



## **NEW MANGALORE PORT AUTHORITY**

**Civil Engineering Department**

**TENDER NO. CIVIL/CEC/EEC/01/2023-24**

**eProcureTender ID: 2023\_NMPT\_747921\_1**

**REQUEST FOR PROPOSAL (RFP)**

**FOR**

**Appointment of Transaction Advisor for Concessionaling of Berth No. 09 for handling Liquid Bulk / LPG / POL products / Chemicals on Captive / PPP Mode**

**COMPLETED TENDERS ARE TO BE  
SUBMITTED ONLINE ON OR BEFORE 15:30 HRS ON 03.05.2023  
TECHNICAL BIDS WILL BE OPENED AT 15:30 HRS ON 04.05.2023**

**CHIEF ENGINEER (CIVIL)i/c**  
New Mangalore Port Authority,  
Panambur, Mangalore-575010

Phone/Fax: 0824-2407948 .Website: [www.newmangaloreport.gov.in](http://www.newmangaloreport.gov.in)

**APRIL 2023**

For any further clarifications / queries on e-Tendering, Chief Engineer (Civil)i/c, NMPA, can be contacted at: Phone No. 0824-2407493 or; e-mail: [chiefengineer@nmpt.gov.in](mailto:chiefengineer@nmpt.gov.in)

## 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.

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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 this Selection Process.

The Authority also accepts no liability of any nature whether resulting from negligence or otherwise however 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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## GLOSSARY

Agreement	As defined in Schedule -2
Agreement Value	As defined in Clause 6.1.2 of Schedule -2
Applicable Laws	As defined in Schedule – 2
Applicant	As defined in Clause 2.1.1
Associate	As defined in Clause 2.3.3
Authorised Representative	As defined in Clause 2.14.3
Authority	As defined in Clause 1.1
Bid Documents	As defined in Clause 1.2
Conditions of Eligibility	As defined in Clause 2.2
Conflict of Interest	As defined in Clause 2.3
Consultancy	As defined in Clause 1.2
Consultancy Team	As defined in Clause 2.1.4
Consultant	As defined in Clause 1.2
CV	Curriculum Vitae
DBFOT	Design, Build, Finance, Operate and Transfer
Deliverables	As defined in Clause 4 of Schedule-1
Documents	As defined in Clause 2.10
Effective Date	As defined in Clause 2.1 of Schedule-2
Eligible Assignments	As defined in Clause 3.1.4
Expatriate Personnel	As defined in Clause 1.1.1(i) of Schedule-2
PPP Expert	As specified in Clause 2.1.4
Financial Proposal	As defined in Clause 2.16.1
Form of Agreement	Form of Agreement as in Schedule -2
INR, Re, Rs.	Indian Rupee(s)
Key Personnel	As defined in Clause 2.1.4
LOA	Letter of Award
Lead Member	As defined in Clause 2.1.1
Member	As defined in Clause 2.3.3 (a)
Official Website	As defined in Clause 1.11.3
PPP	Public Private Partnership
Personnel	As defined in Clause 1.1.1(n) of Schedule-2
Project	As defined in Clause 1.1.1
Team Leader/ Project Manager	As defined in Clause 4.6 of Schedule-2
Professional Personnel	As defined in Clause 2.15.6
Prohibited Practices	As defined in Clause 4.1
Proposals	As defined in Clause 1.2
Proposal Due Date or PDD	As defined in Clause 1.5
RFP	As defined in Disclaimer
Resident Personnel	As defined in Clause 1.1.1(o) of Schedule-2
Scheduled Bank	As specified in RBI Act, 1934
Selected Applicant	As defined in Clause 1.6
Selection Process	As defined in Clause 1.6
Services	As defined in Clause 1.1.1(q) of Schedule -2
Sole Firm	As defined in Clause 2.1.1
Statutory Auditor	An Auditor appointed under Applicable Laws
Sub-Consultant	As defined in Clause 1.1.1(r) of Schedule-2
Support Personnel	As defined in Clause 2.15.6
Technical Proposal	As defined in Clause 2.15.1
TOR	As defined in Clause 1.2
US\$	United States Dollar

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

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**New Mangalore Port Authority****SECTION: I****NOTICE INVITING E-TENDER****NIT NO. CIVIL/CEC/EEC/01/2023-24, dtd. 03.04.2023****[eProcureTender ID: 2023\_NMPT\_747921\_1]**

The Authority invites Proposals (the “Proposals”) through E-Procurement System <https://eprocure.gov.in/cppp/> of CPP from interested, experienced and reputed consultancy firm(s)/consortia to submit their offers containing Technical and Financial Bids (i.e. Technical Proposal and Financial Proposal) for the work of **Appointment of Transaction Advisor for Concessioneing of Berth No. 9 for handling Liquid Bulk / LPG / POL products / Chemicals on Captive / PPP Mode at New Mangalore Port.**

Name of the Work	Appointment of Transaction Advisor for Concessioneing of Berth No. 9 for handling Liquid Bulk / LPG / POL products / Chemicals on Captive / PPP Mode at New Mangalore Port.
Bid Security / Earnest Money Deposit	<b>Rs. 59,000.00</b> (Rupees Fifty Nine Thousand only) or exemption as per clause No.22 of Section II.
Cost of Tender	<b>Rs.1,120.00</b> (Rupees One Thousand One Hundred Twenty only) or exemption as per clause No:22 of Section II.
Date of tender document available to parties to download	<b>05/04/2023</b> at 16.00 Hrs.
Last date for receiving Pre bid queries/clarifications	19/04/2023 at 15:30 HRS
Pre-Proposal Conference	Date: 19/04/2023; Time: 15:30 Hrs Mode: Physical / Virtual Meeting (Microsoft Teams)  Contact details for Pre-bid Conference: Chief Engineer (Civil)i/c, New Mangalore Port Authority, Panambur, Mangalore – 575 010 Phone: 0824 2407948 / 0824 2407413 Email: <a href="mailto:chiefengineer@nmpt.gov.in">chiefengineer@nmpt.gov.in</a>
Starting date of e-Tender for submission of on line Techno-Commercial Bid and price Bid	26/04/2023 at 11:00 HRS
Proposal Due Date (PDD) Closing date of online e-tender for submission of Techno-Commercial Bid & Price Bid	03/05/2023 at 15:30 HRS
Part-I : Date of Opening of Technical Proposal Part-II -Financial Proposal:	04/05/2023 at 15:30 HRS Shall be communicated separately.
Validity of Tender	180 days from the date of tender opening.

Amendments / further information etc. pertaining to the tender if any will be issued only through [www.newmangaloreport.gov.in](http://www.newmangaloreport.gov.in) and [CPP Portal](http://CPP Portal) [www.eprocure.gov.in/eprocure/app](http://www.eprocure.gov.in/eprocure/app). Prospective bidders are instructed to view these websites from time to time for any such notification.

Tender documents may be viewed or downloaded by interested and eligible Tenderers from the Central Public Procurement Portal (CPPP) of Government of India, website :[www.eprocure.gov.in/eprocure/app](http://www.eprocure.gov.in/eprocure/app) on the above mentioned dates after payment of Tender fee of Rs.1,120/-.

**NMPA Bank Details**

Name of the Payee: The FA&CAO, NMPA, Panambur, Mangalore

Name of the Bank: State Bank of India, Panambur,

Mangalore - 575 010.

Bank A/C No. 10205649448

IFSC Code: SBIN0002249

MICR Code: 575002011

**Note:**

*The benefit of Exemption of EMD and Tender Fee to all Micro and small Enterprises (MSE) will also be allowed. For this purpose, the bidder shall upload with their offer, proof of their being MSE registered with District Industries Centre (DIC) or Khadhi and village industries commission or Khadhi and Industries board (KVIV) or Coir board or National Small Scale Industries Corporation (NSIC) or Directorate of handicrafts and handlooms or UDYAM Registration Certificate or any other body specified by Ministry of MSME in the appropriate category.*

**Chief Engineer (Civil)i/c  
New Mangalore Port Authority  
Panambur, Mangalore**

## SECTION: II

### INSTRUCTIONS TO THE BIDDERS FOR E-SUBMISSION OF THE BIDS ONLINE THROUGH E-PROCUREMENT PORTAL

1. Bidder should do Online Enrolment in the Portal using the option Click Here to Enroll available in the Home Page. Then the Digital Signature enrollment has to be done with the e-token, after logging into the portal.
2. Bidder then logs into the portal giving user id / password chosen during enrollment.
3. The e-token that is registered should be used by the bidder and should not be misused by others.
4. DSC once mapped to an account cannot be remapped to any other account. It can only be inactivated.
5. The Bidders can update well in advance, the documents such as certificates, purchase order details etc., under My Documents option and these can be selected as per tender requirements and then attached along with bid documents during bid submission. This will ensure lesser upload of bid documents.
6. After downloading / getting the tender schedules, the Bidder should go through them carefully and then submit the documents as per the tender document; otherwise, the bid will be rejected.
7. The BOQ template must not be modified/ replaced by the bidder and the same should be uploaded after filling the relevant columns, else the bidder is liable to be rejected for that tender. Bidders are allowed to enter the Bidder Name and Values only.
8. If there are any clarifications, this may be obtained online through the e-Procurement Portal, or through the contact details given in the tender document. Bidder should take into account of the corrigendum published before submitting the bids online on the portal or on <http://eprocare.gov.in/eprocare/app> or [www.newmangalore-port.com](http://www.newmangalore-port.com) Bidder, in advance, should prepare the bid documents to be submitted as indicated in the tender schedule and they should be in PDF formats.
9. Bidder should arrange for the EMD / Bid Security and tender fee as specified in the tender. The original should be posted/couriered/given in person to the Tender Inviting Authority, within the bid submission date and time for the tender.
10. The bidder should read the terms and conditions and accepts the same to proceed further to submit the bids.
11. The bidder has to submit the tender document(s) online well in advance before the prescribed time to avoid any delay or problem during the bid submission process.
12. There is no limit on the size of the file uploaded at the server end. However, the upload is decided on the Memory available at the Client System as well as the

- Network bandwidth available at the client side at that point of time. In order to reduce the file size, bidders are suggested to scan the documents in 75-100 DPI so that the clarity is maintained and the size of file gets reduced. This will help in quick uploading even at very low bandwidth speeds.
13. It is important to note that, the bidder has to click on the Freeze Bid Button, to ensure that, he/she completes the Bid Submission Process. Bids, which are not frozen, are considered as Incomplete/Invalid bids and are not considered for evaluation purposes.
  14. The Tender Inviting Authority (TIA) will not be held responsible for any sort of delay or the difficulties faced during the submission of bids online by the bidders due to local issues.
  15. The bidder may submit the bid documents online mode only, through this portal. Offline documents will not be handled through this system. Only hard copy of the Technical Bid should reach immediately after PDD to the Chief Engineer (Civil), NMPA
  16. At the time of freezing the bid, the e-Procurement system will give a successful bid updating message after uploading all the bid documents submitted and then a bid summary will be shown with the bid no., date & time of submission of the bid with all other relevant details. The documents submitted by the bidders will be digitally signed using the e-token of the bidder and then submitted.
  17. After the bid submission, the bid summary has to be printed and kept as an acknowledgement as a token of the submission of the bid. The bid summary will act as a proof of bid submission for a tender floated and will also act as an entry point to participate in the bid opening event.
  18. Successful bid submission from the system means, the bids as uploaded by the bidder is received and stored in the system. System does not certify for its correctness.
  19. The bidder should see that the bid documents submitted should be free from virus and if the documents could not be opened, due to virus, during tender opening, the bid is liable to be rejected.
  20. The time that is displayed from the server clock at the top of the tender Portal, will be valid for all actions of requesting bid submission, bid opening etc., in the e-Procurement portal. The Time followed in this portal is as per Indian Standard Time (IST) which is GMT+5:30. The bidders should adhere to this time during bid submission.
  21. The bidders are requested to submit the bids through online e-Procurement system to the Tender Inviting Authority (TIA) well before the bid submission end date and time (as per Server System Clock).
  22. Tender form Fee and Bid Security shall be submitted with the Part I- Technical BID. BID submitted without fees, as mentioned above will not be considered for evaluation and shall be rejected summarily. Micro and Small Enterprises (MSE)



- registered with District Industries Centre (DIC) or Khadi and Village Industries commission or Khadi & Industries Board (KVIB) or Coir Board or National Small Industries Corporation (NSIC) or Directorate of Handicrafts and Handlooms or UDYAM Registration Certificate or any other body specified by Ministry of MSME shall be exempted of EMD / Bid Security and tender fee on producing self attested supporting certificates along with Technical Bid.
23. The bidder/Tenderer/contractor shall file the applicable returns with Tax departments in time and submit the same as documentary proof.
  24. The GST applicable shall be shown as separate line items in the Tax invoices to avail input credit to Port.
  25. In the event of forfeiting the LD/SD, GST is applicable and while imposing penalty, applicable GST shall be collected.

## SECTION: III

### 1. INTRODUCTION

#### 1.1 Background

- 1.1.1 The New Mangalore Port Authority (the “**Authority**”) intends to hand over existing Berth No. 9 on as-is-where-is basis for handling LPG / POL products / Chemicals as per PPP / Captive Policy Guidelines (the “**Project**”).
- 1.1.2 With a view to invite bids for the Project, the Authority requires preparation of a feasibility report for project appraisal, developing a revenue model based on the feasibility and has decided to conduct a financial viability of the Project. If found technically feasible and financially viable, the Project may be awarded on Captive User / PPP basis to a private entity (the “**Concessionaire**”) selected through a competitive bidding process. The Project would be implemented in accordance with the terms and conditions stated in the concession agreement to be entered into between the Authority and the Concessionaire (the “**Concession Agreement**”).
- 1.1.3 In pursuance of the above, the Authority has decided to carry out the process for selection of a Consultant cum Transaction Adviser (the “**Consultant**”). The Transaction Adviser shall, in accordance with the Terms of Reference specified at Schedule-1 (the “**TOR**”), prepare a Feasibility Report, appraise the Project, develop a revenue model and project structure, prepare the Bid Documents (RFQ, RFP including Draft Concession Agreement) based on Model Bid Documents including Model Concession Agreement to be provided by Authority, and assist the Authority in the bidding process, execution of Concession Agreement with selected Concessionaire and achievement of Financial close.

#### 2 Request for Proposal

The Authority invites tenders from reputed Consulting firms (the “**Proposals**”) for selection of Transaction Adviser (the “**Consultant**”) who shall conduct a feasibility study for handing over of Berth No. 9 in line with the principles of PPP / Captive Policy guidelines, develop a revenue model and appropriate structure for the Project (the “**Revenue Model**”), prepare bid documents for selection of the Concessionaire (the “**Bid Documents**”), assist the Authority in the bidding process, execution of Concession Agreement with selected Concessionaire and achievement of Financial close (collectively the “**Consultancy**”).

##### 2.1 Brief of New Mangalore Port.

- 2.1.1 The Major Port of New Mangalore (NMP), a lagoon type harbour located on the west coast of India (12°55'N; 74°48'E) is a gateway port for State of Karnataka. Amongst the total traffic handled at the port, the bulk liquid crude and POL products forms a major part (about 2/3<sup>rd</sup>). The Liquid Cargo handling capacity at the port currently stands at 21 MTPA of crude and POL.

2.1.2 The Port, a lagoon type harbor is entered through a dredged channel, about 7.5 km long. The entrance is protected by two breakwaters extending to a length of 770m on either side of the channel. The dredged channel has a bottom width of 245m, with a dredged depth of 15.40m below CD. The harbor basin and the Oil Dock Arm have dredged depths of 15.1 m below CD, suitable for handling 65/ 85,000 DWT crude tankers.

#### 2.1.3 Marine & Land Environment:

The Port is located on the alluvial plain, about 10km north of the mouth of the Gurupur and the Netravathi rivers. The old port of Mangalore, located on the confluence of these two rivers, is a roadstead port. This port is operational only during the fair weather season viz., 15<sup>th</sup> September to 15<sup>th</sup> May.

#### 2.1.4 Climate

The climate of Mangalore has seasonal variation on account of the alternating SW and NE monsoon. The different seasons are characterized as under:

- The cool season (December to March), during which winds blow from NE and the weather is dry and little cold.
- The hot season (April to May). During this season, winds are light and variable with sea breezes. Tropical cyclonic storms (cyclones) may cross the Arabian Sea during this season.
- During SW monsoon or rainy season (June to September), the wind over the sea is between SW and W, but mainly W to NW along the coast.
- The interim period (October and November) is marked by light winds with land and sea breezes. Occasional tropical cyclones occur in the Arabian Sea in this period.

#### 2.1.5 Temperature

In Mangalore, the air temperature is high throughout the year. The mean temperature in the hottest month, which generally occurs just before the onset of the SW monsoon, varies between 33<sup>0</sup>C to 37<sup>0</sup> C and lowest temperature recorded in a year has been 16.7<sup>0</sup> C.

#### 2.1.6 Humidity

Humidity is fairly high here at all times and seasons. There is a large variation as well from damp conditions in early mornings in the wet season to the drier conditions in the afternoon in the dry season. Daily variation is least during the SW monsoon. The maximum relative humidity observed during monsoon period is 92% (August). The minimum relative humidity during non monsoon period is 60% (December and January).

### 2.1.7 Visibility

Sometimes mist develops on the coast after a calm and clear night, but it soon disperses after sunrise. In Mangalore, during the SW monsoon (from June to September) thick haze develops. The maximum number of foggy days in a year is only 3.

### 2.1.8 Wind

The winds in the monsoon months (June, July and August) are predominantly from SW to W, with a maximum intensity of 20 to 61 kmph. The winds in the remaining months of the year are predominantly from NW with a maximum intensity of 20 to 61 kmph.

### 2.1.9 Rainfall

The average annual rainfall is 3467mm. The rainfall is concentrated in the SW monsoon (June, July, August and September), during which period the precipitation is as much as 84% of the total annual rainfall. The rainfall is maximum in July (1102.7mm); February is the most dry month (with rainfall being about 2 mm).

The maximum rainfall recorded in a day (24 hour period) was 27 cm. The average number of rainy days in a year is 123.

### 2.1.10 Cyclones

While the average frequency of cyclonic storms in the Arabian Sea is about one per year, there have been years when two or three such storms have occurred. There have also been years without any such storms. The maximum wind speed so far recorded in a cyclonic storm generally does not exceed 62 kmph (16.9m/s.), except once during 1965 when the maximum speed recorded was 97 kmph (26.9m/s.).

### 2.1.11 Wave Climate

The predominant direction of waves in the vicinity of New Mangalore Port during monsoon months (June, July and August) is West to South West, whereas the predominant direction during the fair months is North – West and North. High waves are experienced only during the monsoon month on site.

### 2.1.12 Tides

An automatic recording tide gauge has been installed by the Survey of India, National Hydrographic Office, Dehradun in the vicinity of the Oil Jetty area of the Port, inside the lagoon.

### 2.1.13 Current

The current along the coast during the SW monsoon (from February to September) is generally towards the South (from 160<sup>0</sup> to 200<sup>0</sup>) with a strength of 0.22 to 0.80 knots. During the NE monsoon (from November to January), the current is generally towards the North (from 0<sup>0</sup> to 40<sup>0</sup> and 320<sup>0</sup> to 360<sup>0</sup> bearing) with a velocity of 0.22 to 0.60 knots.

In the port entrance channel protected by breakwater, the current direction lags  $6^{\circ}$  to  $8^{\circ}$  behind the coastal current. The current in the lagoon area further lags behind the approach channel on an average by  $10^{\circ}$  to  $15^{\circ}$ . The magnitude of the current outside the lagoon area during the monsoon as experienced by pilots is about 1 to 1.5 knots.

#### 2.1.14 Littoral Drift

The study carried out by CWPRS, Pune during 2002 has concluded as under:-

- Significant littoral drift occurs between 1 and 2m depth contours, which are at a distance of about 200 to 400m from shoreline.
- Seasonal drift distribution has indicated that during North-East monsoon, littoral drift is towards north, whereas during South – West monsoon and non-monsoon period, the drift is towards South.
- The northwards drift is comparatively less than the southward drift.
- The average littoral drift in the region is of the order of 0.58 lakh cubic meter towards south during southwest monsoon and non-monsoon period and 0.08 lakhs cubic meter towards north in North – East monsoon. The average net littoral drift is 0.5 lakh cubic meter per year towards South.
- The mathematical model studies for shoreline stability have indicated that the effect of breakwater is felt upto a distance of about 2.5 km on either side of the breakwaters. The examination of remote sensing imageries confirms these observations.

