the foregoing, Bidders, and any of their affiliates, shall be considered to have a conflict of interest and shall not be recruited, under any of the circumstances set forth below:-
- (a) **Conflicting Activities:** A firm or any of its affiliates who have been engaged by the Authority to provide goods, works or assignment/job other than consulting assignment / job for a project shall be disqualified from providing consulting assignment / job related to those goods, works or assignments / jobs. Conversely, a firm or any of its affiliates who have been hired to provide consulting assignment / job for the preparation or implementation of a project, and any of its affiliates, shall be disqualified from subsequently providing goods or works or assignment / job other than consulting assignment / job resulting from or directly related to the firms consulting assignment / job for such preparation or implementation. For the purpose of this paragraph, assignment / job other than consulting assignment / job are defined as those leading to a measurable physical output; for example surveys, exploratory drilling, aerial photography, satellite imagery etc.
- (b) **Conflicting assignment/ job:** A Consultant {including its Personnel and Sub-Consultant(s)} or any of its affiliates shall not be hired for any assignment/ job that by its nature may be in conflict with another assignment/ job of the Consultant to be executed for the same or for another Authority, for example a Consultant hired to prepare engineering design for an infrastructure project shall not be engaged to prepare an independent environmental assessment for the same project and a Consultant assisting an Authority in the privatization of public assets shall not purchase nor advise purchasers of such assets.

- (c) **Conflicting Relationships:** A Consultant (including its Personnel and Sub-Consultants) that has a business or family relationship with a member of the Authority's staff who is directly or indirectly involved in any part of (i) the preparation of the Terms of Reference of the assignment/job (ii) the selection process for such assignment/job or (iii) supervision of the Contract, may not be awarded a Contract unless the conflict stemming from this relationship has been resolved in a manner acceptable to the Authority throughout the selection process and the execution of the Contract.

9.3 Consultants have an obligation to disclose any situation of actual or potential conflict that impacts their capacity to serve the best interest of Authority, or that may reasonably be perceived as having this effect. Any such disclosure shall be made as per the standard forms of technical proposal provided herewith. If the Consultant fails to disclose said situations and if the Authority comes to know about any such situation at any time, it may lead to the disqualification of the Consultant during bidding process or termination of its Contract during execution of assignment.

9.4 No agency or current employees of the Authority shall work as Consultants under their own ministries, departments or agencies.

10 Acknowledgement by the Applicant

It shall be deemed that by submitting the proposal, the Bidder has

- 10.1 Made a complete and careful examination of the RFP document for Consultancy;
- 10.2 Received all relevant information requested from the Authority;
- 10.3 Satisfied itself about all matters and necessary information required for submitting a competitive bid;
- 10.4 Acknowledged that it does not have a Conflict of Interest; and
- 10.5 Agreed to be bound by the undertaking provided by it under the terms and conditions laid in this RFP document.

11 Deleted

12 Submission of Proposal

The Proposal shall be submitted in the **hard copy** and delivered to the office of Chairman, IWAI on or before Proposal closing Date & Time.

The Technical and Financial Bids, complete in all respects, should be submitted in three envelopes as per the details mentioned below. These Envelopes shall be superscribed “EMD and Cost of RFP document”, “Technical Proposal” and “Financial Proposal” and put inside the bigger sealed envelope which shall be superscribed with the words

“RFP for engagement of DEA Empaneled Transaction Advisor for providing advisory services for the Development and Operationalization of NW-5 & NW-64 through PPP”.

12.1 Envelope- I : EMD and Cost of RFP Document

- (a) Proof of Cost of RFP Document as specified in Section – II: Proposal Data sheet
- (b) Proof of EMD as specified in Section – II: Proposal Data Sheet

12.2 Envelope-II: Technical Proposal

- (a) Original tender document with all addendums and corrigendum issued till date duly stamped and signed by the authorised signatory of the bidder.
- (b) Form-3A: Technical Proposal Submission Form duly stamped and signed by the Authorized Signatory of the Bidder
- (c) Form 3 B: Bidder Information Sheet, in case of consortium, kindly provide the details with respect to each of the consortium member duly signed and stamped by the Authorized Signatory of the Bidder
- (d) Power of Attorney/Power of Attorney for lead member of the JV/Consortium as per Form 3J/3K as the case may be duly stamped and signed
- (e) Joint Bidding Agreement as per Form 3L duly stamped and signed
- (f) Copy of GST Registration Certificate
- (g) Copy of PAN card of the Bidder
- (h) Bank details, along with the cancelled cheque
- (i) Integrity Agreement duly signed and stamped
- (j) Form-3C Annual Turnover
- (k) Form-3D: Project Specific Experience as per clause 5.2 B, 5.2 C and 5.2 D duly stamped and signed by the Authorised Signatory of the Bidder.
- (l) Copies of completion certificates on client letter head for the projects submitted in above Forms
- (m) Form-3E: Description of Approach, Methodology and Work Plan for performing the Assignment
- (n) Form-3F: Provide the case study of a successful IWT / infrastructure sector /Port sector PPP transaction in last 3 years of any Government Agency
- (o) Form-3G: Particulars of Key Personnel duly stamped and signed
- (p) Form-3H: Assignment of Key Personnel duly stamped and signed
- (q) Form-3I: Curriculum Vitae (CV) of Key Personnel
- (r) Each CV shall bear original signatures of Key Personnel and the Authorized signatory of the Bidder.
- (s) A CV shall be summarily rejected if the educational qualification of the Key Personnel proposed does not match with the requirement stipulated in the RFP document.

It may be noted that the Technical Proposal shall not contain any reference to the Consultancy fee

12.3 Envelope-III: Financial Proposal

Financial Proposal to be submitted as per Section IV of this RFP.

- (i) This will contain consultancy fee to be charged for completing the work

(ii) While working out consultancy fees, following points should be noted:

- (a) The Bidders will have to make their own arrangements for the transport/accommodation/TA/DA of their personnel assigned to this project. The price quoted shall also include the Bidders representative visit to various offices, and other places for meetings, data collection, presentations, public consultation, secretarial staff, their salary, allowances, overhead expenditure etc.
- (b) All duties, taxes, royalties and other levies payable by the bidder under the Contract, or for any other cause, shall be included in the rates, prices, and total Bid price submitted by the Bidder except for service tax which will be quoted separately as per the format in Form Fin – 1 and which will be reimbursed to the Bidder on producing proof of payment. The rates and prices quoted by the Bidder shall be fixed for the duration of the Contract and shall not be subject to any adjustment. The prices shall be quoted by the Bidder entirely in Indian Rupees. All payments shall be made in Indian Rupees (INR).

The total duration of consultancy services shall be specified in Section-V: Terms of Reference

13 Extension of Bid submission date

The Authority may extend the date of submission of bids by issuing an addendum and uploading the same on Authority's website.

14 Late Proposal

Proposals received by the Authority after the specified bid submission date or any extension thereof, pursuant to clause 13, shall not be considered for evaluation and shall be summarily rejected.

15 Deleted

16 Modification/Substitution/Withdrawal of Proposals

The bidders may modify, substitute or withdraw their Proposal after submission before the submission deadline as mentioned NIT in this RFP document through e-Procurement Mode.

No Proposals shall be modified after the deadline for submission of Proposals.

17 Proposal Opening and Evaluation

17.1 From the time the proposals are opened to the time the Contract is awarded, the Bidders should not contact the Authority on any matter related to its Technical and/or Financial Proposal. Any effort by Bidders to influence the Authority in the examination, evaluation, ranking of Proposals, and recommendation for award of Contract may result in the rejection of the Bidders' Proposal.

17.2 The Authority will constitute a tender evaluation committee (TEC) which will carry out the evaluation process

- 17.3 Proposal opening shall be carried out in two stages. Firstly, 'Technical Proposal' shall be opened on the date and time mentioned in Section – II: Proposal Data Sheet (Proposal Due Date). 'Financial Proposal' of those Bidders whose Technical Proposal has been determined to be responsive and obtained a Minimum Technical score of 75 marks as stipulated in the RFP Document, shall be opened on a subsequent date, which will be notified to such Bidders. In the event of the specified date for the submission of bids being declared a holiday for the Authority, the Proposals will be opened at the appointed time and location on the next working day. Proposals for which a notice of withdrawal has been submitted in accordance with Clause 16 shall not be opened.
- 17.4 The TEC shall evaluate the Technical Proposals on the basis of their responsiveness to the Terms of Reference and by applying the evaluation criteria, sub-criteria specified Clause 19. In the first stage of evaluation, a Proposal shall be rejected if it is found deficient or found not meeting the minimum eligibility criteria as mentioned in clause 5 of this ITB. Only responsive Proposals shall be further taken up for evaluation. A Proposal shall be considered responsive only if:
- (i) It is received by the Bid submission date and time including any extension thereof, pursuant to Clause 13
 - (ii) It is accompanied by the Earnest Money Deposit' as specified in Clause 8.1;
 - (iii) It is accompanied by the Cost of RFP Document Fee as specified in Clause 8.2;
 - (iv) It does not contain any condition or qualification or suggestion or submission.
- 17.5 The Authority shall inform the Bidders, whose Technical Proposals are found responsive and thereafter the Technical and Financial Proposal will be evaluated on the marking system mentioned in Clause 19.
- 17.6 Authority shall inform the Bidder whose Technical Proposal fulfils the criteria stipulated in the RFP document, of the Date, Time and Place of opening of the Financial Proposals. The Bidders so informed, or their representative, may attend the meeting of opening of Financial Proposals.
- 17.7 At the time of the opening of the 'Financial Proposals', the names of the Bidders, whose Proposals were found responsive along with the prices, the total amount of each Proposal, and such other details as the Authority may consider appropriate will be announced by the Authority at the time of Proposal opening.
- 17.8 Upon the opening of financial Proposal, the Financial score and combined score of Technical and financial proposal will be worked out as per clause 19.

18 Key Personnel for the Project

The table below presents the list of key experts necessary to be deployed for the project along with a summary of the educational qualifications and minimum relevant work experience required from such experts. CVs proposed for any expert role shall be summarily rejected if conditions of minimum educational qualification and essential criteria/criterion under professional experience are not met.

18.1 Key Personnel

#	Expert	Educational Qualification	Professional experience	Scoring pattern and maximum marks		
1	Team lead	Graduation in engineering in any discipline and MBA/ equivalent	Essential Criteria: 1. Minimum 12 years of total work experience Preferred Criteria: 1. Relevant experience of working on National Waterways in India 2. Experience of working on in inland waterways' projects in international geographies 3. Experience of PPP transaction experience in inland waterways/Ports for Central Government/ State Government 4. Experience of tariff setting in inland waterways sector /Ports for Central Government/ State Government inland waterways asset. 5. Experience of working in Central / State projects with any Government Agency 6. Should be on a payroll of the firm	Maximum marks: 15		
				Criteria	Scoring pattern	Maximum marks
				Total Work Experience	– 12 years- 0.5 mark – More than 12 years- 20 years - 1 marks – More than 20 years 2 marks	2
				Relevant experience of working on National waterways	– 1 unique waterway: 0.5 mark – 2 unique waterways: 1 marks – 3 or above unique waterways: 2 marks	2
				Relevant experience in international waterways	– 1 project: 1 mark – 2 Projects- 2 marks	2
				PPP transaction experience in waterways/ Ports	– 1 PPP transaction: 1 mark – 2 PPP transactions: 2 marks – 3 or above PPP transactions: 4marks	4
				Tariff structuring experience in Inland Waterways/ Ports	– 1 IWT facility: 0.5 mark – 2 IWT facilities: 2 marks – 3 or above IWT facilities: 3 marks	3
				Experience of working in Odisha Project with any	– 1 project: 1 mark	1

#	Expert	Educational Qualification	Professional experience	Scoring pattern and maximum marks		
				Government Agency		
				On the Payroll of the Firm	– Yes- 1 mark	1
				Total		15
2	PPP Expert cum Deputy Team Lead	Graduation in any discipline and Post-graduation or equivalent in any field	<p>Essential criterion: Minimum 8 years of total work experience</p> <p>Preferred criteria:</p> <p>1. No. of years of experience in transaction advisory services for PPP projects</p> <p>2. Assisted in transaction advisory services for at least 2 projects</p> <p>3. Undertaken at least one (1) international assignment of Technical Assistance in PPP</p> <p>4. Should be on a payroll of the firm</p>	Maximum marks: 8		
				Criteria	Scoring pattern	Maximum marks
				Total Work Experience	– 8 years: 2 marks – More than 8 years to 10 years: 2.5 marks – More than 20 years: 3 marks	3
				Assisted in transaction advisory services for the projects in India	– Upto Two Projects: 0.5 mark – Upto Three Projects: 1 marks – More than Three Projects: 2 marks	2
				Undertaken international assignment for providing PPP Technical Assistance	– Upto One Assignment: 1 mark – Two Assignments: 2 marks	2
				On a payroll of the firm	– Yes: 1 marks	1
				Total		8
3	IWT / Traffic expert	Graduation in engineering in any discipline and	<p>Essential criterion: Minimum 5 years of total work experience</p> <p>Evaluation criteria:</p> <p>1. Minimum experience of 5</p>	Maximum marks: 12		
				Criteria	Scoring pattern	Maximum marks
				No. of years of relevant	– 5 years: 1 mark	3

