



Vizhinjam International Seaport Limited
(A fully owned Govt of Kerala Undertaking)
Thiruvananthapuram -14

REQUEST FOR PROPOSAL (RFP)

FOR SELECTION OF

LEGAL ADVISER

TO

**PROVIDE LEGAL ADVISORY
SERVICES**

FOR

**Public Private Partnership in Development
Of Vizhinjam International Deepwater
Multipurpose Seaport**

1st Floor Vipanchika Tower, Near Govt. Guest House,
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DISCLAIMER

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

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

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

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

GLOSSARY

Additional Costs	As in Item B of Form-2 of Appendix-II
Agreement	As defined in Schedule -2
Agreement Value	As defined in Clause 6.1.2 of Schedule -2
Applicable Laws	As defined in Clause 1.1.1 (d) of Schedule – 2
Applicant	As defined in Clause 2.1.1
Associate Lawyer(s)	As defined in Clause 2.1.4
Authorised Representative	As defined in Clause 2.13.3
Authority	As defined in Clause 1.1.1
Concession Agreement	As defined in Clause 1.1.2
Concessionaire	As defined in Clause 1.1.2
Conditions of Eligibility	As defined in Clause 2.2.1
Conflict of Interest	As defined in Clause 2.3.1
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 4.1 of Schedule-1
Documents	As defined in Clause 2.12
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
Financial Proposal	As defined in Clause 2.15.1
Form of Agreement	Form of Agreement as in Schedule -2
INR, Re, Rs.	Indian Rupee(s)
Inception Report	As specified in Clause 4.1(A) of Schedule-1
Key Date or KD	As defined in Clause 5.2 of Schedule-1
Key Personnel	As defined in Clause 2.1.4
Lead Member	As defined in Clause 2.1.1
Legal Adviser	As defined in Clause 1.2
LOA	Letter of Award
MCA	As defined in Clause 1.1.3
Member	As defined in Clause 2.3.3 (a)
Official Website	As defined in Clause 1.11.2

Party	As defined in Clause 1.1.1(m) of Schedule-2
Personnel	As defined in Clause 1.1.1(n) of Schedule-2
Project	As defined in Clause 1.1.1
Project Manager	As defined in Clause 4.6 of Schedule-2
Prohibited Practices	As defined in Clause 4.1
Proposal	As defined in Clause 1.2
Proposal Due Date or PDD	As defined in Clause 1.8
Resident Personnel	As defined in Clause 1.1.1(o) of Schedule-2
RFP	As defined in Disclaimer
Selected Applicant	As defined in Clause 1.6
Selection Process	As defined in Clause 1.6
Services	As defined in Clause 1.1.1(p) of Schedule -2
Sole Firm	As defined in Clause 2.1.1
Statement of Expenses	As defined in Note 8, Form-2 of Appendix- II
Statutory Auditor	An Auditor appointed under Applicable Laws
Technical Proposal	As defined in Clause 2.14.1
TOR	As defined in Clause 1.1.3
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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1. INTRODUCTION

1.1 Background

- 1.1.1 Vizhinjam International Seaport Ltd (VISL) (the “**Authority**”) established by the Government of Kerala for setting up the Vizhinjam International Deepwater Multipurpose Seaport (the “**Project**”) through Public- Private Partnership on Design, Build, Finance, Operate and Transfer (the “**DBFOT**”) basis. The indicative cost of the Project is Rs. 4000 cr. (Rupees four thousand crore).
- 1.1.2 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 Financial Consultant and a Legal Adviser for preparing the bid documents. The Financial Consultant will develop the revenue model and assist the Authority in the bidding process. The Legal Adviser will draft the concession agreement based on the Model Concession Agreement provided by the Authority (the “**MCA**”) and shall provide other assistance in accordance with the Terms of Reference specified at Schedule-1 (the “**TOR**”).

1.2 Request for Proposal

The Authority invites Proposals (the “**Proposals**”) for selection of a law firm (the “**Legal Adviser**” or “**Consultant**”) for drafting the Concession Agreement on the basis of the Model Concession Agreement to be provided by the Authority and for providing legal assistance and legal advisory services to the Authority in the Bidding Process (collectively the “**Consultancy**”) for the Project.

The Authority intends to select the Legal Adviser through an open competitive bidding in accordance with the procedure set out herein.

1.3 Due diligence by Applicants

Applicants are encouraged to inform themselves fully about the assignment and the local conditions before submitting the Proposal by paying a visit to the Authority, sending written queries to the Authority, and attending a Pre-Proposal Conference on the date and time specified in Clause 1.10.

1.4 Sale of RFP Document

RFP document can be obtained between 1100 hrs and 1600 hrs on all working days on payment of a fee of Rs. 1,000 (Rupees one thousand only) in the form of a demand draft or banker’s cheque drawn on any Scheduled Bank in India in favour of Vizhinjam International Seaport Ltd. and payable at

Thiruvananthapuram. The document can also be downloaded from the Official Website of the Authority. In case of a downloaded form, the Applicant need not deposit the aforesaid fee.

1.5 Validity of the Proposal

The Proposal shall be valid for a period of not less than 90 days from the Proposal Due Date (the “PDD”).

1.6 Brief description of the Selection Process

The Authority has adopted a two stage selection process (collectively the “**Selection Process**”) in evaluating the Proposals comprising technical and financial bids to be submitted in two separate sealed envelopes. In the first stage, a technical evaluation will be carried out as specified in Clause 3.1. Based on this technical evaluation, a list of short-listed applicants shall be prepared as specified in Clause 3.2. In the second stage, a financial evaluation will be carried out as specified in Clause 3.3. Proposals will finally be ranked according to their combined technical and financial scores as specified in Clause 3.4. The first ranked Applicant shall be selected for negotiation (the “**Selected Applicant**”) while the second ranked Applicant will be kept in reserve.

1.7 Currency conversion rate and payment

1.7.1 For the purposes of technical evaluation of Applicants, Rs. 50 per US\$ shall be considered as the applicable currency conversion rate. In case of any other currency, the same shall first be converted to US\$ as on the date 60 (sixty) days prior to the PDD, and the amount so derived in US\$ shall be converted into INR at the aforesaid rate. The conversion rate of such currencies shall be the daily representative exchange rates published by the International Monetary Fund for the relevant date.

1.7.2 All payments to the Legal Adviser shall be made in INR in accordance with the provisions of this RFP. The Legal Adviser may convert INR into any foreign currency as per Applicable Laws and the exchange risk, if any, shall be borne by the Consultant.

1.8 Schedule of Selection Process

The Authority would endeavour to adhere to the following schedule:

Event Description	Date
1. Last date for receiving queries/clarifications	November 19, 2013
2. Pre-Proposal Conference	November 21, 2013
3. Authority response to queries	November 27, 2013

4. Proposal Due Date or PDD	December 4, 2013
5. Opening of Proposals	December 4, 2013
6. Letter of Award (LOA)	December 11, 2013
7. Signing of Agreement	Within 7 days of LOA
8. Validity of Applications	90 days of Proposal Due Date

1.9 Inspection of documents and data

Prospective applicants may review the available documents and data at any time prior to PDD. For this purpose, they will provide at least two days' notice to the nodal officer specified below:

The Managing Director & CEO,
Vizhinjam International Seaport Ltd (VISL),
1st Floor, Vipanchika Tower, Near Government Guest House, Thycaud
Thiruvananthapuram, Kerala, India 695 014
PHONE: 0471 2328613
MOBILE: 91 9656022000
Email: ceo@vizhinjamport.in

1.10 Pre-Proposal Conference

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

Date: November 21, 2013
Time: 1100 hrs
Venue: Mini Conference Hall, Government Guest House, Thycaud,
Thiruvananthapuram, 695 014

1.11 Communications

1.11.1 All communications including the submission of Proposal should be addressed to:

The Managing Director & CEO
Vizhinjam International Seaport Ltd, (VISL),
1st Floor, Vipanchika Tower, Near Government Guest House, Thycaud
Thiruvananthapuram, Kerala, India 695 014
Phone: 0471 2328613
EMAIL: ceo@vizhinjamport.in

1.11.2 The **Official Website** of the Authority is:

<http://www.vizhinjamport.in>

Note: Please open the page 'Home' and then page 'Tenders' to access all the posted and uploaded documents related to this RFP.

- 1.11.3 All communications, including the envelopes, should contain the following information, to be marked at the top in bold letters:

RFP Notice No.002

FOR SELECTION OF LEGAL ADVISER FOR Public Private Partnership in Development Of Vizhinjam International Deepwater Multipurpose Seaport.

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 Legal Adviser 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 Part-2 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.

2.1.4 Key Personnel

The Legal Adviser’s team (the “**Consultancy Team**”) shall consist of a legal expert having the experience and qualifications specified herein (the “**Legal Expert**”) assisted by junior lawyers (the “**Associate Lawyer(s)**”) and supporting staff, as may be necessary. The Legal Expert and one or two Associate Lawyers shall be identified and included in the Technical Proposal.

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

Legal 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 not delegate his responsibilities except with the prior written approval of the Authority.

**One/two Associate^s
Lawyer(s)**

He/ They will assist the Legal Expert as may be necessary.

2.2 Conditions of Eligibility of Applicants

2.2.1 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.

2.2.2 To be eligible for evaluation of its Proposal, the Applicant shall fulfil the following:

- (A) **Technical Capacity:** The Applicant shall have, over the past 5(five) years preceding the PDD, undertaken a minimum of 3 (three) Eligible Assignments as specified in Clause 3.1.4, of which at least 2 (two) should be PPP Projects.
- (B) **Financial Capacity:** The Applicant shall have received a minimum of Rs.5 crore (Rs. five crore) or US \$ 2 (two) million per annum as professional fees during each of the three financial years preceding the PDD. For the purpose of evaluation, Applicants having comparatively larger revenues from professional fees shall be given added weightage. For the avoidance of doubt, professional fees hereunder refers to fees received by the Applicant for providing advisory or consultancy services to its clients and shall not include professional fee for undertaking dispute resolution proceeding before courts, tribunals or arbitrators.
- (C) **Availability of Key Personnel:** The Applicant shall offer and make available all Key Personnel meeting the requirements specified in Sub-clause (D) below.
- (D) **Conditions of Eligibility for Key Personnel:** Each of the Key Personnel must fulfil the Conditions of Eligibility specified below:

Key Personnel	Educational Qualification	Length of Professional Experience	Experience on Eligible Assignments
Legal Expert	Bachelor in law or equivalent	15years	He should have 15years experience in commercial contracts. He should have led the legal teams for not less than three Eligible Assignments.