#### 2.1.15 Soil Characteristics

The details soil borings carried out in the Oil Dock Arm area indicate that hard rock is at about -23.5 m to -25 m. Top layers consisted of coarse sand / fine sand.

### 2.2 Existing Port Facilities:

NMP is spread over 820 Ha of land area and water area of about 120 Ha.

#### 2.2.1 Berths and Jetties

The port has total of 16 berths. In addition, MRPL has constructed one SPM within the Port's limits at -22 m contour at a distance of about 17 Km from the shoreline and laid underwater crude oil pipelines. The details of Berths are presented in the following table.

**Berth Particulars**

Name of Berth	Type of Berth	Draught (In Mtrs)	Quay Length (Mtrs.)	DWT (In MT)
B No.1	General Cargo	7.0	125	4000

B No.2	General Cargo	10.50	198	30000
B No.3	General Cargo	10.30	198	30000
B No.4	General Cargo/ Liquid Ammonia / Phosphoric Acid	9.50	198	30000
B No.5	General Cargo / Bulk Cement/ Edible Oil	9.50	198	30000
B No.6	General Cargo/ Bulk cargo	9.50	198	30000
B No.7	General Cargo/ Bulk cargo	9.50	198	30000
B No.14	Coal/ Bulk cargo Mechanized for handling containers on PPP mode (JSW MCTPL)	14.00	350	90000
B No.15	Coal (UPCL)	14 .00	350	90000
B No.16	Coal (M/s. CMCTPL)	14 .00	350	90000
B No. 9	LPG	10.50	330	45000
B No.10	Crude / POL product	14.00	320	85000
B No.11	Crude / POL product	14.00	320	85000
B No.12	POL product/ LPG/ Chemicals	12.50	320	50000
B No.13	POL product	14.00	350	85000
B No. 8	Coal/Iron Ore (KIOCL)	12.50	300	60000
SPM	Crude oil	21.00	-	300000

2.2.2 The Total Traffic handled by the Port during past 5 (five) years is presented in the following table:-

Sl. No.	Year	Total Traffic handled in NMPA (in MTPA)
1	2017-18	42.05
2	2018-19	42.51
3	2019-20	39.14
4	2020-21	36.50
5	2021-22	39.30

2.2.3 The Total Traffic handled by the Port vis-a-vis traffic handled at Oil Berths (Berth No. 9 to 13) and traffic handled at Berth No. 9 is presented in the following Table:-

Sl. No.	Year	Total Traffic handled in NMPA (in MTPA)	Traffic handled at Oil Berths (B.9 to B.13) (in MTPA)	Traffic handled at Berth No. 09 (in MTPA)
1	2017-18	42.05	16.98	0.81
2	2018-19	42.51	16.84	0.78
3	2019-20	39.14	15.53	0.85
4	2020-21	36.50	13.71	0.79
5	2021-22	39.30	16.86	0.85

2.2.4 The commodity-wise traffic handled at Berth No. 09 is as follows:-

COMMODITY NAME	Qty. in MTPA				
	2017-18	2018-19	2019-20	2020-21	2021-22
LPG	0.71	0.70	0.69	0.62	0.62
POL	0.07	0.04	0.04	0.04	0.08
Edible Oil	0.03	0.01	0.07	0.07	0.10
Chemicals	-	0.03	0.05	0.06	0.04
Other Cargo (Bitumen)	-	-	-	-	0.01
<b>TOTAL</b>	<b>0.81</b>	<b>0.78</b>	<b>0.85</b>	<b>0.79</b>	<b>0.85</b>

2.2.5 The salient features of existing berth No. 09 are as follows:-

- Berth No. 9 was constructed during the First Phase Development of the Port during 1968-1975.
- Type of Structure: Jetty type structure with breasting and mooring dolphins, founded on vertical and rake cast-in-situ RCC piles.
- Length:
 

: Jetty Head (Service Platform)	–	25.0 m x 10.0 m
Between two Breasting dolphins	–	50.0 m
Between two Mooring dolphins	–	330.0 m
- Maximum LOA of ships permissible – 200 m
- Depth of water below chart datum – 12.0 m
- Permissible draught – 10.5 m
- Height of deck above chart datum – 3.66 m

The structural components of the existing jetty includes:-

- 2 Nos. of Berthing dolphins of size 16.00 m x 13.00 m having a 2.00 m thick deck slab resting on a system of 24 Nos. of vertical bored cast-in-situ RCC piles of 1,200 mm dia.
- 4 Nos. of Mooring dolphins each of size of 8.00m x 8.00 m founded on 10 Nos. of 800 mm dia. and 6 Nos. of 650 mm dia. bored cast-in-situ RCC raker piles with a concrete slab of 1.00 m thick.
- Service Platform of size 29.00 x 12.00 m resting on 24 nos of piles out of which 18 Nos. are 800 mm dia. and 6 Nos. 1000 mm dia piles. Also there is a provision of 4 Nos. of piles of 1000 mm dia. for fixing unloading arms. The thickness of the deck slab of service platform is 0.70 meter.
- Approach Trestle 100 m long having a width of 13.0 m and a carriage width of 8.50 m resting on 54 Nos. of 1000mm dia piles. The thickness of deck slab is 800mm.

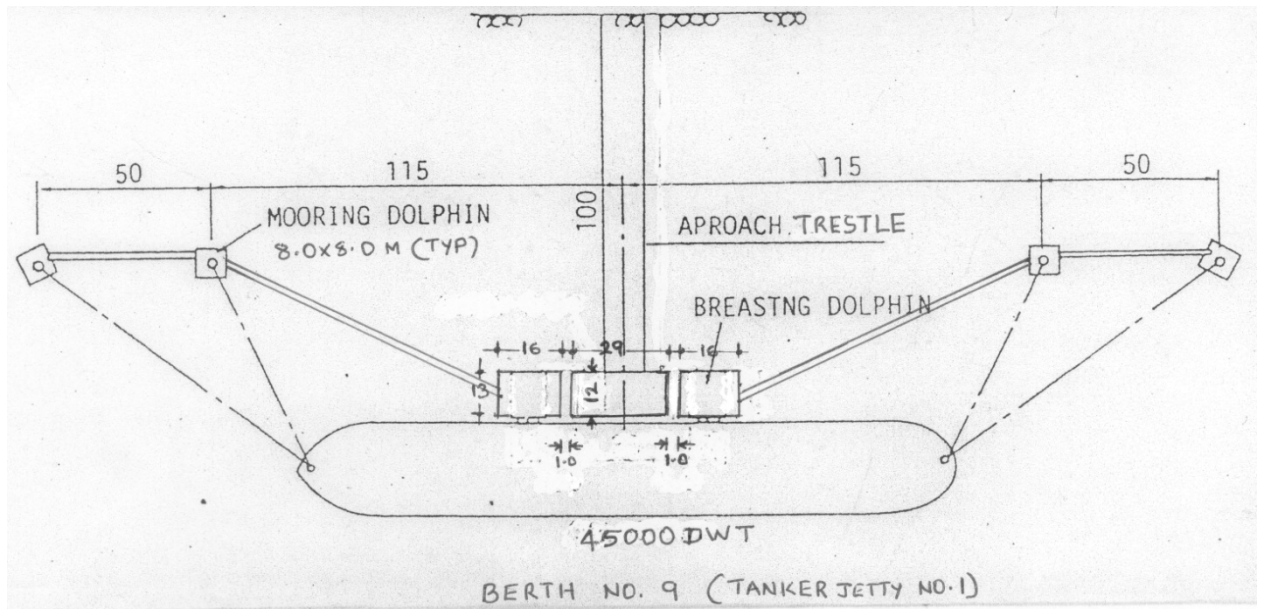


- 2 Nos. of Walkways of 1.20 m wide, having a length of 96.00 m resting on 7 Nos. of 1200 mm dia piles on either sides.
- 2 Nos. of Supercell Fenders are fixed to the two Breasting Dolphins. The size of the Fenders are 1250H with a frontal frame of 2.00 x 2.00 x 0.275. The Fenders are able to withstand a maximum berthing energy of 53.60 TM with a maximum reaction force of 110 Tonnes. In addition, 2 Nos. of giant tyres are provided in the Service Platform suspending by means of GI chains and D shackles. This is to facilitate berthing of smaller size vessels.
- 6 Nos. of electrically operated Remote Controlled Quick Release Mooring Hooks are installed at Berth No. 9. (2 Nos. in BDs and 4 Nos. in MDs).
- 6 Nos. of Mooring Ladders are provided (2 Nos. in the BDs and 4 Nos. in the MDs)
- The Berth No. 9 is also provided with Control Building, Fire Water Pump House and Electrical Transfer Room, which is constructed over a pile foundation consisting of 10 Nos. of 1200 mm dia piles.

2.2.6 Further, due to continuous weathering action and wear & tear, some portion of pile foundation and superstructure of jetty suffered damages. This was strengthened and the jetty was upgraded for handling LPG, POL products and chemicals along with the project of creation of port facilities for MRPL during the year 1994-1996.

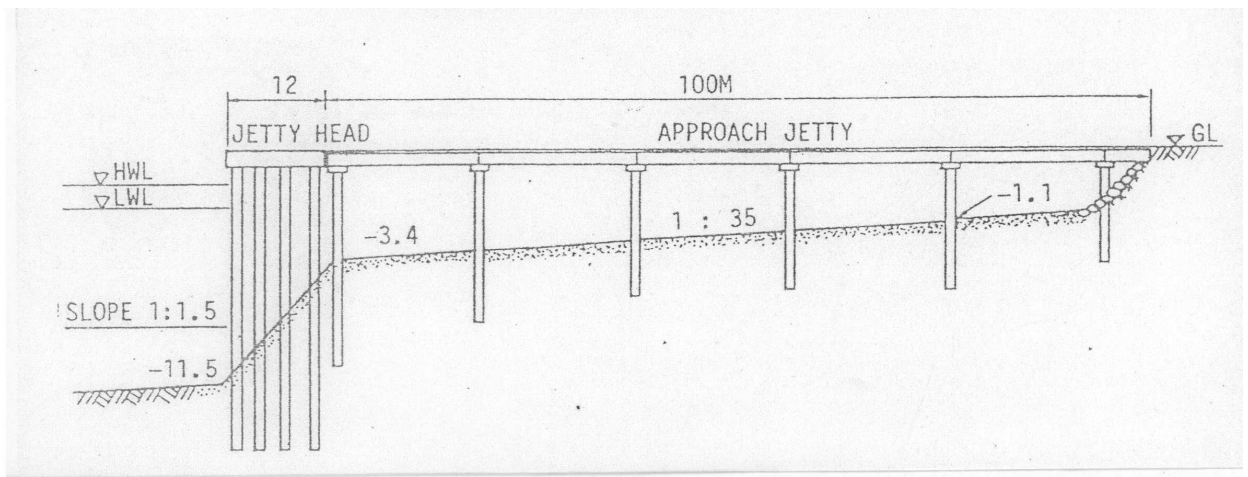
2.2.7 Presently, the jetty is capable of receiving 45,000 DWT vessels. General Features of the Berth No. 9 is as follows:-

### **General Layout of Berth No. 9**





**Typical Section of the Berth is shown in the following drawing**



### 2.2.8 Recent Developments

The PPP Projects for Asset Monetization at Major Ports envisions increase in private participation through PPP mode in the Indian Maritime Sector by strengthening institutional frameworks, model agreements and legislations.

The extract of relevant points of the concept note on PPP projects for Asset Monetization prepared by the Indian Ports Association is as follows:-

In order to improve governance and functioning of Major ports, so that the overall ecosystem for private sector participation in port sector improves, some major steps have been taken recently:

- *Major Port Authorities Act 2021*: MPA Act 2021, enacted by the parliament in February 2021, will provide more autonomy to ports and help them take decisions faster with respect to infrastructure development and changing market conditions. It is expected to usher in a new era for administration of Major Ports in India in which the Major Ports will contribute significantly to the economic growth and provide world-class port infrastructure by adopting Landlord Model of development.
  - i. The Major Ports shall gain autonomy on many key matters including tariffs, development of port assets, master planning of infrastructure within port limits and powers to make regulations for operations of the Major Ports.
  - ii. Also, the role of Tariff Authority for Major Ports (TAMP) for fixation of the tariff has been done away in the new MPT Act as a tariff regulator and ports would be free to set their tariff based on market forces. The impact of the changes in Tariff fixation will be enormous as it will create inter port competition and also once the ports are empowered for tariff fixation, they will be in better position to take on markets with near by non major ports handling similar cargo.

- iii. The Act also provides for formulation of an Adjudicatory Board that will adjudicate disputes among Major Ports, Public Private Partnership concessionaires and captive users. MPA Act 2021 will have enormous impact on overall maritime trade as focus would be on meeting the market demand and providing high level of services to the customers, leading to adoption of high-tech in overall port operations.
- *Captive Policy*: Recently, MoPSW has revised the existing Captive Policy allowing existing captive users to add new berth/ jetty/ terminal/ single point mooring (SPM) for their enhanced capacity requirement; and changes in existing Captive Policy for renewal/ extension of concession period to non-government entities taking into consideration their ongoing business requirements, allotment of waterfront to Government bodies on nomination basis and examining the various aspects like valuation of assets, period of concession, tariff, first right of refusal, etc. The proposal is under review with the Cabinet Committee on Economic Affairs (CCEA) for approval.
  - *Model Concession Agreement (MCA 2021)*: A new MCA 2021 has been notified after revisiting the existing Model Concession Agreement 2018, considering the change in policy environment due to enactment of Major Ports Authorities Act 2021 and exploring provision of further flexibility to respond to dynamic market and regulatory conditions, many provisions have been provided or modified to cater to changing environment and develop a conducive atmosphere around PPP to boost investment.
  - *Tariff Policy (2021)*: New Tariff Guidelines, 2021, for framing of Scale of Rates for PPP projects under bidding stage and all future concession agreements to be entered by Major Ports as per MPA Act, 2021 has been notified on 21<sup>st</sup> Dec.2021. PPP Concessionaires for projects after commencement of the MPA Act are free to fix the tariff based on market conditions and on such other conditions as may be notified by the Government. MoPSW has also issued a Policy to the Major Ports Authorities on 3<sup>rd</sup> November, 2021 as a policy direction under Section 53 of the MPA Act 2021 for fixation of rates for assets and services offered by the Major Ports. New Tariff Policy for Major Ports empowers the board of the ports and provides flexibility to fix tariff for assets and services operated by Major Ports themselves as per the market condition.

## 2.2.9 Detailed Project Report on Refurbishment of Berth No. 9

### 2.2.9.1 NMPA

appointed

National Technology Centre for Ports, Waterways and Coasts, Department of Ocean Engineering, Indian Institute of Technology Madras for preparation of a Detailed Project Report (DPR) for the proposed development of infrastructure for refurbishment of berth no 9 designed to accommodate vessels of at least 200000 DWT to fully utilize the draft provided in terms of cargo carrying capacity of the vessels.

### 2.2.9.2 The Objective and Scope of work was Preparation of Detailed Project Report inter-

aliacovering.

- Refurbishment of Berth No.9 with or without structural modifications and providing additional berthing dolphins (2 nos.) one on either side or Mooring dolphins. (No. of mooring dolphins shall be determined based on the design requirements) to facilitate handling of cape size vessel and LPG vessel.
- Additional loading arms and a new pipeline trestle to accommodate both liquid bulk and LPG cargo.
- Quantity assessment, including rate determination as per the Dredging Guidelines for Capital dredging for deepening in front of berth No.9 and the area in between berth No.9 and the turning circle, as per the dredging depth specified by the client.
- Detailed design to work out the BOQ and also related drawing.

### 2.2.9.3 Demolition of Existing Jetty

The new service platform is proposed 2.6m in front of the existing breasting dolphin. The old service platform, breasting dolphins and part of the old catwalk to be demolished by removing the superstructure, to the extent required to accommodate the proposed approach trestle, and also cutting old piles that are interfering with the proposed construction shall be done alone, at least up to the existing bed level.

### 2.2.9.4 Proposed Berth No. 9

Proposed Berth No.9 (Oil Jetty) is designed with two breasting dolphins, six mooring dolphins, a service platform with a berthing facility, and an approach trestle for roadways and pipelines to connect the landside from jetty structures and connecting walkways (Cat Walk structures) between the dolphins and the service platform. Breasting dolphins have provisions for fire monitor towers. The service platform will be planned to accommodate nine unloading arms and a control panel and monitor towers, etc. The deck system of the approach trestle will be 15m wide, with the delivery of marine loading/unloading arm pipelines and water/firefighting pipelines of 7.5m in width and 7.5m for carriageways. The overall length of the berthing facility in the berthing area is 349.2m. Berthing and mooring arrangements are spaced according to the guidelines mentioned.

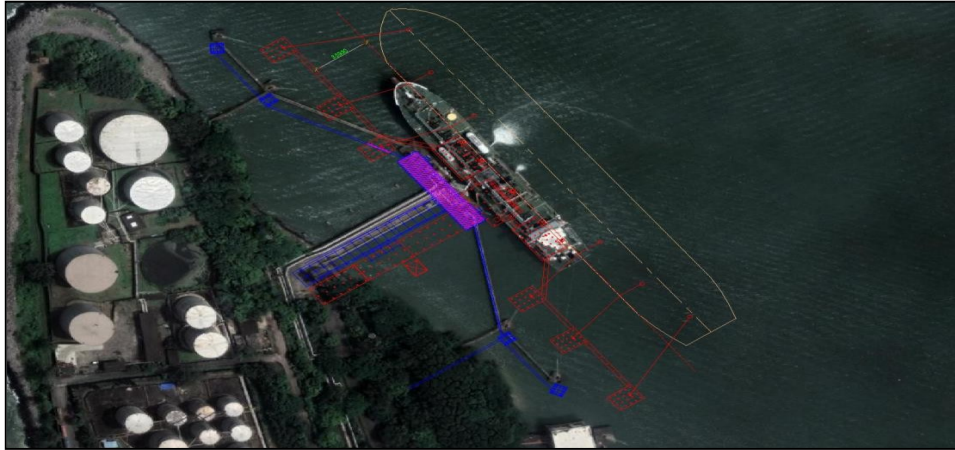
The structural components viz., breasting dolphins and service platform of proposed Berth No. 9 is designed for handling 2,00,000 DWT tank vessel drawing a draft of 18m requiring a dredging depth of (-) 19.8m CD.

The present arrangement will have the flexibility of handling the different size of vessel with LOA up to 320m with 150,000 DWT. The structural arrangements are planned according to 150,000 DWT vessels as mentioned in DBR for space constrained between Berth No.9 and Berth No.10.

NTCPWC in their report have suggested to conduct mooring analysis to check whether the mooring lines are meeting the prescribed guidelines and applicable standards, in future, if there are plans to handle 2,00,000 DWT vessels at Berth No.9.

The dredging pocket located in front of the berth is 365m in length, 70m in width, and has a dredging level of (-) 19.8m (Ref: As per IS 4651 Part 5 – 1980).

**The Overlay of Existing Berth No. 9 and Proposed Berth No. 9 is presented as follows**



**2.2.10 Present Proposal**

2.2.10.1 At present, Berth No. 9 handles majorly LPG, Chemicals (Butyl Acrylate, Sulphuric Acid, Styrene Monomer, Edible Oil & Bitumen. M/s. HPCL, M/s. Total Gas, M/s. Aegis Logistics, M/s. IMC, M/s. IPWC & M/s. MK Agrotech are the major users.