#	Expert	Educational Qualification	Professional experience	Scoring pattern and maximum marks		
		Post-graduation or equivalent in any field	years in IWT sector / infrastructure sector 2. Experience of conducting cargo movement using inland waterway transport (IWT) / infrastructure sector 3. Relevant experience of working on at least 1 inland waterway including but not limited to feasibilities studies and/or project structuring and/or transaction advisory etc. 4. Experience of working in Central / State Project with any Government Agency 5. Should be on a payroll of the firm	experience in IWT sector	– More than 5 to 10 years: 2 mark – More than 10 years: 3 marks	
				No. of cargo movement(s) conducted using IWT in last 10 years	– 1 movement: 1 mark – 2 to 3 movements: 2.5 marks – More than 3 movements: 3 marks	3
				Relevant experience of working on at least 1 inland waterway including but not limited to feasibilities studies and/or project structuring and/or transaction advisory etc.	– 1 unique waterway: 1 mark – 2 unique waterways: 2 marks – 3 or above unique waterways: 4 marks	4
				Experience of working in Odisha Project with any Government Agency	– 1 or above: 1 mark	1
				On a payroll of the firm	– Yes: 1 mark	1
				Total		12
4	Financial expert	MBA/ PGDM or equivalent	Essential criterion: Minimum 8 years of total work experience Preferred criteria: 1. Experience of undertaking at least	Maximum marks: 7		
				Criteria	Scoring pattern	Maximum marks
				Experience of	– 3 IWT facilities: 1 mark	4

#	Expert	Educational Qualification	Professional experience	Scoring pattern and maximum marks		
			3 financial feasibility studies for IWT /Port sector / infrastructure sector 2. Experience of preparing tariff structure for at least 1 Central Government/ State Government IWT sector asset 3. Should be on a pay roll of the Firm	<div>undertaking at least 3 financial feasibility studies for IWT /Port Sector / infrastructure sector</div> <div>Experience of preparing tariff structure for at least 1 Central Government/ State Government IWT sector asset</div> <div>On the Pay roll of the Firm</div>	<div>- 4 IWT facilities: 2 marks</div> <div>- 5 or more IWT facilities: 4 marks</div> <div>- 1 PPP transaction: 1 mark</div> <div>- 2 PPP transactions: 1.5 marks</div> <div>- 3 or above PPP transactions: 2 marks</div> <div>- Yes: 1 mark</div>	<div></div> <div>2</div> <div>1</div> <div>7</div>
5	Legal expert	LLB and LLM	Essential criterion: Minimum 8 years of total work experience Preferred criteria: 1. Minimum experience of 8 years in providing legal expertise to infrastructure sector on transaction and PPP aspects 2. Experience of providing legal services for at least 2 ports and maritime sector projects including IWT sector/ infrastructure sector 3. Experience of undertaking transaction advisory for at least one	Maximum marks: 8		
				Criteria	Scoring pattern	Maximum marks
				Minimum experience of 8 years in providing legal expertise for PPP Projects	- 8 years: 1 mark - 8 to 20 years: 2 marks - 20 or more years: 3 marks	3
				Experience of providing legal services for at least 2 ports and maritime sector projects including IWT sector	- 2 or above: 1 mark	1
				Experience of undertaking transaction advisory for	- 1 PPP transaction: 1 mark	3

#	Expert	Educational Qualification	Professional experience	Scoring pattern and maximum marks		
			project in IWT/port sector / infrastructure sector 4. Employee of the participating firm	at least one IWT sector asset	– 2 PPP transactions: 2 marks – 3 or above PPP transactions: 3 marks	
				On a payroll of the firm	– Yes: 1 mark	1
				Total		8

18.2 Support Role

S.No	Expert	Education Qualification	Professional Experience	Envisaged Role
1.	Consultant	MBA/CA/CFA	Minimum 5 years of total experience	Support role
2	Structural Engineer	B.E /B. Tech (Civil)	Minimum 5 years of experience in marine/river & inland navigation structure	Support role (To be assist to IWAI regular basis at Noida Office)

18.3 Consultant shall submit declaration certifying proposed key expert is an employee of the participating firm (where applicable).

19 Evaluation of Technical Proposal & Financial Proposal

19.1 For the Bidders that qualify the Minimum Qualification criteria as per clause 5.2 shall be further evaluated. The Technical Score (S_t) consists of marks allocated to following two parts

- (a) Technical Presentation – Consisting of credentials, Approach and Methodology
- (b) Key Personnel

19.2 Criteria, sub-criteria, and point system for the evaluation of the Technical Proposals:

S No.	Criteria	Maximum marks
1	Technical Presentation	
1a	Technical approach and methodology Approach and Methodology: 10 marks Work Plan, and Organization and Staffing: 10 marks	20
1b	Presentation on understanding of Project context, Appreciation of Project, Sector Experience and Logistic Project experience in the State of Odisha	15
1c	One case study of a successful IWT/ infrastructure sector /ports sector PPP transaction in last 3 years for any Government Agency	15
	Sub-Total	50
2	Key Personnel - qualifications and competences for the assignment	
2a	Team Leader	15
2b	PPP Expert	8
2c	IWT / traffic expert	12
2d	Finance expert	7
2e	Legal expert	8
	Sub-Total	50
	Grand Total	100

19.3 The Bidder will submit the Approach and Methodology, Work Plan and one case study for successful completion of IWT/ infrastructure sector /Ports sector transaction as per clause 19.2 and also make the presentation as per clause 19.2 1b. The submission and presentation will be evaluated by a committee appointed by IWAI and provide a technical score (Tech PPT).

19.4 Key personnel qualification and competencies will be evaluated as per clause 18.1 and provide a technical score (KeyP)

19.5 Shortlisting of Bidders

The bidders ranked on the basis of technical score (S_t), not more than five shall be pre-qualified and shortlisted for price evaluation in the second stage. The Minimum technical Score to pass the technical-Presentation is 75 marks. However, if the number of such prequalified bidder is less than two, IWAI at its sole discretion, pre-qualify the Bidder(s) whose Technical score is less than 75 marks provided that in such event, the total number of pre-qualified and shortlisted bidder shall not exceed two.

19.6 Combined technical score will be calculated in a following manner

Particulars	Score
Marks for Technical Presentation (Tech PPT)	Tech PPT
Marks to Key Personnel	KeyP
Tech PPT- KeyP Weightage (Pw:Kw)	60:40
Combined Technical Score Calculation	$S_t = Pw * TechPPT + Kw * KeyP$

19.7 Score of Financial Proposal

The Financial score shall be the financial proposal submitted by the empaneled TA (S_f) will be calculated in a following manner

- (a) The lowest evaluated Financial Proposal (F_{min}) is given the maximum financial score (S_f) of 100.
- (b) The formula for determining the financial scores (S_f) of all other Proposals is calculated as following:

$S_f = 100 \times F_{min} / F$, in which " S_f " is the financial score, " F_{min} " is the lowest price, and " F " the price of the proposal under consideration.

19.8 Final Evaluation

A combined score of Technical and Financial will be evaluated. The successful Bidder shall be selected as per the following procedure:-

- (i) The weights, Technical (T_w) and Financial (F_w) would be given for Technical and Financial proposals, where $T_w=0.80$ and $F_w=0.20$
(T_w =the weight given to technical proposal; F_w =weight given to the financial proposal;
 $T_w+F_w=1$)
- (ii) Final Score (S) would be arrived at using the following formula:
 $S = S_t \times T_w + S_f \times F_w$
- (iii) The Bidder achieving the Highest Combined Score will be successful Bidder/Selected Bidder

20 Award of Contract

20.1 The Authority shall issue a Letter of Award to the selected Bidder. It may also notify all other Bidders about the decision taken (if requested by other Bidders).

- 20.2 The Consultant will sign the contract after fulfilling all the formalities/pre-conditions mentioned in the Draft Agreement for Provision of Transaction Advisor in Section VI, within 15 days of issuance of the Letter of Award.
- 20.3 The Consultant is expected to commence the Assignment/job on the date and at the location specified in Draft Agreement for provision of Transaction Advisor.

21 Insurance

The Consultant shall maintain at his own cost personal and accident insurance for all his Personnel and property as considered satisfactory by the Client to cover any risks arising from work and services to be rendered by the Consultant under this Consultancy Agreement. The Consultant shall ensure the same for his sub-Consultants also. Client shall not be responsible for any such events or effects thereof. A statement to this effect may be submitted with the offer.

22 Indemnity

It shall be deemed that by submitting the Bid, the Bidder agrees and releases the Employer, its employees, agents and advisers, irrevocably, unconditionally, fully and finally from any and all liability for claims, losses, damages, costs, expenses or liabilities in any way related to or arising from the exercise of any rights and/or performance of any obligations hereunder, pursuant hereto and/or in connection herewith and waives any and all rights and/or claims it may have in this respect, whether actual or contingent, whether present or future.

23 Fraud and Corrupt Practices

- 23.1 The Bidders and their respective officers, employees, agents and advisers shall observe the highest standard of ethics during the Selection Process. Notwithstanding anything to the contrary contained in this RFP for Consultancy, the Authority shall reject a Proposal without being liable in any manner whatsoever to the Bidder, if it determines that the Bidder has, directly or indirectly or through an agent, engaged in corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice (collectively the “Prohibited Practices”) in the Selection Process. In such an event, the Authority shall, without prejudice to its any other rights or remedies, forfeit the EMD or Performance Security, towards damages payable to the Authority for, inter alias, time, cost and effort of the Authority, in regard to the RFP for Consultancy, including consideration and evaluation of such Bidder’s Proposal.
- 23.2 Without prejudice to the rights of the Authority under Clause 21 (Insurance) hereinabove and the rights and remedies which the Authority may have under the LOA or the Agreement, if a Bidder or Consultant is found by the Authority to have directly or indirectly or through an agent, engaged or indulged in any prohibited practices during the Selection Process, or after the issue of the LOA or the execution of the Agreement, such Bidder or Consultant shall not be eligible to participate in any RFP or RFP for Consultancy issued by the Authority during a period of two years from the date such Bidder or Consultant, as the case may be, is found by the Authority to have directly or through an agent, engaged or indulged in any prohibited practices, as the case may be.

24 Ownership of Document and Copyright

All the deliverables and study outputs including primary data shall be compiled, classified and submitted by the Consultant to the Authority in hard copies and editable soft copies in addition to the requirements for the reports and deliverables indicated in the Terms of Reference.

The study outputs shall remain the property of the Authority and shall not be used for any purpose other than that intended under these Terms of Reference without the prior written permission of the Authority. In the case of any deliverables by Consultant consisting of any Intellectual Property Rights ("IPR") rights of the Consultant, the Consultant shall provide the Authority with necessary irrevocable royalty-free license to use such IPR. Further, for the avoidance of any doubt, it is clarified that any intellectual property developed during the course of, or as a result of, the services rendered in relation to the consultancy, shall be and remain property of the Authority.

SECTION-II: PROPOSAL DATA SHEET

Proposal Data Sheet

Clause No. of Data Sheet	Reference of ITB	Particulars	Description
1.	1.4	Authority	The Chairperson, Inland Waterways Authority of India (IWAI), A-13, Sector-1, Noida-201 301
2.	1.4	Name of Assignment	Development and Operationalization of NW-5 & NW-64 for select stretches through PPP model
3.	-	Method of Selection	Quality and Cost Based Selection (QCBS)
4.		Website of Proposal Submission/ RFP issue	09.11.2022
5.	6.3	Email for correspondence with client	vc dialani@iwai.gov.in
6.	6.1	Pre-Proposal Meeting	25.11.2022
7.	6.1	Last date for seeking clarifications	25.11.2022
8.	-	Estimated cost	Rs. 1,50,25,000/- (excluding GST)
9.	8.1	EMD	Rs. 3,00,500/-
10.	8.2	Cost of RFP Document	Rs. 59,00/- (incl. GST)
11.	8.7	Bid Validity	120 days after the opening of the Technical Proposal
12.		Estimated type of Key Personnel required	7
13.	5.2	The formats of Technical Proposal	(i) Form 3A: Technical Proposal submission form (ii) Form-3B: Bidder information (iii) Form-3C: Annual Turnover of the firm (iv) Form-3 D: Project Specific Experience (v) Copy of Completion certificate or Statutory Auditor Certificate to be provided to substantiate the claim
14.	18.1 and 19.2		(i) Form-3E: Description of Approach and Methodology and Work Plan (ii) Form-3F: provide the case study of a successful IWT/ infrastructure sector / Port sector transaction in the last three years (i) Form-3G: Particulars of Key Personnel (ii) Form-3H: Assignments of Key Personnel (iii) Form-3I: CV of key Personnel
15.	-	Proposal Due Date	16.12.2022
16.	-	Opening of Proposal	20.12.2022

16. Entire Duration of On-boarding Transaction Advisor

The Authority would endeavor to adhere to the following schedule:

S.No.	Event Description	Date
1	Issue of RFP	09.11.2022
2	Last date for receiving queries/ clarifications	18.11.2022
3	Pre-Proposal Conference	25.11.2022
4	Authority response to queries	09.12.2022
5	Submission of Technical PPT + Financial Quote	16.12.2022
6	Invitation for Presentation	22.12.2022
7	Letter of Award (LOA)	30.12.2022

17. The Consultant will make presentations of its Deliverables to the IWAI for discussions as and when required.

18. Completion of Services

All the deliverables shall be complied, classified, and submitted by the consultant to the IWAI in soft form. The documents comprising the deliverables shall remain the property of the IWAI and shall not be used by the Consultant for any purpose other than that intended under these Terms of Reference without the permission of IWAI. The Assignment shall stand completed on acceptance by the IWAI of all the deliverables, as mandated under the Agreement/ work-order for the Assignment. Unless completed earlier, the Assignment shall be deemed completed and finally accepted by the IWAI and final deliverable shall be deemed approved by the IWAI as satisfactory upon expiry of 60 (sixty) days after receipt of the final deliverable unless the IWAI, within such 60 days period, gives written notice to the Consultant specifying in detail, the deficiencies in the services. The Consultant shall thereupon promptly make any necessary corrections and/or additions, and upon completion of such corrections or additions, the foregoing process shall be repeated.