^s In the event that the Legal Advisor/ Legal Expert is an expatriate firm/ professional, it shall include an Associate Lawyer with at least 10 (ten) years experience in India with respect to commercial contracts.

One/two Associate Lawyer(s)	Bachelor in law or equivalent	3years	He should have worked as an Associate Lawyer for not less than two Eligible Assignments.
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- 2.2.3 The Applicant shall enclose with its Proposal, certificate(s) from its Statutory Auditors[§] stating its total revenues from professional fees during each of the past three financial years and the fee received in respect of each of the Eligible Assignments specified in the Proposal. In the event that the Applicant does not have a statutory auditor, it shall provide the requisite certificate(s) from the firm of Chartered Accountants that ordinarily audits the annual accounts of the Applicant.
- 2.2.4 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 of the Applicant, in case the Applicant is a partnership firm or limited liability partnership.
- 2.2.5 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.
- 2.2.6 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.
- 2.2.7 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.

2.3 Conflict of Interest

- 2.3.1 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

[§] No separate annual financial statements should be submitted.

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.

- 2.3.2 The Authority requires that the Legal Adviser 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 Legal Adviser 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.
- 2.3.3 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; provided further that this disqualification shall not apply to any ownership by a bank, insurance company, pension fund or a public financial institution referred to in section 4A of the Companies Act, 1956. 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 Legal Adviser will depend on the circumstances of each case. While providing consultancy services to the Authority for this particular assignment, the Legal Adviser 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 percent) 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 percent) 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 or “Best Friend Relationship” 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.

- 2.3.4 An Applicant eventually appointed to provide Consultancy for this Project, its Associates, affiliates and the Legal 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 5(five) 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 Legal Adviser shall include a partner in the Legal Adviser’s firm or a person who holds more than 5% (five per cent) of the subscribed and paid up share capital of the Legal Adviser, as the case may be, and any Associate thereof. For the avoidance of doubt, in the event that: (a) the Legal Expert of an Applicant/ Legal Advisor 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 Legal Expert shall be deemed to suffer from Conflict of Interest for the purpose hereof.

2.4 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.

2.5 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 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.

2.7 Acknowledgement by Applicant

- 2.7.1 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.
- 2.7.2 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.

2.8 Right to reject any or all Proposals

- 2.8.1 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 therefore.
- 2.8.2 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.

B. 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

- 1 Introduction
- 2 Instructions to Applicants
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Appendices

Appendix-I: Technical Proposal

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Form 9: Eligible Assignments of Applicant

Form 9A: Other relevant assignments of Applicant

Form 10: Eligible Assignments of Key Personnel

Form 10A: Other relevant assignments of Key Personnel

Form 11: CVs of Professional personnel

Appendix – II: Financial Proposal

Form 1: Covering Letter

Form 2: Financial Proposal

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 at Clause 1.8. The envelopes shall clearly bear the following identification:

"Queries/Request for Additional Information concerning RFP for Selection of Legal Adviser for PPP in Development of Vizhinjam International Deepwater Multipurpose SeaPort"

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 responses will be sent by fax or e-mail. The Authority will post the reply to all such queries on the Official Website and copies thereof will also be circulated 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 questions 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 Amendment of RFP

2.11.1 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 Official Website and

by conveying the same to the prospective Applicants (who have purchased the RFP document) by fax or e-mail.

- 2.11.2 All such amendments will be notified in writing through fax or 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.
- 2.11.3 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

2.12 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.

2.13 Format and signing of Proposal

- 2.13.1 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.
- 2.13.2 The Applicant shall prepare one original set of the Proposal (together with originals/ copies of Documents required to be submitted along therewith pursuant to this RFP) and clearly marked “ORIGINAL”. In addition, the Applicant shall submit 1 (one) copy of the Proposal, along with Documents, marked “COPY”. In the event of any discrepancy between the original and its copy, the original shall prevail.
- 2.13.3 The Proposal, and its copy 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 initialled. All the alterations, omissions, additions, or any other amendments made to the Proposal shall be initialled by the person(s) signing the Proposal. The Proposals must be properly signed by the authorised representative (the “**Authorised Representative**”)as detailed below:

[§] While extending the Proposal Due Date on account of an addendum, the Authority shall have due regard for the time required by bidders to address the amendments specified therein. In the case of significant amendments, at least 15 (fifteen) days shall be provided between the date of amendment and the Proposal Due Date, and in the case of minor amendments, at least 7 (seven) days shall be provided.

- (a) By the proprietor, in case of a proprietary firm; or
- (b) By a partner, in case of a partnership firm and/or a limited liability partnership; or
- (c) By a duly authorised person holding the Power of Attorney, in case of a Limited Company or a corporation; or
- (d) 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).

2.13.4 Applicants should note the PDD, as specified in Clause 1.8, 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.

2.14 Technical Proposal

2.14.1 Applicants shall submit the technical proposal in the formats at Appendix-I (the “**Technical Proposal**”).

2.14.2 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 2.2.2 (D) 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, 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 75 years at the time of submitting the proposal; and
- (k) The proposal is responsive in terms of Clause 2.21.3.

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

2.14.4 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.

2.14.5 The Technical Proposal shall not include any financial information relating to the Financial Proposal.

2.14.6 In addition to the Legal expert, the Consultancy Team shall comprise of 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.

2.14.7 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. A Sub-Consultant, however, shall not be a substitute for the Legal Expert. Upon acceptance of the proposed Sub-Consultant by the Authority, such Sub-Consultant shall be deemed to be an Associate Lawyer.

2.14.8 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.

2.14.9 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 subsistence 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 Legal Adviser 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.

2.15 Financial Proposal

2.15.1 Applicants shall submit the financial proposal in the formats at Appendix-II (the “**Financial Proposal**”) clearly indicating the total cost of the Consultancy (Item C 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.

2.15.2 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.

2.16 Submission of Proposal

2.16.1 The Applicants shall submit the Proposal in hard bound form with all pages numbered serially and by giving an index of submissions. Each page of the submission shall be initialled by the Authorised Representative of the Applicant as per the terms of this RFP. In case the proposal is submitted on the document down loaded from Official Website, the Applicant shall be responsible for its accuracy and correctness as per the version uploaded by the Authority and shall ensure that there are no changes caused in the content of the downloaded document. In case of any discrepancy between the downloaded or photocopied version of the RFP and the original RFP issued by the Authority, the latter shall prevail.

2.16.2 The Proposal will be sealed in an outer envelope which will bear the address of the Authority, RFP Notice number, Consultancy name as indicated at Clause 1.11.1 and 1.11.3 and the name and address of the Applicant. It shall bear on top, the following:

“Do not open, except in presence of the Authorised Person of the Authority”

If the envelope is not sealed and marked as instructed above, the Authority assumes no responsibility for the misplacement or premature opening of the contents of the Proposal submitted and consequent losses, if any, suffered by the Applicant.

2.16.3 The aforesaid outer envelope will contain two separate sealed envelopes, one clearly marked ‘Technical Proposal’ and the other clearly marked ‘Financial Proposal’. The envelope marked “Technical Proposal” shall contain the Application in the prescribed format (Form 1 of Appendix-I) along with Forms 2 to 11 of Appendix-I and supporting documents. The envelope marked “Financial Proposal” shall contain the financial proposal in the prescribed format (Forms 1 and 2 of Appendix-II).

2.16.4 The Technical Proposal and Financial Proposal shall be typed or written in indelible ink and signed by the Authorised Representative of the Applicant. All pages of the original Technical Proposal and Financial Proposal must be numbered and initialled by the person or persons signing the Proposal.

2.16.5 The completed Proposal must be delivered on or before the specified time on PDD. Proposals submitted by fax, telex, telegram or e-mail shall not be entertained.

2.16.6 The Proposal shall be made in the Forms specified in this RFP. Any attachment to such Forms must be provided on separate sheets of paper and only information that is directly relevant should be provided. This may include photocopies of the relevant pages of printed documents. No separate documents like printed annual statements, firm profiles, copy of contracts etc. will be entertained.

2.16.7 The rates quoted shall be firm throughout the period of performance of the assignment up to and including discharge of all obligations of the Legal Adviser under the Agreement.

2.17 Proposal Due Date

2.17.1 Proposal should be submitted before 1100 hrs on the PDD specified at Clause 1.8 at the address provided in Clause 1.11 in the manner and form as detailed in this RFP. A receipt thereof should be obtained from the person specified therein.

2.17.2 The Authority may, in its sole discretion, extend the PDD by issuing an Addendum in accordance with Clause 2.11 uniformly for all Applicants.

2.18 Late Proposals

Proposals received by the Authority after the specified time on PDD shall not be eligible for consideration and shall be summarily rejected.

2.19 Modification/ substitution/ withdrawal of Proposals

2.19.1 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.

2.19.2 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.

2.19.3 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.

2.20 Performance Security

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 Performance Security, if available, shall be forfeited and appropriated by the Authority as the mutually agreed pre-estimated compensation and damage payable to the Authority for, *inter alia*, the 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 engages in any of the Prohibited Practices specified in Clause 4 of this RFP;
- (b) If the Applicant is found to have a Conflict of Interest as specified in Clause 2.3; and
- (c) If the selected Applicant commits a breach of the Agreement.

D. EVALUATION PROCESS

2.21 Evaluation of Proposals

2.21.1 The Authority shall open the Proposals at 1130 hours on the PDD, at the place specified in Clause 1.11.1 and in the presence of the Applicants who choose to attend. The envelopes marked “Technical Proposal” shall be opened first. The envelopes marked “Financial Proposal” shall be kept sealed for opening at a later date.

- 2.21.2 Proposals for which a notice of withdrawal has been submitted in accordance with Clause 2.19 shall not be opened.
- 2.21.3 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) The Technical Proposal is received in the form specified at Appendix-I;
 - (b) It is received by the PDD including any extension thereof pursuant to Clause 2.17;
 - (c) it is signed, sealed, bound together in hard cover and marked as stipulated in Clauses 2.13 and 2.16;
 - (d) It is accompanied by the Power of Attorney as specified in Clause 2.2.4;
 - (e) It contains all the information (complete in all respects) as requested in the RFP;
 - (f) It does not contain any condition or qualification; and
 - (g) It is not non-responsive in terms hereof.
- 2.21.4 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.
- 2.21.5 The Authority shall subsequently examine and evaluate Proposals in accordance with the Selection Process specified at Clause 1.6 and the criteria set out in Section 3 of this RFP.
- 2.21.6 After the technical evaluation, the Authority shall prepare a list of pre-qualified Applicants in terms of Clause 3.2 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. Before opening of the Financial Proposals, the list of pre-qualified Applicants along with their Technical Scores will be read out. The opening of Financial Proposals shall be done in presence of respective representatives of Applicants who choose to be present. 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 3.3 and 3.4.
- 2.21.7 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.
- 2.21.8 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.