2.2.10.2 Government of India, Ministry of Power vide reference No. 23/02/2022-R&R, dtd. 17.02.2022 has notified the green Hydrogen Policy. The policy states that manufacturers of green hydrogen / green ammonia shall be allowed to set up bunkers (tank farms) near ports for storage of green ammonia for export / use by shipping. The land for the storage purpose shall be provided by the respective Port Authorities at applicable charges. Further, the Green Hydrogen Mission launched by Govt. of India in January, 2023 states that Ports will play a crucial role in establishing India's export capabilities for green hydrogen and its derivatives. The Ministry of Ports, Shipping and Waterways (MoPSW) through Ports will facilitate development of the required infrastructure including storage bunkers, port operations equipment and re-fuelling facilities and work towards making India as a green hydrogen hub. It is expected that the green hydrogen costs are expected to become competitive with fossil fuel based alternatives allowing for accelerated growth in production and there will also be an economic rationale for producing fertilizers using green hydrogen / green ammonia for import substitution. NMPA has already received business enquiries even from few foreign players who are interested to setup infrastructure for handling green hydrogen and green ammonia near the Port. Hence, the possibility of handling these green fuels along with the conventional cargo at the refurbished Berth No. 9 may be explored.

2.2.10.3 As per Asset Monetization programme, NMPA proposes to hand over existing Berth No. 9 on PPP mode. The selected developer shall invest in upgrading the berth for handling 1,50,000 DWT vessels, provide handling equipments, pipelines for handling LPG / POL products / Chemicals and green fuels and operate the berth for a concession period of 30 years.

2.2.10.4 Therefore, considering the immediate demand and future prospects, New Mangalore Port Authority intends to hand over existing Berth No. 09 to a PPP Operator for handling POL / Chemicals/LPG products on PPP mode.

## 2. INSTRUCTIONS TO APPLICANTS

### A. GENERAL

#### 2.1 Scope of Proposal

- 2.1.1 Detailed description of the objectives, scope of services, Deliverables and other requirements relating to this Consultancy are specified in this RFP. In case an applicant firm possesses the requisite experience and capabilities required for undertaking the Consultancy, it may participate in the Selection Process either individually (**the “Sole Firm”**) or as lead member of a consortium of firms (**the “Lead Member”**) in response to this invitation. The term applicant (**the “Applicant”**) means the Sole Firm or the Lead Member, as the case may be. The manner in which the Proposal is required to be submitted, evaluated and accepted is explained in this RFP.
- 2.1.2 Applicants are advised that the selection of Consultant shall be on the basis of an evaluation by the Authority through the Selection Process specified in this RFP. Applicants shall be deemed to have understood and agreed that no explanation or justification for any aspect of the Selection Process will be given and that the Authority’s decisions are without any right of appeal whatsoever.
- 2.1.3 The Applicant shall submit its Proposal in the form and manner specified in this Section of the RFP. The Technical proposal shall be submitted in the form at Appendix-I and the Financial Proposal shall be submitted in the form at Appendix-II. Upon selection, the Applicant shall be required to enter into an agreement with the Authority in the form specified at Schedule-

#### 2.2 Key Personnel

- 2.2.1 The Consultant’s team (**the “Consultancy Team”**) shall consist of the following key personnel (**the “Key Personnel”**) who shall discharge their respective responsibilities as specified below:

Key Personnel	Responsibilities
PPP Expert-cum-Team Leader (the “PPP Expert”)	He will lead, co-ordinate and supervise the Consultancy Team for delivering the Consultancy in a timely manner as envisaged in this RFP. He shall be responsible for preparation of Revenue Model and appropriate structure for the Project, prepare bid documents for selection of the Concessionaire in line with the principles of PPP / Captive Policy guidelines. He shall not delegate his responsibilities except with the prior written approval of the Authority.
Port Sector Expert	He will provide the sectoral perspective and shall be responsible for preparation of Feasibility Report for the project including cost estimates and traffic projections and the Draft Concession Agreement. He shall assist the Team Leader in the preparation of the Revenue Model and preparation of bid documents for selection of the Concessionaire.



Legal Consultant	He will provide the Legal Perspective and will review the Model Bid Documents including Model Concession Agreement to affect project specific changes required from legal perspective.
Associate Consultant	He will assist the Team Leader / PPP Expert and Port Sector Expert by providing inputs for preparation of Revenue Model, project structure and preparation of bid documents.

## 2.3 Conditions of Eligibility of Applicants

2.3.1 Applicants must read carefully the minimum conditions of eligibility (the "Conditions of Eligibility") provided herein. Proposals of only those Applicants who satisfy the Conditions of Eligibility will be considered for evaluation. To be eligible for evaluation of its Proposal, the Applicant shall fulfill the following:

2.3.2 **Technical Capacity:** The Applicant shall have, **over the past 10 (ten) years** preceding the PDD, undertaken assignments as specified in Clause 3.1.4. The Consultant shall have to substantiate the above experience with a work order and Completion certificate from the Client of having successfully completed the works indicating the time period during which the work has been executed and actual fees received.

2.3.3 **Financial Capacity:** The Applicant shall have received a minimum of Rs.1.00 crore (**US \$ 0.13 million (US Dollar Zero Point One Three million)**) per annum as professional fees during each of the three financial years preceding the PDD. For the avoidance of doubt, professional fees hereunder refer to fees received by the Applicant for providing advisory or consultancy services to its clients.

### 2.3.4 Conditions of Eligibility of Key Personnel

Each of the Key Personnel must fulfill the Conditions of Eligibility specified below:

(A) The Applicant shall offer and make available all Key Personnel meeting the requirements specified in Sub-clause (B) below.

(B) Each of the Key Personnel must fulfill the Conditions of Eligibility specified below:

Key Personnel	Educational Qualification	Length of Professional Experience	Experience on Eligible Assignments
PPP Expert-cum-Team Leader	Chartered Accountant /ICWA / CFA / <b>MBA (Finance) with Bachelors or Masters in Engineering</b>	15 years	He should have led the financial team in preparation of revenue model, bid documents for at least <b>3 (three)</b> Public Private Partnership (PPP) projects, out of which, 1 (one) project should be a Port Sector PPP project.

Port Sector Expert	Masters or Bachelors degree in Engineering or Equivalent	10 years	He should have worked as a sector expert for 2 (two) Port Sector projects out of which 1 project should be Bulk Liquid handling facilities.
Legal Consultant	Masters / Bachelors degree in Law or Equivalent	5 years	He should have worked as a Legal Consultant for issues relating to commercial contracts in a Transaction Advisory team for at least 1 (one) Port Sector project.
Associate Consultant	Masters / Bachelors degree in Engineering or Finance	5 years	He should have worked as member of a Transaction Advisory team in preparation of Revenue Model and/or Bid Documents for at least 1 (one) Port Sector projects.

- 2.3.1 The Applicants who satisfies the above criteria shall be considered for further evaluation in accordance with the method of selection specified in Clause 3.1.3 of this document.
- 2.3.2 The Applicant should submit a Power of Attorney as per the format at Form-4 of Appendix-I; provided, however, that such Power of Attorney would not be required if the Application is signed by a partner or Director (on the Board of Directors) of the Applicant, in case the Applicant is a partnership firm or limited liability partnership.
- 2.3.3 Any entity which has been barred by the Central Government, any State Government, a statutory authority or a public sector undertaking, as the case may be, from participating in any project, and the bar subsists as on the date of the Proposal, would not be eligible to submit a Proposal either by itself or through its Associate.
- 2.3.4 An Applicant or its Associate should have, during the last three years, neither failed to perform on any agreement, as evidenced by imposition of a penalty by an arbitral or judicial authority or a judicial pronouncement or arbitration award against the Applicant or its Associate, nor been expelled from any project or agreement nor have had any agreement terminated for breach by such Applicant or its Associate.
- 2.3.5 While submitting a Proposal, the Applicant should attach clearly marked and referenced continuation sheets in the event that the space provided in the specified forms in the Appendices is insufficient. Alternatively, Applicants may format the specified forms making due provision for incorporation of the requested

information.

## **2.4 Conflict of Interest**

- 2.4.1 An Applicant shall not have a conflict of interest that may affect the Selection Process or the Consultancy (the "Conflict of Interest"). Any Applicant found to have a Conflict of Interest shall be disqualified. In the event of disqualification, the Authority shall forfeit and appropriate the Performance Security, if available, as mutually agreed genuine pre-estimated compensation and damages payable to the Authority for, inter alia, the time, cost and effort of the Authority including consideration of such Applicant's Proposal, without prejudice to any other right or remedy that may be available to the Authority hereunder or otherwise.
- 2.4.2 The Authority requires that the Consultant provides professional, objective, and impartial advice and at all times hold the Authority's interests paramount, avoid conflicts with other assignments or its own interests, and act without any consideration for future work. The Consultant shall not accept or engage in any assignment that would be in conflict with its prior or current obligations to other clients, or that may place it in a position of not being able to carry out the assignment in the best interests of the Authority.
- 2.4.3 Some guiding principles for identifying and addressing Conflicts of Interest have been illustrated in the Guidance Note at Schedule-3. Without limiting the generality of the above, an Applicant shall be deemed to have a Conflict of Interest affecting the Selection Process, if:
- (a) the Applicant, its consortium member (the "Member") or Associates (or any constituent thereof) and any other Applicant, its consortium member or Associate (or any constituent thereof) have common controlling shareholders or other ownership interest; provided that this disqualification shall not apply in cases where the direct or indirect shareholding or ownership interest of an Applicant, its Member or Associate (or any shareholder thereof having a shareholding of more than 5 per cent of the paid up and subscribed share capital of such Applicant, Member or Associate, as the case may be) in the other Applicant, its consortium member or Associate is less than 5% (five per cent) of the subscribed and paid up equity share capital thereof. For the purposes of this Clause 2.3.3(a), indirect shareholding held through one or more intermediate persons shall be computed as follows: (aa) where any intermediary is controlled by a person through management control or otherwise, the entire shareholding held by such controlled intermediary in any other person (the "Subject Person") shall be taken into account for computing the shareholding of such controlling person in the Subject Person; and (bb) subject always to Sub-clause (aa) above, where a person does not exercise control over an intermediary, which has shareholding in the Subject Person, the computation of indirect shareholding of such person in the Subject Person shall be undertaken on a proportionate basis; provided, however, that no such shareholding shall be reckoned under this Sub-clause (bb) if the shareholding of such person in the intermediary is less than 26% (twenty six per cent) of the subscribed and paid up equity shareholding of such intermediary; or



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

For purposes of this RFP, Associate means, in relation to the Applicant, a person who controls, is controlled by, or is under the common control with such Applicant, or is deemed or published as an “**Associate Office**”; or has a formal arrangement such as tie up for client referral or technology sharing, joint venture with the Applicant (the “**Associate**”); provided, however, that if the Applicant has any formal arrangement such as consortium membership in a consortium of advisers/ consultants for a particular assignment/project, not being this project, with any other person, then such other person shall not be treated to be an Associate of the Applicant solely due to the reason of forming such consortium. As used in this definition, the expression “control” means, with respect to a person which is a company or corporation, the ownership, directly or indirectly, of more than 50% (fifty per cent) of the voting shares of such person, and with respect to a person which is not a company or corporation, the power to direct the management and policies of such person by operation of law or by contract.

2.4.4 An Applicant eventually appointed to provide Consultancy for this Project, its Associates, affiliates and the PPP Expert, shall be disqualified from subsequently providing goods or works or services related to the construction and operation of the same Project and any breach of this obligation shall be construed as Conflict of Interest; provided that the restriction herein shall not apply after a period of 3 (three) years from the completion of this assignment or to any consulting assignments granted by banks/ lenders at any time; provided further that this restriction shall not apply to consultancy/ advisory services performed for the Authority in continuation of this Consultancy or to any subsequent consultancy/ advisory services performed for the Authority in accordance with the rules of the Authority. For the avoidance of doubt, an entity affiliated with the Consultant shall include a partner in the Consultant’s firm or a person who holds more than 5% (five per cent) of the subscribed and paid up share capital of the Consultant, as the case may be, and any Associate thereof. For the avoidance of doubt, in the event that: (a) the PPP Expert of an Applicant/ Consultant was a partner or an employee of another firm, which attracts the provisions relating to Conflict of Interest hereunder; and (b) was directly or indirectly associated with any assignment that causes a Conflict of Interest hereunder, then such PPP Expert shall be deemed to suffer from Conflict of Interest for the purpose hereof.

2.4.5 In the event that the Consultant, its Associates or affiliates are auditors or financial advisers to any of the bidders for the Project, they shall make a disclosure to the Authority as soon as any potential conflict comes to their notice but in no case later than 7 (seven) days from the opening of the RFQ applications for the Project and any breach of this obligation of disclosure shall be construed as Conflict of Interest. The Authority shall, upon being notified by the Consultant under this Clause 2.3.5, decide whether it wishes to terminate this Consultancy or otherwise, and convey its decision to the Consultant within a period not exceeding 15 (fifteen) days.

## **2.5 Number of Proposals**

No Applicant or its Associate shall submit more than one Application for the Consultancy. An Applicant applying individually or as an Associate shall not be

entitled to submit another application either individually or as a member of any consortium, as the case may be.

## **2.6 Cost of Proposal**

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

### **2.6.1 Visit to the Authority and verification of information**

Applicants are encouraged to submit their respective Proposals after visiting the office of the Authority and ascertaining for themselves the availability of documents and other data with the Authority, Applicable Laws and regulations or any other matter considered relevant by them.

### **2.6.2 Acknowledgement by Applicant**

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

- (a) made a complete and careful examination of the RFP;
- (b) received all relevant information requested from the Authority;
- (c) accepted the risk of inadequacy, error or mistake in the information provided in the RFP or furnished by or on behalf of the Authority or relating to any of the matters referred to in Clause 2.6 above;
- (d) satisfied itself about all matters, things and information, including matters referred to in Clause 2.6 herein above, necessary and required for submitting an informed Application and performance of all of its obligations there under;
- (e) acknowledged that it does not have a Conflict of Interest; and
- (f) agreed to be bound by the undertaking provided by it under and in terms hereof.

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

## **2.7 Right to reject any or all Proposals**

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

2.7.2 Without prejudice to the generality of Clause 2.8.1, the Authority reserves the right to reject any Proposal if:

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

Misrepresentation/ improper response by the Applicant may lead to the disqualification of the Applicant. If the Applicant is the Lead Member of a consortium, then the entire consortium may be disqualified / rejected. If such disqualification / rejection occurs after the Proposals have been opened and the highest ranking Applicant gets disqualified / rejected, then the Authority reserves the right to consider the next best Applicant, or take any other measure as may be deemed fit in the sole discretion of the Authority, including annulment of the Selection Process.

## 2.8 Integrity Pact

Integrity Pact (IP) shall cover this RFP throughout its various phases, and IP would be deemed as a part of the contract. The Applicant should sign and submit a 'Integrity Pact' to be executed between the Applicant and the Authority as per the format at Form-9, and shall be submitted along with the Bid Enclosure in the manner provided in this RFP. IP would be implemented through the following Independent External Monitor ("IEM") for this Bid:

**Sri. Prem Chand Pankaj,**  
Ex-CMD, NEEPCO, M 402, Pioneer Park,  
Sector-61, Golf Course Extn. Road,  
Gurgaon, Haryana -  
Mob: 9717433886  
Email: [prempankaj@gmail.com](mailto:prempankaj@gmail.com)

## DOCUMENTS

### 2.9 Contents of the RFP

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

#### **Request for Proposal**

Section I Notice Inviting Online Tender  
Section II Instructions to Applicants for Online Bid Submissions  
Section III

1. Introduction
2. Instructions to Applicants
3. Criteria for Evaluation
4. Fraud and corrupt practices
5. Pre-Proposal Conference
6. Miscellaneous

#### **Schedules**

- 1 **Terms of Reference**
- 2 **Form of Agreement**
- 3 **Guidance Note on Conflict of Interest**

#### **Appendices**

#### **Appendix - I**

### **Technical Proposal**

- Form 1: Letter of Proposal
- Form 2: Particulars of the applicant
- Form 3: Statement of Legal Capacity
- Form 4: Financial Capacity of Applicant
- Form 5: Power of Attorney
- Form6: Particulars of Key Personnel
- Form 7: Abstract of Eligible Assignments of Key Personnel
- Form 8: Abstract of Eligible Assignments of Key Personnel
- Form 9: Eligible Assignments of Applicants
- Form 10: Eligible Assignments of Key Personnel
- Form 11: CV of Professional Personnel
- Form 12: Integrity Pact

### **Appendix – II**

- Form 1: Covering Letter
- Form 2: Reference Format of Financial Proposal
- Project Implementation Schedule

## **2.10 Clarifications**

- 2.10.1 Applicants requiring any clarification on the RFP may send their queries to the Authority in writing before the date mentioned in the Schedule of Selection Process I-Notice Inviting Online Tender. The envelopes shall clearly bear the following identification:

**"QUERIES/REQUEST FOR ADDITIONAL INFORMATION CONCERNING RFP FOR APPOINTMENT OF TRANSACTION ADVISERFOR CONCESSIONING OF BERTH NO.9FOR HANDLING LIQUID BULK / LPG / POL PRODUCTS / CHEMICALS ON CAPTIVE / PPP MODE"**

The Authority shall endeavour to respond to the queries within the period specified therein but no later than 7 (seven) days prior to the PDD. The Authority will post the reply to all such queries on the E-Tender portal and Official Website and copies thereof will also be circulated by e-mail to all Applicants who have purchased the RFP document without identifying the source of queries.

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

## **2.11.3 Amendment of RFP**

At any time prior to the deadline for submission of Proposal, the Authority may, for any reason, whether at its own initiative or in response to clarifications requested by an Applicant, modify the RFP document by the issuance of Addendum/ Amendment and posting it on the E-Tender portal and Official Website.prior to the deadline for submission of Proposal, the Authority may, for any reason, whether at its own initiative or in response to clarifications requested

by an Applicant, modify the RFP document by the issuance of Addendum/ Amendment and posting it on the Official Website and by conveying the same to the prospective Applicants (who have purchased the RFP document) by e-mail. All such amendments will be notified in writing through e-mail to all Applicants who have purchased the RFP document. The amendments will also be posted on the Official Website along with the revised RFP containing the amendments and will be binding on all Applicants.

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

## **C. PREPARATION AND SUBMISSION OF PROPOSAL**

### **2.10 Language**

The Proposal with all accompanying documents (the “Documents”) and all communications in relation to or concerning the Selection Process shall be in English language and strictly on the forms provided in this RFP. No supporting document or printed literature shall be submitted with the Proposal unless specifically asked for 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, in which case, for all purposes of interpretation of the Proposal, the translation in English shall prevail.

### **2.11 Format and signing of Proposal**

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

2.11.2 The Applicant shall prepare the Proposal together with the enclosures required to be submitted along therewith pursuant to this RFP in ORIGINAL.

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

- i. by the proprietor, in case of a proprietary firm; or
- ii. by a partner, in case of a partnership firm and/or a limited liability partnership; or
- iii. by a duly authorised person holding the Power of Attorney, in case of a Limited Company or a corporation; or
- iv. by the authorised representative of the Lead Member, in case of consortium.

A copy of the Power of Attorney certified by a notary public in the form specified in Appendix-I (Form-4) shall accompany the Proposal (if required).

2.11.4 Applicants should note the PDD, as specified in the Notice Inviting Tender, for submission of Proposals. Except as specifically provided in this RFP, no

supplementary material will be entertained by the Authority, and that evaluation will be carried out only on the basis of Documents received by the closing time of PDD as specified in Clause 2.17.1. Applicants will ordinarily not be asked to provide additional material information or documents subsequent to the date of submission, and unsolicited material if submitted will be summarily rejected.

The Applicants would provide all information as per this Proposal Document as well as subsequent clarifications/explanations furnished by NMPA. New Mangalore Port Authority reserves the right to reject any non responsive proposal.