Section-III: Technical Proposal Forms

Form-3 A: Technical Proposal submission form

To,

.....

.....

.....

Sub: RFP dated [insert date and month], 2022 for Appointment of Transaction Advisors for Development and Operationalization of NW-5 & NW64 through PPP.

Dear Sir

With reference to your RFP document dated, we, having examined all relevant documents and understood their contents, hereby submit our Proposal for selection. The Proposal is unconditional and unqualified.

We are submitting our Proposal as [sole applicant / Consortium] [insert full name and address Consultant/ each members of Consortium].

We understand you are not bound to accept any Proposal you receive.

Further,

- 1) We acknowledge that Authority will be relying on the information provided in the Proposal and the documents accompanying the Proposal for selection of the Consultant, and we certify that all information provided in the Proposal and in the supporting documents is true and correct, nothing has been omitted which renders such information misleading; and all documents accompanying such Proposal are true copies of their respective originals.
- 2) This statement is made for the express purpose of appointment as the Consultant for the aforesaid Assignment.
- 3) We shall make available to Authority/Client any additional information it may deem necessary or require for supplementing or authenticating the Proposal.
- 4) We acknowledge the right of Authority/Client to reject our application without assigning any reason or otherwise and hereby waive our right to challenge the same on any account whatsoever.
- 5) We certify that in the last 3 years, we/any of our Consortium Member have neither failed to perform on any contract, as evidenced by imposition of a penalty by an arbitral or judicial authority or a judicial pronouncement or arbitration award against the Applicant, nor been expelled from any project or contract by any public authority nor have had any contract terminated by any public authority for breach on our part.
- 6) We declare that:
 - (a) We have examined and have no reservations to the RFP, including any Addendum/corrigendum issued by the Client;
 - (b) We do not have any conflict of interest in accordance with the terms of RFP
 - (c) We have not directly or indirectly or through an agent engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice, as defined in the

- RFP document, in respect of any tender or request for proposal issued by or any agreement entered into with Client or any other public sector enterprise or any government, Central or State; and
- (d) We hereby certify that we have taken steps to ensure that no person acting for us or on our behalf will engage in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice.
- 7) We understand that you may cancel the selection process at any time and that you are neither bound to accept any Proposal that you may receive nor to select the Consultant, without incurring any liability to the Applicants.
- 8) We declare that we/any member of the consortium, are/is not a Member of a/any other Consortium applying for this RFP.
- 9) We certify that in regard to matters other than security and integrity of the country, we or any of our affiliates have not been convicted by a court of law or indicted or adverse orders passed by a regulatory authority which would cast a doubt on our ability to undertake the Consultancy for the Assignment or which relates to a grave offence that outrages the moral sense of the community.
- 10) We further certify that in regard to matters relating to security and integrity of the country, we have not been charge-sheeted by any agency of the Government or convicted by a court of law for any offence committed by us or by any of our affiliates. We further certify that neither we nor any of our Consortium members have been barred by the central government, any state government, a statutory body or any public sector undertaking, as the case may be, from participating in any project or bid, and that any such bar, if any, does not subsist as on the date of this RFP.
- 11) We further certify that no investigation by a regulatory authority is pending either against us or against or against our CEO or any of our Directors / Managers
- 12) 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 Client in connection with the selection of Consultant or in connection with the selection process itself in respect of the above mentioned Assignment.
- 13) We agree and understand that the proposal is subject to the provisions of the RFP document. In no case, shall we have any claim or right of whatsoever nature if the consultancy for the Assignment is not awarded to us or our proposal is not opened or rejected.
- 14) We agree to keep this offer valid for one hundred twenty (120) days from the Proposal Due Date specified in the RFP.
- 15) A Power of Attorney in favor of the authorized signatory to sign and submit this Proposal and documents is attached herewith.
- 16) A Power of Attorney in favor of the Lead Member to sign and submit this Proposal and documents for and on behalf of the consortium members is attached herewith. (applicable in case of consortium only)
- 17) EMD and RFP processing fee as provided in the RFP has been paid by us and we are enclosing the proof of the such payment.

- 18) In the event of our being selected as the Consultant, we agree to enter into a Contract in accordance with the contract prescribed in the RFP. We agree not to seek any changes in the aforesaid form and agree to abide by the same.
- 19) We have studied the RFP and all other documents carefully. We understand that except to the extent as expressly set forth in the Contract, we shall have no claim, right or title arising out of any documents or information provided to us by Client or in respect of any matter arising out of or concerning or relating to the selection process including the award of consultancy.
- 20) The Technical and Financial Proposal is being submitted. This Technical Proposal read with the Financial Proposal shall constitute the application which shall be binding on us.
- 21) We agree and undertake to abide by all the terms and conditions of the RFP Document.
- 22) We, the Consortium Members agree and undertake to be jointly and severally liable for all the obligations under the RFP documents till the completion of the Assignment/ Services in accordance with the terms of the RFP documents. (Applicable in case of Consortium only)

Your Sincerely

(Authorized Signatory)

Form-3B: Bidder information Sheet

Bidder Name [Insert full name]
Bidder's Party Name [insert full name of Applicant's Party]
Bidder's Party country of registration [indicate country of registration]
Bidder's year of constitution [indicate year of constitution]
Bidder's legal address in country of constitution [insert street/number/town or city/ country]
Bidder Authorized representative information Name: [Insert full name] Address: [insert street/number/town or city/ country] Telephone/Fax numbers: <i>[insert telephone/fax numbers, including country and city codes]</i> E-mail address: <i>[indicate e-mail address]</i>
Attached are copies of original documents of <input type="checkbox"/> Articles of Incorporation (or equivalent documents of constitution or association), and/or registration documents of the legal entity named above <input type="checkbox"/> In case of a Government-owned enterprise or institution, documents establishing legal and financial autonomy, operation in accordance with commercial law, and absence of dependent status 2. Included are the organizational chart, a list of Board of Directors, and the beneficial ownership

Note: This Form shall be supplied with Identity proof of the authorized representative

Form-3C: Minimum Turnover of the firm

(Refer Clause 5.2 A)

S.No.	Financial Year	Annual Turnover (in Rs cr)
1		
2		
3		

Certificate from the Statutory Auditor*

This is to certify that -----(name of the Applicant) has received the payment shown above against the respective years on account of professional fees.

(Signature, name and designation of the Authorized Signatory)

Date:

Name and Seal of the firm

*in case the Applicant does not have a statutory auditor, it shall provide the certificate from its chartered accountant that ordinarily audits the annual accounts of the Applicant

Note: Please do not attach any printed Annual Financial Statement

Form-3D: Project Specific Experience

(Refer 5.2 B, 5.2 C and 5.2 D)

[Using the format below, provide information on each assignment for which your firm, and each associate for this assignment, was legally contracted either individually as a corporate entity or as one of the major companies within an JV for carrying similar works under this assignment.]

1. Use projects with copy of proof of experience as required for meeting the minimum Qualification criteria prescribed
2. Exhibit only those projects undertaken in the past Seven (7) years from the Proposal Due Date
3. Projects without the proof of completion including start date, end date and value of the work executed as applicable from respective client will not be considered.

#	Client Name, Name of work & Location of Project	Contract Value	Date of Start of Work	Scheduled Completion Date	Actual Completion Date	Details of Work	Remarks

Firm's Name :

Authorized Signature :

- * The Bidder shall enclose document proof viz. copy of the completion certificate issued by the client for all Assignments above

or

- * Certificate duly signed by Statutory Auditor

Note:

1. For the purpose of evaluation, Bidders should assume 7% inflation for Indian Rupees every year and 2% for foreign currency portions per year compounded annually.
2. Bidders should mention the maximum value of similar works executed during the last seven years (adjusted last day of the month previous to the one in which this Tender is invited).

3. In case of foreign currency, it should first be escalated at the rate mentioned above and then the amount so derived shall be converted to INR at the exchange rate prevailing last day of the month previous to the one in which this Tender is invited.
4. Exchange rate should be taken from official website of RBI (<https://www.rbi.org.in/scripts/ReferenceRateArchive.aspx>)
5. In case exchange rate for the currency in consideration is not available on RBI website (mentioned above), Bidders shall quote exchange rates from websites such as www.xe.com, www.oanda.com, along with copy of the exchange rate used by the Bidder for the conversion.
6. Any additional comments / information to substantiate that the said work conforms to the specified similar works can also be indicated by the bidder as deemed fit.

Please limit the description of each project in two A4 size sheet of paper. Descriptions exceeding two (02) A4 size sheet of paper may or may not be considered for evaluation

Form-3E : Description of Approach, Methodology and Work Plan for Performing the Assignment

(Refer Clause 7.1 1a)

Technical approach, methodology and work plan are key components of the Technical Proposal. The Applicant will present its Technical Proposal (items a, b and c below) in no more than 40 single sided or 20 double sided printed sheets (A- 4 size, minimum 11 font size). The Page count does not include the Forms.

- (t) Technical Approach and Methodology
- (u) Work Plan
- (v) Organization and Staffing

Technical Approach and Methodology: In this section the Applicant should explain the understanding of the assignment, approach to the services and methodology for carrying out the activities to accomplish the objectives mentioned. The consultant should highlight any challenges anticipated in delivering a programme of this nature and discuss proposed approaches to overcome the challenges and meet the requirement of the assignment.

Work Plan: In this section the Applicant should describe the overall work plan for the activities of the assignment. The work plan must show (i) mobilization details for the Key Personnel (ii) Key tasks and deliverables which form the basis of invoice payment.

Organization and Staffing: In this section the Applicant should briefly discuss the structure, composition, roles and responsibility of the integrated team and how the integrated team will drive the assignment. Sub-consultants envisaged to deliver the scope of work must be listed with their role and responsibility noted in the organization chart

**Form-3F : Provide the case study of a successful IWT/ infrastructure sector / Port
Sector transaction in last 3 years**
(Refer Clause 7.1 1c)

Please limit the description of case study in three A4 size sheet of paper. Descriptions exceeding three (03) A4 size sheet of paper may or may not be considered for evaluation

Form 3 G: Details of Key Personnel

(Refer Clause 6.1)

Form- 1: Particulars of Key Personnel

s. No.	Designation of Key Personnel	Name	Educational Qualification	Length of Professional Experience	Present Employment		No. of Assignments\$
					Name of Firm	Employed Since	
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
1.	Team Lead						
2.	PPP Expert cum Deputy Team Lead						
3.	IWT / traffic Expert						
4.	Financial Expert						
5.	Legal Expert						
6.	Civil Engineer						
7.	Consultant						

\$ refer Clause 6.1 for demonstration of credentials of Key Personnel

Form-3 H : Assignments of Key Personnel

(Refer Clause 6.1)

Name of Key Personnel:	
Designation of Key Personnel:	
Name of the Project:	
Name of Consulting Firm where employed:	
Description of services performed by the Key Personnel (including designation):	
Name of client and Address: (indicate whether public or private)	
Name, telephone no. and fax no. of client's representative:	
Estimated capital cost of the Project (in Rs. crore or US\$ million):	
Start date and finish date of the services (month/ year):	
Brief description of the Project:	
It is certified that the aforesaid information is true and correct to the best of my knowledge and belief.	
(Signature and name of Key Personnel)	

Notes:

1. Use separate sheet for each Eligible Project.
The Applicant may attach separate sheets to provide brief particulars of other relevant experience of the Key Personnel

Form-3I: Curriculum Vitae (CV) of Key Personnel

(Refer Clause 6.1)

- 1. Proposed Position/Designation :**
- 2. Name of Firm :**
[Insert name of firm proposing the staff]
- 3. Name of Staff: [Insert full name] :**
- 4. Date of Birth :**
- 5. Nationality :**
- 6. Education :**
[Indicate college/university and other specialized education of staff member, giving names of institutions, degrees obtained, and dates of obtainment. In case of foreign degrees, Indian equivalent to be indicated]:
- 7. Membership of Professional Associations :**
- 8. Other Training :**
- 9. Countries of Work Experience :**
[List countries where staff has worked in the last ten years] :
- 10. Language Known :**
[For each language indicate proficiency: good, fair, or poor in speaking, reading, and writing] :
- 11. Employment Record :**
[Starting with present position, list in reverse order every employment held by staff member since graduation, giving for each employment (see format here below): dates of employment, name of employing organization, positions held.] :

From [Year] : To [Year] :.....
Employer :.....
Positions held :.....
- 12. Detailed Tasks Assigned**
[List all tasks to be performed under this Assignment/Job] :
- 13. Work Undertaken that Best Illustrates Capability to Handle the Tasks Assigned:**
[Among the Assignment/jobs in which the staff has been involved, indicate the following information for those Assignment/jobs that best illustrate staff capability to handle the tasks listed under Para 12.]