2.22 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.

2.23 Clarifications

- 2.23.1 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.
- 2.23.2 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 LEGAL ADVISER

2.24 Negotiations

- 2.24.1 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 Legal Adviser 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. 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.
- 2.24.2 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.
- 2.24.3 The Authority will examine the credentials of all Sub-Consultants/Consortium Members proposed for this Consultancy and those not found suitable shall be replaced by the Selected Applicant to the satisfaction of the Authority.

2.25 Substitution of Legal Expert

- 2.25.1 The Authority will not normally consider any request of the Selected Applicant for substitution of the Legal Expert as the ranking of the Applicant is based on the evaluation of the Legal Expert and any change therein may upset the ranking. Substitution will, however, be permitted in exceptional circumstances if the Legal Expert 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.
- 2.25.2 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 Without prejudice to the foregoing, substitution of the Legal Expert shall only be permitted subject to reduction of remuneration equal to 30% (thirty per cent) of the total remuneration specified for the original Legal Expert who is proposed to be substituted.
- 2.25.3 Notwithstanding Clauses 2.25.1 and 2.25.2, Applicants should specifically note that substitution of the Legal 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. Applicants are expected to propose only such Legal Expert who will be in a position to commit the time required for and be available for delivering the Consultancy in accordance with the Key Dates specified herein and in the Agreement.

2.26 Indemnity

The Legal Adviser 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.

2.27 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.

2.28 Execution of Agreement

After acknowledgement of the LOA as aforesaid by the Selected Applicant, it shall execute the Agreement within the period prescribed in Clause 1.8. The Selected Applicant shall not be entitled to seek any deviation in the Agreement.

2.29 Commencement of Assignment

The Legal Adviser shall commence the Consultancy within seven days of the date of the Agreement, or such other date as may be mutually agreed. If the Legal Adviser fails to either sign the Agreement as specified in Clause 2.28 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.

2.30 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 Legal Adviser 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 the experience of the Applicant and the Legal Expert. 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 (S_T).
- 3.1.2 The Legal Expert must score a minimum of 70% (seventy per cent) marks for the Applicant to qualify.
- 3.1.3 The scoring criteria to be used for evaluation shall be as follows.

Item Code	Criteria	Marks	Criteria
1.	Relevant Experience of the Applicant	30	30% of the maximum marks shall be awarded for the number of Eligible Assignments undertaken by the Applicant. The remaining 70% shall be awarded for: (i) the comparative size and quality of Eligible Assignments; (ii) other similar work in the infrastructure sectors; and (iii) overall turnover, experience and capacity of the firm.
2.	Relevant Experience of the Legal Expert	70	a) 30% of the maximum marks shall be awarded for the number of Eligible Assignments the Legal Expert has worked on, as described below. The remaining 70% shall be awarded for: (i) the comparative size and quality of Eligible Assignments; and (ii) other similar work in infrastructure sectors. b) He should have worked as leader or head of the legal team for at least 3 (three) Eligible Assignments. c) He should have accounted for at least 20% of the total professional fee received by the firm for the relevant assignment.
Grand Total		100	

While awarding marks for the number of Eligible Assignments, the Applicant or Legal Expert, as the case may be, that has undertaken the highest number of Eligible Assignments shall be entitled to the maximum score for the respective category and all other competing Applicants or respective Legal Expert, as the case may be, shall be entitled to a proportionate score. No score will be

awarded to an Applicant/ Legal Expert for fulfilling the eligibility criteria of a minimum number of Eligible Assignments and only projects exceeding the eligibility criteria shall qualify for scoring. For the avoidance of doubt and by way of illustration, if the minimum number of Eligible Projects for meeting the eligibility criteria is 3 (three), then an equivalent number will be ignored for each Applicant/ Legal Expert and only the balance remaining will be considered for awarding scores relating to the number of Eligible Assignments on a proportionate basis. However, for assigning scores in respect of the size and quality of Eligible Assignments, all Eligible Assignments of the Applicant/ Legal Expert shall be considered.

3.1.4 Eligible Assignments

For the purposes of satisfying the Conditions of Eligibility and for evaluating the Proposals under this RFP, advisory/ consultancy assignments granted by the government, regulatory commission, tribunal, multilateral agencies, statutory authority or public sector entity in respect of review and/or preparation of concession agreements and other similar documents, and/or in relation to the bidding process or other transactions, as the case may be, for the following projects shall be deemed as eligible assignments (the “**Eligible Assignments**”):

- (a) An 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. 100crore (Rupees one hundred crore) in case of a project in India, and US \$ 50million (US\$ fifty million) for infrastructure projects undertaken elsewhere through PPP or other forms of private participation(the “**PPP Projects**”), provided that the payment of professional fee to the Applicant was at least Rs. 5 lakh (Rupees five lakh) in case of a project in India and US \$ 25,000 (US\$ twenty five thousand) for a project elsewhere;
- (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**”);
- (c) an infrastructure project having an estimated capital cost (excluding land) of at least Rs. 100crore (Rupees one hundred crore)in case of a project in India, and US \$ 50million (US\$ fifty million) for projects elsewhere, provided that the payment of professional fee to the Applicant was at least Rs. 5 lakh (Rupees five lakh)in case of a project in India, and US \$ 25,000 (US\$ twenty five thousand) for any infrastructure project elsewhere (the “**Other Projects**”); or
- (d) an assignment relating to rules, regulations, orders, appraisal, approval or any other matter pertaining to infrastructure, but only if the payment of professional fee to the Applicant was at least Rs. 1 lakh (Rupees one lakh)(the “**Regulatory Projects**”):

Provided that all Eligible Assignments relating to projects based on the same Model Concession Agreement and awarded by the same public entity shall be counted as one Eligible Assignment.

Where credit is being claimed by the Legal Expert, she/he should have completed the relevant assignment prior to PDD or at least 75% (seventy five per cent) of the contracted fee for the assignment should have been received prior to PDD.

3.1.5 Other relevant assignments

Assignments undertaken by the Applicant/ Legal Expert for private sector entities shall be considered for evaluation if: (a) the advisory/consultancy services relate to an infrastructure project; (b) the estimated capital cost of the project exceeds Rs. 100 crore (Rupees hundred crore) in case of a project in India, and US \$ 50 million (US\$ fifty million) for projects elsewhere; and (c) the professional fee for the assignment was at least Rs. 5 lakh (Rupees five lakh) in case of a project in India, and US \$ 25,000 (US\$ twenty five thousand) for projects elsewhere.

3.2 Short-listing of Applicants

Of the Applicants ranked as aforesaid, not more than 5 (five) shall be pre-qualified and short-listed for financial evaluation in the second stage. However, if the number of such pre-qualified 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 indicated in the Financial Proposal, excluding Additional Costs, will be considered. Additional Costs shall include items specified as such in Form -2 of Appendix-II.

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 Legal Adviser to be compensated and the liability to fulfil its obligations as per the TOR within the total quoted price shall be that of the Legal Adviser. The lowest Financial Proposal (F_M) will be given a financial score (S_F) 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 (S_T) and financial (S_F) 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 0.8 and 0.2 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 Legal Expert, 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 Legal Expert 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 Legal Expert, 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 there from, 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 purchased the RFP document or downloaded the same 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 During the course of Pre-Proposal Conference, 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.

6. MISCELLANEOUS

- 6.1 The Selection Process shall be governed by, and construed in accordance with, the laws of India and the Courts at Thiruvananthapuram 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
(See Clause 1.1.3)

Consultancy for PPP in Development of
Vizhinjam International Deepwater Multipurpose
Seaport

Terms of Reference (TOR)

For Legal Adviser

Terms of Reference (TOR)

1. General

- 1.1 The Authority seeks the services of a qualified law firm for drafting the Concession Agreement on the basis of the Model Concession Agreement to be provided by the Authority and for providing legal assistance and legal advisory services to the Authority in the Bidding Process (collectively the “**Consultancy**”) for the Project. The Terms of Reference (the “**TOR**”) and the scope of the Consultancy for this assignment are specified below.
- 1.2 The Legal Adviser shall be guided in its assignment by the Model Concession Agreement (the “**MCA**”) to be provided by the Authority.
- 1.3 The Legal Adviser shall be responsible for drafting the Concession Agreement based on the Model Concession Agreement to be provided by the Authority and for providing legal assistance and legal advisory services to the Authority in the Bidding Process.
- 1.4 The Legal Adviser shall assist the Authority and its Financial Consultant by furnishing clarifications as required for the financial appraisal and legal scrutiny of the Project and Bid Documents.
- 1.5 The Legal Adviser shall also participate in the pre-bid conference with the bidders of the Project and assist the Authority in clarifying the legal aspects arising from the Bid Documents including the Feasibility Report.
- 1.6 The Legal Adviser shall make available the Legal 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 legal and commercial issues that may arise from time to time.

2. Objective

The objective of this assignment is to obtain the Consultancy from the Legal Adviser.