## **2.12 Technical Proposal**

2.12.1 Applicants shall submit the technical proposal in the formats at Appendix-I (the "Technical Proposal").

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

- (a) all forms are submitted in the prescribed formats and signed by the prescribed signatories;
- (b) power of attorney, if applicable, is executed as per Applicable Laws;
- (c) CVs of all Key Personnel have been included;
- (d) Key Personnel have been proposed only if they meet the Conditions of Eligibility laid down at Clause 2.3.4 of the RFP;
- (e) no alternative proposal for any Key Personnel is being made and only one CV for each position has been furnished;
- (f) the CVs have been recently signed and dated, i.e. after the date of issue of this Request for Proposal document in blue ink by the respective Personnel and countersigned by the Applicant. Photocopy or unsigned/countersigned CVs shall be rejected;
- (g) the CVs shall contain an undertaking from the respective Key Personnel about his/her availability for the duration specified in the RFP;
- (h) Key Personnel proposed have good working knowledge of English language;
- (i) Key Personnel would be available for the period indicated in the TOR;
- (j) no Key Personnel should have attained the age of 70 years at the time of submitting the proposal; and
- (k) the proposal is responsive in terms of Clause 3, Criteria for Evaluation.
- (l) the proposal shall include EMD and Tender document fee in the form of DD.
- (m) The work order and completion certificate from the client of having successfully completed eligible works.

2.12.3 Failure to comply with the requirements spelt out in this Clause 2.14 shall make the Proposal liable to be rejected.

2.12.4 If an individual Key Personnel makes a false averment regarding his qualification, experience or other particulars, he shall be liable to be debarred for any future assignment of the Authority for a period of 3 (three) years. The award of this



Consultancy to the Applicant may also be liable to cancellation in such an event.

- 2.12.5 The Technical Proposal shall not include any financial information relating to the Financial Proposal.
- 2.12.6 The proposed team shall include experts and specialists (the “Professional Personnel”) in their respective areas of expertise and managerial/support staff (the “Support Personnel”) such that the Consultant should be able to complete the Consultancy within the specified time schedule. The Key Personnel specified in Clause 2.1.4 shall be included in the proposed team of Professional Personnel. The team shall comprise other competent and experienced professional personnel in the relevant areas of expertise (where applicable) as required for successful completion of this Consultancy. The CV of each such professional personnel, if any, should also be submitted in the format at Form-11 of Appendix-I.
- 2.12.7 An Applicant may, from time to time, if it considers necessary, propose suitable Sub-Consultants in specific areas of expertise (where applicable). Credentials of such Sub-Consultants should be submitted by the Applicant in Form-12 of Appendix-I. A Sub-Consultant, however, shall not be a substitute for any Key Personnel.
- 2.12.8 The Authority reserves the right to verify all statements, information and documents, submitted by the Applicant in response to the RFP. Any such verification or the lack of such verification by the Authority to undertake such verification shall not relieve the Applicant of its obligations or liabilities hereunder nor will it affect any rights of the Authority there under.
- 2.12.9 In case it is found during the evaluation or at any time before signing of the Agreement or after its execution and during the period of thereof, that one or more of the eligibility conditions have not been met by the Applicant or the Applicant has made material misrepresentation or has given any materially incorrect or false information, the Applicant shall be disqualified forthwith if not yet appointed as the Consultant either by issue of the LOA or entering into of the Agreement, and if the Selected Applicant has already been issued the LOA or has entered into the Agreement, as the case may be, the same shall, notwithstanding anything to the contrary contained therein or in this RFP, be liable to be terminated, by a communication in writing by the Authority without the Authority being liable in any manner whatsoever to the Selected Applicant or Consultant, as the case may be.

In such an event, the Authority shall forfeit and appropriate the Performance Security, if available, as mutually agreed pre-estimated compensation and damages payable to the Authority for, inter alia, time, cost and effort of the Authority, without prejudice to any other right or remedy that may be available to the Authority.

## **2.13 Financial Proposal**

- 2.13.1 Applicants shall submit the financial proposal in the formats at Appendix-II (the “Financial Proposal”) clearly indicating the total cost of the Consultancy (Item F of Form-2 of Appendix II) in both figures and words, in Indian Rupees, and signed by the Applicant’s Authorised Representative. In the event of any difference between figures and words, the amount indicated in words shall prevail. In the event of a difference between the arithmetic total and the total shown in the Financial Proposal, the lower of the two shall prevail.



**2.13.2 While submitting the Financial Proposal, the Applicant shall ensure the following:**

- (i) All the costs associated with the assignment shall be included in the Financial Proposal. These shall normally cover remuneration for all the Personnel (Expatriate and Resident, in the field, office etc), accommodation, air fare, equipment, printing of documents, etc. The total amount indicated in the Financial Proposal shall be without any condition attached or subject to any assumption, and shall be final and binding. In case any assumption or condition is indicated in the Financial Proposal, it shall be considered non-responsive and liable to be rejected.
- (ii) The Financial Proposal shall take into account all expenses and tax liabilities. For the avoidance of doubt, it is clarified that all taxes shall be deemed to be included in the costs shown under different items of the Financial Proposal. Further, all payments shall be subject to deduction of taxes at source as per Applicable Laws.
- (iii) Costs (including break down of costs) shall be expressed in INR.

**2.14 Submission of Proposal**

Bidders shall submit their bid through E-tenders <https://eprocure.gov.in/cppp/> of CPP.

**2.15 Proposal Due Date**

- 2.15.1 Proposal must be uploaded in the website <https://eprocure.gov.in/cppp/> not later than the time and date indicated in the online bid reference.
- 2.15.2 The Authority may, in its sole discretion, extend the PDD by issuing an Addendum in accordance with Clause 2.11 uniformly for all Applicants.
- 2.15.3 Since the bid document is downloaded from web site and uploaded through e-Tender, the bidder shall give an undertaking that no changes have been made in document.
- 2.15.4 For both Technical and Financial evaluation purpose, e-tender only will be considered.

**2.16 Modification/ substitution/ withdrawal of Proposals**

- 2.16.1 The Applicant may modify, substitute, or withdraw its Proposal after submission, provided that written notice of the modification, substitution, or withdrawal is received by the Authority prior to PDD. No Proposal shall be modified, substituted, or withdrawn by the Applicant on or after the PDD.
- 2.16.2 The modification, substitution, or withdrawal notice shall be prepared, sealed, marked, and delivered in accordance with Clause 2.16, with the envelopes being additionally marked "MODIFICATION", "SUBSTITUTION" or "WITHDRAWAL", as appropriate.
- 2.16.3 Any alteration / modification in the Proposal or additional information or material supplied subsequent to the PDD, unless the same has been expressly sought for by the Authority, shall be disregarded.

## 2.17 Bid Security

The Applicant shall furnish as part of its Proposal, a bid security of **Rs.59,000.00(Rupees Fifty nine thousand only)** through NEFT in favour of the Financial Advisor & Chief Accounts Officer (FA&CAO), NMPA. The “**Bid Security**”, is returnable not later than 30 days from PDD except in case of the two highest ranked Applicants as required in Clause 2.24.1. In the event that the first ranked Applicant commences the assignment as required in Clause 2.29, the second ranked Applicant, who has been kept in reserve, shall be returned its Bid Security forthwith, but in no case not later than 120 (one hundred and twenty) days from PDD. The Selected Applicant’s Bid Security shall be returned, upon the Applicant signing the Agreement and completing the Deliverables assigned to it for the first 2 (two) months of the Consultancy in accordance with the provisions thereof.

The benefit of Exemption of EMD to all Micro and small Enterprises (MSE) will be allowed. The bidder shall upload with their offer, proof of their being MSE registered with District Industries Centre (DIC) or Khadhi and village industries commission or Khadhi and Industries board (KVIV) or Coir board or National Small Scale Industries Corporation (NSIC) or Directorate of handicrafts and handlooms or UDYAM Registration Certificate or any other body specified by Ministry of MSME, will be considered.

2.17.1 Any Bid not accompanied by the Bid Security shall be rejected by the Authority as nonresponsive.

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

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

- (a) If an Applicant submits a non-responsive Proposal;
- (b) If an Applicant engages in any of the Prohibited Practices specified in Clause 4 of this RFP;
- (c) If an Applicant withdraws its Proposal during the period of its validity as specified in this RFP and as extended by the Applicant from time to time;
- (d) In the case of the Selected Applicant, if the Applicant fails to reconfirm its commitments during negotiation as required vide Clause 2.24.1;
- (e) In the case of a Selected Applicant, if the Applicant fails to sign the Agreement or commence the assignment as specified in Clause 2.28 and 2.29 respectively; or
- (f) If the Applicant is found to have a Conflict of Interest as specified in Clause 2.3.

## **D. EVALUATION PROCESS**

### **2.18 Evaluation of Proposals**

- 2.18.1 Prior to evaluation of Proposals, the Authority will determine whether each Proposal is responsive to the requirements of the RFP. A Proposal shall be considered responsive only if:
- a. It is received by the Proposal Due Date (PDD) and Time.
  - b. It is Digitally Signed.
  - c. It contains the information and documents as required in the RFP Document.
  - d. It contains information in formats specified in the RFP Document.
  - e. It mentions the validity period as set out in the document.
  - f. It provides the information in reasonable detail. The Port Trust reserves the right to determine whether the information has been provided in reasonable detail.
  - g. There are no significant inconsistencies between the proposal and the supporting documents.
  - h. The Technical qualification conforms to as specified in the qualification criteria.
  - i. It contains sealed and signed copy of RFP document, amendments and addendum (if any) issued by New Mangalore Port are submitted with initials on all pages.
  - j. the EMD and Tender document fee have been paid.
- 2.18.2 The Authority reserves the right to reject any Proposal which is non-responsive and no request for alteration, modification, substitution or withdrawal shall be entertained by the Authority in respect of such Proposals.
- 2.18.3 The Authority shall subsequently examine and evaluate Proposals in accordance with the Selection Process specified at Section 3 of this RFP.
- 2.18.4 After the technical evaluation, the Authority shall prepare a list of pre-qualified Applicants in terms of Clause 3.1.1 for opening of their Financial Proposals. A date, time and venue will be notified to all Applicants for announcing the result of evaluation and opening of Financial Proposals. The opening of Financial Proposals will be through E-Tender. The Authority will not entertain any query or clarification from Applicants who fail to qualify at any stage of the Selection Process. The financial evaluation and final ranking of the Proposals shall be carried out in terms of Clauses 3.2 and 3.3
- 2.18.5 Applicants are advised that Selection shall be entirely at the discretion of the Authority. Applicants shall be deemed to have understood and agreed that the Authority shall not be required to provide any explanation or justification in respect of any aspect of the Selection Process or Selection.
- 2.18.6 Any information contained in the Proposal shall not in any way be construed as binding on the Authority, its agents, successors or assigns, but shall be binding against the Applicant if the Consultancy is subsequently awarded to it.

## **2.19 Confidentiality**

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

## **2.20 Clarifications**

- 2.20.1 To facilitate evaluation of Proposals, the Authority may, at its sole discretion, seek clarifications from any Applicant regarding its Proposal. Such clarification(s) shall be provided within the time specified by the Authority for this purpose. Any request for clarification(s) and all clarification(s) in response thereto shall be in writing.
- 2.20.2 If an Applicant does not provide clarifications sought under Clause 2.23.1 above within the specified time, its Proposal shall be liable to be rejected. In case the Proposal is not rejected, the Authority may proceed to evaluate the Proposal by construing the particulars requiring clarification to the best of its understanding, and the Applicant shall be barred from subsequently questioning such interpretation of the Authority.

## **E. APPOINTMENT OF CONSULTANT**

### **2.21 Negotiations**

- 2.21.1 The Selected Applicant may, if necessary, be invited for negotiations. The negotiations shall generally not be for reducing the price of the Proposal, but will be for re-confirming the obligations of the Consultant under this RFP. Issues such as deployment of Key Personnel, understanding of the RFP, methodology and quality of the work plan shall be discussed during negotiations. A Key Personnel who did not score 70% (seventy per cent) marks as required under Clause 3.1.2 shall be replaced by the Applicant with a better candidate to the satisfaction of the Authority. In case the Selected Applicant fails to reconfirm its commitment, the Authority reserves the right to designate the next ranked Applicant as the Selected Applicant and invite it for negotiations.
- 2.21.2 The Authority will examine the CVs of all other Professional Personnel and those not found suitable shall be replaced by the Applicant to the satisfaction of the Authority.
- 2.21.3 The Authority will examine the credentials of all Sub-Consultants proposed for this Consulting services and those not found suitable shall be replaced by the Applicant to the satisfaction of the Authority.

## 2.22 Substitution of Key Personnel

- 2.22.1 The Authority will not normally consider any request of the Selected Applicant for substitution of Key Personnel during negotiations as the ranking of the Applicant is based on the evaluation of Key Personnel and any change therein may upset the ranking. Substitution, will, however be permitted if the Key Personnel is not available for reasons of any incapacity or due to health, subject to equally or better qualified and experienced personnel being provided to the satisfaction of the Authority.
- 2.22.2 The Authority expects the Key Personnel to be available during implementation of the Agreement. The Authority will not consider substitution of the Key Personnel except for reasons of any incapacity or due to health. Such substitution shall ordinarily be limited to one Key Personnel subject to equally or better qualified and experienced personnel being provided to the satisfaction of the Authority. As a condition to such substitution, a sum equal to 10% (ten per cent) of the remuneration weightage specified for the original Key Personnel in the scoring criteria as per clause 3.1.3 shall be deducted from the payments due to the Consultant. In the case of a second substitution hereunder, such deduction shall be 20% (twenty per cent) of the remuneration specified for the original Key Personnel.

The deduction shall be made as follows:-

For first substitution	=	Percentage of Remuneration Weightage for the original Key Personnel from the Contract Agreement Amount	X	10%
For second substitution	=	Percentage of Remuneration Weightage for the original Key Personnel from the Revised Agreement Amount arrived after first substitution	X	20%

- 2.22.3 Any further substitution may lead to disqualification of the Applicant or termination of the Agreement.
- 2.22.4 Substitution of the Team Leader will not normally considered and may lead to disqualification of the Applicant or termination of the Agreement.

## 2.23 Indemnity

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

## 2.24 Award of Consultancy

After selection, a Letter of Award (the "LOA") shall be issued, in duplicate, by the Authority to the Selected Applicant and the Selected Applicant shall, within 7

(seven) days of the receipt of the LOA, sign and return the duplicate copy of the LOA in acknowledgement thereof. In the event the duplicate copy of the LOA duly signed by the Selected Applicant is not received by the stipulated date, the Authority may, unless it consents to extension of time for submission thereof, cancel the LOA and the next highest ranking Applicant may be considered.

## **2.25 Execution of Agreement**

After acknowledgement of the LOA as aforesaid by the Selected Applicant, it shall execute the Agreement within 21 (twenty one) days from the date of issue of LoA. The Selected Applicant shall not be entitled to seek any deviation in the Agreement.

The successful Bidder shall prepare and submit agreement format in line with the draft enclosed to the proposal document. On Approval of the Authority the agreement shall be signed by both the Bidder and Authority, after payment of stamp duties as may be necessary by the successful Bidder. The successful bidder shall also bear the cost for making of 10 sets of Agreement copies.

## **2.26 Commencement of Assignment**

The Consultant shall commence the Consultancy within thirty (30) days from the date of issue of Letter of Award, or such other date as may be mutually agreed. If the Consultant fails to either sign the Agreement as specified in Clause 2.25 or commence the assignment as specified herein, the Authority may invite the second ranked Applicant for negotiations. In such an event, the LOA or the Agreement, as the case may be, may be cancelled /terminated.

## **2.27 Proprietary data**

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

## **3. CRITERIA FOR EVALUATION**

### **3.1 Evaluation of Technical Proposals**

- 3.1.1 In the first stage, the Technical Proposal will be evaluated on the basis of Applicant's experience, its understanding of TOR, proposed methodology and Work Plan, and the experience of Key Personnel. Only those Applicants whose Technical Proposals score 70 points or more out of 100 shall be ranked as per score achieved by them, from highest to the lowest technical score (ST).
- 3.1.2 Each Key Personnel must score a minimum of 70% marks except as provided herein. A Proposal shall be rejected if the PPP Expert scores less than 70% (seventy per cent) marks or any two of the remaining Key Personnel score less than 70% (seventy per cent) marks.

3.1.3 The scoring criteria to be used for evaluation shall be as follows.

Item Code	Parameter	Max. Marks	Criteria	Scoring	Remuneration weightage for Key Personnel in percentage (ref. Cl. 2.22.2)
<b>A</b>	<b>Relevant Experience of the Applicant</b>	<b>25</b>			
i)	Number of Eligible Assignments undertaken by the Applicant, over the past 10 (Ten) years preceding to PDD	15	More than 5 Projects	15	
			4-5 projects	12.75	
			3 projects	10.5	
ii)	Financial capacity of the firm	10	More than 2 Crore	10	
			>1 Cr. upto 2 Crore	7	
	<b>Proposed Methodology and works plan</b>	<b>5</b>	Evaluation based on quality of submission		
<b>B</b>	<b>Relevant Experience of the Key Personnel</b>	<b>70</b>			
i	<b>TEAM LEADER -PPP Expert</b>	<b>25</b>			25%
	i. Length / status of Association with Firm	5.0	Permanent Expert with more than 15 years experience with the Firm or an Independent Expert with more than 20years experience	5.00	
			Permanent Expert with more than 10 years experience with the Firm or an Independent Expert with more than 15years experience	4.25	
			Permanent Expert with 5 years experience with the firm or an Independent Expert with more than 10years experience	3.50	



	ii. Qualification	5.0	CA/ICWA/ CFA or equivalent	5.00	
			MBA(Finance) with Masters in Engineering	4.25	
			MBA(Finance) with Bachelors in Engineering	3.50	
	iii. Total Work Experience	5.0	More than 20yrs	5.00	
			16-20 yrs	4.25	
			15 yrs	3.50	
	<b>Adequacy in Assignment /Job</b> iv. Experience in carrying out Eligible assignment	10.0	More than 5 projects (with atleast 1 port sector project)	10.00	
			More than 3 projects upto 5 projects (with atleast 1 port sector project)	8.50	
			Minimum 3 projects (with atleast 1 port sector project)	7.00	
ii	<b>PORT SECTOR EXPERT</b>	<b>20</b>			20%
	i. Length / status of Association with Firm	5.0	Permanent Expert with more than 10 years experience with the firm or an Independent Expert with 15 years experience	5.00	
			Permanent Expert with more than 5years experience with the firm or an Independent Expert with more than 10 years experience	4.25	
			Permanent Expert with more than 2years experience with the firm or an Independent Expert with more than 5 years experience	3.50	
	ii. Qualification	5.00	Master	5.00	
			Bachelor	3.50	
	iii. Total Work Experience	5.00	more than 15 yrs	5.00	
			11-15 yrs	4.25	
			10 yrs	3.50	



	<b>Adequacy in Assignment /Job</b> iv. Experience in carrying out Eligible assignment	5.00	More than 4 Projects	5.00	
			3-4 projects	4.25	
			2 projects	3.50	
iii	<b>LEGAL CONSULTANT</b>	<b>15.00</b>			15%
	i. Length / status of Association with Firm	2.50	Permanent Expert with more than 10 years experience with the firm or an Independent Expert with more than 15 years experience	2.50	
			Permanent Expert with more than 5 years experience with the firm or an Independent Expert with more than 10 years experience	1.75	
	ii. Qualification	2.50	Master in Law or equivalent	2.50	
			Bachelor in Law or equivalent	1.75	
	iii. Total Work Experience	5.00	more than 10 yrs	5.00	
			6-10 yrs	4.25	
			5 yrs	3.50	
	<b>Adequacy in Assignment /Job</b> iv. Experience in carrying out Eligible assignment	5.00	More than 3 Projects	5.00	
			2- 3 projects	4.25	
			1 project	3.50	
iv	<b>ASSOCIATE CONSULTANT</b>	<b>10.00</b>			10%
	i. Length / status of Association with Firm	2.50	Permanent Expert with more than 10 years experience with the firm or an Independent Expert with more than 15 years experience	2.50	
			Permanent Expert with more than 5 years experience with the firm or an Independent Expert with more than 10 years experience	1.75	

	ii. Qualification	2.50	Master in Engineering or Finance	2.50
			Bachelor in Engineering or Finance	1.75
	iii. Total Work Experience	2.50	more than 10 yrs	2.50
			6-10 yrs	2.00
			5 yrs	1.75
	<b>Adequacy in Assignment /Job</b> iv. Experience in carrying out Eligible assignment	2.50	More than 3 projects	2.50
			2- 3 projects	2.00
			1 project	1.75

### 3.1.4 Eligible Assignments

For the purposes of satisfying the Conditions of Eligibility and for evaluating the Proposals under this RFP, Consultancy / Transaction Advisory Services assignments granted by the government, regulatory commission, tribunal, statutory authority or public sector entity in respect of preparation of revenue model and/or preparation of transaction / bid documents and other similar assignments in relation to the bidding process or other transactions, as the case may be, for which the Bidder over the **past 10 (ten) years** preceding the PDD shall have successfully completed at least **3 (three)** assignments for the following types of projects, shall be deemed as eligible assignments (the “Eligible Assignments”):

- (a) Infrastructure project undertaken through Public Private Partnership (PPP) or other forms of private participation and having an estimated capital cost (excluding land) of at least Rs. 100 crore (Rupees One hundred crore only) in case of a project in India, and [US \$ 50 million for infrastructure projects undertaken elsewhere]
- OR
- (b) Privatization or disinvestment of government owned companies in India involving transfer of management control to a private sector entity where the financial transaction involves a payment of at least Rs.50 crore (Rupees Fifty crore) for such transfer (the “Disinvestment Projects”).

