

**HALDIA DOCK COMPLEX
KOLKATA PORT TRUST**



ENGINEERING DEPARTMENT INVITE E-TENDER

[Tender No. SDM(P&E)/T/ 51 /2019-2020]

FOR

**HIRING OF 2(TWO) NOS DIESEL ELECTRIC/ DIESEL HYDRAULIC
LOCOMOTIVE EACH HAVING HAULING CAPACITY 5500MT AND POWER
1400HP AND ABOVE ON WET LEASE BASIS FOR A PERIOD OF 5(FIVE)
YEARS FOR HALDIA DOCK COMPLEX, KOLKATA PORT TRUST.**

AUGUST - 2019

TABLE OF CONTENTS

[Tender No. : SDM(P&E)/T/51/2019-2020]

PARTS	Sections	CHAPTER DESCRIPTION	PAGE NO.
PART-1		BID INVITING	
	I	Short e-Tender Notice	1
	II	Notice Inviting e-Tender	2 – 4
	III	Schedule Of Tender (SOT)	5 – 7
PART-2		BIDDING PROCEDURES	
	IV	Instructions for Online Bid Submission	8 – 10
	V	Instructions To Bidders (ITB)	11 – 19
	VI	Scope of Work & Technical specification	20 – 22
PART-4		CONDITIONS OF CONTRACT	
	VII	General Conditions of Contract (GCC)	23 – 72
	VIII	Special Conditions of Contract (SCC)	73 – 86
PART-5		BIDDING FORMS, PREAMBLE PRICE SCHEDULE ,UNPRICED PRICE SCHEDULE, PRICED SCHEDULE, LOCOMOTIVE DRIVER PROFILE, CHECKLIST AND CONTRACT FORMS.	
		Preamble of price schedule	87
		Unpriced price schedule (Annexure – I)	88
		Priced schedule (Annexure – II)	89
		Locomotive Driver Profile (Annexure – III)	90
		Technical Information of Locomotive (Annexure –IV)	91
	IX	Bidding Forms [I to VI]	92 – 101
	X	Checklist	102 – 103
	XI	Formats for :	
		Form of Agreement	104 – 105
		Indemnity Bond	106 – 107
		Bank Guarantee for Performance Guarantee	108 – 110
		Certificate of Completion of work	111
		Certificate of Final Completion	112
		No Claim Certificate	113
		Integrity Pact	114 – 119

KOLKATA PORT TRUST
HALDIA DOCK COMPLEX
SHORT E-TENDER NOTICE

E-Tender ID : 2019_KoPT_496661

Online e-tenders are invited for the work of **“Hiring of 2(two) nos diesel electric/ diesel hydraulic locomotive each having hauling capacity 5500MT and power 1400HP and above on wet lease basis for a period of 5(five) years for Haldia Dock Complex, Kolkata Port Trust”**.

Closing date & time of online submission of e-tender: **12.09.2019**, up to 15:00 Hrs.

For details of tender and any corrigendum / addendum, please visit CPPP's e-portal <https://eprocure.gov.in/eprocure/app>.

General Manager (Engineering)
Haldia Dock Complex
Kolkata Port Trust

KOLKATA PORT TRUST
HALDIA DOCK COMPLEX
NOTICE INVITING E-TENDER

(Tender No. SDM(P&E)T/ 51/2019-2020)

E-Tender ID : 2019_KoPT_496661

E-Tenders, under **single stage two part system** [Part I: **Pre-qualification & Techno-commercial Bid** and Part II: **Price Bid**] are invited on behalf of Haldia Dock Complex (HDC), Kolkata Port Trust (KoPT), from the intending bidders, fulfilling the “**Minimum Eligibility Criteria (MEC)**” and complying with the “Documents To Be Uploaded” for the work of “**Hiring of 2(two) nos diesel electric/ diesel hydraulic locomotive each having hauling capacity 5500MT and power 1400HP and above on wet lease basis for a period of 5(five) years for Haldia Dock Complex, Kolkata Port Trust.**”

2.1 MINIMUM ELIGIBILITY CRITERIA (MEC):

2.1.1 The average annual financial turnover of the bidder, during the last three (3) years, ending 31st March, 2019, must be at least Rs. 2,13,78,000.00 Auditor’s Report of the bidding firm, certified by Chartered Accountant (CA), for the years 2016-17, 2017-18 & 2018-2019 including relevant Audited Balance Sheets and Profit & Loss Accounts, should be made available.