3. Scope of Services

- 3.1 The Legal Adviser shall draft the concession agreement and related Project agreements (the “**CA**”), on the basis of the MCA provided by the Authority.
- 3.2 The Legal Adviser shall advise the Authority on all legal matters associated with the successful conduct of the Bidding Process and execution of the Concession Agreement with the selected bidder. This will include a review of the relevant provisions of Applicable Laws in order to determine that the CA is compatible with these provisions. In case of any incompatibility, the Legal Adviser shall recommend the course of action to be adopted. The advisory services to be provided by the Legal Adviser shall include:

- (a) Evaluation of the strategic objectives of the Authority in relation to the Project and advising on the legal, commercial and corporate structuring, especially with reference to Applicable Laws;
 - (b) Preparing a consolidated list of approvals/ consents/ clearances required from government instrumentalities;
 - (c) Reviewing the relevant titles of the Authority and the approvals obtained by it;
 - (d) Assisting the Authority in identification of project risks and in allocation of the same in an efficient and economic manner;
 - (e) Advising on and assisting in obtaining the regulatory approvals and issues related thereto; and
 - (f) Assist in preparation of the RFQ and RFP documents and in selection of the preferred bidder.
- 3.3 The Legal Adviser shall assist the Authority/ its Financial Consultant in the preparation of Bid Documents. Bid Documents shall be based on the Model Request for Proposal (the “**Model RFP**”) to be provided by the Authority. The Legal Adviser shall review the draft of Bid Documents, offer its comments and also assist the Authority/ its Financial Consultant in finalising the Bid Documents. The Bidding Process is specified in the Model RFQ document and Model RFP document published by the Planning Commission and available at www.infrastructure.gov.in. Bid Documents would include the draft Concession Agreement and the Feasibility Report.
- 3.4 The Authority will soon short list and pre-qualify applicants who would be entitled to bid for the Project. It is expected that by the time the Legal Adviser drafts the CA, the list of such pre-qualified bidders would be ready. The draft CA will be given to the short-listed bidders for comments and suggestions. The Legal Adviser shall assist the Authority in preparing replies to such comments and suggestions and in modifying the draft CA as deemed necessary.
- 3.5 The Legal Adviser shall assist the Authority in engaging with the pre-qualified bidders when required for providing clarifications to legal queries on the Bid Documents. The Authority intends to select the preferred bidder on the basis of the Proposals received from pre-qualified bidders. Only financial proposals will be invited as part of the Bidding Process. The Legal Adviser shall also assist the Authority in engaging with the selected bidder during negotiations and for providing clarifications on legal issues that are raised during the process. Such services shall continue till the execution of the Concession Agreement with the selected bidder.
- 3.6 The Legal Adviser shall provide such other legal 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 legal and commercial issues

that may arise from time to time. The Legal Adviser shall be responsible primarily for providing advice relating to legal issues arising from or during the course of the bidding process and the documents relating thereto.

- 3.7 The Manual and/ or applicable regulations, codes, standards, rules, statutory requirements, provisions of law and other such relevant references of the Central Government and the relevant State Governments relating to the development, operation and maintenance of ports shall form part of the CA by reference. The Legal Adviser shall collate and compile these provisions for issuing to the pre-qualified bidders.

4. Deliverables

- 4.1 In pursuance of this TOR, the Legal Adviser shall undertake and/ or deliver the following deliverables (the “**Deliverables**”):

A. Inception Report

On commencement of the Consultancy, the Legal Adviser shall submit an Inception Report. The Inception Report shall include the Consultant’s submissions towards understanding of the RFP and the Work Plan.

The Inception Report must clearly spell out the broad strategy of the Legal Adviser to deliver the consultancy services.

B. Draft Documents

The Legal Adviser shall deliver the drafts of the Project related agreements and other documents, as may be necessary and as may be identified in the Inception Report, including the following:

- (i) Draft of the concession agreement and related Project agreements, based on the Model Concession Agreement to be provided by the Authority, as specified in Clause 3.1;
- (ii) Vetting of the Bid Documents as specified in Cause 3.3;
- (iii) Assistance in obtaining the requisite regulatory approvals; and
- (iv) Compilation of the regulations, codes, standards, rules, statutory requirements, provisions of law and other such relevant references of the Central Government and the relevant State Governments relating to the development, operation and maintenance of ports as specified in Clause 3.7and
- (iv) review of the Manual as specified in Clause 3.7;

C. Assistance during Bid Process

The Legal Adviser shall provide the required assistance to the Authority and its Financial Consultant in the preparation of Bid Documents. The Legal Adviser shall also participate in Pre-bid Conferences and assist in the

preparation of answers to the bidders' queries on legal aspects of the Project and Bid Documents, and provide other legal assistance, including the following:

- (i) Advisory services as specified in Clauses 3.2, 3.4, 3.5 and 3.8; and
- (ii) Participate in meetings and conferences and provide legal advice and assistance as specified in Clause 3.6.

- 4.2 The Deliverables shall be submitted as per schedule provided in this RFP.
- 4.3 The Legal Adviser shall provide the Deliverables in 10 (ten) hard copies and 2 (two) soft copies in Compact Discs (CDs). For draft reports, only 5 (five) hard copies and 1 (one) soft copy in CD shall be submitted to the Authority.

5. Time and Payment Schedule

- 5.1 Subject to the provisions of Clause 10.1 of the TOR, the total duration for delivering the Consultancy shall be 18(eighteen) weeks, excluding the time taken by the Authority in providing the requisite documents or in conveying its comments on the Draft documents. The Legal Adviser shall deploy the Legal Expert and its Key Personnel as per the deployment of Personnel proposed. Intermittent services will be required beyond the 18th (eighteenth) week and until the end of 52 (fifty two) weeks or two months after the signing of the Concession Agreement, whichever is earlier. The man-days required for the intermittent services shall be provided by the Legal Adviser as per the Agreement.

The period for completing the Deliverables specified under Clauses 4.1A and 4.1B shall be 18(eighteen) weeks. Deliverable under Clause 4.1C may continue till the execution of the Concession Agreement and completion of Services.

- 5.2 Time schedule for important Deliverables (the “**Key Dates**”) of the Consultancy and the payment schedule linked to the specified deliverables are given below:

Key Date No.	Description of Deliverables	Week No.	Payment
KD1	Inception Report	2	Nil
KD 2	Draft Concession Agreement	6	25%
KD3	Collating and compiling the relevant regulations, rules and provisions of law	8	10%
KD4	Vetting of Bid Documents	10	20%
KD5	Advisory services during pre-bid conferences and upto the relevant Bid Due Date	14	15%
KD6	Advisory services up to execution of project agreement	18	10%
KD7	Completion of Services including assistance during Bid Process	52	20%
	Total		100

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**”).

- 5.3 Payment for the Services shall be based on actual number of man hours of the Legal Expert deployed by the Legal Adviser, but always subject to the maximum hours specified in Clause 5.4. Save and except as provided herein, no separate payment shall be made for the costs relating to the Associate Lawyer(s) and supporting staff deployed by the Legal Adviser and these shall be deemed to be included in the payment to be made for the man hours expended by the Legal Expert. However, the Legal Adviser may, in its discretion, substitute a man hour of the Legal Expert by 4 (four) man hours of an Associate Lawyer, subject always to the condition that the Legal Expert shall himself expend on this Consultancy no less than one half of the man hours specified for each Deliverable in Clause 5.4. No bills shall be submitted by the Consultant for payment by the Authority if the amount attributed to the man hours expended by the Associate Lawyers is more than one-half of the total amount due and payable for the respective bill. Reimbursement of expenses relating to travel for participating in meetings and conferences or for other Additional Costs 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.
- 5.4 The Deliverables and maximum payable man hours for completing the Deliverables shall be as specified below:

Deliverable	Description of Deliverables	Maximum Man Hours
A	Draft Concession Agreement	80
B	Collating and compiling the relevant regulations, rules and provisions of law	20
C	Vetting of the Bid Documents	20
D	Advisory services as specified in Clauses 3.2, 3.4, 3.6 and 3.8	Lower of 50 or actual
E.	Obtaining regulatory approvals	30
F	Attending meetings and conferences and providing legal advice and assistance as specified in Clause 3.6(including an estimated 50 hours for meetings and conferences with the Authority)	Lower of 100 or actual
Estimated Total		300

- 5.5 Adjustments with respect to the estimated periods of engagement of the Legal Expert may be made by the Legal Adviser by written notice to the Authority; provided that: (i) such adjustments shall not alter the originally estimated period of engagement of the Legal Expert by more than 30% (thirty percent) 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 the Agreement by more than 25% (twenty five per cent) thereof. Any other adjustments shall only be made with the written approval of the Authority.
- 5.6 Payment shall be made in respect of each deliverable upon completion thereof; save in the case of deliverables 4.1C for which bills may be raised by the Legal Adviser once a month.
- 5.7 20% (twenty per cent) of the Agreement Value has been earmarked as Final Payment to be made to the Legal Adviser upon execution of the Concession Agreement. In the event the Concession Agreement does not get executed within one year of the Effective Date, the Final Payment shall not become due to the Legal Adviser, save and except the costs incurred for meeting its reimbursable expenses during the period after expiry of 18 (eighteen) weeks from the Effective Date, including travel costs and personnel costs, at the agreed rates.

6 Meetings

- 6.1 The Authority may review with the Legal Expert, any or all of the documents and advice forming part of the Consultancy, in meetings and conferences which will be held in Thiruvananthapuram at the Authority's office. Further, the Legal Expert may be required to attend meetings and conferences with pre-qualified bidders or the selected bidder. The expenses towards attending such meetings during the period of Consultancy, including travel costs and *per diem*, shall be reimbursed in accordance with the Financial Proposal contained in Form-2 of Appendix-II of the RFP. In the case of an outstation Personnel, the days required to be spent at the office of the Authority shall be computed at the rate of 10 man hours a day. For a Legal Expert having its office in Thiruvananthapuram, the time spent during meetings in Thiruvananthapuram shall be calculated as per actual. No travel time shall be payable except in case of an expatriate Legal Expert who will be entitled to claim actual travel time, subject to a maximum of 12 man hours for a return journey.
- 6.2 The Authority may, in its discretion, require the Legal Expert to participate in extended meetings and/or work from the offices of the Authority and the Legal Adviser shall, on a best endeavour basis and without unreasonable delay, provide such services at the offices of the Authority.

7 Reporting

The Legal Adviser shall electronically and by mail, submit fortnightly time reports of each of the Key Personnel, to the Authority. Such time reports shall be submitted on the 15th and the last day of each calendar month by end of the

business day and shall include the number of hours expended on the Project by the Legal Adviser on each working day of the fortnight covered by the time report. The time reports shall also include a brief description of work performed during that fortnight by each of the Key Personnel.

8. Consultancy Team

The Legal Adviser shall form a team (the “**Consultancy Team**”) for undertaking this assignment. The Legal Expert whose experience and responsibilities are briefly described herein would be considered for evaluation of the Technical Proposal.