#### **Note:**

The value of the project executed shall be brought to current costing level by enhancing the actual value of the work upon completion by using the following enhancement factors. For intermediate periods, the actual number of years will be calculated based on number of days and the enhancement / multiplying factor will be interpolated accordingly and the same will be considered for evaluation.

Year before	Enhancement factor / Multiplication factor
One year	1.07
Two years	1.14
Three years	1.21

Four years	1.28
Five years	1.35
Six years	1.42
Seven years	1.49
Eight years	1.56
Nine years	1.63

### 3.1.5 Other relevant assignments

Deleted

### 3.2 Short-listing of Applicants

Of the Applicants ranked as aforesaid, not more than 7 (seven) shall be pre-qualified and short-listed for financial evaluation in the second stage. However, if the number of such prequalified Applicants is less than 2 (two), the Authority may, in its sole discretion, pre-qualify the Applicant(s) whose Technical Score is less than the score specified in Clauses 3.1.1 and 3.1.2; provided that in such an event, the total number of pre-qualified and short-listed Applicants shall not exceed 2 (two).

### 3.3 Evaluation of Financial Proposal

3.3.1 In the second stage, the financial evaluation will be carried out as per this Clause 3.3. Each Financial Proposal will be assigned a financial score ( $S_F$ ) as specified in Clause 3.3.3.

3.3.2 For financial evaluation, the total cost (excluding GST) indicated in the Financial Proposal will be considered.

3.3.3 The Authority will determine whether the Financial Proposals are complete, unqualified and unconditional. The cost indicated in the Financial Proposal shall be deemed as final and reflecting the total cost of services. Omissions, if any, in costing any item shall not entitle the Consultant to be compensated and the liability to fulfil its obligations as per the TOR within the total quoted price shall be that of the Consultant. The lowest Financial Proposal (FM) will be given a financial score (SF) of 100 points. The financial scores of other proposals will be computed as follows:

$$S_F = 100 \times F_M/F$$

(F = amount of Financial Proposal)

### 3.4 Combined and Final Evaluation

3.4.1 Proposals will finally be ranked according to their combined technical (ST) and financial (SF) scores as follows:

$$S = S_T \times T_w + S_F \times F_w$$

Where,  $T_w$  and  $F_w$  are weights assigned to Technical Proposal and Financial Proposal that shall be 0.7 and 0.3 respectively.

3.4.2 The Selected Applicant shall be the Applicant having the highest combined score. The second highest Applicant shall be kept in reserve and may be invited in its discretion for negotiations in case the first-ranked Applicant withdraws, or fails to comply with the requirements specified in Clauses 2.24, 2.28 and 2.29, as the case may be.

#### **4. FRAUD AND CORRUPT PRACTICES**

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

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

## **5. PRE-PROPOSAL CONFERENCE**

- 5.1 Pre-Proposal Conference of the Applicants shall be convened at the designated date, time and place. Only those Applicants who have downloaded the RFP document from the Official Website of the Authority, shall be allowed to participate in the Pre-Proposal Conference. A maximum of two representatives of each Applicant shall be allowed to participate on production of an authority letter from the Applicant.
- 5.2 The Applicants will be free to seek clarifications and make suggestions for consideration of the Authority. The Authority shall endeavour to provide clarifications and such further information as it may, in its sole discretion, consider appropriate for facilitating a fair, transparent and competitive Selection Process.
- 5.3 The link to the Virtual Meeting (Microsoft Teams) will be shared only to those Bidders who have confirmed their participation and furnished valid email ID for communication.
- 5.4 Prospective Bidders may send queries to Chief Engineer (Civil)/c through email [chiefengineer@nmpt.gov.in](mailto:chiefengineer@nmpt.gov.in) or send online through CPP portal on or before **19/04/2023**.
- 5.5 Consolidated reply / clarifications to all the queries received till **19/04/2023** will be uploaded on the CPP portal & NMPA website well in advance to the last date of submission of tenders. No queries will be entertained after **19/04/2023**.

## **6. MISCELLANEOUS**

- 6.1 The Selection Process shall be governed by, and construed in accordance with, the laws of India and the Courts at Mangalore shall have exclusive jurisdiction over all disputes arising under, pursuant to and/or in connection with the Selection Process.
- 6.2 The Authority, in its sole discretion and without incurring any obligation or liability, reserves the right, at any time, to:

- (a) suspend and/or cancel the Selection Process and/or amend and/or

supplement the Selection Process or modify the dates or other terms and conditions relating thereto;

- (b) consult with any Applicant in order to receive clarification or further information;
  - (c) retain any information and/or evidence submitted to the Authority by, on behalf of and/or in relation to any Applicant; and/or
  - (d) independently verify, disqualify, reject and/or accept any and all submissions or other information and/or evidence submitted by or on behalf of any Applicant.
- 6.3 It shall be deemed that by submitting the Proposal, the Applicant agrees and releases the Authority, its employees, agents and advisers, irrevocably, unconditionally, fully and finally from any and all liability for claims, losses, damages, costs, expenses or liabilities in any way related to or arising from the exercise of any rights and/or performance of any obligations hereunder, pursuant hereto and/or in connection herewith and waives any and all rights and/or claims it may have in this respect, whether actual or contingent, whether present or future.
- 6.4 All documents and other information supplied by the Authority or submitted by an Applicant shall remain or become, as the case may be, the property of the Authority. The Authority will not return any submissions made hereunder. Applicants are required to treat all such documents and information as strictly confidential.
- 6.5 The Authority reserves the right to make inquiries with any of the clients listed by the Applicants in their previous experience record.

## **SCHEDULES**



## Schedule – 1: Terms of Reference

SCHEDULE – 1  
(See Clause 1.1.3)

**RFP FOR APPOINTMENT OF TRANSACTION  
ADVISOR FOR CONCESSIONING OF BERTH NO. 9 FOR HANDLING LIQUID  
BULK / LPG / POL PRODUCTS / CHEMICALS ON CAPTIVE / PPP MODE AT  
NEW MANGALORE PORT**

**TERMS OF REFERENCE (TOR)**

**1. GENERAL**

- 1.1 The Authority seeks the services of a qualified firm for acting as Transaction Adviser (the “**Consultant**”) for appraising the Project, developing a revenue model and preparing bid documents for the Project (collectively the “**Consultancy**”). The Terms of Reference (the “**TOR**”) and the scope of the Consultancy for this assignment are specified below.
- 1.2 The Consultant shall be guided in its assignment by the Captive Policy Guidelines and Model Concession Agreement (the “**MCA**”) including Construction Standards, Operations & Maintenance Standards, Safety Standards and Performance Standards for Port Projects through Public Private Partnership.
- 1.3 The Consultant shall be responsible for preparing the relevant Schedules of the Concession Agreement and for bringing out any special feature or requirement of the Project referred to in the Concession Agreement or applicable standards.
- 1.4 The Consultant shall assist the Authority by furnishing clarifications as required for the structuring, documentation and award of the Project.
- 1.5 The Consultant shall also participate in the pre-bid conferences with the Bidders of the Project and assist the Authority in clarifying the financial and legal aspects arising from the Bid Documents.
- 1.6 The Consultant shall make available the PPP Expert and other Key Personnel to attend and participate in meetings, conferences and discussions with the Authority and shall otherwise advise on and assist the Authority in the diverse commercial issues that may arise from time to time.

**2. OBJECTIVE**

The objective of this Consultancy (the “**Objective**”) is to procure transaction related advice, preparation of a report containing a Conceptual Business Plan including methodology and work plan for structuring the project develop a revenue model, undertake a financial appraisal and assist in the bidding process and award of the Project in a manner which ensures:

- (a) participation by the best available companies in the bidding process;
- (b) financing of the capital cost by the Concessionaire; and
- (c) optimising the revenue potential of the Project.

### 3. SCOPE OF SERVICES

3.1 The scope of services shall be providing Technical, Transactional and Legal advice as required including but not limited to the following:

1. Scrutiny of the project of concessioning of Berth No. 9 with respect to PPP / Captive policies issued by the Government, review of EOI application received and submit an Inception Report of the project containing a Conceptual Business Plan, modalities to be adopted keeping in view the interests of the existing users of Berth No. 9, prepare a methodology and work plan for structuring the project.
2. Prepare Techno-Economic Feasibility Report (TEFR) for the project of concessioning of Berth No. 9 for a concession period of 30 years or more as envisaged. The TEFR shall consist of project details covering topics viz., traffic study, modalities on alternative plan for existing users of Berth No. 9, Capital Cost Estimates & Implementation Schedule, Operation and Maintenance Costs, Annual Revenue Estimates, Financial Viability & Sensitivity Analysis. Work out a draft Royalty/Revenue Share model for the Project.
3. Prepare and submit Request for Qualification (RFQ) document as per the latest model Document published by the Ministry based on the Feasibility Report and updated figures, data and statistics, etc., assist NMPA for publishing the RFQ, conducting pre-proposal conference, draft replies/clarifications to bidders queries in consultation with officials of Ports for approval of the competent authority.
4. Prepare and submit a sustainable Royalty/Revenue Share financial model for the Project including furnishing clarification to the query from RFQ applicants/bidders, Ministry or any other statutory Authority.
5. Prepare and submit evaluation statement of RFQ documents received, submit scrutiny note along with recommendations of the Consultant / Transaction Advisor, with respect to short-listing of bidders and project re-structuring in consultation with Port Authority. To scrutinize security clearance information of bidders/RFQ Applicants.
6. Prepare documents for obtaining Security clearance of bidders, submit the documents for according approval of the competent authority in the Ministry.
7. Prepare and submit Request for Proposal (RFP) and Draft Concession Agreement (DCA) as per the latest Model Documents published by the Ministry for approval of the competent authority.
8. Prepare and submit proposals like, but not limited to, SFC, EFC, PPPAC, CCEA etc. to take approval of Competent Authority / Ministry for appraisal of the project, which shall include drafting letters, SFC Memorandum, preparation of power point presentations to be made by the Port before Authorities to finalize evaluation to seek approval of proposal. Arranging material for the meetings for obtaining Government approvals at various stages including Security Clearance etc. Co-ordination and correspondence with concerned statutory State/Central Govt. organizations/persons.
9. Issue of Request for Proposal (RFP) document and Draft Concession Agreement to the qualified bidders after applying necessary corrections suggested by the SFC / MoPSW / Competent Authority in consultation with officials of Ports.
10. Evaluation of RFP, submit evaluation report with recommendations and Conclusion of Bid Process and issue of Letter of Award.

11. After signing of agreement with Concessionaire, provide financial/legal opinion on implementation & operation of terminal. Assist Port Authority for appointment of Independent Engineer Consultant /technical advisor for PPP projects, frame bidding documents & subsequent evaluation thereof.
12. Follow-up of compliance and scrutiny of conditions precedent and final closure. Provide necessary technical, financial and legal assistance from time to time from Head Office and any other matter related to procedural issues of PPP.

In making its projections, recommendations and Reports, the Consultant shall identify the underlying assumptions and reach an agreement with the Authority in relation thereto. The services to be rendered by the Transaction Advisor are briefly explained hereunder:

### **3.2 Transaction Adviser**

The Consultant shall be responsible for review of the financial parameters and examination of the viability of the Project. The Consultant will also render advisory services for conducting the bid process and will prepare bidding documents and in conducting the bidding process for selection of the concessionaire for the project. The Consultant shall also maintain, update and disseminate the necessary data and information related to the Project and the bid process. During interaction with the bidders and stakeholders, the Consultant shall assist the Authority in responding to all queries satisfactorily and within the specified time. The Consultant shall render advisory services till the project achieves Financial Close.

### **3.3 Compilation and analysis of Data**

The Consultant shall, based on available information, compile and analyze the financial and commercial data relating to the Project and prepare a revenue and expenditure statement, on commercial accounting principles, for three financial years preceding the consultancy. The expenditure statement shall include expenses on staff, material, contractual payments, etc.

### **3.4 Review of costs**

Feasibility Report, along with applicable standards and the Concession Agreement will indicate the nature and extent of infrastructure, facilities and services to be provided by the Concessionaire. The Consultant shall review and comment on the cost estimates contained in the Feasibility Report. He shall ensure that appropriate provisions have been made for physical and price contingencies, financing costs, interest during construction, etc. The Consultant shall also make a broad assessment of O&M expenses to be incurred by the Concessionaire during the entire Concession period based on applicable standards

### **3.5 Estimation of revenues**

The Consultant shall evaluate the available data and information with a view to preparing a reasonable estimation of the likely revenues of the concessionaire.

### **3.6 Comment on draft Concession Agreement**

The Consultant shall comment on the Model Concession Agreement (MCA) provided by the Authority and make its recommendations.

### **3.7 Impact of Project on Government Resources**

The Consultant shall also identify and quantify the estimated financial impact of the Project on the resources of the Central / State Governments and the Project Authority.

### **3.8 Development of Revenue Model**

The Consultant shall identify and quantify all costs, expenses and revenues of the Project, and shall prepare cash-flow statements for the concession period. Based on the above, the Consultant shall prepare the Revenue Model which will indicate the possible capital structure, likely sources of financing, the costs of financing, the cash flow, debt service, return on investment etc. (the "Revenue Model"). This would also include sensitivity analysis in relation to the critical parameters of the Revenue Model.

### **3.9 Project Appraisal**

Based on the parameters specified in the Bid documents as well as the Revenue Model, the Consultant shall prepare an Appraisal Report for the Project outlining the salient features of the Project, its financial viability and its social and economic benefits. The Consultant shall work out the financial viability of the Project with a view to estimating the likely IRR over a concession period of 10 (ten) years, 15 (fifteen) years, 20 (twenty) years, 25 (twenty five) years and 30 (thirty) years. The Consultant shall review the Feasibility Report and the Model Concession Agreement to estimate the capital costs, O&M costs, revenues etc. and prepare a financial appraisal report for the Project (the "Appraisal Report").

The Authority shall invite Expression of Interest (EOI) from the Interested Parties for the Project. The Consultant shall prepare Expression of Interest (EOI) document and shall assist the Authority in evaluation of EOI applications.

### **3.10 Assistance in the RFQ process**

The bidding process is specified in the Model Request for Qualification (RFQ) document. The Consultant shall assist in adapting the Model RFQ document for project-specific purposes. The Consultant shall also assist the Authority in the pre-qualification process. The Authority intends to pre-qualify bidders on the basis of the response to the RFQ document.

### **3.11 Preparation of Bid Documents**

The Consultant shall prepare the Bid Documents i.e. the request for Qualification, the Request for Proposal and Draft Concession Agreement based on the Model RFQ, RFP and MCA. The Model Bid Documents shall be provided by the Authority. The Consultant may also suggest improvements in the development plan and project specific changes to be made in the Bid Documents. For this purpose, he shall work closely with the Authority and its associates / technical consultants. Bid documents would also include the draft Concession Agreement and the Feasibility Report. Bids to be submitted by the bidders shall be based on the aforesaid bid documents.

### **3.12 Assistance in the Bid Process**

The Consultant shall assist the Authority in the bid process for selection of the Concessionaire from among the Bidders and till the project achieves Financial Close.

This will primarily relate to participation in pre-bid meetings and answering questions or issuing clarifications with the approval of the Authority and evaluation of bids. The Consultant shall also assist the Authority in engaging with the bidders on different aspects of the Project such as its assets, the process of the transaction, the Revenue Model and the structure of the Project. It will also assist the Authority in preparing internal notes and projections for securing governmental approvals, if any.

Beyond the conclusion of bid process, these services may be in the nature of intermittent services required till the Completion of Services. Costs of Services till conclusion of bidding process are to be included in the Financial Proposal whereas payment for Services beyond this stage shall form part of Lump sum payment to be made as specified in Clause 10.2.

### **3.13 Assistance in selection of the preferred Bidder**

The Authority intends to select the preferred bidder on the basis of the Proposals received from pre-qualified bidders. Request for Qualification and Financial Proposals will be invited as part of the Bidding Process. The Consultant shall assist the Authority in evaluating the proposals and in engaging with the selected bidder till the project achieves the Financial Close.

### **3.14 Rendering advisory services**

The Consultant shall provide such other advice and assistance as may be necessary and incidental to the Services and as may be requested by the Authority in respect of the Project, including but not limited to attending meetings, conferences and discussions with the Authority, and shall otherwise advise on and assist the Authority in the diverse commercial issues that may arise from time to time. The Consultant shall be responsible primarily for providing advice relating to legal, financial and project structuring issues arising from or during the course of the bidding process and the documents relating thereto.

### **3.15 Tax and insurance-related Matters**

During the course of the Consultancy, the Consultant may be called upon to advise on tax and / or insurance related issues affecting the Project.

### **3.16 Specific Requirements for the Project**

As specified in the clause No.3.1 of TOR

### **3.17 Scope not exhaustive**

The Scope of Services specified in this Clause 3 are not exhaustive and the Consultant shall undertake such other tasks as may be necessary to appraise the project financially, prepare the Revenue Model and successfully complete the bid process for the Project.

## **4. DELIVERABLES**

In pursuance of this TOR, the Consultant shall undertake/deliver the following deliverables (the "Deliverables") during the course of this Consultancy. Each deliverable shall include an executive summary, analyses, assumptions, results of computations, tables, charts, recommendations, and such other contents that generally comprise deliverables for similar consultancy work by way of best practices.

5 hard copies (draft reports), 15 hard copies in color (final reports) and 3 soft copies(editable format) of all Reports mentioned herein below shall be submitted to the Authority. The deliverables shall include:

**A. Inception Report**

On commencement of the Consultancy, the Consultant shall prepare and submit an Inception Report (the “Inception Report”). The Inception Report shall be a further elaboration of the Consultant’s submissions towards understanding of the RFP, the methodology to be followed and Work Plan, etc. the Consultant shall submit a Conceptual Business Plan where it should clearly spell out the broad strategy for structuring the project and determining the viability gap funding requirement, if any, assuming an IRR of 12%.

**B. Revenue Model (Refer Clause 3.8)**

**C. Appraisal Report (Refer Clause 3.9)**

In the event that a viable project does not seem possible, the Consultant shall not proceed with the Consultancy and the same shall be terminated. Upon such termination, the Consultant shall be entitled to (a) full payment for the Deliverables completed by it; and (b) part payment for the non-completed deliverables on pro-rata basis as assessed by the Authority and the Authority’s decision in this regard shall be final.

**D. Preparation of Tariff proposal.**

**E. Preparation of RFQ, RFP and Concession Agreement (Refer Clauses 3.10 & 3.11).**

**F. Submission for security clearance of bidders**

**G. Submission of proposal to SFC/PPAC/MoS for approval and assisting the Authority during presentation.**

**H. Assistance in Bidding Process till the project achieves financial close (Refer Clause 3.12)**

**5. TIME AND PAYMENT SCHEDULE**

5.1 Subject to the provisions of Clause 10.1 of the TOR, the total duration for preparation of the Revenue Model, Appraisal Report and bid documents and the bidding process shall be 52weeks, excluding the time taken by the Authority in providing the requisite documents or in conveying its comments on the Draft Reports. The Consultant shall deploy the Key Personnel as per the deployment of Personnel proposed. Intermittent services will be required beyond the conclusion of bid process and until the project achieves financial close or six months after the signing of the Concession Agreement, whichever is earlier.