Name of Assignment/Job or project :
Year:
Location:
Employer:

Main Project Features

Position Held:

Activities Performed:

Period of deployment:

14. Certification :

I, the undersigned, certify that to the best of my knowledge and belief, this CV correctly describes me, my qualifications, and my experience. I understand that any wilful misstatement described herein may lead to my disqualification or dismissal, if engaged. I also confirm my availability for the project.

I hereby declare that I have not given my consent to any other Consultant besides (name of bidder) to use my CV for the purpose of bid submission for this project.

Date:.....

[Signature of staff member]

Place:.....

[Signature of authorized signatory of the firm]

[Full name of authorized representative]

FORM 3 J: Power of Attorney

(To be executed on Non-Judicial Stamp Paper of Rs. 100 and duly notarized)

Know all men by these presents, We,(name of organization and address of the registered office) do hereby constitute, nominate, appoint and authorise Mr. /Ms.son/daughter/wife and presently residing at ... who is presently employed with/retained by us and holding the position of, as our true and lawful attorney (hereinafter referred to as the "**Authorised Representative**"), with power to sub-delegate to any person, to do in our name and on our behalf, all such acts, deeds and things as are necessary or required in connection with or incidental to submission of our Proposal for "**Development and Operationalization of NW-5 through PPP framework**". The selection of Consultant for Inland Waterways Authority of India (the "**Authority**") including but not limited to signing and submission of all applications, Bids and other documents and writings, participating in pre-bid and other conferences and providing information/responses to the Employer, representing us in all matters before the Employer, signing and execution of all contracts and undertakings consequent to acceptance of our Bid and generally dealing with the Employer in all matters in connection with or relating to or arising out of our Bid for the said Project and/or upon award thereof to us till the entering into of the Contract with the Employer.

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

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

...
(Signature, Name, Designation and Address)

Witnesses:

1.....

2.

Accepted

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

Notes:

4. 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.
5. Wherever required, the Applicant should submit for verification the extract of the charter documents and other documents such as a resolution / power of attorney in favour of the person executing this Power of Attorney for the delegation of power hereunder on behalf of the Applicant
6. Wherever required, the Applicant should submit for verification the extract of the charter documents and other documents such as a resolution / power of attorney in favour of the person executing this Power of Attorney for the delegation of power hereunder on behalf of the Applicant

FORM 3K: Power of Attorney for Lead Member of JV/Consortium

(To be executed on Non-Judicial Stamp Paper of Rs. 100 and duly notarised. For a Power of Attorney executed and issued overseas, the document will also have to be legalised by the Indian Embassy and notarized in the jurisdiction where the undertaking is being issued.)

Whereas the Inland Waterways Authority of India (the “Authority”) has invited Bids from interested parties for the **“Development and Operationalization of National Waterways-5 & NW-64 through PPP framework”** (hereinafter referred to as **“The Work”**)” and Whereas,
.....and (collectively the “JV/Consortium”) being Members of the JV/Consortium are interested in bidding for the Project in accordance with the terms and conditions of the tender document and other connected documents in respect of the Project, and

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

NOW THEREFORE KNOW ALL MEN BY THESE PRESENTS

We,having our registered office at, M/s. having our registered office at, M/s. having our registered office at, and having our registered office at, (hereinafter collectively referred to as the “Principals”) do hereby irrevocably designate, nominate, constitute, appoint and authorise M/s having its registered office at, being one of the Members of the JV/Consortium, as the Lead Member and true and lawful attorney of the JV/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 JV/Consortium and any one of us during the bidding process and, in the event the JV/Consortium is awarded the contract, during the execution of the Project and in this regard, to do on our behalf and on behalf of the JV/Consortium, all or any of such acts, deeds or things as are necessary or required or incidental to the pre-qualification of the JV/Consortium and submission of its Bid for the Project, including but not limited to signing and submission of all, Bid and other documents and writings, 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 JV/Consortium and generally to represent the JV/Consortium in all its dealings with the Authority, and/ or any other Government Agency or any person, in all matters in connection with or relating to or arising out of the JV/Consortium’s Bid for the **“The Work”**.

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

IN WITNESS WHEREOF WE THE PRINCIPALS ABOVE NAMED HAVE EXECUTED THIS POWER OF ATTORNEY ON THIS DAY OF 2022.

For (Signature)
..... (Name & Title)

For (Signature)
..... (Name & Title)

For (Signature)
..... (Name & Title)

Witnesses:

1.
2.
.....

(Executants)

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

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 executants and when it is so required, the same should be under common seal affixed in accordance with the required procedure.*
- *Also, wherever required, the Bidder should submit for verification the extract of the charter documents and documents such as a board or shareholders' resolution/ power of attorney in favour of the person executing this Power of Attorney for the delegation of power hereunder on behalf of the Bidder.*
- *For a Power of Attorney executed and issued overseas, the document will also have to be 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 Bidders 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 Apostil certificate.*

Form- 3L: Joint Bidding Agreement

(To be executed on Stamp paper of appropriate value)

THIS JOINT BIDDING AGREEMENT is entered into on this the day of 20...
AMONGST

2. {..... Limited, a company incorporated under the Companies Act, 1956} and having its registered office at (hereinafter referred to as the “**First Part**” which expression shall, unless repugnant to the context include its successors and permitted assigns)

AND

3. {..... Limited, a company incorporated under the Companies Act, 1956} and having its registered office at (hereinafter referred to as the “**Second Part**” which expression shall, unless repugnant to the context include its successors and permitted assigns)

AND

4. {..... Limited, a company incorporated under the Companies Act, 1956} and having its registered office at (hereinafter referred to as the “**Third Part**” which expression shall, unless repugnant to the context include its successors and permitted assigns)

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

WHEREAS,

- (A) Inland Waterways Authority of India (the “**Authority**”), has invited Proposals (the “**Proposals**”) by its Request for Bid dated (The “**tender Document**” for “**Development and Operationalization of National Waterway-5 through PPP framework**” (The “**Work**”)
- (B) The Parties have read and understood the RFP Document and are interested in jointly bidding for the Project as members of a JV/Consortium and in accordance with the terms and conditions of the RFP document and other RFP documents in respect of the Project, and
- (C) It is a necessary condition under the RFP document that the members of the JV/Consortium shall enter into a Joint Bidding Agreement and furnish a copy thereof with the Bid.

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 RFP document.

2. JV/Consortium

- 2.1 The Parties do hereby irrevocably constitute a JV/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 JV/Consortium and not individually and/ or through any other JV/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 JV/Consortium is declared the Successful Bidder and awarded the Consultancy, the Lead Member/Member in Charge shall enter into a contract for consultancy services (“**Agreement**”) with the Authority as per the terms of the RFP and for performing all obligations as the Consultant in the terms of the Agreement for Consultancy.

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 JV/Consortium and shall have the power of attorney from all Parties for conducting all business for and on behalf of the JV/Consortium during the Bidding Process and until the Expiration of the Agreement.
- (b) Party of the Second Part shall be assisting the Lead member in the manner as recorded herein for carrying out the entire scope of work awarded under this RFP.

5. Joint and Several Liabilities

The Parties do hereby undertake to be jointly and severally responsible for all obligations and liabilities relating to the Consultancy and in accordance with the terms of the RFP and the Agreement, for the performance of the Agreement.

6. Lead Member or Member in Charge

Without prejudice to the joint and several liabilities of all the Parties, each Party agrees that it shall exercise all rights and remedies under the Agreement through the Lead Member /Member-In-Charge and the Authority shall be entitled to deal with such Lead Member/Member-In-Charge as the representative of all Members Each Party agrees and acknowledges that:

- (a) any decision (including without limitation, any waiver or consent), action, omission, communication or notice of the Lead Member/Member-In-Charge on any matters related to the Agreement shall be deemed to have been on its behalf and shall be binding on it. The Authority shall be entitled to rely upon any such action, decision or communication from the Lead Member/ Member-in-Charge;
- (b) consolidated invoices for the services in relation to the Consultancy performed by all the Members shall be prepared and submitted by the Lead Member/Member-In- Charge and the Authority shall have the right to release payments solely to the Lead Member/Member-In- Charge and the Authority shall not in any manner be responsible or liable for the inter se allocation of payments, works etc. among the Parties; and
- (c) any notice, communication, information or documents to be provided to the Consultant shall be delivered to the authorized representative of the Lead Member/Member-In- Charge (as designated pursuant to the Contract) and any such notice, communication, information or documents shall be deemed to have been delivered to all the Parties

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 laws of its incorporation and has all requisite power and authority to enter into this Agreement;
- (b) The execution, delivery and performance by such Party of this Agreement has been authorized by all necessary and appropriate corporate or Governmental action and a copy of the extract of the charter documents and board resolution/ power of attorney in favour of the person executing this Agreement for the delegation of power and authority to execute this Agreement on behalf of the Consortium Member is annexed to this Agreement, and will not, to the best of its knowledge:
 - (i) Require any consent or approval not already obtained;
 - (ii) Violate any Applicable Law presently in effect and having applicability to it;
 - (iii) Violate the memorandum and articles of association, by-laws or other applicable organizational documents thereof;
 - (iv) Violate any clearance, permit, concession, grant, license or other Governmental authorization, approval, judgment, 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 Affiliates is a party that presently affects or which would have a material adverse effect on the financial condition or prospects or business of such Party in the fulfilment of its obligations under this Agreement.

8. Authorized Representation

The parties agree that, who is employed with the Lead Member/ member in charge, or his/her nominee shall be the authorized representative of the consortium, to do on behalf of the Consortium, all such acts, deeds and things as are necessary or required in connection with or incidental to submission of the Consortium's proposal for and the Consultancy including but not limited to signing and submission of all applications, proposals and other documents, participating in pre-proposal and other conferences and providing information/responses to the Authority, representing the consortium in all matters before the Client, signing and execution of all contracts/Agreements and undertakings consequent to acceptance of the Consortium's proposal .and generally dealing with the Authority in all matters in connection with or relating or arising out of the Consultancy.

9. Termination

In case the Consultancy is awarded to the Consortium, this Agreement shall be effective from the date hereof and shall continue in full force and effect until the Expiration of Contract. However, in case the Consortium is not selected for award of the Consultancy, the Agreement shall stand terminated upon intimation by the Authority that it has not been selected and upon return of the Bid Security by the Client.

10. Miscellaneous

10.1 This Joint Bidding Agreement shall be Governed by laws of India.

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

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

SIGNED, SEALED AND DELIVERED

For and on behalf of For and on behalf of the LEAD MEMBER

(Signature)

(Name)

(Designation)

(Address)

SIGNED, SEALED AND DELIVERED

For and on behalf of For and on behalf of SECOND PART

(Signature)

(Name)

(Designation)

(Address)

In the presence of:

1) _____

2) _____

Notes:

- *The mode of the execution of the Joint Bidding Agreement should be in accordance with the procedure, if any, laid down by the Applicable Law and the charter documents of the executant(s) and when it is so required, the same should be under common seal affixed in accordance with the required procedure.*
- *Each Joint Bidding Agreement should attach a copy of the extract of the charter documents and documents such as resolution / power of attorney in favour of the person executing this Agreement for the delegation of power and authority to execute this Agreement on behalf of the Consortium Member.*
- *For a Joint Bidding Agreement executed and issued overseas, the document shall be legalised by the Indian Embassy and notarized in the jurisdiction where the Power of Attorney has been executed.*

FORM 3M: INTEGRITY PACT

Between

Inland Waterways Authority of India (IWAI) hereinafter referred to as “**The Principal**”

And

..... hereinafter referred to as “**The Bidder**”

Preamble

The Principal intends to award, under laid down organizational procedures, contract/s for -----
----- The Principal values full compliance with all relevant laws of the land, rules, regulations, economic use of resources and of fairness / transparency in its relations with its Bidder(s) and / or Contractor(s).

In order to achieve these goals, the Principal will appoint Independent External Monitors (IEMs) who will monitor the tender process and the execution of the contract for compliance with the principles mentioned above.

Section 1 - Commitments of the Principal

- (1) The Principal commits itself to take all measures necessary to prevent corruption and to observe the following principles:-
 - (a) No employee of the Principal, personally or through family members, will in connection with the tender for, or the execution of a contract, demand; take a promise for or accept, for self or third person, any material or immaterial benefit which the person is not legally entitled to.
 - (b) The Principal will, during the tender process treat all Bidder(s) with equity and reason. The Principal will in particular, before and during the tender process, provide to all Bidder(s) the same information and will not provide to any Bidder(s) confidential / additional information through which the Bidder(s) could obtain an advantage in relation to the tender process or the contract execution.
 - (c) The Principal will exclude from the process all known prejudiced persons.
- (2) If the Principal obtains information on the conduct of any of its employees which is a criminal offence under the JPC/PC Act, or if there be a substantive suspicion in this regard, the Principal will inform the Chief Vigilance Officer and in addition can initiate disciplinary actions.