Legal Expert

Educational Qualifications	Bachelor in law or equivalent
Essential Experience	15years in legal advisory services relating to commercial contracts. He should have also led the legal teams for not less than three Eligible Assignments.
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 not delegate his responsibilities except with the prior written approval of the Authority.
Minimum time required for the project	45 days

9. Documents to be made available by the Authority

The Authority shall provide to the Legal Adviser the following:

- (a) A copy of the Model Concession Agreement.
- (b) A copy of the Feasibility Report

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

- 10.1 All the Deliverables shall be compiled, classified and submitted by the Legal Adviser 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 Legal Adviser 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 Legal Adviser. 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 Legal Adviser specifying in detail, the deficiencies in the Services. The Legal Adviser 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 1 (one) year from the Effective Date, unless extended by mutual consent of the Authority and the Legal Adviser.

- 10.2 20% (twenty per cent) of the Agreement Value has been earmarked as lump sum payment to be made to the Consultant upon execution of the Concession Agreement (the "Lump Sum Payment"). In consideration of the Lump Sum Payment, the Consultant would provide such services as may be required by the Authority for concluding the Bid Process and execution of the Concession Agreement. In the event the Concession Agreement does not get executed within 1 (one) year of the Effective Date, the Consultancy shall stand completed as specified in Clause 10.1 above, but no Lump Sum Payment shall be due to the Consultant, save and except the costs incurred for meeting its expenses during the period after expiry of 18 (eighteen) weeks from the Effective Date, including travel costs and Personnel costs on account of hours spent, at the agreed rates specified in Annex-3 of the Agreement, which shall be reimbursed to the Consultant as per actual. For the avoidance of doubt, it is agreed that reimbursement of such costs on travel and personnel shall be due to the Consultant as aforesaid, even if the Concession Agreement is not executed.

SCHEDULE – 2
(See Clause 2.1.3)

AGREEMENT

FOR

PROVISION OF LEGAL CONSULTANCY SERVICES

FOR

**PPP in Development of Vizhinjam International
Deepwater Multipurpose Seaport**

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AGREEMENT

Provision of Legal Services for PPP in Development of Vizhinjam International Deepwater Multipurpose Seaport

This AGREEMENT (hereinafter called the “**Agreement**”) is made on the _____ day of the month of _____ 2***, between, on the one hand, Vizhinjam International Seaport Limited, represented by its Managing Director & CEO having its Registered Office at Ist Floor, Vipanchika Tower, Near Government Guest House, Thycadu, Thiruvananthapuram, Kerala, India, 695 014 entrusted with the responsibility of developing, operating ,maintaining and managing the Vizhinjam port in the State(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 “**Legal Adviser**” which expression shall include their respective successors and permitted assigns).

WHEREAS

- (A) The Authority vide its Request for Proposal for appointment of Legal Adviser (hereinafter called the “**Consultancy**”) for the Development of Vizhinjam International Deepwater Multipurpose Seaport (hereinafter called the “**Project**”);
- (B) the Legal Adviser submitted its proposals for the aforesaid work, whereby the Legal Adviser represented to the Authority that it had the required professional skills, and in the said proposals the Legal Adviser also agreed to provide the Services to the Authority on the terms and conditions as set forth in the RFP and this Agreement; and
- (C) The Authority, on acceptance of the aforesaid proposals of the Legal Adviser, awarded the Consultancy to the Legal Adviser vide its Letter of Award dated _____ (the “**LOA**”); and
- (D) In pursuance of the LOA, the parties have agreed to enter into this Agreement.

NOW, THEREFORE, the parties hereto hereby agree as follows:

1. GENERAL

1.1 Definitions and Interpretation

1.1.1 The words and expressions beginning with capital letters and defined in this Agreement shall, unless the context otherwise requires, have the meaning hereinafter respectively assigned to them:

- (a) “Additional Costs” shall have the meaning set forth in Clause 6.1.2;

- (b) “Agreement” means this Agreement, together with all the Annexes;
- (c) “Agreement Value” shall have the meaning set forth in Clause 6.1.2;
- (d) “Applicable Laws” means the laws and any other instruments having the force of law in India as they may be issued and in force from time to time;
- (e) “Confidential Information” shall have the meaning set forth in Clause 3.3;
- (f) “Conflict of Interest” shall have the meaning set forth in Clause 3.2 read with the provisions of RFP;
- (g) “Dispute” shall have the meaning set forth in Clause 9.2.1;
- (h) “Effective Date” means the date on which this Agreement comes into force and effect pursuant to Clause 2.1;
- (i) “Expatriate Personnel” means such persons who at the time of being so hired had their domicile outside India;
- (j) “Government” means the Government of Kerala;
- (k) “INR, Re. or Rs.” means Indian Rupees;
- (l) “Member”, in case the Legal Adviser 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 Legal Adviser, as the case may be, and Parties means both of them;
- (n) “Personnel” means persons hired by the Legal Adviser 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 Legal Adviser’s proposal for providing Services was accepted;
- (q) “Services” means the work to be performed by the Legal Adviser pursuant to this Agreement, as described in the Terms of Reference hereto; and
- (r) “Third Party” means any person or entity other than the Government, the Authority or the Legal Adviser.

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

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

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

1.2 Relation between the Parties

Nothing contained herein shall be construed as establishing a relation of master and servant or of agent and principal as between the Authority and the Legal Adviser. The Legal Adviser 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 Legal Adviser shall be as set forth in the Agreement, in particular:

- (a) The Legal Adviser shall carry out the Services in accordance with the provisions of the Agreement; and
- (b) The Authority shall make payments to the Legal Adviser 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 Thiruvananthapuram shall have exclusive jurisdiction over matters arising out of or relating to this Agreement.

1.5 Language

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

1.6 Table of contents and headings

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

1.7 Notices

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

- (a) in the case of the Legal Adviser, be given by facsimile or e-mail and by letter delivered by hand to the address given and marked for attention of the Legal Adviser's Representative set out below in Clause 1.10 or to such other person as the Legal Adviser may from time to time designate by notice to the Authority; provided that notices or other communications to be given to an address outside Thiruvananthapuram 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 as the Legal Adviser 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 Legal Adviser; provided that if the Legal Adviser does not have an office in Thiruvananthapuram 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 in accordance with the provisions of RFP and at such locations as are incidental thereto, including the offices of the Legal Adviser.
- 1.8.2 The Authority may require the Legal Expert to spend the required man hours at the offices of the Authority and the Legal Adviser 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 Legal Adviser 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 Legal Adviser'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 Legal

Adviser, 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:

A.S. Suresh Babu, Managing Director& CEO
Vizhinjam International Seaport Ltd, (VISL),
1st Floor, Vipanchika Tower, Near Government Guest House, Thycaud
Thiruvananthapuram 695 014
Phone: 91 471 2328613
Mobile: 91 9656022000
Fax: 91 471 2328616
Email: ceo@vizhinjamport.in

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

Tel:-----
Mobile:-----

Fax: -----
Email:-----

1.11 Taxes and duties

Unless otherwise specified in the Agreement, the Legal Adviser 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 Legal Adviser 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 Legal Adviser 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 Legal Adviser, declare this Agreement to be null and

void, and in the event of such a declaration, this Agreement shall stand terminated and the Legal Adviser 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 Legal Adviser hereunder.

2.5 Entire Agreement

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

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

2.6 Modification of Agreement

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

2.7 Force Majeure

2.7.1 Definition

(a) For the purposes of this Agreement, "Force Majeure" means an event which is beyond the reasonable control of a Party, and which makes a Party's performance of its obligations hereunder impossible or so impractical as reasonably to be considered impossible in the circumstances, and includes, but is not limited to, war, riots, civil disorder, earthquake, fire, explosion, storm, flood or other adverse weather 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 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 fulfil any of its obligations hereunder shall not be considered to be a breach of, or default under, this Agreement insofar as such inability arises from an event of Force Majeure, provided that the Party affected by such an event has taken all reasonable precautions, due care and reasonable alternative measures, all with the objective of carrying out the terms and conditions of this Agreement.

2.7.3 Measures to be taken

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

During the period of its inability to perform the Services as a result of an event of Force Majeure, the Legal Adviser 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 Legal Adviser 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 Legal Adviser, suspend all payments to the Legal Adviser hereunder if the Legal Adviser 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 Legal Adviser to remedy such breach or failure within a period not exceeding 30 (thirty) days after receipt by the Legal Adviser 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 Legal Adviser, 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 Legal Adviser 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 Legal Adviser 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 Legal Adviser fails to comply with any final decision reached as a result of arbitration proceedings pursuant to Clause 9 hereof;
- (d) the Legal Adviser submits to the Authority a statement which has a material effect on the rights, obligations or interests of the Authority and which the Legal Adviser knows to be false;
- (e) any document, information, data or statement submitted by the Legal Adviser in its Proposals, based on which the Legal Adviser was considered eligible or successful, is found to be false, incorrect or misleading;
- (f) as the result of Force Majeure, the Legal Adviser 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 Legal Adviser

The Legal Adviser 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 Legal Adviser 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 Legal Adviser 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 Legal Adviser may have subsequently granted in writing) following the receipt by the Authority of the Legal Adviser's notice specifying such breach;
- (c) as the result of Force Majeure, the Legal Adviser 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 Legal Adviser'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 Legal Adviser'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 Legal Adviser 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 Legal Adviser and materials furnished by the Authority, the Legal Adviser 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 Legal Adviser (after

offsetting against these payments any amount that may be due from the Legal Adviser to the Authority):

- (i) Remuneration pursuant to Clause 6 hereof for Services satisfactorily performed prior to the date of termination;
- (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 Legal Adviser'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 LEGAL ADVISER

3.1 General

3.1.1 Standards of Performance

The Legal Adviser 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 Legal Adviser 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 Legal Adviser are specified in the Terms of Reference (the “**TOR**”) at Annex-1 of this Agreement. The Legal Adviser shall provide the Deliverables specified therein in conformity with the time schedule stated therein.

3.1.3 Applicable Laws

The Legal Adviser 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 Legal Adviser, comply with the Applicable Laws.

3.2 Conflict of Interest

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

3.2.2 Legal Adviser and Affiliates not to be otherwise interested in the Project

The Legal Adviser agrees that, during the term of this Agreement and after its termination, the Legal Adviser or any Associate thereof and any entity affiliated with the Legal Adviser, shall be disqualified from providing 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 five 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 Legal Adviser shall include a partner in the firm of the Legal Adviser who holds more than 5% (five per cent) of the subscribed and paid up share capital of the Legal Adviser.

3.2.3 Prohibition of conflicting activities

Neither the Legal Adviser nor its Personnel 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 Legal Adviser not to benefit from commissions, discounts, etc.

The remuneration of the Legal Adviser pursuant to Clause 6 hereof shall constitute the Legal Adviser's sole remuneration in connection with this Agreement or the Services and the Legal Adviser 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.