5.2 The schedule for completing the Deliverables shall be determined by the maximum number of days/ weeks from the Effective Date of the Agreement (the “Key Dates” or “KD”). Time schedule for important Deliverables of the Consultancy and the payment schedule linked to the specified Deliverables are given below:



Key Dates	Description of Deliverable	Week No.*	Percentage of Payment
KD-1	Review of the project and submission of Inception Report	4	5
KD-2	Submission of Techno Economic Feasibility Report	8	10
KD-3	Submission of RFQ for approval and invitation of RFQ	16	10
KD-4	Submission of a sustainable Royalty/Revenue Share model for PPP Project	22	10
KD-5	Evaluation of RFQ applications and Concluding of RFQ process	37	10
KD-6	Submission of RFP and Draft Concession Agreement for approval	37	10
KD-7	Submission of documents for Security clearance of bidders	37	10
KD-8	Submission of appraisal report to PPPAC/SFC/MoS	41	5
KD-9	Issue of RFP including preparation of Draft Concession Agreement	45	10
KD-10	Conclusion of Bid Process and issue of LoA	49	10
KD-11	Signing of Concession Agreement	52	5
KD-12	Completion of Services till financial close	76	5

\* Excluding time taken by Authority in providing comments on Draft Reports. Final Report to be submitted in a week's time after receipt of comments of the Authority.

**Note:**

The consultant may kindly note in case project being found non-feasible or no response for RFQ / RFP the respective item specified in clause 5.2 will not be operative. The consultant shall not claim the same.

In case for any reasons viz., after finalization and approval of the reports by the Authority, if the Authority requests the Consultant for repetition of any tasks mentioned above, the consultant shall do so and in such case, the Consultant shall be eligible for an additional payment of 50% of the original payment indicated for respective task.

- 5.3 Payment for the Services shall be based on the percentage specified in Clause 5.2.
- 5.4 The professional fees payable to the Consultant in accordance with the Financial Proposal shall cover the costs of telephone/fax, photocopying, couriers and postage, collections and deliveries, traveling expense, stationery, costs of support staff and counsel fee, overheads, etc., including all taxes and duties except GST. No additional charges in respect thereof shall be due or payable. Payment for the Services shall be based on the percentage specified in Clause 5.2. Reimbursement of expenses relating to travel for participating in meetings and shall be made in accordance with the provisions of the Financial Proposal

- contained in Form–2 of Appendix-II of the RFP. Bills for such reimbursement may be submitted on a monthly basis.
- 5.5 Deleted
- 5.6 Deleted
- 5.7 Payment shall be made in respect of each Deliverable upon completion thereof.
- 10%(twenty per cent)of the Agreement Value has been earmarked asFinal Payment to be made to the Consultant upon execution of the Concession Agreement. In the event the Concession Agreement does not get executed within 18 (eighteen) months of theEffective Date, the Final Payment shall not become due to the Consultant, save and except the costsincurredfor travel costs to attend meeting in the locations other than Mangalore, during the period from the Effective Date.
  - 5% each of the Agreement Value has been earmarked as payment to be made to the Consultant upon execution of the ConcessionAgreement and onachievement of financial close of the project.
- 5.8 In the event theConcession Agreement does not get executed within 52 weeks of the Effective Date, the Payment shall not become due to the Consultant, save and except the costs incurred for travel costs to attend meeting in the locations other than Mangalore, during the period from the Effective Date.
- 5.9 In the event that the Consultancy is foreclosed, percentage payment due uptothe completed stage will be made as indicated and in caseassignment foreclose in the middle of any indicated stage, pro-rata payment shall be made for the completed services as assessed by the Authority and the Authority’s decision in this regard shall be final.terminated by the Authority prior to its completion, the Consultant shall be entitled to (a) full payment for the Deliverables completed by it; and (b) part payment for the non-completed deliverables on pro-rata basis as assessed by the Authority and the Authority’s decision in this regard shall be final.
- 6. MEETINGS**
- 6.2 The Authority may review with the Consultant, any or all of the documents and advice forming part of the Consultancy, in meetings and conferences which will be held in Mangalore at the Authority’s office. Further, the Consultant may be required to attend meetings and conferences with pre-qualified bidders / the Selected Bidder / Govt. agencies or as directed by the Authority from time to time. The expenses towards attending such meetings in places other than Mangalore shall be undertaken as per request of the Authority. For maximum two key personnel’s or one key personnel and an Assistant shall be entitled to economic class air travel, board & lodging in a Three-star hotel. Bills for reimbursement hereunder may be submitted in original, along with supporting materials, Statement of Expenses, duly certified by the Authorised Representative.
- 6.3 The Authority may review with the Consultant, any or all of the documents and advice forming part of the Consultancy, in meetings and conferences which will be held in Mangalore at the Authority’s office. Further, the Consultant may be required to attend meetings and conferences with pre-qualified bidders / the

Selected Bidder / Govt. agencies or as directed by the Authority from time to time. The expenses towards attending such meetings in places other than Mangalore, during the period of Consultancy, including travel costs shall be reimbursed in accordance with the Financial Proposal contained in Form-2 of Appendix-II of the RFP.

- 6.4 The Authority may, in its discretion, require the Consultant to participate in extended meetings and/ or work from the offices of the Authority and the Consultant shall, on a best endeavor basis and without unreasonable delay, provide such services at the offices of the Authority.

## 7. CONSULTANCY TEAM

- 7.1 The Consultant shall form a team (the “Consultancy Team”) for undertaking this assignment. The Consultancy Team shall consist of experts who have the requisite qualifications and experience. PPP Expert shall be the leader of the Consultancy Team. The following Key Personnel whose experience and responsibilities are briefly described herein would be considered for evaluation of the Technical Proposal. Other expertise as required for the services to be rendered by the Consultant shall be included in the Team either through the Key Personnel specified below or through other Professional Personnel, as necessary.

Key Personnel:

### PPP Expert-cum-Team Leader (the “PPP Expert”)

Educational Qualifications	Chartered Accountant / ICWA / CFA / <b>MBA (Finance) with Bachelors or Masters in Engineering</b>
Essential Experience	15 years. He should have led the financial team in preparation of revenue model, bid documents for atleast <b>3 (three)</b> Public Private Partnership (PPP) projects, out of which, 1 (one) project should be a Port Sector PPP project.
Job Responsibilities	He will lead, co-ordinate and supervise the Consultancy Team for delivering the Consultancy in a timely manner as envisaged in this RFP. He shall be responsible for preparation of Revenue Model and appropriate structure for the Project, prepare bid documents for selection of the Concessionaire in line with the principles of PPP / Captive Policy guidelines. He shall not delegate his responsibilities except with the prior written approval of the Authority.
Minimum time required on site	As and when required

### Port Sector Expert

Educational Qualifications	Masters or Bachelors degree in Engineering or Equivalent
Essential Experience	10 years. He should have worked as a sector expert for 2 (two) Port

	Sector projects, out of which 1 project should be Bulk Liquid handling facilities.
Job Responsibilities	He will provide the sectoral perspective and shall be responsible for preparation of Feasibility Report for the project including cost estimates and traffic projections and the Draft Concession Agreement. He shall assist the Team Leader in the preparation of the Revenue Model and preparation of bid documents for selection of the Concessionaire.
Minimum time required on site	As and when required.

### Legal Consultant

Educational Qualifications	Masters / Bachelors degree in Law or Equivalent
Essential Experience	5 years  He should have worked as a Legal Consultant for issues relating to commercial contracts in a Transaction Advisory team for atleast 1 (one) Port Sector project.
Job Responsibilities	He will provide the Legal Perspective and will review the Model Bid Documents including Model Concession Agreement to affect project specific changes required from legal perspective.
Minimum time required on site	As and when required.

### Associate Consultant

Educational Qualifications	Masters / Bachelors degree in Engineering or Finance
Essential Experience	5 years  He should have worked as member of a Transaction Advisory team in preparation of TEFR, Revenue Model and/or Bid Documents for at least 1 (one) Port Sector projects.
Job Responsibilities	He will assist the Team Leader / PPP Expert and Port Sector Expert by providing inputs for preparation of Revenue Model, project structure and preparation of bid documents.

7.2 The Consultant shall mobilise and demobilise its Professional Personnel and Support Personnel as required.

## 8. REPORTING

8.1 Deleted

8.2 The Consultant will work closely with the Authority and its technical and legal consultants. The Authority has established a Working Group (the "WG") to enable conduct of this assignment. A designated nodal officer of the Authority will be responsible for the overall coordination and project development. He will play a coordinating role in dissemination of the Consultant's outputs, facilitating

discussions, and ensuring required reactions and responses to the Consultant.

- 8.3 The Consultant may prepare Issue Papers highlighting issues that could become critical for the timely completion of the Project and that require attention from the Authority.
- 8.4 The Consultant will make a presentation on the inception report for discussion with the WG at a meeting. This will be a working document. The Consultant is required to prepare and submit a monthly report that includes and describes, inter alia, general progress to date; data and reports obtained and reviewed, conclusions to date, if any; concerns about availability of, or access to, data, analyses, reports; questions regarding the TOR or any other matters regarding work scope and related issues; and so on. The Consultants' work on the TOR tasks should continue while the report is under consideration and is being discussed.
- 8.5 Regular communication with the WG and the Nodal officer is required in addition to all key communications. This may take the form of telephone/ teleconferencing, emails, faxes, and occasional meetings.
- 8.6 The Deliverables will be submitted as per schedule provided in this RFP.

## **9. DOCUMENTS TO BE MADE AVAILABLE BY THE AUTHORITY**

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

The Authority shall provide to the Consultant the following:

- (a) Detailed Project Report for the Refurbishment of Berth No. 9 at New Mangalore Port – December, 2022;
- (b) Construction Standards, Operations & Maintenance Standards, Safety Standards and Performance Standards for Port Projects through Public Private Partnership.; and
- (c) A copy of the Model Bid Documents including Concession Agreement. Available data as may be required by the Consultant will be provided by the Authority on request. The Nodal Officer designated by the Authority shall facilitate handing over of such information to the Consultant.

## **10. COMPLETION OF SERVICES**

All the Deliverables shall be compiled, classified and submitted by the Consultant to the Authority in soft form, to the extent possible. The documents comprising the Deliverables shall remain the property of the Authority and shall not be used by the Consultant for any purpose other than that intended under these Terms of Reference without the permission of the Authority. The Consultancy shall stand completed on acceptance by the Authority of all the Deliverables of the Consultant. Unless completed earlier, 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 Consultancy shall in any case be deemed to be completed upon expiry of 18 (eighteen) months or 76 (seventy six) weeks from the Effective Date, unless extended by mutual consent of the Authority and the Consultant.

**SCHEDULE – 2**  
**(See Clause 2.1.3)**

**AGREEMENT**

**FOR**

**APPOINTMENT OF TRANSACTION ADVISOR FOR CONCESSIONING OF  
BERTH NO. 9 FOR HANDLING LIQUID BULK / LPG / POL PRODUCTS/  
CHEMICALS ON CAPTIVE / PPP MODE**



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## AGREEMENT

### **Appointment of Transaction Advisor for Concessioneing of Berth No.9 for handling Liquid Bulk / LPG / POL products / Chemicals at New Mangalore Port on Captive / PPP Mode**

AGREEMENT No. \_\_\_\_\_ This AGREEMENT (hereinafter called the "Agreement") is made on the

\_\_\_\_\_ day of the month of \_\_\_\_\_ 2023, between, on the one hand, the SPV/ New Mangalore Port Trust (NMPA) (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

The Authority vide its Request for Proposal for appointment of Transaction Adviser (hereinafter called the "Consultancy") for the project of '**Concessioneing of Berth No.9 for handling Liquid Bulk / LPG / POL products / Chemicals at New Mangalore Port on Captive / PPP Mode**'(hereinafter called the "Project");

- (A) the Consultant submitted its proposals for the aforesaid work, whereby the Consultant represented to the Authority that it had the required professional skills, and in the said proposals the Consultant also agreed to provide the Services to the Authority on the terms and conditions as set forth in the RFP and this Agreement; and
- (B) the Authority, on acceptance of the aforesaid proposals of the Consultant, awarded the Consultancy to the Consultant vide its Letter of Award No. \_\_\_\_\_ dated \_\_\_\_\_ (the "LOA"); and
- (C) 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, Re. or Rs." means Indian Rupees;
- (l) "Member", in case the Consultant consists of a consortium of more than one entity, means any of these entities, and "Members" means all of these entities;
- (m) "Party" means the Authority or the Consultant, as the case may be, and Parties means both of them;
- (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
- (r) "Third Party" means any person or entity other than the Government, the Authority, the Consultant or a Sub-Consultant.

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

1.1.2 The following documents along with all addenda issued thereto shall be deemed to form and be read and construed as integral 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 Corrigendum's if any; and
- (d) Letter of Award

**1.2 Relation between the Parties**

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

**1.3 Rights and obligations**

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

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

**1.4 Governing law and jurisdiction**

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

**1.5 Language**

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

**1.6 Table of contents and headings**

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

**1.7 Notices**

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

- (a) in the case of the Consultant, be given by facsimile or e-mail and by letter delivered by hand to the address given and marked for

attention of the Consultant's Representative set out below in Clause 1.10 or to such other person as the Consultant may from time to time designate by notice to the Authority; provided that notices or other communications to be given to an address outside may, if they are subsequently confirmed by sending a copy thereof by registered acknowledgement due, air mail or by courier, be sent by facsimile or e-mail to the number/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 facsimile or e-mail and by letter delivered by hand and be addressed to the Authority with a copy delivered to the Authority Representative set out below in Clause 1.10 or to such other person as the Authority may from time to time designate by notice to the Consultant; provided that if the Consultant does not have an office in Mangalore it may send such notice by facsimile or e-mail and by registered acknowledgement due, air mail or by courier; and
- (c) any notice or communication by a Party to the other Party, given in accordance herewith, shall be deemed to have been delivered when in the normal course of post it ought to have been delivered and in all other cases, it shall be deemed to have been delivered on the actual date and time of delivery; provided that in the case of facsimile or 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 Consultant in accordance with the provisions of RFP and at such locations as are incidental thereto, including the offices of the Consultant Authority.

1.8.2 The Authority may require the PPP 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 Authorised 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:  
Chief Engineer (Civil)  
Civil Engineering Department  
New Mangalore Port Authority  
Panambur,  
Mangalore – 575 010  
Kanrnataka (India)  
Phone : 0824 2407493  
Fax :0824 2407493  
Email : chiefengineer@nmpt.gov.in

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

-----

Tel: -----

Mobile: -----

Fax: -----

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 may be lawfully imposed on it.

## **2. COMMENCEMENT, COMPLETION AND TERMINATION OF AGREEMENT**

### **2.1 Effectiveness of Agreement**

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

### **2.2 Commencement of Services**

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

### **2.3 Termination of Agreement for failure to commence Services**

If the Consultant does not commence the Services within the period specified in Clause 2.2 above, the Authority may, by not less than 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 Expiration of Agreement**

Unless terminated earlier pursuant to Clauses 2.3 or 2.9 hereof, this Agreement shall, unless extended by the Parties by mutual consent, expire upon the earlier of (i) expiry of a period of 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.

## **2.5.1 Entire Agreement**

2.5.2 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.

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

## **2.6 Modification of Agreement**

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

## **2.7 Force Majeure**

### **2.7.1 Definition**

(a) For the purposes of this Agreement, "Force Majeure" means an event which is beyond the reasonable control of a Party, and which makes a Party's performance of its obligations hereunder impossible or so impractical as reasonably to be considered impossible in the circumstances, and includes, but is not limited to, war, riots, civil disorder, earthquake, fire, **lockdown or quarantine restrictions due to pandemic/ epidemic**, explosion, storm, flood or other adverse weather conditions, strikes, lockouts or other industrial action (except where such strikes, lockouts or other industrial action are within the power of the Party invoking Force Majeure to prevent), confiscation or any other action by government agencies.

(b) Force Majeure shall not include (i) any event which is caused by the negligence or intentional action of a Party or such Party's Sub-Consultant or agents or employees, nor (ii) any event which a diligent Party could reasonably have been expected to both (A) take into account at the time of the conclusion of this Agreement, and (B) avoid

or overcome in the carrying out of its obligations hereunder.

- (c) Force Majeure shall not include insufficiency of funds or failure to make any payment required hereunder.

#### **2.7.2 No breach of Agreement**

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

#### **2.7.3 Measures to be taken**

- (a) A Party affected by an event of Force Majeure shall take all reasonable measures to remove such Party's inability to 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 minimise the consequences of any event of Force Majeure.

#### **2.7.4 Extension of time**

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

#### **2.7.5 Payments**

The payment shall be made to the Consultant as specified in the Clause 5.0 of Terms of Reference.

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
- (d) the Authority fails to comply with any final decision reached as a result of arbitration pursuant to Clause 9 hereof.

### **2.9.3 Cessation of rights and obligations**

Upon termination of this Agreement pursuant to Clauses 2.3 or 2.9 hereof, or upon expiration of this Agreement pursuant to Clause 2.4 hereof, all rights and obligations of the Parties hereunder shall cease, except (i) such rights and obligations as may have accrued on the date of termination or expiration, or which expressly 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):

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

### **2.9.6 Disputes about Events of Termination**

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

### **3. OBLIGATIONS OF THE CONSULTANT**

#### **3.1 General**

##### **3.1.1 Standards of Performance**

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

##### **3.1.2 Terms of Reference**

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

##### **3.1.3 Applicable Laws**

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

#### **3.2 Conflict of Interest**

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

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

The Consultant agrees that, during the term of this Agreement and after its termination, the Consultant or any Associate thereof, 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 or restrictive practice (collectively the "Prohibited Practices"). Notwithstanding anything to the contrary contained in this Agreement, the Authority shall be entitled to terminate this Agreement forthwith by a communication in writing to the Consultant, without being liable in any manner whatsoever to the Consultant, if it determines that the Consultant has, directly or indirectly or through an agent, engaged in any Prohibited Practices in the Selection Process or before or after entering into of this Agreement. In such an event, the Authority shall forfeit and appropriate the Performance Security, if any, as mutually agreed genuine pre-estimated compensation and damages payable to the Authority towards, inter alia, time, cost and effort of the Authority, without prejudice to the Authority's any other rights or remedy hereunder or in law.

3.2.6 Without prejudice to the rights of the Authority under Clause 3.2.5 above and the other rights and remedies which the Authority may have under this Agreement, if the Consultant is found by the Authority to have directly or indirectly or through an agent, engaged or indulged in any Prohibited Practices, during the Selection Process or before or after the execution of this Agreement, the Consultant shall not be eligible to participate in any

tender or RFP issued during a period of 2 (two) years from the date the Consultant is found by the Authority to have directly or indirectly or through an agent, engaged or indulged in any Prohibited Practices.

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

- (a) “corrupt practice” means the offering, giving, receiving or soliciting, directly or indirectly, of anything of value to influence the actions of any person connected with the Selection Process (for removal of doubt, offering of employment or employing or engaging in any manner whatsoever, directly or indirectly, any official of the Authority who is or has been associated in any manner, directly or indirectly with Selection Process or LOA or dealing with matters concerning the Agreement before or after the execution thereof, at any time prior to the expiry of one year from the date such official resigns or retires from or otherwise ceases to be in the service of the Authority, shall be deemed to constitute influencing the actions of a person connected with the Selection Process); or (ii) engaging in any manner whatsoever, whether during the Selection Process or after the issue of LOA or after the execution of the Agreement, as the case may be, any person in respect of any matter relating to the Project or the LOA or the Agreement, who at any time has been or is a legal, financial or technical adviser the Authority in relation to any matter concerning the Project;
- (b) “fraudulent practice” means a misrepresentation or omission of facts or suppression of facts or disclosure of incomplete facts, in order to influence the Selection Process;
- (c) “coercive practice” means impairing or harming, or threatening to impair or harm, directly or indirectly, any person or property to influence any person’s participation or action in the Selection Process or the exercise of its rights or performance of its obligations by the Authority under this Agreement;
- (d) “undesirable practice” means (i) establishing contact with any person connected with or employed or engaged by the Authority with the objective of canvassing, lobbying or in any manner influencing or attempting to influence the Selection Process; or (ii) having a Conflict of Interest; and
- (e) “restrictive practice” means forming a cartel or arriving at any understanding or arrangement among Applicants with the objective of restricting or manipulating a full and fair competition in the Selection Process.