Section 2 - Commitments of the Bidder(s)/ Contractor(s)

- (1) The Bidder(s)/ Contractor(s) commit themselves to take all measures necessary to prevent corruption. The Bidder(s)/ Contractor(s) commit themselves to observe the following principles during participation in the tender process and during the contract execution.
 - (a) The Bidder(s)/ Contractor(s) will not, directly or through any other person or firm, offer, promise or give to any of the Principal's employees involved in the tender process or the execution of the contract or to any third person any material or other benefit which he/ she is not legally entitled to, in order to obtain in exchange any advantage of any kind whatsoever during the tender process or during the

execution of the contract. The Bidder(s)/ Contractor(s) will not enter with other Bidders into any undisclosed agreement or understanding, whether formal or informal. This applies in particular to prices, specifications, certifications, subsidiary contracts, submission or non-submission of bids or any other actions to restrict competitiveness or to introduce cartelization in the bidding process.

- (b) The Bidder(s)/ Contractor(s) will not commit any offence under the relevant JPC/PC Act; further the Bidder(s)/ Contractor(s) will not use improperly, for purposes of competition or personal gain, or pass on to others, any information or document provided by the Principal as part of the business relationship, regarding plans, technical proposals and business details, including information contained or transmitted electronically.
- (c) The Bidder(s)/Contractors(s) of foreign origin shall disclose the name and address of the Agents/representatives in India, if any, Similarly the Bidder(s)/Contractors(s) of Indian Nationality shall furnish the name and address of the foreign principals, if any. Further details as mentioned in the "Guidelines on Indian Agents of Foreign Suppliers" shall be disclosed by the Bidder(s)/Contractor(s). Further, as mentioned in the Guidelines all the payments made to the Indian agent/representative have to be in Indian Rupees only.
- (d) The Bidder(s)/ Contractor(s) will, when presenting their bid, disclose any and all payments made, is committed to or intends to make to agents, brokers or any other intermediaries in connection with the award of the contract.
- (e) Bidder(s) /Contractor(s) who have signed the Integrity Pact shall not approach the Courts while representing the matter to IEMs and shall wait for their decision in the matter.

- (2) The Bidder(s) / Contractor(s) will not instigate third persons to commit offences outlined above or be an accessory to such offences.

Section 3 - Disqualification from tender process and exclusion from future contracts

- (1) If the Bidder(s)/Contractor(s), before award or during execution has committed a transgression through a violation of Section 2, above or in any other form such as to put their reliability or credibility in question, the Principal is entitled to disqualify the Bidder(s)/Contractor(s) from the tender process or take action as per the procedure mentioned in the "**Guidelines on Banning of business dealings**".

Section 4 - Compensation for Damages

- (1) If the Principal has disqualified the Bidder(s) from the tender process prior to the award according to Section 3, the Principal is entitled to demand and recover the damages equivalent to Earnest Money Deposit/ Bid Security.
- (2) If the Principal has terminated the contract according to Section 3, or if the Principal is entitled to terminate the contract according to Section 3, the Principal shall be entitled to demand and recover from the

Contractor liquidated damages of the Contract value or the amount equivalent to Performance Bank Guarantee.

Section 5 - Previous transgression

- (1) The Bidder declares that no previous transgressions occurred in the last three years with any other Company in any country conforming to the anti-corruption approach or with any Public Sector Enterprise in India that could justify his exclusion from the tender process.
- (2) If the Bidder makes incorrect statement on this subject, he can be disqualified from the tender process or action can be taken as per the procedure mentioned in "Guidelines on Banning of business dealings".

Section 6 - Equal treatment of all Bidders/ Contractors/ Subcontractors

- (1) In case of Sub-contracting, the Principal Contractor shall take the responsibility of the adoption of Integrity Pact by the Sub-contractor.
- (2) The Principal will enter into agreements with identical conditions as this one with all Bidders and Contractors.
- (3) The Principal will disqualify from the tender process all bidders who do not sign this Pact or violate its provisions.

Section 7 - Criminal charges against violating Bidder(s)/ Contractor(s)/ Subcontractor(s)

- (1) If the Principal obtains knowledge of conduct of a Bidder, Contractor or Subcontractor, or of an employee or a representative or an associate of a Bidder, Contractor or Subcontractor which constitutes corruption, or if the Principal has substantive suspicion in this regard, the Principal will inform the same to the Chief Vigilance Officer.

Section 8 - Independent External Monitor

- (1) The Principal appoints competent and credible Independent External Monitor for this Pact after approval by Central Vigilance Commission. The task of the Monitor is to review independently and objectively, whether and to what extent the parties comply with the obligations under this agreement.
- (2) The Monitor is not subject to instructions by the representatives of the parties and performs his/her functions neutrally and independently. The Monitor would have access to all Contract documents, whenever required. It will be obligatory for him / her to treat the information and documents of the Bidders/Contractors as confidential. He/ she reports to the Chairman, IWAI.
- (3) The Bidder(s)/Contractor(s) accepts that the Monitor has the right to access without restriction to all Project documentation of the Principal including that provided by the Contractor. The Contractor will also grant the Monitor, upon his/her request and demonstration of a valid interest, unrestricted and unconditional access to their project documentation. The same is applicable to Sub-contractors.

- (4) The Monitor is under contractual obligation to treat the information and documents of the Bidder(s)/ Contractor(s)/ Sub-contractor(s) with confidentiality. The Monitor has also signed declarations on 'Non-Disclosure of Confidential information' and of 'Absence of Conflict of interest'. In case of any conflict of interest arising at a later date, the IEM shall inform Chairperson, IWAI and rescues himself/ herself from that case.
- (5) The Principal will provide to the Monitor sufficient information about all meetings among the parties related to the Project provided such meetings could have an impact on the contractual relations between the Principal and the Contractor. The parties offer to the Monitor the option to participate in such meetings.
- (6) As soon as the Monitor notices, or believes to notice, a violation of this agreement, he/she will so inform the Management of the Principal and request the Management to discontinue or take corrective action, or to take other relevant action. The monitor can in this regard submit non-binding recommendations. Beyond this, the Monitor has no right to demand from the parties that they act in a specific manner, refrain from action or tolerate action.
- (7) The Monitor will submit a written report to the Chairperson, IWAI within 8 to 10 weeks from the date of reference or intimation to him by the Principal and, should the occasion arise, submit proposals for correcting problematic situations.
- (8) If the Monitor has reported to the Chairperson, IWAI, a substantiated suspicion of an offence under relevant JPC/ PC Act, and the Chairman, IWAI has not, within the reasonable time taken visible action to proceed against such offence or reported it to the Chief Vigilance Officer, the Monitor may also transmit this information directly to the Central Vigilance Commissioner.
- (9) The word 'Monitor' would include both singular and plural.

Section 9 - Pact Duration

This Pact begins when both parties have legally signed it. It expires for the Contractor ~~12 months~~ 45 weeks after the last payment under the contract, and for all other Bidders 6 months after the contract has been awarded. Any violation of the same would entail disqualification of the bidders and exclusion from future business dealings.

If any claim is made / lodged during this time, the same shall be binding and continue to be valid despite the lapse of this pact as specified above, unless it is discharged / determined by Chairperson, IWAI.

Section 10 - Other provisions

- (1) This agreement is subject to Indian Law. Place of performance and jurisdiction is the Registered Office of the Principal, i.e. Noida.
- (2) Changes and supplements as well as termination notices need to be made in writing. Side agreements have not been made.
- (3) If the Contractor is a partnership or a consortium, this agreement must be signed by all partners or consortium members

- (4) Should one or several provisions of this agreement turn out to be invalid, the remainder of this agreement remains valid. In this case, the parties will strive to come to an agreement to their original intentions.
- (5) Issues like Warranty / Guarantee etc. shall be outside the purview of IEMs.
- (6) In the event of any contradiction between the Integrity Pact and its Annexure, the Clause in the Integrity Pact will prevail.

For & On behalf of the IWAI	For & On behalf of Bidder/ Contractor
(Office Seal)	(Office Seal)

Place -----

Date -----

Section-IV: Financial Proposal Forms

Form- 4A Financial Proposal Letter

<Covering Letter (On Applicant's letter head)>

(Date and Reference)

To,

Dear Sir,

Subject: Appointment of Consultant for Financial [and Transaction] Advisory Services for
.....Project.

I/We, (Applicant's name) herewith enclose the Financial Proposal for selection of my/our firm as Consultant for Financial [and Transaction] Advisory Services for above.

I/We agree that this offer shall remain valid for a period of 120 (One Hundred twenty) days from the Proposal Due Date or such further period as may be mutually agreed upon.

Yours faithfully,

(Signature, name, and designation of the authorized signatory)

Form- 4B: Financial Proposal

S.No	Description	Amount in Words (INR)	Amount in Figure (INR)
A	End to End Transaction Advisory Cost		
1	Total Financial Quote		
2	GST (----%)		
3	Grand Total		

Note:

1. The financial evaluation shall be based on the Total Financial Quote (as at Sr. No. 3 of the table above)
2. All payments shall be made in Indian Rupees and shall be subject to applicable Indian laws, withholding taxes if any.

Signature, name, and designation of the Authorized Signatory Name of Firm:

Address:

Form -4C: Estimates of Personnel Cost

Estimates of Key Personnel					
S.No	Name of Personnel	Position	Man-Month Rate (Rs)	Time in Months	Total Amount (Rs)
1					
2					
3					
4					
5					
6					
7					
	Total				

Note:

1. All payments shall be made in Indian Rupees and shall be subject to applicable Indian laws, withholding taxes if any.

Signature, name, and designation of the Authorized Signatory Name of Firm:

Address:

Section -V: Terms of Reference

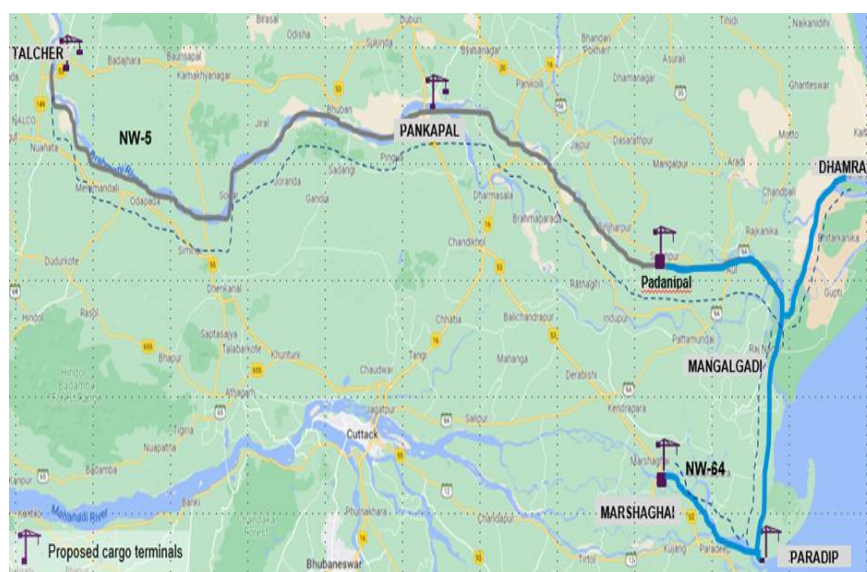
Terms of Reference

for

Study on National Waterway-5 development through Public Private Partnership and preparation of draft transaction documents for the project

1. Background

- (a) Odisha - often referred to as India's best kept secret- is rich in mineral deposits including iron, manganese, bauxite and coal. It contributes to more than 50% of iron ore produced in India. Owing to such abundant mineral deposits and an active mining industry, the state has several thermal power plants and multiple state of the art metal refining and processing industries. The entire ecosystem of thermal power plants, mining and metal processing is a major generator of bulk cargo (including raw materials and finished products) which is not only distributed in domestic markets but also exported especially through Dhamra and Paradip ports. Also, it requires a robust and reliable network of transport for evacuation of ores from mines (both for export and domestic consumption), supply of raw material to refining/processing centers and distribution of finished products from refining/processing centers.
- (b) While currently, the ecosystem is serviced by existing road and rail networks in the state, inland waterway transport (IWT) over **National Waterway – 5 (NW-5)** has the potential to offer significant advantages over or in combination with other modes in logistics chains.



- (c) Select stretches of the Brahmani river and Mahanadi delta along with the East Coast Canal were declared as **NW-5** in November 2008.
- (d) Total length of NW-5 is 588 km (across Odisha and West Bengal) of which a stretch of 371 km which includes the following stretches in Odisha is proposed to be taken up by IWAI initially
- (e) **Stretch 1 :**
 - (i) Jokadia/Pankapal to Mangalgadi (106 km)
 - (ii) Dhamra to Mangalgadi (28 km)
 - (iii) Mangalgadi to Paradip (67 km)

(f) Stretch 2

- (i) Talcher to Jokadia/Pankapal (131 km)

(g) Stretch 3

- (i) Charbatia to Dhamra – 39 km
- (h) Recently, a shipment by IFFCO was dispatched from Paradip over a sub-stretch (of Stretch 1) of NW-5. This event along with associated discussions and developments paved the path for assessing the possibility of starting operation on a patch/sub-stretch of Stretch I (NW-5) running between Padanipal to Paradip / Dhamra.
- (i) In addition to NW-5, IWAI also intends to develop and operationalize a part of NW-64 from Marshaghai to Paradip Port, a stretch of about 35 km through PPP mode as part of above assignment.