3.2.5 The Legal Adviser 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 Legal Adviser, without being liable in any manner whatsoever to the Legal Adviser, if it determines that the Legal Adviser 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 Legal Adviser 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 Legal Adviser shall not be eligible to participate in any tender or RFP issued during a period of 2 (two) years from the date the Legal Adviser 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 Legal Adviser and its Personnel 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 Legal Adviser 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 Legal Adviser 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 Legal Adviser and all its Personnel may disclose Confidential Information to the extent that such Confidential Information:

- (i) was in the public domain prior to its delivery to the Legal Adviser and the Personnel or become a part of the public knowledge from a source other than the Legal Adviser and the Personnel or 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 Legal Adviser and the Personnel 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 Legal Adviser or Personnel, as is reasonable under the circumstances; provided, however, that the Legal Adviser or

Personnel, 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 Legal Adviser

3.4.1 The Legal Adviser's liability under this Agreement shall be determined by the Applicable Laws and the provisions hereof.

3.4.2 The Legal Adviser 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 Legal Adviser or on the part of any person or firm acting on behalf of the Legal Adviser in carrying out the Services, the Legal Adviser, 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 Legal Adviser may be entitled to receive from any insurance maintained by the Legal Adviser to cover such a liability, whichever of (a) or (b) is higher.

3.4.4 The limitation of liability specified in Clause 3.4.3 shall not affect the Legal Adviser's liability, if any, for damage to Third Parties caused by the Legal Adviser or any person or firm acting on behalf of the Legal Adviser 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 Legal Adviser 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 in such form and detail as will clearly identify all relevant time charges and cost, and the basis thereof (including the basis of the Legal Adviser'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 Legal Adviser's actions requiring the Authority's prior approval

The Legal Adviser 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 Annex-2;
- (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 Legal Adviser 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 Legal Adviser shall submit to the Authority the reports and documents specified in the Agreement, in the form, in the numbers and within the time periods set forth therein.

3.7.2 The Legal Adviser shall electronically and by mail, submit fortnightly time reports of each of the Key Personnel, to the Authority, in the format set out in Annex - 6 hereto. Such time reports shall be submitted on the 15th and the last day of each calendar month by end of the business day and shall include the number of hours expended on the Project by the Key Personnel on each working day of the fortnight covered by the time report. The time reports shall also include a brief description of work performed during that fortnight by each of the Key Personnel.

3.8 Documents prepared by the Legal Adviser to be property of the Authority

3.8.1 All plans, specifications, reports and other documents (collectively referred to as “**Consultancy Documents**”) prepared by the Legal Adviser (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 Legal Adviser 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 Legal Adviser.

3.8.2 The Legal Adviser shall, not later than termination or expiration of this Agreement, deliver all Consultancy Documents to the Authority, together with a detailed inventory thereof. The Legal Adviser may retain a copy of such Consultancy Documents. The Legal Adviser, 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 Legal Adviser 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 Legal Adviser 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 Legal Adviser by the Authority shall be the property of the Authority and shall be marked accordingly. Upon termination or expiration of this Agreement, the Legal Adviser 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 Office and Personnel

The Legal Adviser shall ensure that the Authority, and officials of the Authority having authorisation from the Authority, are provided unrestricted access to the office of the Legal Adviser 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 Legal Adviser and verify the records relating to the Services for his satisfaction.

3.11 Accuracy of Documents

The Legal Adviser shall be responsible for accuracy of the documents drafted and/ or vetted by it. 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 Legal Adviser or arises out of its failure to conform to good industry practice. The Legal Adviser shall also be responsible for promptly correcting, at its own cost and risk, the documents.

4 LEGAL ADVISER'S PERSONNEL

4.1 General

The Legal Adviser 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 the Legal Adviser's Personnel including the Legal Expert are described in Annex-2 of this Agreement.

- 4.2.2 Adjustments with respect to the estimated periods of engagement of the Legal Expert may be made by the Legal Adviser by written notice to the Authority; provided that: (i) such adjustments shall not alter the originally estimated period of engagement of the Legal Expert by more than 30% (thirty percent), 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 Legal Adviser, 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 professional personnel listed in Annex-2 of the Agreement are hereby approved by the Authority. No other professional personnel shall be engaged without prior approval of the Authority.
- 4.3.2 If the Legal Adviser hereafter proposes to engage any person as professional personnel, it shall submit to the Authority its proposal along with a CV of such person in the form provided at Appendix-I (Form-11) 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 Legal Adviser 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 Legal Adviser. Such substitution shall be limited to not more than one Key Personnel subject to equally or better qualified and experienced personnel being provided to the satisfaction of the Authority. Without prejudice to the foregoing, substitution of the Legal Expert shall be permitted only upon reduction of remuneration equal to 30% (thirty percent) of the total remuneration specified for the Legal Expert who is proposed to be substituted.

The Legal Adviser should specifically note that substitution of the Legal 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 Legal Expert must commit the time required for and be available for delivering the Consultancy in accordance with the terms specified herein.

4.5 Working hours, overtime, leave, etc.

The Personnel shall not be entitled to be paid for overtime nor to take paid sick leave or vacation leave except as specified in the Agreement, and the Legal Adviser's remuneration shall be deemed to cover these items.

4.6 Legal Expert and Project Manager

The person designated as the Legal Expert shall be responsible for the coordinated, timely and efficient functioning of the Personnel. The Legal Adviser shall designate an Associate Lawyer or a suitable person as Project Manager (the "**Project Manager**") who shall be responsible for day to day performance of the Services.

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 Legal Adviser, its Sub-Consultants and Personnel with work permits and such other documents as maybe necessary to enable the Legal Adviser, 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 Change in Applicable Law

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

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

5.3 Payment

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

6. PAYMENT TO THE LEGAL ADVISER

6.1 Cost estimates and Agreement Value

- 6.1.1 An abstract of the cost of the Services payable to the Legal Adviser is set forth in Annex-3 of the Agreement.
- 6.1.2 Except as may be otherwise agreed under Clause 2.6 and subject to Clauses 4.2.2 and 6.1.3, the payments under this Agreement shall not exceed the agreement value specified herein (the “**Agreement Value**”). The Parties agree that the Agreement Value is Rs. (Rs.), which does not include the Additional Costs specified in Annex-3 (the “**Additional Costs**”).
- 6.1.3 Notwithstanding anything to the contrary contained in Clause 6.1.2, if pursuant to the provisions of Clauses 2.6 and 2.7, the Parties agree that additional payments shall be made to the Legal Adviser in order to cover any additional expenditures not envisaged in the cost estimates referred to in Clause 6.1.1 above, the Agreement Value set forth in Clause 6.1.2 above shall be increased by the amount or amounts, as the case may be, of any such additional payments.

6.2 Currency of payment

All payments shall be made in Indian Rupees. The Legal Adviser 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 Legal Adviser shall be paid for its services as per the Payment Schedule at Annex-4 of this Agreement, and Clauses 5.2 and 5.3 of the TOR, and the hourly rates specified in Annex-3 of this Agreement, subject to the Legal Adviser fulfilling following conditions:
- (i) No payment shall be due for the next stage till the Legal Adviser completes, to the satisfaction of the Authority, the work pertaining to the preceding stage. Provided, however, that for the Deliverables specified at KD5, KD6 and KD7 in Clause 5.2 of the TOR, payment shall be due and payable by the Authority for the man hours spent during each calendar month;
 - (ii) The Authority shall pay to the Legal Adviser, only the undisputed amount.
- (b) The Authority shall cause the payment due to the Legal Adviser to be made within 30 (thirty) days after the receipt by the Authority of duly completed bills with necessary particulars (the “Due Date”). Interest at the rate of 10% (ten per cent) per annum shall become payable by the Authority as from the Due Date on any amount due by, but not paid on or before, such Due Date.

- (c) The final payment under this Clause shall be made only after the final Deliverable shall have been submitted by the Legal Adviser 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 Legal Adviser specifying in detail, the deficiencies in the Services. The Legal Adviser 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 Legal Adviser to the Authority within 30 (thirty) days after receipt by the Legal Adviser 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 Legal Adviser in reimbursement by the due date shall attract simple interest @ 10% (ten percent) per annum.
- (e) All payments under this Agreement shall be made to the account of the Legal Adviser as may be notified to the Authority by the Legal Adviser.

7. LIQUIDATED DAMAGES AND PENALTIES

7.1 Performance Security

- 7.1.1 For the purposes of this Agreement, performance security shall be deemed to be an amount equal to 10% (ten per cent) of the Agreement Value (the “**Performance Security**”); provided that the Legal Adviser shall not be required to provide Performance Security in the form of a bank guarantee or cash deposit.
- 7.1.2 Notwithstanding anything to the contrary contained in Clause 7.1.1, as and when payments become due to the Legal Adviser for its Services, the Authority shall retain by way of Performance Security, 10% (ten percent) of all the amounts due and payable to the Legal Adviser, to be appropriated against breach of this Agreement or for recovery of liquidated damages as specified in Clause 7.2. The balance remaining out of the Performance Security shall be returned to the Legal Adviser at the end of three months after the expiry of this Agreement pursuant to Clause 2.4 hereof. For the avoidance of doubt, the parties hereto expressly agree that in addition to appropriation of the amounts withheld hereunder, in the event of any default requiring the appropriation of further amounts comprising the Performance Security, the Authority may make deductions from any subsequent payments due and

payable to the Legal Adviser hereunder, as if it is appropriating the Performance Security in accordance with the provisions of this Agreement.

- 7.1.3 The Legal Adviser may, in lieu of retention of the amounts as referred to in Clause 7.1.2 above, furnish a Bank Guarantee substantially in the form specified at Annex-5 of this Agreement.

7.2 Liquidated Damages

7.2.1 Liquidated Damages for error

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

7.2.2 Liquidated Damages for delay

In case of delay in completion of Services, liquidated damages not exceeding an amount equal to 0.2% (zero point two percent) of the Agreement Value per day, subject to a maximum of 10% (ten percent) of the Agreement Value shall be imposed and shall be recovered by appropriation from the Performance Security or otherwise. However, in case of delay due to reasons beyond the control of the Legal Adviser, 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 Legal Adviser 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 Legal Adviser for minor deficiencies on its part. In the case of significant deficiencies in Services causing adverse effect on the Project or on the reputation of the Authority, other penal action including debarring for a specified period may also be initiated as per policy of the Authority.