### **3.3 Confidentiality**

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

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

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

### **3.4 Liability of the Consultant**

- 3.4.1 The Consultant's liability under this Agreement shall be determined by the Applicable Laws and the provisions hereof.
- 3.4.2 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 wilful misconduct on the part of the Consultant or on the part of any person or firm acting on behalf of the Consultant in carrying out the Services, the Consultant, with respect to damage caused to the Authority's property, shall not be liable to the Authority:
- (i) for any indirect or consequential loss or damage; and
  - (ii) for any direct loss or damage that exceeds (a) the Agreement Value set forth in Clause 6.1.2 of this Agreement, or (b) the proceeds the Consultant may be entitled to receive from any insurance maintained by the Consultant to cover such a liability, 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 detail as 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 professional personnel as are not listed in Appendix-1, Form 6;
- (b) entering into a subcontract for the performance of any part of the Services, it being understood (i) that the selection of the Sub-consultant and the terms and conditions of the subcontract shall have been approved in writing by the Authority prior to the execution of the subcontract, and (ii) that the Consultant shall remain fully liable for the performance of the Services by the Sub-Consultant and its Personnel pursuant to this Agreement; or

- (c) any other action that is specified in this Agreement.

### **3.7 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 Deleted

### **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 unauthorised use of such Consultancy Documents, or due to any breach or failure on part of the Consultant or its Sub-Consultants or a Third Party to perform any of its duties or obligations in relation to securing the aforementioned rights of the Authority.

### **3.9 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 authorised 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 CONSULTANT'S PERSONNEL AND SUB-CONSULTANTS**

### **4.1 General**

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

### **4.2 Deployment of Personnel**

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 Form-6 of Appendix-I of this Agreement. The estimated deployment schedule of key personnel is provided in Annexure-2 of this Agreement.

4.2.2 Adjustments with respect to the estimated periods of engagement of Personnel set forth in the aforementioned Form-3 of Appendix-II 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 Form-6 of Appendix-I 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 Form No. 6 of Appendix-I 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 Key Personnel shall be permitted only upon reduction of remuneration weightage specified for the original Key Personnel in the scoring criteria as per clause 3.1.3 shall be deducted from the payments due to the Consultant.

The Consultant should specifically note that substitution of the Team Leader cum PPP Expert will not normally be considered during the implementation of the Agreement and may lead to disqualification of the Applicant or termination of the Agreement. The PPP Expert must commit the time required for and be available for delivering the Consultancy in accordance with the terms specified herein.

4.5 Deleted

#### **4.6 PPP Expert and Project Manager**

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

4.7 Deleted.

### **5. OBLIGATIONS OF THE AUTHORITY**

5.1 Assistance in clearances etc.

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

- (a) provide the Consultant, its Sub-Consultants and Personnel with work permits and such other documents as may be necessary to enable the Consultant, its Sub-Consultants or Personnel to perform

the Services;

- (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**

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 'Schedule of Prices', Form-2 of Appendix II of the Agreement.

6.1.2 Except as may be otherwise agreed under Clause 2.6 and subject to Clauses 5.1 and 5.2 of Schedule-1, the payments under this Agreement shall not exceed the agreement value specified herein (the "Agreement Value"). The Parties agree that the Agreement Value is Rs. .... (Rs.....).

6.1.2 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 Rs. .... (Rs.....), which does not include the Additional Costs specified in Form-2 of Appendix -II (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.Deleted.

## **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 clause 4 & 5, sub-clauses 5.2, 5.3, 5.4, 5.5, 5.6 and 5.7 of the TOR, and the rates specified in the Price Schedule of this Agreement / RFP, 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; 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**”).
- (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 in excess of the amounts actually payable in accordance with the provisions of this Agreement shall be reimbursed by the Consultant to the Authority within 30 (thirty) days after receipt by the Consultant of notice thereof. Any such claim by the Authority for reimbursement must be made within 1 (one) year after receipt by the Authority of a final report in accordance with Clause 6.3 (c). Any delay by the Consultant in reimbursement by the due date shall attract simple interest @ PLR SBI +2% (two per cent) 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. Performance Security, Liquidated Damages and Penalties**

### **7.1 Performance Security**

- i) Within 21 days of receipt of the Letter of Award, the successful Bidder shall deliver to the Employer a Performance Security in the form in the form of Insurance Surety Bonds, Account Payee Demand draft, Fixed Deposit Receipt from a commercial bank, remittance by RTGS or in the form of Bank Guarantee for an amount equivalent to 3% of the Contract price including GST, as applicable rounded off to the nearest 1000.
- ii) If the performance security is provided by the successful Bidder in the form of a Bank Guarantee, it shall be issued by a Nationalized /Scheduled Indian bank having its branch at Mangalore acceptable by NMPA. The BG shall be issued in favor of New Mangalore Port Authority as per the draft proforma specified as Annexure-1.
- iii) Failure of the successful bidder to lodge and subsequently renew the required Bank Guarantee shall constitute sufficient grounds for the termination of the contract and forfeiting of "Bid security".
- iv) The performance security shall remain in force until the satisfactory completion of the contract and will be discharged thereafter. The obtaining of such guarantee (and the cost of guarantee) shall be at the expense of the Bidder/s.

### **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 0.5% (zero point five per cent) per week of the activity specified in Time& Payment Schedule - Clause 5 of TOR, subject to a maximum of 10% (ten per cent) of Agreement Value will be imposed and shall be recovered by appropriation from the Performance Security or otherwise. However, in case of delay due to reasons beyond the control of the Consultant, suitable extension of time shall be granted.

#### **7.2.3 Encashment and appropriation of Performance Security**

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

### **7.3 Penalty for deficiency in Services**

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

In the event of forfeiting the EMD/SD/Performance Security and imposition of liquidated damages, GST is applicable and while imposing penalty GST shall be collected. The GST shall be shown claimed as a separate line item in Tax Invoice. The Consultant shall file the applicable returns with Tax Dept. in time and submit the same as a documentary proof. In case, input Tax credit lost due to non filing of returns will be recovered from Consultant.

## **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 realisation of the objectives of this Agreement.

### **8.2 Operation of the Agreement**

The Parties recognise 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 Secretary, Ministry of Shipping 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 (Amendment) Act, 2015. Arbitration and Conciliation Act, 1996. The venue of such arbitration shall be Mangalore and the language of arbitration proceedings shall be English.
- 9.4.2 There shall be a sole arbitrator whose appointment shall be made in accordance with the Rules.
- 9.4.3 The arbitrators shall make a reasoned award (the "Award"). Any Award made in any arbitration held pursuant to this Clause 9 shall be final and binding on the Parties as from the date it is made, and the Consultant and the Authority agree and undertake to carry out such Award without delay.
- 9.4.4 The Consultant and the Authority agree that an Award may be enforced against the Consultant and/or the Authority, as the case may be, and their respective assets wherever situated.
- 9.4.5 This Agreement and the rights and obligations of the Parties shall remain in full force and effect, pending the Award in any arbitration proceedings hereunder.

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

### **SCHEDULE-3**

(See Clause 2.4.3)

#### Guidance Note on Conflict of Interest

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

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

4. The normal way to identify conflicts of interest is through self-declaration by consultants. Where a conflict exists, which has not been declared, competing companies are likely to bring this to the notice of the Authority. All conflicts must be declared as and when the consultants become aware of them.

5. Another approach towards avoiding a conflict of interest is through the use of “Chinese walls” to avoid the flow of commercially sensitive information from one part of the consultant’s company to another. This could help overcome the problem of availability of limited numbers of experts for the project. However, in reality effective operation of “Chinese walls” may be a difficult proposition. As a general rule, larger companies will be more capable of adopting Chinese walls approach than smaller companies. Although, “Chinese walls” have been relatively common for many years, they are an increasingly discredited means of avoiding conflicts of interest and should be considered with caution. As a rule, “Chinese walls” should be considered as unacceptable and may be accepted only in exceptional cases upon full disclosure by a consultant coupled with provision of safeguards to the satisfaction of the Authority.
  
6. Another way to avoid conflicts of interest is through the appropriate grouping of tasks. For example, conflicts may arise if consultants drawing up the terms of reference or the proposed documentation are also eligible for the consequent assignment or project.
  
7. Another form of conflict of interest called “scope–creep” arises when consultants advocate either an unnecessary broadening of the terms of reference or make recommendations which are not in the best interests of the Authority but which will generate further work for the consultants. Some forms of contractual arrangements are more likely to lead to scope-creep. For example, lump-sum contracts provide fewer incentives for this, while time and material contracts provide built in incentives for consultants to extend the length of their assignment.
  
8. Every project contains potential conflicts of interest. Consultants should not only avoid any conflict of interest, they should report any present/ potential conflict of interest to the Authority at the earliest. Officials of the Authority involved in development of a project shall be responsible for identifying and resolving any conflicts of interest. It should be ensured that safeguards are in place to preserve fair and open competition and measures should be taken to eliminate any conflict of interest arising at any stage in the process.

Bank Guarantee for Performance Security

(Refer Clause 7.1)

To

Board Members  
New Mangalore Port Authority  
acting through  
Chairman New  
Mangalore Port  
Authority

In consideration of Chairman acting on behalf of the New Mangalore Port Authority (hereinafter referred as the "Authority", which expression shall, unless repugnant to the context or meaning thereof, include its successors, administrators and assigns) having awarded to M/s ....., having its office at ..... (hereinafter referred as the "Consultant" which expression shall, unless repugnant to the context or meaning thereof, include its successors, administrators, executors and assigns), vide the Authority's Agreement no. .... dated ..... valued at Rs. ....

(Rupees .....), (hereinafter referred to as the "Agreement") the work of Transaction advisory services for Concessioning of Berth No.9 for handling Liquid Bulk / LPG / POL products / Chemicals at New Mangalore Port on Captive / PPP Mode 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 be a valid discharge of our

liability for payment thereunder and the Consultant shall have no claim against us for making such payment.

4. We, ..... (indicate the name of Bank) further agree that the Guarantee herein contained shall remain in full force and effect during the period that would be taken for the performance of the said Agreement and that it shall continue to be enforceable till all the dues of the Authority under or by virtue of the said Agreement have been fully paid and its claims satisfied or discharged or till the Authority certifies that the terms and conditions of the said Agreement have been fully and properly carried out by the said Consultant and accordingly discharges this Guarantee. Unless a demand or claim under this Guarantee is made on us in writing on or before a period of one year from the date of this Guarantee, we shall be discharged from all liability under this Guarantee thereafter.

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

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

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

8. For the avoidance of doubt, the Bank's liability under this Guarantee shall be restricted to Rs. \*\*\* crore (Rupees \*\*\*\*\* crore) only. The Bank shall be liable to pay the said amount or any part thereof only if the Authority serves a written claim on the Bank in accordance with paragraph 2 hereof, on or before [\*\*\* (indicate date falling 180 days after the Bid Due Date specified in the RFQ/RFP for the Project)].

Dated, the ..... day of ..... 20

For .....

(Name of Bank)

(Signature, name and designation of the authorised 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.

Annexure -2

(Refer Clause 7.1 of ToR)

**Proposed Deployment Schedule**

<b>Key Personnel</b>	<b>Man weeks</b>	<b>1</b>	<b>2</b>	<b>3</b>	<b>5</b>	<b>6</b>	<b>7</b>	<b>8</b>	<b>9</b>	<b>.</b>	<b>.</b>	<b>.</b>	<b>52</b>
PPP Expert cum Team Leader													
Port Sector Expert													
Legal Consultant													
Associate Consultant													

## **APPENDICES**

APPENDIX-I  
(See Clause 2.1.3)  
TECHNICAL PROPOSAL  
Form-1  
Letter of Proposal  
(On Applicant's letter head)

(Date and Reference)

To

-----

Sub:Appointment of Transaction Advisor for Concessioneing of Berth No.9 for handling Liquid Bulk / LPG / POL products / Chemicals at New Mangalore Port on Captive / PPP Mode

Dear Sir,

With reference to your RFP Document dated ....., I/We, having examined all relevant documents and understood their contents, hereby submit our Proposal for Appointment of Transaction Advisor for Concessioneing of Berth No.9 for handling Liquid Bulk / LPG / POL products / Chemicals at New Mangalore Port on Captive / PPP Mode.

. The proposal is unconditional and unqualified.

2. I/We acknowledge that the 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 Appendices 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.
3. This statement is made for the express purpose of appointment as the Consultant for the aforesaid Project.
4. I/We shall make available to the Authority any additional information it may deem necessary or require for supplementing or authenticating the Proposal.
5. I/We acknowledge the right of the Authority to reject our application without assigning any reason or otherwise and hereby waive our right to challenge the same on any account whatsoever.
6. I/We certify that in the last three years, we or any of our Associates have neither failed to perform on any contract, as evidenced by imposition of a penalty by an arbitral or judicial authority or a judicial pronouncement or arbitration award against the Applicant, nor been expelled from any project or contract by any public authority nor have had any contract terminated by any public authority for breach on our part.

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

14. I/We agree and understand that the proposal is subject to the provisions of the RFP document. In no case, shall I/we have any claim or right of whatsoever nature if the Consultancy for the Project is not awarded to me/us or our proposal is not opened or rejected.
15. I/We agree to keep this offer valid for 90 (ninety) days from the PDD specified in the RFP.
16. A Power of Attorney in favour of the authorised signatory to sign and submit this Proposal and documents is attached herewith in Form 4.
17. In the event of my/our firm being selected as the Consultant, I/we agree to enter into an Agreement in accordance with the form at Schedule-2 of the RFP. We agree not to seek any changes in the aforesaid form and agree to abide by the same.
18. In the event of my/our firm being selected as the Consultant, I/we agree and undertake to provide the services of the PPP Expert in accordance with the provisions of the RFP and that the PPP Expert shall be responsible for providing the agreed services himself and not through any other person or Associate.
19. I/We have studied RFP and all other documents carefully. We understand that except to the extent as expressly set forth in the Agreement, we shall have no claim, right or title arising out of any documents or information provided to us by the Authority or in respect of any matter arising out of or concerning or relating to the Selection Process including the award of Consultancy.
20. The Financial Proposal is being submitted in a separate cover. This Technical Proposal read with the Financial Proposal shall constitute the Application which shall be binding on us.
21. I/We agree and undertake to abide by all the terms and conditions of the RFP Document.

In witness thereof, I/we submit this Proposal under and in accordance with the terms of the RFP Document.

Yours faithfully,

(Signature, name and designation of the authorised signatory)

(Name and seal of the Applicant/ Lead Member)

## APPENDIX-I

Form-2

## Particulars of the Applicant

1.1	Title of Consultanting services: TRANSACTION ADVISOR
1.2	Title of Project: Appointment of Transaction Advisor for Concessioneing of Berth No.9for handling Liquid bulk / LPG / POL products / Chemicals at New Mangalore Port on Captive / PPP Mode
1.3	State whether applying as Sole Firm or Lead Member of a consortium: Sole Firm or Lead Member of a consortium
1.4	<p>State the following:</p> <p>Name of Company or Firm:</p> <p>Legal status (e.g. incorporated private company, unincorporated business, partnership etc.):</p> <p>Country of incorporation:</p> <p>Registered address:</p> <p>\Year of Incorporation:</p> <p>Year of commencement of business:</p> <p>Principal place of business:</p> <p>Brief description of the Company including details of its main lines of business</p> <p>Name, designation, address and phone numbers of Authorised Signatory of the Applicant:</p> <p>Name:</p> <p>Designation:</p> <p>Company:</p> <p>Address</p> <p>Phone No.:</p> <p>Fax No. :</p> <p>E-mail address::</p>
1.5	If the Applicant is Lead Member of a consortium, state the following for each of the other Member Firms:
	(i) Name of Firm:
	(ii) Legal Status and country of incorporation



	(iii) Registered address and principal place of business.
1.6	<p>For the Applicant, (in case of a consortium, for each Member), state the following information:</p> <p>(i) In case of non Indian company, does the company have business presence in India? Yes/No</p> <p>If so, provide the office address(es) in India.</p> <p>(ii) Has the Applicant or any of the Members in case of a consortium been penalized by any organization for poor quality of work or breach of contract in the last five years? Yes/No</p> <p>(iii) Has the Applicant/ Member ever failed to complete any work awarded to it by any public authority/ entity in last five years? Yes/No</p> <p>(iv) Has the Applicant or any member of the consortium been blacklisted by any Government department/Public Sector Undertaking in the last five years? Yes/No</p> <p>(v) Has the Applicant or any of the Members, in case of a consortium, suffered bankruptcy/insolvency in the last five years? Yes/No</p> <p><b>Note: If answer to any of the questions at (ii) to (v) is yes, the Applicant is not eligible for this assignment.</b></p>
1.7	<p>(Signature, name and designation of the Authorized Signatory)</p> <p>For and on behalf of .....</p>

APPENDIX-I

Form-3

Statement of Legal Capacity

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

Ref. Date:

To

Chief Engineer  
Administrative Office Building  
2<sup>nd</sup> Floor, New Mangalore Port Trust  
Panambur  
Mangalore 575010

Dear Sir,

Sub:APPOINTMENT OF TRANSACTION ADVISOR FOR CONCESSIONING  
OF BERTH NO.9 FOR HANDLING LIQUID BULK / LPG / POL PRODUCTS /  
CHEMICALSON CAPTIVE / PPP MODE AT NEW MANGALORE PORT

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

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

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

Yours faithfully,

(Signature, name and designation of the authorised signatory

For and on behalf of .....

\*Please strike out whichever is not applicable

## APPENDIX-I

Form-4

## Financial Capacity of the Applicant

(Ref. Clause 2.3.3)

Sl. No.	Financial Year	Professional Fees received (Rs.)
1.	2019-20	
2.	2020-21	
3.	2021-22	

Certificate from the Statutory Auditor<sup>§</sup>

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

(Signature, name and designation of the authorised signatory)

Date: \_\_\_\_\_ Name and seal of the audit firm: \_\_\_\_\_  
UDIN : \_\_\_\_\_

<sup>§</sup> 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.

APPENDIX-I

Form-5

Power of Attorney

Know all men by these presents, We, ..... (name of Firm and address of the registered office) do hereby constitute, nominate, appoint and authorise Mr / Ms.....son/daughter/wife and presently residing at ..... , who is presently employed with/ retained by us and holding the position of ..... as our true and lawful attorney (hereinafter referred to as the "Authorised Representative") to do in our name and on our behalf, all such acts, deeds and things as are necessary or required in connection with or incidental to submission of our Proposal for and selection as the Consultant for Providing Transaction Advisory Services for Concessioneing of Berth No.9for Handling POL / Chemicals on Captive / PPP Modeat New Mangalore Port, proposed to be developed by the SPV/ NMPA (the "Authority") including but not limited to signing and submission of all applications, proposals and other documents and writings, participating in pre-bid and other conferences and providing information/ responses to the Authority, representing us in all matters before the Authority, signing and execution of all contracts and undertakings consequent to acceptance of our proposal and generally dealing with the Authority in all matters in connection with or relating to or arising out of our Proposal for the said Project and/or upon award thereof to us till the entering into of the Agreement with the Authority.

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

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

..... DAY OF  
..... , 20\*\*

For .....

(Signature, name, designation and address)

Witnesses:

- 1.
- 2.

Notarised

Accepted

.....

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

**Notes:**

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

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

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

APPENDIX-I  
Form-6

Particulars of Key Personnel

(Ref. Clause 2.3.4)

Sl. No	Designation of Key/ other Personnel	Name	Educational Qualification	Length of Professional Experience	Present Employment		No. of Eligible Assignment
					Name of Firm	Employed Since	
1	2	3	4	5	6	7	8
1	Port Expert cum Team Leader						
2	Port Sector Expert						
3	Legal Consultant						
4	Associate Consultant(s)						

#Refer Form 8 of Appendix I Eligible Assignments of Key Personnel

## APPENDIX-I

Form-7Abstract of Eligible Assignments of the Applicant<sup>#</sup>

(Refer Clause 3.1)

<b>S.No</b>	<b>Name of Project</b>	<b>Name of Client</b>	<b>Estimated capital cost of Project (in Rs crore/ US\$ million)</b>	<b>Professional fee<sup>##</sup> received by the Applicant (in Rs crore)</b>
(1)*	(2)	(3)	(4)	(5)
1				
2				
3				
4				

# The Applicant should provide details of only those assignments that have been undertaken by it under its own name.

## Exchange rate should be taken as Rs. 75 per US \$ for conversion to Rupees.

Copy of Contract/work orders along with completion certificate indicating the details of previous assignment completed, client, value of assignment/proportionate value in use of projects/ assignment in process date and year of award.