Note: The bidder must upload the scanned copies of Annual Financial Turnover Statement (certified by CA) for the years 2016-17, 2017-18 & 2018-2019 along with Balance Sheets and Profit & Loss Accounts.

2.1.2 The bidder must have experience of having successfully completed “Similar Works” [defined below] during last seven (7) years, ending last day of month previous to the one in which tenders are invited, and the experience must be either of the following :-

a) Three similar completed works of contract value not less than Rs. 2,85,04,000.00 each.

Or

b) Two similar completed works of contract value not less than Rs. 3,56,30,000.00 each.

Or

c) One similar completed work of contract value not less than Rs. 5,70,08,000.00.

The term “*similar works*” means -

“Successful execution of the direct contract for Supply including operation & maintenance of Diesel Electric/ Diesel Hydraulic Locomotive, turbo charged, DC-DC /AC-AC /AC-DC transmission or equivalent should be owned/leased by the firm”.

Note:

1. In case any composite work order is submitted as credential then the exact executed work order value corresponding to the specified nature of job / similar job as defined above will be considered for evaluation and the same

needs to be clearly mentioned & should be supported by documentary evidence corresponding to the value as defined under 2.1.2 (a), 2.1.2(b) & 2.1.2(c) as the case may be, otherwise the credential will not be considered.

2. Completed Work: Completed work means the executed/ completed portion of work order/ AMC (Annual Maintenance Contract)/ RC (Running Contract), even if the work has not been completed in totality subject to furnishing proof of executed value of the work in the form of certified copies of RA (Running Account) bills or certificate from the organization (Where the bidder has worked) to this effect that the job to this extent has been done by the bidder satisfactorily.
3. The bidder must upload the scanned copies of work order(s) for similar works, successful completion certificates (with performance) from clients indicating the date of completion, value of work done, etc.
4. The bidder must clearly mention the specific make and model of locomotive to be offered in their Techno-Commercial bid, failing which the bid will be summarily rejected.

2.2 DOCUMENTS TO BE UPLOADED:

2.2.1 ESSENTIAL DOCUMENTS:

- i. Scanned copies of Audited Balance Sheets and Profit & Loss Accounts for the Years 2016-17, 2017-18 and 2018-19.
- ii. Scanned copies of work order(s) for similar works, successful completion certificates (with performance) from clients indicating the date of completion, Value of work done, etc.
- iii. Scanned copy of Power of Attorney.
Note: In case the tender is submitted by the Proprietor of the Firm, Power of Attorney is not required.
- iv. Scanned copy of Integrity **Pact**.
- v. Scanned copy of valid **Trade Licence**.
- vi. Scanned copy of HP certificate from OEM or Authorised service provider of OEM.

2.2.2 OTHER DOCUMENTS:

- i. Goods and Services Tax (GST) Registration Certificate, issued by Government of India.
- ii. Valid **Profession Tax Clearance Certificate (PTCC)** or Up-to-date **Profession Tax payment challan**, if applicable. If this is not applicable, the bidder must submit [upload] a declaration in this regard.
- iii. Certificate for allotment of **Employees' Provident Fund (EPF) Code No.** [**Latest challan** is to be submitted (uploaded)], if applicable. If this is not applicable, the Bidder should submit [upload] a declaration (in the form of Affidavit), in this regard.
- iv. Registration certificate of **Employees' State Insurance (ESI)** authority, if applicable.
If this is not applicable, necessary document(s) [to establish Non-applicability], along with **affidavit, affirmed before a first-class Judicial Magistrate** to that effect, are to be submitted [uploaded]. Moreover, such bidder(s) shall have to

submit a declaration, confirming that they will obtain registration certificate of ESI authority, if required, and they will indemnify **Kolkata Port Trust** against all damages & accident occurring to their labourer (including that of sub-contractor's labourers), in connection with the instant contract, in case they become a Successful Bidder.

- iv. PAN Card, issued by Income Tax Department, Government of India.
- v. **Certificate of MSME / Micro & Small Enterprises (MSEs) / DIC / SSI / National Small Industries Corporation (NSIC)** to get benefit in this regard.

2.3 The bidders are required to submit bid as per the instructions of the instant bidding documents (including Notice Inviting e-Tender). Bid will be considered rejected if any of the essential documents is not submitted by the bidder. Essential documents means papers related to "Minimum Eligibility Criteria (MEC)", including Bid Document fee, Earnest Money Deposit and Power of Attorney.