8. FAIRNESS AND GOOD FAITH

8.1 Good Faith

The Parties undertake to act in good faith with respect to each other's rights under this Agreement and to adopt all reasonable measures to ensure the 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 Managing Director, Vizhinjam International Seaport Limited and the Managing Partner of the Legal Adviser or a substitute thereof for amicable settlement, and upon such reference, the said persons shall meet no later than 10 (ten) days from the date of reference to discuss and attempt to amicably resolve the Dispute. If such meeting does not take place within the 10 (ten) day period or the Dispute is not amicably settled within 15 (fifteen) days of the meeting or the Dispute is not resolved as evidenced by the signing of written terms of settlement within 30 (thirty) days of the notice in writing referred to in Clause 9.2.1 or such longer period as may be mutually agreed by the Parties, either Party may refer the Dispute to arbitration in accordance with the provisions of Clause 9.4.

9.4 Arbitration

- 9.4.1 Any Dispute which is not resolved amicably by conciliation, as provided in Clause 9.3, shall be finally decided by reference to arbitration by an Arbitral Tribunal appointed in accordance with Clause 9.4.2. Such arbitration shall be held in accordance with the Rules of Arbitration of the International Centre for Alternative Dispute Resolution, New Delhi (the “**Rules**”), or such other rules as may be mutually agreed by the Parties, and shall be subject to the provisions of the Arbitration and Conciliation Act,1996. The venue of such arbitration shall be Thiruvananthapuram and the language of arbitration proceedings shall be English.
- 9.4.2 There shall be a sole arbitrator^s whose appointment an Arbitral Tribunal of three arbitrators, of whom each Party shall select one, and the third arbitrator shall be appointed by the two arbitrators so selected, and in the event of disagreement between the two arbitrators, the appointment shall be made in accordance with the Rules.
- 9.4.3 The arbitrators shall make a reasoned award (the “**Award**”). Any Award made in any arbitration held pursuant to this Clause 9 shall be final and binding on the Parties as from the date it is made, and the Legal Adviser and the Authority agree and undertake to carry out such Award without delay.
- 9.4.4 The Legal Adviser and the Authority agree that an Award may be enforced against the Legal Adviser 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.

SIGNED, SEALED AND DELIVERED

For and on behalf of
Legal Adviser:

SIGNED, SEALED AND DELIVERED

For and on behalf of
Vizhinjam International Seaport Limited

(Signature)

(Name)

(Designation)

(Address)

(Signature)

(Name)

(Designation)

(Address)

^sIn case the Agreement Value specified in Clause 6.1.2 of this Agreement does not exceed Rs. 1 crore, a sole arbitrator shall be appointed. In case the Agreement Value specified in Clause 6.1.2 of this Agreement is more than Rs. 1 crore, a Board shall be appointed. Depending upon the Agreement Value, one of the two square parentheses shall be deleted from Clause 9.4.2.

(Fax No.)

(Fax No.)

In the presence of:

1.

2.

Annex -1

Terms of Reference

(Refer Clause 3.1.2)

(Reproduce Schedule-1 of RFP)

Annex-2

Deployment of Personnel

(Refer Clause 4.2.1)

(Reproduce as per Form-6 of Appendix-I)

Annex-3

Cost of Services

(Refer Clause 6.1)

(Reproduce as per Form-2 of Appendix-II)

Annex-4

Payment Schedule*(Refer Clause 6.3)*

Key Date No.	Description of Deliverables	Week No.	Payment
KD1	Inception Report	2	
KD2	Draft Concession Agreement	6	25%
KD3	Collating and compiling the relevant regulations, rules and provisions of law	8	10%
KD4	Vetting of Bid Documents	10	20%
KD5	Advisory services during pre-bid conferences and up to the relevant Bid Due Date	14	15%
KD6	Advisory services up to execution of project agreement	18	10%
KD7	Completion of Services including assistance during Bid Process	52	20%
	Total		100

Notes:

1. *The above payments shall be made to the Legal Adviser provided that the payments to be made at any time shall not exceed the amount certified by the Legal Adviser in its Statement of Expenses.*
2. *All Reports shall first be submitted as draft reports for comments of the Authority. The Authority shall provide its comments no later than three weeks from the date of receiving a draft report and in case no comments are provided within such three weeks, the Legal Adviser shall finalise its report.*
3. *Final payment of 20% (twenty per cent) shall be released upon completion of Services in their entirety.*

Annex- 5

Bank Guarantee for Performance Security

(Refer Clause 7.1.3)

To

The Managing Director & CEO
Vizhinjam International Seaport Ltd, (VISL), 1st Floor, Vipanchika Tower,
Near Government Guest House, Thycaud ,
Thiruvananthapuram 695 014

In consideration of Managing Director, Vizhinjam International Seaport Limited , entrusted with the responsibility of developing, operating maintaining and managing the Vizhinjamport in the State(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 “**Legal Adviser**” 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**”) a consultancy services for the Development of Vizhinjam International Deepwater Multipurpose Seaport, and the Legal Adviser having agreed to furnish a Bank Guarantee amounting to Rs. (Rupees) to the Authority for performance of the said Agreement.

1. We, (hereinafter referred to as the “**Bank**”) at the request of the Legal Adviser 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 Legal Adviser 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 Legal Adviser of any of the terms or conditions contained in the said Agreement or by reason of the Legal Adviser’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 there under 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 date of this Guarantee)].

Dated, the day of 20

For

(Name of Bank)

(Signature, name and designation of the authorised signatory)

Seal of the Bank:

NOTES:

The Bank Guarantee should contain the name, designation and code number of the officer(s) signing the Guarantee.

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.

Annex –6

(Name of Legal Adviser)

Fortnightly Time Report

(See Clause 3.7.2)

Project Name:

Fortnight ending:

Week One from _____ to _____ (insert dates covered by Week One)

Key Personnel	Hours on Site	Hours off Site	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday	Total Hours

Week Two from _____ to _____ (insert dates covered by Week Two)

Key Personnel	Hours on Site	Hours off Site	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday	Total Hours

Provide brief description of work undertaken on each day of the fortnight, below:

Date:(Signature and name of authorised signatory)

Note: Hours on Site include time spent in the office of the Authority or at any place other than the office of the Legal Adviser, as may be necessary for carrying out the assignment.

SCHEDULE-3*(See Clause 2.3.3)***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.

APPENDICES

APPENDIX-I

(See Clause 2.1.3)

TECHNICAL PROPOSAL

Form-1

Letter of Proposal

(On Applicant's letter head)

(Date and Reference)

To,

The Managing Director & CEO
Vizhinjam International Seaport Ltd, (VISL),
1st Floor, Vipanchika Tower,
Near Government Guest House,
Thycaud ,
Thiruvananthapuram , Kerala 695 014
India

Sub: Appointment of Legal Adviser for PPP in the Development of
Vizhinjam International Deepwater Multipurpose Seaport

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 selection as Legal Adviser for PPP in the Development of Vizhinjam International Deepwater Multipurpose Seaport. 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 Legal Adviser for the Consultancy, 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 Legal Adviser 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 Legal Adviser 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 Legal Adviser, I/we agree to enter into an Agreement in accordance with the format 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 Legal Adviser, I/we agree and undertake to provide the services of the Legal Expert in accordance with the provisions of the RFP and that the Legal 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 Consultancy:
1.2	Title of Project: PPP in the Development of Vizhinjam International Deepwater Multipurpose Seaport
1.3	State whether applying as Sole Firm or Lead Member of a consortium: Sole Firm or Lead Member of a consortium
1.4	State the following: Name of Firm: Legal status (e.g. sole proprietorship or partnership): Country of incorporation: Registered address: Year of Incorporation: Year of commencement of business: Principal place of business: Name, designation, address and phone numbers of authorised signatory of the Applicant: Name: Designation: Company: Address: Phone No.: Fax No.: E-mail address:
1.5	If the Applicant is Lead Member of a consortium, state the following for each of the other Member Firms:

	<p>(i) Name of Firm:</p> <p>(ii) Legal Status and country of incorporation</p> <p>(iii) Registered address and principal place of business.</p>
<p>1.6</p>	<p>For the Applicant, (in case of a consortium, for each Member), state the following information:</p> <p>(i) In case of non Indian Firm, does the Firm have business presence in India? <p style="text-align: right;">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 penalised by any organization for poor quality of work or breach of contract in the last five years? <p style="text-align: right;">Yes/No</p> <p>(iii) Has the Applicant/ or any of its Associates ever failed to complete any work awarded to it by any public authority/ entity in last five years? <p style="text-align: right;">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? <p style="text-align: right;">Yes/No</p> <p>(v) Has the Applicant or any of its Associates, in case of a consortium, suffered bankruptcy/insolvency in the last five years? <p style="text-align: right;">Yes/No</p> <p>Note: If answer to any of the questions at (ii) to (v) is yes, the Applicant is not eligible for this consultancy assignment.</p> </p></p></p></p></p>
<p>1.7</p>	<p style="text-align: center;">(Signature, name and designation of the authorised signatory)</p> <p style="text-align: center;">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,

The Managing Director & CEO
Vizhinjam International Seaport Ltd, (VISL),
1st Floor, Vipanchika Tower,
Near Government Guest House,
Thycaud ,
Thiruvananthapuram , Kerala 695 014
India

Dear Sir,

Sub: RFP for Consultant: PPP in the Development of Vizhinjam International Deepwater Multipurpose Seaport

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

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 Legal Adviser for PPP in the Development, Operation and Maintenance of Vizhinjam International Deepwater Multipurpose Seaport, proposed to be developed by the Vizhinjam International Seaport Limited, entrusted with the responsibility of developing, maintaining and managing the Vizhinjamport in the State and represented by the Managing Director , VISL (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-5**Financial Capacity of the Applicant***(Refer Clause 2.2.2 (B))*

S. No.	Financial Year	Annual Revenue (Rs.crore/US \$ in million)
1.		
2.		
3.		
<p>Certificate from the Statutory Auditor^{\$}</p> <p>This is to certify that(name of the Applicant) has received the payments shown above against the respective years on account of professional fees.</p> <p style="text-align: center;">(Signature, name and designation of the authorised signatory)</p> <p>Date: Name and seal of the audit firm</p>		

^{\$}In case the Applicant does not have a statutory auditor, it shall provide the certificate from its chartered accountant that ordinarily audits the annual accounts of the Applicant.