2. Detailed Scope of Work for the services

Module 1: Preparation of tender documents for NW-5 and NW-64 development through PPP mode

- (i) Undertake the Market assessment (through stakeholder consultation and/or secondary data) of the existing cargo movement in and around the immediate catchment area of the NW-5 and part of NW-64
- (A) Estimation of the cargo potential in the region including both domestic and EXIM cargo
- (B) Existing mode of transportation and its cost thereof
- (C) Identify the volume of cargo which can be diverted to IWT mode and provide the cargo projection for next 20 years.
- (ii) Revalidation of the earlier studies and review the cost estimates and likely revenues
- (iii) Documenting finalized PPP project structure for NW-5 and NW-64 development through PPP mode as per revalidation of the earlier studies undertaken by IWAI and in consultation with IWAI.
- (iv) Assisting the Authority in identification of project risks and in allocation of the same in an efficient and economic manner.
- (v) Assisting client in conducting roadshows/workshops for development and operationalizing of assets on PPP mode.
- (vi) Identification and quantification of estimated financial impact of the Project on Government resources.
- (vii) Preparation of a consolidated list of approvals/consents/clearances required from Government Authority
- (viii) Preparing draft RFQ, draft RFP and draft Concession Agreement (DCA) for identified PPP project structure.
- (ix) Incorporating feedback from relevant authorities (such as IWAI Board, various departments during Inter-Ministerial Consultation and Competent Authority for project appraisal) for PPP approval.
- (x) Preparing final draft RFQ, draft RFP and DCA to be published pursuant to procurement process for NW-5 and NW-64 development through PPP mode.
- (xi) Assisting in preparing tariff structure for assets along NW-5 and NW-64.

Module 2: Facilitating procurement process for NW-5 and NW-64 development through PPP mode

- (ii) Facilitating preparation of responses to queries/clarifications/comments raised by market participants during pre-application and pre-bid stages.
- (iii) Facilitating evaluation of RFQ applications and RFP bids received.
- (iv) Facilitating bid process up till Letter of Award stage.

3. Deliverables Timelines and Payment Terms

The Consultant will prepare and submit the following reports to the Client:

S No.	Deliverable description	Timeline of submission	Payment (as % of the total Financial Quote)
1	Submission & acceptance of asset management strategy document for NW-5 and NW-64 development	Within 3 weeks from effective date	20%
2	Submission & acceptance of Draft transaction documents (including RFQ, RFP, DCA)	Within 16 weeks from effective date	10%
3	Providing responses to comments/feedback during project appraisal	Within 22 weeks from effective date	10%
4	Publishing of RFQ	Within 25 weeks from effective date	10%
5	Providing responses to comments/ feedback during pre-application stage of procurement for PPP project	Within 32 weeks from effective date	10%
6	Publishing/Releasing of RFP	Within 36 weeks from effective date	20%
7	Providing responses to comments/ feedback during pre-bid stage of procurement for PPP project	Within 45 weeks from effective date	10%
8	Signing of Agreement		10%

All the payments shall be made in Indian Rupees only and shall be subject to applicable Indian Laws for withholding taxes, if any.

4. Duration of Contract

The contract is for 45 weeks

5. Key Personnel

#	Expert	Educational Qualification	Professional experience
1	Team lead	Graduation in engineering in any discipline and MBA/ equivalent	Essential Criteria: Minimum 12 years of total work experience Preferred Criteria: 1. Relevant experience of working on National Waterways in India 2. Experience of working on inland waterways' projects in international geographies 3. Experience of PPP transaction experience in inland waterways/Ports for Central Government/ State Government 4. Experience of tariff setting in inland waterways sector /Ports for Central

#	Expert	Educational Qualification	Professional experience
			Government/ State Government inland waterways asset. 5. Experience of working in Odisha projects with any Government Agency 6. Should be on a payroll of the firm
2	PPP Expert cum Deputy Team Lead	Graduation in any discipline and Post-graduation or equivalent in any field	Essential criterion: Minimum 8 years of total work experience Preferred criteria: 1. No. of years of experience in transaction advisory services for PPP projects 2. Assisted in transaction advisory services for atleast 2 projects 3. Undertaken at least one (1) international assignment of Technical Assistance in PPP 4. Should be on a payroll of the firm
3	IWT /traffic expert	Graduation in engineering in any discipline and Post-graduation or equivalent in any field	Essential criterion: Minimum 5 years of total work experience Evaluation criteria: 1. Minimum experience of 5 years in IWT sector / infrastructure sector 2. Experience of conducting cargo movement using inland waterway transport (IWT) / infrastructure sector 3. Relevant experience of working on at least 1 inland waterway including but not limited to feasibilities studies and/or project structuring and/or transaction advisory etc. 4. Experience of working in Odisha Project with any Government Agency 5. Should be on a pay-roll of the firm
4	Financial expert	MBA/ PGDM or equivalent	Essential criterion: Minimum 8 years of total work experience Preferred criteria: 1. Experience of undertaking at least 3 financial feasibility studies for IWT /Port sector / infrastructure sector

#	Expert	Educational Qualification	Professional experience
			<p>2. Experience of preparing tariff structure for at least 1 Central Government/ State Government IWT sector asset/ infrastructure sector</p> <p>3. Should be on a pay roll of the Firm</p>
5	Legal expert	LLB and LLM	<p>Essential criterion: Minimum 8 years of total work experience</p> <p>Preferred criteria:</p> <ol style="list-style-type: none"> 1. Minimum experience of 8 years in providing legal expertise to infrastructure sector on transaction and PPP aspects 2. Experience of providing legal services for at least 2 ports and maritime sector projects including IWT sector/ infrastructure sector 3. Experience of undertaking transaction advisory for at least one project in IWT/port sector / infrastructure sector 4. Employee of the participating firm

Section-VI: Draft Agreement for Transaction Services

Draft Agreement for provision of Transaction Services

AGREEMENT FOR PROVISION OF TRANSACTION SERVICES FOR PROJECT

This AGREEMENT (hereinafter called the "Agreement") is made on the day of themonth of 2022, between, on the one hand, the [Chairman acting through] (Hereinafter called the "Authority" which expression shall include their respective successors and permitted assigns, unless the context otherwise requires) and, on the other hand, (hereinafter called the "Consultant" which expression shall include their respective successors and permitted assigns).

WHEREAS

- (A) The Authority vide its Request for Proposal for appointment of Transaction Advisor (hereinafter called the "Consultancy") for the.....Project (hereinafter called the "Project").
- (B) the Consultant submitted its proposals for the aforesaid work, whereby the Consultant represented to the Authority that it had the required professional skills, and in the said proposals the Consultant also agreed to provide the Services to the Authority on the terms and conditions set forth in the RFP and this Agreement; and
- (C) the Authority, on acceptance of the aforesaid proposals of the Consultant, awarded the Consultancy to the Consultant vide its Letter of Award dated.....(the"LOA"); and
- (D) in pursuance of the LOA, the parties have agreed to enter into this Agreement. NOW, THEREFORE, the parties hereto hereby agree as follows:

1. GENERAL

1.1 Definitions and Interpretation

- 1.1.1. The words and expressions beginning with capital letters and defined in this Agreement shall, unless the context otherwise requires, have the meaning hereinafter respectively assigned to them:
 - a) **"Additional Costs"** shall have the meaning set forth in Clause 6.1.2.
 - b) **"Agreement"** means this Agreement, together with all the Annexes.
 - c) **"Agreement Value"** shall have the meaning set forth in Clause 6.1.2.
 - d) **"Applicable Laws"** means the laws and any other instruments having the force of law in India as they may be issued and in force from time to time.
 - e) **"Confidential Information"** shall have the meaning set forth in Clause 3.3.
 - f) **"Conflict of Interest"** shall have the meaning set forth in Clause 3.2 read with the provisions of RFP.

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

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

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

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

1.2 Relation between the Parties

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

1.3 Rights and obligations

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

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

1.4 Governing law and jurisdiction

This Agreement shall be construed and interpreted in accordance with and governed by the laws of India, and the courts in the State in which the Authority has its headquarters shall have exclusive jurisdiction over matters arising out of or relating to this Agreement.

1.5 Language

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

1.6 Table of contents and headings

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

1.7 Notices

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

- a) in the case of the Consultant, be given by e-mail and by letter delivered by hand to the address given and marked for attention of the Consultant's Representative set out below in Clause 1.10 or to such other person as the Consultant may from time to time designate by notice to the Authority; provided that notices or other communications to be given to an address outside the city specified in Sub-clause (b) below may, if they are subsequently confirmed by sending a copy thereof by registered acknowledgement due, air mail or by courier, be sent by e-mail to the number/address as the Consultant may from time to time specify by notice to the Authority;
- b) in the case of the Authority, be given by e-mail and by letter delivered by hand and be addressed to the Authority with a copy delivered to the Authority Representative set out below in Clause 1.10 or to such other person as the Authority may from time to time designate by notice to the Consultant; provided that if the Consultant does not have an office in the same city as the Authority's office, it may send such notice by e-mail and by registered acknowledgement due, air mail or by courier; and

- c) any notice or communication by a Party to the other Party, given in accordance herewith, shall be deemed to have been delivered when in the normal course of post it ought to have been delivered and in all other cases, it shall be deemed to have been delivered on the actual date and time of delivery; provided that in the case of email, it shall be deemed to have been delivered on the working days following the date of its delivery.

1.8 Location

- 1.8.1. The Services shall be performed at the offices of the Authority in accordance with the provisions of RFP and at such locations as are incidental thereto, including the offices of the Consultant.
- 1.8.2. The Authority may require the Financial Expert to spend the required man hours at the offices of the Authority and the Consultant agrees and undertakes to provide such services on a best effort basis and without any unreasonable delay.

1.9 Authority of Member-in-charge

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

1.10 Authorized Representatives

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

.....<Name>

.....<Designation>,

.....<Office Address>

Tel:

Mobile:

E-mail:

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

.....<Name>

.....<Designation>,

.....<Office Address>

Tel:

Mobile:

E-mail:

1.11 Taxes and duties

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

2. COMMENCEMENT, COMPLETION AND TERMINATION OF AGREEMENT

2.1. Effectiveness of Agreement

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

2.2. Commencement of Services

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

2.3. Termination of Agreement for failure to commence Services

If the Consultant does not commence the Services within the period specified in Clause 2.2 above, the Authority may, by not less than 1 (one) weeks' notice to the Consultant, declare this Agreement to be null and void, and in the event of such a declaration, this Agreement shall stand terminated and the Consultant shall be deemed to have accepted such termination.

2.4. Expiry of Agreement

Unless terminated earlier pursuant to Clauses 2.3 or 2.9 hereof, this Agreement shall, unless extended by the Parties by mutual consent, expire upon the earlier of (i) expiry of a period of 60(sixty) days after the delivery of the final Deliverable to the Authority; and (ii) the expiry of [1 (one) year] from the Effective Date. Upon Termination, the Authority shall make payments of all amounts due to the Consultant hereunder.

2.5. Entire Agreement

- 2.5.1 This Agreement and the Annexes together constitute a complete and exclusive statement of the terms of the agreement between the Parties on the subject hereof, and no amendment or modification hereto shall be valid and effective unless such modification or amendment is agreed to in writing by the Parties and duly executed by persons especially empowered in this behalf by the respective Parties. All prior written or oral understandings, offers or other communications of every kind pertaining to this Agreement are abrogated and withdrawn; provided, however, that the obligations of the Consultant arising out of the provisions of the RFP shall continue to subsist and shall be deemed to form part of this Agreement.

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

2.6. Modification of Agreement

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

2.7. Force Majeure

2.7.1. Definition

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

2.7.2. No breach of Agreement

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

2.7.3. Measures to be taken

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

- c) The Parties shall take all reasonable measures to minimize the consequences of any event of Force Majeure.

2.7.4. Extension of time

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

2.7.5. Payments

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

2.7.6. Consultation

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

2.8. Suspension of Agreement

The Authority may, by written notice of suspension to the Consultant, suspend all payments to the Consultant hereunder if the Consultant shall be in breach of this Agreement or shall fail to perform any of its obligations under this Agreement, including the carrying out of the Services; provided that such notice of suspension (i) shall specify the nature of the breach or failure, and (ii) shall provide an opportunity to the Consultant to remedy such breach or failure within a period not exceeding 15 (fifteen) days after receipt by the Consultant of such notice of suspension.

2.9. Termination of Agreement

2.9.1. By the Authority

The Authority may, by not less than 15 (fifteen) days' written notice of termination to the Consultant, such notice to be given after the occurrence of any of the events specified in this Clause 2.9.1, terminate this Agreement if:

- a) the Consultant fails to remedy any breach hereof or any failure in the performance of its obligations hereunder, as specified in a notice of suspension pursuant to Clause 2.8 hereinabove, within 15 (fifteen) days of receipt of such notice of suspension or within such further period as the Authority may have subsequently granted in writing.
- b) the Consultant becomes insolvent or bankrupt or enters into any agreement with its creditors for relief of debt or take advantage of any law for the benefit of debtors or goes into liquidation or receivership whether compulsory or voluntary.
- c) the Consultant fails to comply with any final decision reached as a result of arbitration proceedings pursuant to Clause 9 hereof.