\* The names and chronology of Eligible Assignments included here should conform to the project-wise details submitted in Form-9 of Appendix-I.

Certificate from the Statutory Auditor<sup>§</sup>

This is to certify that the information contained in Column 5 above is correct as per the accounts of the Applicant and/ or the clients.

(Signature, name and designation of the authorised signatory)

Date:

Name and seal of the audit firm:

UDIN :

§ 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.



## APPENDIX-I

Form-8Abstract of Eligible Assignments of Key Personnel<sup>§</sup>  
(Refer Clause 3.1)

Name of Key/ Other Personnel:

Designation:

S.No	Name of Project*	Name of Client	Estimated capital cost of project (in Rs cr./ US\$ million)	Name of firm for which the Key Personnel worked	Designation of the Key Personnel on the assignment	Date of completion of the assignment	Man hours spent on the assignment
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
1							
2							
3							
4							
5							

@ Use separate Form for each Key Personnel.

<sup>§</sup> In the case of PPP Expert, only those assignments shall be included where the PPP Expert worked as Team Leader or Leader of the Financial/ PPP Team in the relevant assignment.

\* The names and chronology of projects included here should conform to the project-wise details submitted in Form-10of Appendix-I.

## APPENDIX-I

Form-9Eligible Assignments of Applicant  
(Refer Clause 3.1.4)

Name of Applicant:	
Name of the Project:	
Project size particulars:	
Description of services performed by the Applicant firm:	
Name of client and Address:	
Name, telephone no. and fax no. of client's representative:	
Estimated capital cost of Project (in Rs crore or US\$ million):	
Payment received by the Applicant as professional fees (in Rs. crore):	
Start date and finish date of the services (month/ year):	
Brief description of the Project:	
Notes:	
1. Use separate sheet for each assignment.	
2. Exchange rate should be taken as Rs. 75 per US \$ for converting to Rupees.	

## APPENDIX-I

Form-10

## Eligible Assignments of Key Personnel

(Refer Clause 3.1.4)

Name of Key Personnel:	
Designation of Key Personnel:	
Name of the Project:	
Project size particulars:	
Name of Consulting Firm where employed:	
Description of services performed by the Key Personnel (including designation):	
Name of client and Address:	
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:	
Notes:	
<ol style="list-style-type: none"> <li>1. Use separate sheet for each assignment.</li> <li>2. In the case of PPP Expert, only those assignments shall be included where the PPP Expert worked as the Team Leader or the leader of the Financial Team in the relevant assignment.</li> <li>3. Exchange rate should be taken as Rs. 75 per US \$ for converting in Indian Rupees.</li> </ol>	

APPENDIX-I

Form -11

Curriculum Vitae (CV) of Professional Personnel

1. Proposed Position:
2. Name of Personnel:
3. Date of Birth:
4. Nationality:
5. Educational Qualifications:
6. Employment Record:  
(Starting with present position, list in reverse order every employment held.)
7. List of projects on which the Personnel has worked

Name of Project

Description of responsibilities

Certification:

- 1 I am willing to work on the Project and I will be available for entire duration of the Project assignment as required.
- 2 I, the undersigned, certify that to the best of my knowledge and belief, this CV correctly describes my qualifications, my experience and me.

(Signature and name of the Professional Personnel)

Place.....

(Signature and name of the authorised signatory of the Applicant)

Notes:

1. Use separate form for each Key Personnel and Professional Personnel.
2. In the case of PPP Expert, only those assignments shall be included where the PPP Expert worked as the Team Leader or the leader of the Financial/PPP Team in the relevant assignment.
3. The names and chronology of assignments included here should conform to the project-wise details submitted in Form-7 of Appendix-I.
4. Each page of the CV shall be signed in ink by both the Personnel concerned and by the Authorised Representative of the Applicant firm along with the seal of the firm. Photocopies will not be considered for evaluation.

**APPENDIX-I**  
**Form – 12**  
**Integrity Pact**

**General**

This pre-bid pre-contract Agreement (hereinafter called the Integrity Pact) is made on \_\_\_\_\_ day of the month of \_\_\_\_\_ 20\_\_, between, on one hand, the Board of Trustees of New Mangalore Port Authority acting through Shri. \_\_\_\_\_, Chief Engineer (Civil), New Mangalore Port Authority (hereinafter called the 'AUTHORITY', which expression shall mean and include, unless the context otherwise requires, his successors in office and assigns) of the First Part and M/s. \_\_\_\_\_ represented by Shri. \_\_\_\_\_, Chief Executive Officer (hereinafter called the "APPLICANT" which expression shall mean and include, unless the context otherwise requires, his successors and permitted assigns) of the Second Part.

WHEREAS the AUTHORITY has invited bids for the project of "Request for Proposal (RFP) for "Appointment of Transaction Advisor for Concessioning of Berth No. 9 for handling Liquid Bulk / LPG / POL products / Chemicals on Captive / PPP Mode at New Mangalore Port" (hereinafter referred to as the "Work") and the "APPLICANT" is submitting its Bid for the Project, and

WHEREAS the APPLICANT is a Private Limited Company/ Public Limited Company/ Government undertaking/ registered partnership firm/ Joint Venture/ Consortium, constituted in accordance with the relevant law in the matter.

AUTHORITY NOW, THEREFORE,

To avoid all forms of corruption by following a system that is fair, transparent and free from any influence/prejudiced dealings prior to, during and subsequent to the currency of the contract to be entered into with a view to:-

Enabling APPLICANTS to abstain from bribing or indulging in any corrupt practice in order to secure the contract by providing assurance to them that their competitors will also abstain from bribing and other corrupt practices and the AUTHORITY will commit to prevent corruption, in any form, by its officials by following transparent procedures.

The parties hereto hereby agree to enter into this Integrity Pact and agree as follows:

### **Commitments of the AUTHORITY**

- 1.1 The AUTHORITY undertakes that no official of the AUTHORITY, connected directly or indirectly with the contract, will demand, take a promise for or accept, directly or through intermediaries, any bribe, consideration, gift, reward, favour or any material or immaterial benefit or any other advantage from the APPLICANT, either for themselves or for any person, organisation or third party related to the contract in exchange for an advantage in the bidding process, bid evaluation, contracting or implementation process related to the contract.
- 1.2 The AUTHORITY will, during the pre-contract stage, treat all APPLICANTS alike and will provide to all APPLICANTS the same information and will not provide any such information to any particular APPLICANT which could afford an advantage to that particular APPLICANT in comparison to other APPLICANTS.
- 1.3 All the officials of the CONCESSIONING AUTHORITY will report to the appropriate Government office any attempted or completed breaches of the above commitments as well as any substantial suspicion of such a breach.
2. In case any such preceding misconduct on the part of such official(s) is reported by the APPLICANT to the AUTHORITY with full and verifiable facts and the same is prima facie found to be correct by the AUTHORITY necessary disciplinary proceedings, or any other action as deemed fit, including criminal proceedings may be initiated by the AUTHORITY and such a person shall be debarred from further dealings related to the contract process. In such a case, while an enquiry is being conducted by the AUTHORITY the proceedings under the contract would not be stalled.

### **Commitments of APPLICANTS**

3. The APPLICANT commits itself to take all measures necessary to prevent corrupt practices, unfair means and illegal activities during any stage of its bid or during any pre-contract or post-contract stage in order to secure the contract or in furtherance to secure it and in particular commit itself to the following:-
  - 3.1 The APPLICANT will not offer, directly or through intermediaries, any bribe, gift, consideration, reward, favour, any material or immaterial benefit or other advantage, commission, fees, brokerage or inducement to any official of the AUTHORITY connected directly or indirectly with the bidding process, or to any person, organisation or third party related to the contract in exchange for any advantage in the bidding, evaluation, contracting and implementation of the contract.

- 3.2 The APPLICANT further undertakes that it has not given, offered or promised to give, directly or indirectly any bribe, gift, consideration, reward, favour, any material or immaterial benefit or other advantage, commission, fees, brokerage or inducement to any official of the AUTHORITY or otherwise in procuring the Contract or forbearing to do or having done any act in relation to the obtaining or execution of the contract or any other contract with the Government for showing or forbearing to show favour or disfavour to any person in relation to the contract or any other contract with the Government.
- 3.3\* APPLICANTS shall disclose the name and address of agents and representatives and Indian APPLICANTS shall disclose their foreign principals or associates.
- 3.4\* APPLICANTS shall disclose the payments to be made by them to agents/brokers or any other intermediary, in connection with this bid/contract.
- 3.5\* The APPLICANT further confirms and declares to the AUTHORITY that the APPLICANT has not engaged any individual or firm or company whether Indian or foreign to intercede, facilitate or in any way to recommend to the AUTHORITY or any of its functionaries, whether officially or unofficially to the award of the contract to the APPLICANT, nor has any amount been paid, promised or intended to be paid to any such individual, firm or company in respect of any such intercession, facilitation or recommendation.
- 3.6 The APPLICANT, either while presenting the bid or during pre-contract negotiations or before signing the contract/ Concession Agreement, shall disclose any payments he has made, is committed to or intends to make to officials of the AUTHORITY or their family members, agents, brokers or any other intermediaries in connection with the contract and the details of services agreed upon for such payments.
- 3.7 The APPLICANT will not collude with other parties interested in the contract to impair the transparency, fairness and progress of the bidding process, bid evaluation, contracting and implementation of the contract.
- 3.8 The APPLICANT will not accept any advantage in exchange for any corrupt practice, unfair means and illegal activities.
- 3.9 The APPLICANT shall not use impropriety for purposes of competition or personal gain, or pass on to others, any information provided by the AUTHORITY as part of the business relationship, regarding plans, technical proposals and business details, including information contained in any electronic data carrier. The APPLICANT also undertakes to exercise due and adequate care lest any such information is divulged.



- 3.10 The APPLICANT commits to refrain from giving any complaint directly or through any other manner without supporting it with full and verifiable facts.
- 3.11 The APPLICANT shall not instigate or cause to instigate any third person to commit any of the actions mentioned above.
- 3.12 If the APPLICANT or any employee of the APPLICANT or any person acting on behalf of the APPLICANT, either directly or indirectly, is a relative of any of the officers of the AUTHORITY, or alternatively, if any relative of an officer of the AUTHORITY has financial interest/stake in the APPLICANT's firm, the same shall be disclosed by the APPLICANT at the time of filing of tender.

The term 'relative' for this purpose would be as defined in Section 6 of the Companies Act 1956.

- 3.13 The APPLICANT shall not lend to or borrow any money from or enter into any monetary dealings or transactions, directly or indirectly, with any employee of the AUTHORITY.

#### **4. Previous Transgression**

- 4.1 The APPLICANT declares that no previous transgression occurred in the last three years immediately before signing of this Integrity Pact, with any other company in any country in respect of any corrupt practices envisaged hereunder or with any Public Sector Enterprise in India or any Government Department in India that could justify Applicant's exclusion from the tender process.
- 4.2 The APPLICANT agrees that if it makes incorrect statement on this subject, APPLICANT can be disqualified from the tender process or the contract, if already awarded, can be terminated for such reason.

#### **5. Sanctions for Violations**

- 5.1 Any breach of the aforesaid provisions by the APPLICANT or any one employed by it or acting on its behalf (whether with or without the knowledge of the APPLICANT) shall entitle the AUTHORITY to take all or any one of the following actions, wherever required:-
- a. To immediately call off the pre-contract negotiations without assigning any reason or giving any compensation to the APPLICANT. However, the proceedings with the other APPLICANT(s) would continue.
  - b. The Bid Security (in pre-contract stage) and/or /Performance Security (after the contract is signed) shall stand forfeited either fully or partially, as decided by the AUTHORITY and the AUTHORITY shall not be required to assign any reason therefore.
  - c. To immediately cancel the contract, if already signed, without giving any compensation to the APPLICANT.

- d. To cancel all or any other Contracts with the APPLICANT. The APPLICANT shall, be liable to pay compensation for any loss or damage to the AUTHORITY resulting from such cancellation/rescission and the AUTHORITY shall be entitled to deduct the amount so payable from the money(s) due to the APPLICANT.
  - e. To debar the APPLICANT from participating in future bidding processes of the Government of India for a minimum period of five years, which may be further extended at the discretion of the AUTHORITY.
  - f. To recover all sums paid in violation of this Pact by APPLICANT(s) to any middleman or agent or broker with a view to securing the contract.
  - g. Forfeiture of Performance Security in case of a decision by the AUTHORITY to forfeit the same without assigning any reason for imposing sanction for violation of this Pact.
- 6.2 The AUTHORITY will be entitled to take all or any of the actions mentioned at para 6.1(a) to (g) of this Pact also on the Commission by the APPLICANT or any one employed by it or acting on its behalf (whether with or without the knowledge of the APPLICANT), of an offence as defined in Chapter IX of the Indian Penal code, 1860 or Prevention of Corruption Act, 1988 or any other statute enacted for prevention of corruption.
- 6.3 The decision of the AUTHORITY to the effect that a breach of the provisions of this Pact has been committed by the APPLICANT shall be final and conclusive on the APPLICANT. However, the APPLICANT can approach the Independent Monitor(s) appointed for the purposes of this Pact.

## **7. Fall Clause**

- 7.1 The APPLICANT undertakes that it has not performed /is not performing similar project at a price lower than that offered in the present bid in respect of any other Ministry/Department of the Government of India or PSU and if it is found at any stage that similar project was performed by the APPLICANT to any other Ministry/Department of the Government of India or a PSU at a lower price, then that very price, with due allowance for elapsed time, will be applicable to the present case and the difference in the cost would be refunded by the APPLICANT to the AUTHORITY, if the contract has already been concluded.

## **8. Independent Monitors**

- 8.1 The AUTHORITY has appointed the following Independent Monitors (hereinafter referred to as Monitor) for this Pact in consultation with the Central Vigilance Commission.

**Sri. Prem Chand Pankaj,**  
Ex-CMD, NEEPCO, M 402, Pioneer Park,  
Sector-61, Golf Course Extn. Road,  
Gurgaon, Haryana -  
Mob: 9717433886  
Email: [prempankaj@gmail.com](mailto:prempankaj@gmail.com)

- 8.2 The task of the Monitors shall be to review independently and objectively, whether and to what extent the parties comply with the obligations under this Pact.
- 8.3 The Monitors shall not be subject to instructions by the representatives of the parties and perform their functions neutrally and independently.
- 8.4 Both the parties accept that the Monitors have the right to access all the documents relating to the project/bidding, including minutes of meetings.
- 8.5 As soon as the Monitor notices, or has reason to believe, a violation of this Pact, he will so inform the Authority designated by the AUTHORITY,
- 8.6 The APPLICANT(s) accepts that the Monitor has the right to access without restriction to all Project documentation of the AUTHORITY including that provided by the APPLICANT. The APPLICANT will also grant the Monitor, upon his request and demonstration of a valid interest, unrestricted and unconditional access to his project documentation. The same is applicable to Subcontractors. The Monitor shall be under contractual obligation to treat the information and documents of the APPLICANT/Subcontractor(s) with confidentiality.
- 8.7 The AUTHORITY 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 parties. The parties will offer to the Monitor the option to participate in such meetings.
- 8.8 The Monitor will submit a written report to the designated Authority of AUTHORITY within 8 to 10 weeks from the date of reference or intimation to him by the AUTHORITY / APPLICANT and, should the occasion arise, submit proposals for correcting problematic situations.

**9. Facilitation of Investigation**

In case of any allegation of violation of any provisions of this pact or payment of commission, the AUTHORITY or its agencies shall be entitled to examine all the documents including the Books of Accounts of the APPLICANT and the APPLICANT shall provide necessary information and documents in English and shall extend all possible help for the purpose of such examination.

**10. Law and Place of Jurisdiction**

This Pact is subject to Indian Law.' The place of performance and jurisdiction is the seat of the AUTHORITY.

**11. Other Legal Actions**

The actions stipulated in this Integrity Pact are without prejudice to any other legal action that may follow in accordance with the provisions of the extant law in force relating to any civil or criminal proceedings.

**12. Validity**

12.1 The validity of this Integrity Pact shall be from date of its signing and extend upto 5 years or the complete execution of the contract to the satisfaction of both the AUTHORITY and the APPLICANT, including warranty period, whichever is later. In case APPLICANT is unsuccessful, this Integrity Pact shall expire after six months from the date of the signing of the contract.

12.2 Should one or several provisions of this Pact turn out to be invalid; the remainder of this Pact shall remain valid. In this case, the parties will strive to come to an agreement to their original intentions.

13. The parties hereby sign this Integrity Pact at \_\_\_\_\_ on \_\_\_\_\_

APPLICANT

CONCESSIONING AUTHORITY

Name of the Officer.

Chief Engineer (Civil)

Designation

Dept./MINISTRY/PSU

Witness

1. \_\_\_\_\_

2. \_\_\_\_\_

Witness

1. \_\_\_\_\_

2. \_\_\_\_\_,

\* Provisions of these clauses would need to be amended/ deleted in line with the policy of the AUTHORITY in regard to involvement of Indian agents of foreign applicants.

APPENDIX-II  
FINANCIAL PROPOSAL  
Form - 1

Covering Letter

(On Applicant's letter head)

(Date and Reference)

To,

Chief Engineer  
Administrative Office Building  
2<sup>rd</sup> Floor, New Mangalore Port Authority  
Panambur  
Mangalore 575010

Dear Sir,

Subject: "Appointment of Transaction Advisor for Concessioneing of Berth No.9 for handling Liquid Bulk / LPG / POL products / Chemicals on Captive / PPP Mode at New Mangalore Port"

I/We, \_\_\_\_\_ (Applicant's name) herewith enclose the Financial Proposal for selection of my/our firm as Consultant for 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 authorised signatory)

Note: The Financial Proposal is to be submitted strictly as per forms given in the RFP.

**APPENDIX -II**

(See Clause 2.1.3)

**Form - 2****Reference Format of Financial Proposal****[Shall be submitted in E-Tender only]**

**Name of Work** Appointment of Transaction Advisor for Concessioning of Berth No. 9 for handling Liquid Bulk / LPG / POL products / Chemicals on Captive / PPP Mode at New Mangalore Port.

**SCHEDULE OF PRICES**

<b>SI.No.</b>	<b>Description</b>	<b>Amount (Rs.)</b>
1	Transaction Advisory Services for Concessioning of Berth No. 9for handling Liquid Bulk / LPG / POL products / Chemicals on Captive / PPP Mode at New Mangalore Port.	Amount in Lumpsum (Excluding GST)

**Total cost of consultancy in words -----**

Note.

1. The aforesaid professional fees, payable to the Consultant in accordance with the Financial Proposal, shall cover the costs of telephone/fax, photocopying, couriers and postage, collections and deliveries, traveling expense, stationery, costs of support staff and counsel fee, cost of stamping Agreement, cost towards making 10 sets of agreement,overheads, etc., including all taxes and duties except GST. No additional charges in respect thereof shall be due or payable. The fees shall be limited to the amounts indicated above and no escalation on any account will be payable on the above amounts.
2. Outstation travel (for locations other than Mangalore) shall be undertaken as per request of the Authority. The Financial ExpertOne Key Personnel and one AssistantAssociateConsultantshall be entitled to economic class air travel, and board and lodging in a Three-star hotel. Bills for reimbursement hereunder may be submitted along in original supporting materials, along with a Statement of Expenses, duly certified by the Authorised Representative.
3. All payments shall be made in Indian Rupees and shall be subject to applicable Indian withholding taxes if any.
4. Applicable GST shall be paid separately.

**Signature**  
**Name**  
**Designation**  
**Date**  
**For and on behalf**