Note:

1. Please do not attach any printed Annual Financial Statement.

APPENDIX-I

Form-6

Particulars of Key Personnel

S. No.	Designation of Key Personnel	Name	Educational Qualification	Length of Professional Experience	Present Employment		No. of Eligible Assignments [#]
					Name of Firm	Employed Since	
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
1.	Legal Expert						
2.	Associate Lawyer(s)						
3.	Other Personnel, if any						

[#]Refer Form 8 of Appendix I Experience of Key Personnel

APPENDIX-I

Form-7

Abstract of Eligible Assignments of the Applicant[#]*(Refer Clause 3.1)*

S.No	Name of Project	Name of Client	Estimated capital cost of Project (in Rs crore/ US\$ million)	Professional fee ^{##} received by the Applicant (in Rs crore) [£]
(1)*	(2)	(3)	(4)	(5)
1				
2				
3				
4				
5				

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. 50 per US \$ for conversion to Rupees.

£ In the event that the Applicant does not wish to disclose the actual fee received for any particular assignment, it may state that it has received more than the amount specified for eligibility under this RFP. For example, it may state: "Above Rs. 5 (five) lakh" in respect of a particular project.

* 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^{\$}

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

^{\$} 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-7A**Abstract of other relevant experience of the Applicant[#]***(Refer Clause 3.1.5)*

S.No	Name of Project	Name of Client	Estimated capital cost of Project (in Rscore/ US\$ million)	Professional fee## received by the Applicant (in Rscore) [£]
(1)*	(2)	(3)	(4)	(5)
1				
2				
3				
4				
5				

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. 50 per US \$ for conversion to Rupees.

£ In the event that the Applicant does not wish to disclose the actual fee received for any particular assignment, it may state that it has received more than the amount specified for eligibility under this RFP. For example, it may state: "Above Rs. 5 (five) lakh" in respect of a particular project.

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

Certificate from the Statutory Auditor^{\$}

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: Seal of the audit firm

^{\$} In case the Applicant does not have a statutory auditor, it shall provide the certificate from its chartered accountant that ordinarily audits the annual accounts of the Applicant.

APPENDIX-I

Form-8[@]**Abstract of Eligible Assignments of Key Personnel^{\$}***(Refer Clause 3.1)*

Name of Key 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.

^{\$} In the case of Legal Expert, only those assignments shall be included where the Legal Expert accounted for at least 20% of the total professional fee received by the firm for the relevant assignment.

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

APPENDIX-I

Form-8A[@]**Abstract of other relevant experience of Key Personnel[§]***(Refer Clause 3.1.5)*

Name of Key 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.

[§] In the case of Legal Expert, only those assignments shall be included where the Legal Expert accounted for at least 20% of the total professional fee received by the firm for the relevant assignment.

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

APPENDIX-I

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

Name of Applicant:	
Name of the Project:	
Length in km or other 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 Eligible Assignment.
2. Exchange rate should be taken as Rs.50 per US \$ for converting to Rupees.

APPENDIX-I

Form-9A**Other relevant assignments of Applicant***(Refer Clause 3.1.5)*

Name of Applicant:	
Name of the Project:	
Length in km or other 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.50 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:	
Length in km or other 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:

1. Use separate sheet for each Eligible Assignment.
2. In the case of Legal Expert, only those Eligible Assignments shall be included where at least 20% of the total professional fee received by the firm was on account of the man hours provided by the Legal Expert.
3. Exchange rate should be taken as Rs. 50 per US \$ for converting in Indian Rupees.

APPENDIX-I

Form-10A**Other relevant assignments of Key Personnel***(Refer Clause 3.1.5)*

Name of Key Personnel:	
Designation of Key Personnel:	
Name of the Project:	
Length in km or other 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:

1. Use separate sheet for each assignment.
2. In the case of Legal Expert, only those assignments shall be included where at least 20% of the total professional fee received by the firm was on account of the man hours provided by the Legal Expert.
3. Exchange rate should be taken as Rs. 50 per US \$ for converting in Indian Rupees.

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)

Place.....

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

Notes:

1. Use separate form for each Key Personnel.
2. In the case of Legal Expert, only those assignments shall be included where at least 20% of the total professional fee received by the firm was on account of the man-hours provided by the Legal Expert.

3. The names and chronology of assignments included here should conform to the project-wise details submitted in Form-7 or Form-7A, as the case may be, 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-II

FINANCIAL PROPOSAL

Form - 1

Covering Letter

(On Applicant's letter head)

(Date and Reference)

To,

The Managing Director & CEO
Vizhinjam International Seaport Ltd, (VISL),
1st Floor, Vipanchika Tower,
Near Government Guest House,
Thycaud ,
Thiruvananthapuram , Kerala 695 014
India

Dear Sir,

Subject: Appointment of Legal Adviser for PPP in the Development of Vizhinjam International Deepwater Multipurpose Seaport

I/We, _____ (Applicant's name) herewith enclose the Financial Proposal for selection of my/our firm as Legal Adviser for above.

I/We agree that this offer shall remain valid for a period of 90 (ninety) 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**Financial Proposal**

Item No.	Description	Rate (Rs.)	Amount (Rs.)
A.	PERSONNEL COST		
	Remuneration for the Legal Expert (Ref. Clause 6 of Form of Agreement) (Indicate remuneration for 300 (three hundred) man hours as specified in Clause 5.4 of TOR; amount to be calculated as the product of rate per man hour multiplied by 300 (three hundred))		
B	ADDITIONAL COSTS		
	(a) Return journeys (international/domestic) for the Legal Expert in business class and one Associate Lawyer in economy class from the firm's office to Thiruvananthapuram to attend meetings and conferences held by Authority (provide indicative amount for five return fares) (b) Estimated costs of out-station telephones and other costs (c) Sub total of B (a+b)		
C	TOTAL COST OF THE CONSULTANCY (A+B) In Indian Rupees in Figures In Words _____		

Note:

1. The financial evaluation shall be based on the above Financial Proposal for 300manhours, and excluding Additional Costs. The total under Item A shall, therefore, be the amount for purposes of evaluation. Additional Costs in Item B shall not be reckoned for purposes of financial evaluation.
2. Payment for the Services shall be based on actual number of man hours of the Legal Expert deployed by the Legal Adviser, but always subject to the maximum hours specified in Clause 5.4 of the TOR. Save and except as provided herein, no separate payment shall be made for the costs relating to the Associate Lawyer(s) and supporting staff deployed by the Legal Adviser and these shall be deemed to be included in payment to be made for the man hours expended by the Legal Expert. However, the Legal Adviser may, in its discretion, substitute a man hour of the Legal Expert by 4 (four) man hours of an Associate Lawyer, subject always to the condition that the Legal Expert shall itself expend on this Consultancy no less than one half of the man hours specified for each Deliverable in the said Clause 5.4. No bills shall be submitted by the Consultant for payment by the Authority if the amount attributed to the man hours expended by the Associate Lawyer(s) is more than the amount due and payable for the Legal Expert in respective bill.
3. In the case of an outstation Personnel, the days required to be spent at the office of the Authority shall be computed at the rate of 10 man hours a day. For a Legal Expert having its office within Thiruvananthapuram, the time spent during meetings in Thiruvananthapuram shall be calculated as per actual. No travel time shall be payable except in case of an expatriate Key Personnel who will be entitled to claim actual travel time, subject to a maximum of 12 man hours for a return journey.
4. The aforesaid fees payable to the Legal Adviser shall cover the costs of local telephone/fax, reasonable amount of in-house photocopying and stationery and costs of support staff. No additional charges in respect thereof shall be due or payable. The professional fees, however, will not include counsel fee, outstation travel, long distance telephone calls and faxes, couriers and postage, collections and deliveries, subscriptions to special services and specifically required stationery and bulk photocopying (the “**Disbursements**”). The Disbursements will be paid at actual and will be indicated separately in the invoices of the Legal Adviser together with appropriate supporting documents. Outstation travel shall be undertaken as per request of the Authority. The Legal Expert and Associate Lawyer(s) shall be entitled to business class and economy class air travel respectively, and board and lodging in a four-star hotel. Bills for reimbursement hereunder may be submitted on a monthly basis along with a Statement of Expenses, duly certified by the Authorised Representative.
5. The reimbursement of expenses shall be limited to the amounts indicated above and no escalation on any account will be payable on the above amounts.
6. Any other charges not shown here are considered included in the man hour rate for the Legal Expert.

7. All payments shall be made in Indian Rupees and shall be subject to applicable Indian withholding taxes if any.
8. For the purposes hereof “**Statement of Expenses**” means a statement of the expenses incurred on each of the Cost heads indicated in paragraph 4 above; provided that in relation to claims relating to man hours, the Statement of Expenses shall be accompanied by the particulars of the man hours of personnel spent on the Consultancy.

APPENDIX- III

LIST OF BID-SPECIFIC CLAUSES[§]

A. Clauses and appendices with non-numerical footnotes

1. Clause 2.1.4: Key Personnel
2. Clause 2.2.3 : Conditions of Eligibility of Applicants
3. Clause 2.11.3: Amendment of RFP
4. Schedule 2: Form of Agreement: Para 9.4.2
5. Form 3, Appendix-I: Statement of Legal Capacity
6. Form 5, Appendix-I: Financial Capacity of the Applicant
7. Form 6, Appendix-I: Particulars of Key Personnel
8. Form-7, Appendix-I: Abstract of Eligible Assignments of the Applicant
9. Form-7A, Appendix-I: Abstract of other relevant experience of the Applicant
10. Form-8, Appendix I: Abstract of Eligible Assignments of Key Personnel
11. Form-8A, Appendix-I: Abstract of other relevant experience of Key Personnel
12. Appendix-III: List of Bid-specific clauses

B. Clauses and appendices with blank spaces

1. Annex- 5, Schedule 2: Bank Guarantee for Performance Security
2. Form-3, Appendix-I Statement of Legal Capacity
3. Form-4, Appendix-I: Power of Attorney
4. Form-5, Appendix-I: Financial Capacity of the Applicant
5. Form-11, Appendix-I: Curriculum Vitae (CV) of Key Personnel
6. Appendix-II: Financial Proposal: Form 2, Part C

[§] This Appendix-III contains a list of clauses and appendices that would need to be suitably modified for reflecting applicant-specific provisions. This Appendix-III may, therefore, be included in the RFP document to be issued to prospective Applicants. The blank spaces in Appendices may be filled up by the Applicant and the footnotes may be deleted when it submits its proposal.