- d) the Consultant submits to the Authority a statement which has a material effect on the rights, obligations, or interests of the Authority and which the Consultant knows to be false.
- e) any document, information, data, or statement submitted by the Consultant in its Proposals, based on which the Consultant was considered eligible or successful, is found to be false, incorrect, or misleading.
- f) as the result of Force Majeure, the Consultant is unable to perform a material portion of the Services for a period of not less than 60 (sixty) days; or
- g) the Authority, in its sole discretion and for any reason whatsoever, decides to terminate this Agreement.

2.9.2. By the Consultant

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

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

2.9.3. Cessation of rights and obligations

Upon termination of this Agreement pursuant to Clauses 2.3 or 2.9 hereof, or upon expiration of this Agreement pursuant to Clause 2.4 hereof, all rights and obligations of the Parties hereunder shall cease, except (i) such rights and obligations as may have accrued on the date of termination or expiration, or which expressly survives such Termination; (ii) the obligation of confidentiality set forth in Clause 3.3 hereof; (iii) the Consultant's obligation to permit inspection, copying and auditing of such of its accounts and records set forth in Clause 3.5, as relate to the Consultant's Services provided under this Agreement, and (iv) any right or remedy which a Party may have under this Agreement or the Applicable Laws.

2.9.4. Cessation of Services

Upon termination of this Agreement by notice of either Party to the other pursuant to Clauses 2.9.1 or 2.9.2 hereof, the Consultant shall, immediately upon dispatch or receipt of such notice, take all necessary steps to bring the Services to a close in a prompt and orderly manner and shall make every reasonable effort to keep expenditures for this purpose to a minimum. With respect to documents prepared by the Consultant and materials furnished by the Authority, the Consultant shall proceed as provided respectively by Clauses 3.8 or 3.9 hereof.

2.9.5. Payment upon Termination

Upon termination of this Agreement pursuant to Clauses 2.9.1 or 2.9.2 hereof, the Authority shall make

the following payments to the Consultant (after offsetting against these payments any amount that may be due from the Consultant to the Authority):

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

2.9.6. Disputes about Events of Termination

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

3. OBLIGATIONS OF THE CONSULTANT

3.1 General

3.1.1. Standards of Performance

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

3.1.2. Terms of Reference

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

3.1.3. Applicable Laws

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

3.2 Conflict of Interest

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

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

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

3.2.3. Prohibition of conflicting activities

Neither the Consultant nor its Sub-consultant nor the Personnel of either of them shall engage, either

directly or indirectly, in any of the following activities:

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

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

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

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

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

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

- a) "corrupt practice" means the offering, giving, receiving or soliciting, directly or indirectly, of anything of value to influence the actions of any person connected with the Selection Process (for removal of doubt, offering of employment or employing or engaging in any manner whatsoever, directly or indirectly, any official of the Authority who is or has been associated in any manner, directly or indirectly with Selection Process or LOA or dealing with matters concerning the Agreement before or after the execution thereof, at any time prior to the expiry of one year from the date such official resigns or retires from or otherwise ceases to be in the service of the Authority, shall be deemed to constitute influencing the actions of a person connected with the Selection Process); or (ii) engaging in any manner whatsoever, whether during the Selection Process or after the issue of LOA or after the execution of the Agreement,

as the case may be, any person in respect of any matter relating to the Project or the LOA or the Agreement, who at any time has been or is a legal, financial, or technical advisor the Authority in relation to any matter concerning the Project.

- b) "Fraudulent practice" means a misrepresentation or omission of facts or suppression of facts or disclosure of incomplete facts, to influence the Selection Process.
- c) "Coercive practice" means impairing or harming, or threatening to impair or harm, directly or indirectly, any person or property to influence any person's participation or action in the Selection Process or the exercise of its rights or performance of its obligations by the Authority under this Agreement.
- d) "Undesirable practice" means (i) establishing contact with any person connected with or employed or engaged by the Authority with the objective of canvassing, lobbying or in any manner influencing or attempting to influence the Selection Process; or (ii) having a Conflict of Interest; and
- e) "Restrictive practice" means forming a cartel or arriving at any understanding or arrangement among Applicants with the objective of restricting or manipulating a full and fair competition in the Selection Process.
- f) "Anti-competitive practice" means any collusion, bid rigging or anti- competitive arrangement, or any other practice coming under the purview of The Competition Act, 2002, between two or more bidders, with or without the knowledge of the Authority, that may impair the transparency, fairness, and the progress of the procurement process or to establish bid prices at artificial, non-competitive levels.
- g) "Obstructive practice" materially impede the Authority's investigation into allegations of one or more of the above mentioned prohibited practices either by deliberately destroying, falsifying, altering; or by concealing of evidence material to the investigation; or by making false statements to investigators and/or by threatening, harassing or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation; or by impeding the Authority's rights of audit or access to information.

3.3 Confidentiality

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

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

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

3.4 Liability of the Consultant

- 3.4.1. The Consultant's liability under this Agreement shall be determined by the Applicable Laws and the provisions hereof.
- 3.4.2. The Consultant shall, subject to the limitation specified in Clause 3.4.3, be liable to the Authority for any direct loss or damage accrued or likely to accrue due to deficiency in Services rendered by it.
- 3.4.3. The Parties hereto agree that in case of negligence or willful misconduct on the part of the Consultant or on the part of any person or firm acting on behalf of the Consultant in carrying out the Services, the Consultant, with respect to damage caused to the Authority's property, shall not be liable to the Authority:
 - a) for any indirect or consequential loss or damage; and
 - b) for any direct loss or damage that exceeds (a) the Agreement Value set forth in Clause 6.1.2 of this Agreement, or (b) the proceeds the Consultant may be entitled to receive from any insurance maintained by the Consultant to cover such a liability, whichever of (a) or (b) is higher.
- 3.4.4. This limitation of liability specified in Clause 3.4.3 shall not affect the Consultant's liability, if any, for damage to Third Parties caused by the Consultant or any person or firm acting on behalf of the Consultant in carrying out the Services subject, however, to a limit equal to 3 (three) times the Agreement Value.

3.5 Accounting, inspection, and auditing

The Consultant shall:

- a) keep accurate and systematic accounts and records in respect of the Services provided under this Agreement, in accordance with internationally accepted accounting principles and standards such as Indian Accounting Standards, GAAP, etc. and in such form and details will clearly identify all relevant time charges and cost, and the basis thereof (including the basis of the Consultant's costs and charges); and

- b) permit the Authority or its designated representative periodically, and up to one year from the expiration or termination of this Agreement, to inspect the same and make copies thereof as well as to have them audited by auditors appointed by the Authority.

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

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

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

3.7 Reporting obligations

- 3.7.1. The Consultant shall submit to the Authority the reports and documents specified in the Agreement, in the form, in the numbers and within the time periods set forth therein.
- 3.7.2. The Consultant shall electronically and by mail, submit fortnightly time reports of each of the Key Personnel, to the Authority. Such time reports shall be submitted on the 15th and the last day of each calendar month by end of the business day and shall include the number of hours expended on the Project by the Key Personnel on each working day of the fortnight covered by the time report. The time reports shall also include a brief description of work performed during that fortnight by each of the Key Personnel.

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

- 3.8.1. All reports and other documents (collectively referred to as "Consultancy Documents") prepared by the Consultant (or by the Sub-Consultants or any Third Party) in performing the Services shall become and remain the property of the Authority, and all intellectual property rights in such Consultancy Documents shall vest with the Authority. Any Consultancy Document, of which the ownership or the intellectual property rights do not vest with the Authority under law, shall automatically stand assigned to the Authority as and when such Consultancy Document is created, and the Consultant agrees to execute all papers and to perform such other acts as the Authority may deem necessary to secure its rights herein assigned by the Consultant.
- 3.8.2. The Consultant shall, not later than termination or expiration of this Agreement, deliver all Consultancy Documents to the Authority, together with a detailed inventory thereof. The Consultant may retain a copy of such Consultancy Documents. The Consultant, its Sub- Consultants or a Third Party shall not use these Consultancy Documents for purposes unrelated to this Agreement without the prior written approval of the Authority.

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

3.9 Materials furnished by the Authority

Materials made available to the Consultant by the Authority shall be the property of the Authority and shall be marked accordingly. Upon termination or expiration of this Agreement, the Consultant shall furnish forthwith to the Authority, an inventory of such materials and shall dispose of such materials in accordance with the instructions of the Authority.

3.10 Providing access to Project Office and Personnel

The Consultant shall ensure that the Authority, and officials of the Authority having authorization from the Authority, are provided unrestricted access to the office of the Consultant and to all Personnel during office hours. The Authority's official, who has been authorized by the Authority in this behalf, shall have the right to inspect the Services in progress, interact with Personnel of the Consultant and verify the records relating to the Services for his satisfaction.

3.11 Accuracy of Documents

The Consultant shall be responsible for accuracy of the documents drafted and/ or vetted and data collected by it directly or procured from other agencies/authorities, estimates and all other details prepared by it as part of these services. Subject to the provisions of Clause 3.4, it shall indemnify the Authority against any inaccuracy in its work which might surface during implementation of the Project, if such inaccuracy is the result of any negligence or inadequate due diligence on part of the Consultant or arises out of its failure to conform to good industry practice. The Consultant shall also be responsible for promptly correcting, at its own cost and risk, the documents including any re-survey / investigations.

4. Consultants' Personnel and Sub-Consultants

4.1 General

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

4.2 Deployment of Personnel

- 4.2.1. The designations, names, and other particulars of each of the Consultant's Key Personnel required in carrying out the Services are described in Annexure-2 of this Agreement. The estimate of Personnel costs and man day rates are specified in Annexure-3 of this Agreement.
- 4.2.2. Adjustments with respect to the estimated periods of engagement of Personnel set forth in the aforementioned Annexure-3 may be made by the Consultant by written notice to the Authority, provided that (i) such adjustments shall not alter the originally estimated period of engagement of any individual by more than 30% (thirty per cent), and (ii) the aggregate of such adjustments shall not cause payments under the Agreement to exceed the Agreement Value set forth in Clause 6.1.2 of this Agreement by

more than 25% (twenty five per cent) thereof. Any other adjustments shall only be made with the written approval of the Authority.

- 4.2.3. If additional work is required beyond the scope of the Services specified in the Terms of Reference, the estimated periods of engagement of Personnel, set forth in the Annexes of the Agreement may be increased by agreement in writing between the Authority and the Consultant, provided that any such increase shall not, except as otherwise agreed, cause payments under this Agreement to exceed the Agreement Value set forth in Clause 6.1.2.

4.3 Approval of Personnel

- 4.3.1. The Key Personnel listed in Annexure-2 of the Agreement are hereby approved by the Authority. No other Key Personnel shall be engaged without prior approval of the Authority.
- 4.3.2. If the Consultant hereafter proposes to engage any person as Professional Personnel, it shall submit to the Authority its proposal along with a CV of such person in the form provided at Appendix-III (Form-3) of the RFP. The Authority may approve or reject such proposal within 14 (fourteen) days of receipt thereof. In case the proposal is rejected, the Consultant may propose an alternative person for the Authority's consideration. In the event the Authority does not reject a proposal within 14 (fourteen) days of the date of receipt thereof under this Clause 4.3, it shall be deemed to have been approved by the Authority.

4.4 Substitution of Key Personnel

The Authority expects all the Key Personnel specified in the Proposal to be available during implementation of the Agreement. The Authority will not consider any substitution of Key Personnel except under compelling circumstances beyond the control of the Consultant and the concerned Key Personnel. Such substitution shall be limited to not more than two Key Personnel subject to equally or better qualified and experienced personnel being provided to the satisfaction of the Authority. Without prejudice to the foregoing, substitution of the Financial Expert shall be permitted only upon reduction of remuneration equal to 20% (twenty per cent) of the total remuneration specified for the Key Personnel who is proposed to be substituted.

4.5 Working hours, overtime, leave, etc.

The Personnel shall not be entitled to be paid for overtime nor to take paid sick leave or vacation leave except as specified in the Agreement, and the Consultant's remuneration shall be deemed to cover these items. All leave to be allowed to the Personnel is excluded from the man days of service set forth in Annexure-3. Any taking of leave by any Personnel for a period exceeding 7 days shall be subject to the prior approval of the Authority, and the Consultant shall ensure that any absence on leave will not delay the progress and quality of the Services.

4.6 Deleted

4.7 Sub-Consultants

The Consultant may, with prior written approval of the Authority, engage additional Sub-Consultants or substitute an existing Sub- Consultant. The hiring of Personnel by the Sub- Consultants shall be subject to the same conditions as applicable to Personnel of the Consultant under this Clause 4.

5. OBLIGATIONS OF THE AUTHORITY

5.1 Assistance in clearances etc.

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

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

5.2 Access to land and property

The Authority warrants that the Consultant shall have, free of charge, unimpeded access to the site of the project in respect of which access is required for the performance of Services; provided that if such access shall not be made available to the Consultant as and when so required, the Parties shall agree on (i) the time extension, as may be appropriate, for the performance of Services, and (ii) the additional payments, if any, to be made to the Consultant as a result thereof pursuant to Clause 6.1.3.

5.3 Change in Applicable Law

If, after the date of this Agreement, there is any change in the Applicable Laws with respect to taxes and duties which increases or decreases the cost or reimbursable expenses incurred by the Consultant in performing the Services, by an amount exceeding 2% (two per cent) of the Agreement Value specified in Clause 6.1.2, then the remuneration and reimbursable expenses otherwise payable to the Consultant under this Agreement shall be increased or decreased accordingly by agreement between the Parties hereto, and corresponding adjustments shall be made to the aforesaid Agreement Value.

All service tax and other taxes other than income tax, as may be applicable from time to time, on the payment of the professional fees to the Consultant, shall be borne by the Authority.

5.4 Payment

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

6. PAYMENT TO THE CONSULTANT

6.1 Cost estimates and Agreement Value

- 6.1.1. An abstract of the cost of the Services payable to the Consultant is set forth in Annexure-5 of the Agreement.
- 6.1.2. Except as may be otherwise agreed under Clause 2.6 and subject to Clauses 4.2.2 and 6.1.3, the payments under this Agreement shall not exceed the agreement value specified herein (the “**Agreement Value**”). The Parties agree that the Agreement Value is •.•.•.•• (Rupees), which does not include the

Additional Costs (the “Additional Costs”).

- 6.1.3. Notwithstanding anything to the contrary contained in Clause 6.1.2, if pursuant to the provisions of Clause 2.6, the Parties agree that additional payments shall be made to the Consultant in order to cover any additional expenditures not envisaged in the cost estimates referred to in Clause 6.1.1 above, the Agreement Value set forth in Clause 6.1.2 above shall be increased by the amount or amounts, as the case may be, of any such additional payments.

6.2 Currency of payment

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

6.3 Mode of billing and payment

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

- a) The Consultant shall be paid for its services as per the Payment Schedule at Annexure -6(Clause 9) of this Agreement and the rates specified in Annexure-5 of this Agreement, subject to the Consultant fulfilling the following conditions:
 - (i) No payment shall be due for the next stage till the Consultant completes to the satisfaction of the Authority the work pertaining to the preceding stage. Provided, however, that for the Deliverables specified at [KD7 and KD8] in Paragraph 5.2 of the TOR, payment shall be due and payable by the Authority for the man hours spent during each calendar month; and
 - (ii) The Authority shall pay to the Consultant, only the undisputed amount.
- b) The Authority shall cause the payment due to the Consultant to be made within 30 (thirty) days after the receipt by the Authority of duly completed bills with necessary particulars (the “**Due Date**”). Interest at the rate of 10% (ten per cent) per annum shall become payable by the Authority as from the Due Date on any amount due by, but not paid on or before, such Due Date.
- c) The final payment under this Clause 6.3 shall be made only after the final Deliverable shall have been submitted by the Consultant and approved as satisfactory by the Authority. The Services shall be deemed completed and finally accepted by the Authority and the final Deliverable shall be deemed approved by the Authority as satisfactory upon expiry of 60 (sixty) days after receipt of the final Deliverable unless the Authority, within such 60 (sixty) day period, gives written notice to the Consultant specifying in detail, the deficiencies in the Services. The Consultant shall thereupon promptly make any necessary corrections and/or additions, and upon completion of such corrections or additions, the foregoing process shall be repeated. The Authority shall make the final payment upon acceptance or deemed acceptance of the final Deliverable by the Authority.
- d) Any amount which the Authority has paid or caused to be paid more than the amounts payable in accordance with the provisions of this Agreement shall be reimbursed by the Consultant to the Authority within 30 (thirty) days after receipt by the Consultant of notice thereof. Any such claim by the Authority for reimbursement must be made within 1 (one) year after receipt by the Authority of a final report in accordance with Clause 6.3 (c). Any delay by the Consultant in reimbursement by the due date shall attract simple interest @10% (ten percent) per annum.

- e) All payments under this Agreement shall be made to the account of the Consultant as may be notified to the Authority by the Consultant.

7. LIQUIDATED DAMAGES AND PENALTIES

7.1 Performance Security

- 7.1.1. For the purposes of this Agreement, performance security shall be deemed to be an amount equal to 10% (ten percent) of the Agreement Value (the "Performance Security"); provided, however, that the Consultant shall not be required to provide a Performance Security in the form of a bank guarantee or cash deposit. Performance Security may be furnished in the form of Insurance Surety Bonds, Account Payee Demand Draft, Fixed Deposit Receipt from a Commercial bank, Bank Guarantee (including e- Bank Guarantee) from a Commercial bank or online payment in an acceptable form safeguarding the purchaser's interest in all respects [as per amendment in GFR 170 (i) and GFR 171(i)].
- 7.1.2. Notwithstanding anything to the contrary contained in Clause 7.1.1, as and when payments become due to the Consultant for its Services, the Authority shall retain by way of Performance Security, 10% (ten percent) of all the amounts due and payable to the Consultant, to be appropriated against breach of this Agreement or for recovery of liquidated damages as specified in Clause
- 7.1.3. The balance remaining out of the Performance Security shall be returned to the Consultant at the end of three months after the expiry of this Agreement pursuant to Clause 2.4 hereof. For the avoidance of doubt, the parties hereto expressly agree that in addition to appropriation of the amounts withheld hereunder, in the event of any default requiring the appropriation of further amounts comprising the Performance Security, the Authority may make deductions from any subsequent payments due and payable to the Financial Consultant hereunder, As if it is appropriating the Performance Security in accordance with the provisions of this Agreement.
- 7.1.4. The Consultant may, in lieu of retention of the amounts as referred to in Clause 7.1.2 above, furnish a Bank Guarantee substantially in the form specified at Annexure-7 of this Agreement.

7.2 Liquidated Damages

7.2.1. Liquidated Damages for error/variation

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

7.2.2. Liquidated Damages for delay

In case of delay in completion of Services, liquidated damages not exceeding an amount equal to 0.2% (zero-point two percent) of the Agreement Value per day, subject to a maximum of 10% (ten percent) of the Agreement Value shall be imposed and shall be recovered by appropriation from the Performance Security or otherwise. However, in case of delay due to reasons beyond the control of the Consultant, suitable extension of time shall be granted.

7.2.3. Encashment and appropriation of Performance Security

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

7.3 Penalty for deficiency in Services

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

8. FAIRNESS AND GOOD FAITH

8.1 Good Faith

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

8.2 Operation of the Agreement

The Parties recognize that it is impractical in this Agreement to provide for every contingency which may arise during the life of the Agreement, and the Parties hereby agree that it is their intention that this Agreement shall operate fairly as between them, and without detriment to the interest of either of them, and that, if during the term of this Agreement either Party believes that this Agreement is operating unfairly, the Parties will use their best efforts to agree on such action as may be necessary to remove the cause or causes of such unfairness, but failure to agree on any action pursuant to this Clause 8.2 shall not give rise to a dispute subject to arbitration in accordance with Clause 9 hereof.

9. SETTLEMENT OF DISPUTES

9.1 Amicable settlement

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

9.2 Dispute resolution

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

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

9.3 Conciliation

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

9.4 Arbitration

- 9.4.1 Any Dispute which is not resolved amicably by conciliation, as provided in Clause 9.3, shall be finally decided by reference to arbitration by an Arbitral Tribunal appointed in accordance with Clause 9.4.2. Such arbitration shall be held in accordance with the Rules of Arbitration of the International Centre for Alternative Dispute Resolution, New Delhi (the "Rules"), or such other rules as may be mutually agreed by the Parties and shall be subject to the provisions of the Arbitration and Conciliation Act, 1996. The place of such arbitration shall be the capital of the State where the Authority has its headquarters, and the language of arbitration proceedings shall be English.
- 9.4.2 There shall be [a sole arbitrator whose appointment] / [an Arbitral Tribunal of three arbitrators, of whom each Party shall select one, and the third arbitrator shall be appointed by the two arbitrators so selected, and in the event of disagreement between the two arbitrators, the appointment shall be made in accordance with the Rules.
- 9.4.3 The arbitrators shall make a reasoned award (the "Award"). Any Award made in any arbitration held pursuant to this Clause 9 shall be final and binding on the Parties as from the date it is made, and the Consultant and the Authority agree and undertake to carry out such Award without delay.
- 9.4.4 The Consultant and the Authority agree that an Award may be enforced against the Consultant and/or the Authority and their respective assets wherever situated.
- 9.4.5 This Agreement and the rights and obligations of the Parties shall remain in full force and effect, pending the Awarding any arbitration proceedings hereunder.

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

Signed, Sealed and Delivered

For and on behalf of
consultant:

(Signature) (Name)

(Designation) (Address)

In the presence of:

1.

Signed, Sealed and Delivered

For and
on behalf
of
Authorit
y

(Signat
ure)

(Name)

(Design
ation)

(Addres
s)

2.

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Annexure-I
Terms of Reference
(Refer Clause 3.1.2)
Reproduce Scope of Work

Annexure-2

Deployment of Key Personnel

(Refer Clause 4.2)

(Reproduce as per Form-3G of Section-III: Technical Proposal Form)

Annexure-3

Estimate of Personnel Costs

(Refer Clause 4.2)

(Reproduce as per Form-4C of Section-IV: Financial Proposal Form)

Annexure-4: Deleted

Annexure-5

Cost of Services

(Refer Clause 6.1)

(Reproduce as per Form-4B of Section-IV: Financial Proposal Form)

Annexure-6
Payment Schedule
(Refer Clause 6.3)

S No.	Deliverable description	Timeline of submission	Payment (as a % of cost of consultancy)
1	Submission of asset management strategy document for NW-5 and NW-64 development	Within 3 weeks from effective date	20%
2	Submission of Draft transaction documents (including RFQ, RFP, DCA)	Within 16 weeks from effective date	10%
3	Providing responses to comments/feedback during project appraisal	Within 22 weeks from effective date	10%
4	Publishing of RFQ	Within 25 weeks from effective date	10%
5	Providing responses to comments/ feedback during pre-application stage of procurement for PPP project	Within 32 weeks from effective date	10%
6	Publishing/Releasing of RFP	Within 36 weeks from effective date	20%
7	Providing responses to comments/ feedback during pre-bid stage of procurement for PPP project	Within 45 weeks from effective date	10%
8	Signing of contract with concessionaires		10%

Annexure-7

Bank Guarantee for Performance Security

(Refer Clause 7.1.3)

To

The Chairman,

IWAI

In consideration ofacting on behalf of the Chairman.....
.....(hereinafter referred as the “**Authority**” which expression shall, unless repugnant to the context or meaning thereof, include its successors, administrators and assigns) awarding to, having its office at (hereinafter referred as the “**Consultant**” which expression shall, unless repugnant to the context or meaning thereof, include its successors, administrators, executors and assigns), vide the Authority's Agreement no..... datedvalued at (Rupees), (hereinafter referred to as the "Agreement") the assignment for consultancy services in respect of the Project, and the Consultant having agreed to furnish a Bank Guarantee amounting to Rs..... (Rupees)
to the Authority for performance of the said Agreement.

We, (hereinafter referred to as the “**Bank**”) at the request of the Consultant do hereby undertake to pay to the Authority an amount not exceeding Rs (Rupees) against any loss or damage caused to or suffered or would be caused to or suffered by the Authority by reason of any breach by the said Consultant of any of the terms or conditions contained in the said Agreement.

2. We,..... (indicate the name of the Bank) do hereby undertake to pay the amounts due and payable under this Guarantee without any demur, merely on a demand from the Authority stating that the amount/claimed is due by way of loss or damage caused to or would be caused to or suffered by the Authority by reason of breach by the said Consultant of any of the terms or conditions contained in the said Agreement or by reason of the Consultant's failure to perform the said Agreement. Any such demand made on the bank shall be conclusive as regards the amount due and payable by the Bank under this Guarantee. However, our liability under this Guarantee shall be restricted to an amount not exceeding Rs..... (Rupees.....).

3. We, (Indicate the name of Bank) undertake to pay to the Authority any money so demanded notwithstanding any dispute or disputes raised by the Consultant in any suit or proceeding pending before any court or tribunal relating thereto, our liability under this present being absolute and unequivocal. The payment so made by us under this bond shall bear valid discharge of our liability for payment thereunder and the Consultant shall have claim against us for making such payment.

4. We, (indicate the name of Bank) further agree that the Guarantee herein contained shall remain in full force and effect during the period that would be required for the performance of the said

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

5. We, (indicate the name of Bank) further agree with the Authority that the Authority shall have the fullest liberty without our consent and without affecting in any manner our obligations hereunder to vary any of the terms and conditions of the said Agreement or to extend time of performance by the said Consultant from time to time or to postpone for any time or from time to time any of the powers exercisable by the Authority against the said Consultant and to forbear or enforce any of the terms and conditions relating to the said Agreement and we shall not be relieved from our liability by reason of any such variation, or extension being granted to the said Consultant or for any forbearance, act or omission on the part of the Authority or any indulgence by the Authority to the said Consultant or any such matter or thing whatsoever which under the law relating to sureties would, but for this provision, have the effect of so relieving us.

6. This Guarantee will not be discharged due to the change in the constitution of the Bank or the Consultant(s).

7. We, (Indicate the name of Bank) lastly undertake not to revoke this Guarantee during its currency except with the previous consent of the Authority in writing.

8. For the avoidance of doubt, the Bank's liability under this Guarantee shall be restricted to crore (Rupee's crore) only. The Bank shall be liable to pay the said amount or any part thereof only if the Authority serves a written claim on the Bank in accordance with paragraph 2 hereof, on or before [(indicate the date falling 365 days after the Bid Due Date specified in the RFP)].

Dated, theday of.....2022

For

(Name of Bank)

(Signature, name and designation of the authorized signatory)

Seal of the Bank:

NOTES:

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