2.4 AVAILABILITY OF THE BIDDING DOCUMENTS:

The bidding documents (in full) would be available in the following websites:-

- <https://eprocure.gov.in/eprocure/app> of **Central Public Procurement Portal**.
- <http://www.kolkataporttrust.gov.in> of **Kolkata Port Trust**.

Corrigenda, Addenda, Queries & Clarifications, if any, would also be available in the aforesaid websites.

2.5 PARTICIPATING IN THE BIDDING PROCESS:

The bidders will have to participate in the electronic bidding process through the website of CPPP (<https://eprocure.gov.in/eprocure/app>) only.

General Manager (Engineering)
Haldia Dock Complex
Kolkata Port Trust

SCHEDULE OF TENDER (SOT)

(Tender No. SDM(P&E)/T/51/2019-2020)

E-Tender ID : 2019_KoPT_496661

3.1.	Name of work	::	Hiring of 2(two) nos diesel electric/ diesel hydraulic locomotive each having hauling capacity 5500MT and power 1400HP and above on wet lease basis for a period of 5(five) years for Haldia Dock Complex, Kolkata Port Trust.
3.2.	Tender Inviting Authority	::	General Manager (Engg.) Haldia Dock CoBmplex ; Kolkata Port Trust.
3.3.	Mode of Tender	::	e-Procurement System Online (Part I: <i>Pre-qualification & Techno-commercial Bid</i> and Part II: <i>Price Bid</i>) through https://eprocure.gov.in/eprocure/app of CPPP <i>No physical tender is acceptable by Haldia Dock Complex, Kolkata Port Trust.</i>
3.4.	Estimated Cost	::	Rs. 35,63,00,000.00 (excluding GST) for a period of 5 years.
3.5	i) Bid Document Fee (Cost of bidding documents)	::	The intending bidders must deposit Rs. 5,900.00 (Indian Rupees: Five thousand nine hundred) only [including GST @ 18%] , as Bid Document Fee (non-refundable), to Haldia Dock Complex, along with their offer. In case the said Bid Document Fee is not deposited by the bidder, the respective bid will be summarily rejected, treating the same as non-responsive.
	ii) Earnest Money Deposit (EMD)	::	The intending bidders must deposit Rs. 14,25,200.00 (Indian Rupees: Fourteen lakh twenty five thousand two hundred) only , as Earnest Money, to Haldia Dock Complex, through DD/Banker's Cheque in favour of Kolkata Port Trust on any Scheduled/Nationalized Bank payable at Haldia , otherwise their offer will be summarily rejected. Copy of the DD/Banker's Cheque should be uploaded. In case the said Earnest Money is not deposited by the bidder, the respective bid will be summarily rejected, treating the same as non-responsive.
			NOTE :: (i) For exemption of Bid Document Fee and EMD to upload the scanned copy of the certificate from MSME / Micro & Small Enterprises (MSEs) / DIC / SSI / National Small Industries Corporation (NSIC) or any empowered Central /

			<p>State Govt. authority is required in electronic format.</p> <p>(ii) Earnest money and cost of tender document are to be physically deposited at the office of Sr. Dy. Manager [P&E Div.], Operational Administrative Building(1st floor), Haldia Dock Complex, Chiranjibpur, Haldia, PIN:721604), separately in a single sealed envelope, mentioning Tender no. with proper marking.</p> <p>Demand Draft /Banker's Cheque against Earnest money and cost of tender document should be submitted /deposited on any scheduled/ nationalized Bank, by the bidder in favour of Kolkata Port Trust, payable at Haldia before opening of the tender, as specified in the Tender Document.</p>
3.5.	Commencement of work contract for hiring of locomotives	::	03 months for old locomotives and 06 months for new locomotives from the date of placement of order .
3.6.	Bid Validity	::	120 days.
3.7.	Security Deposit	::	10% of the annual evaluated value excluding GST of the tender as accepted by Kolkata Port Trust.
3.8.	i) Starting date & time of submission of e-Tender at https://eprocure.gov.in/eprocure/app	::	23.08.2019 from 11 00 Hrs. (IST).
	ii) Closing date & time of submission of e-Tender at https://eprocure.gov.in/eprocure/app	::	12.09.2019, up to 15 00 Hrs. (IST).
	iii) Date & time of opening of Part-I (Techno-commercial Bid)	::	13.09.2019, 15 30 Hrs. (IST) onwards.
	iv) Date & time of opening of Part-II (Price Bid)	::	Shall be informed separately.
3.9.	Address of the Employer	::	Kolkata Port Trust (KoPT). 15 Strand Road, Kolkata – 700 001, West Bengal, India.

3.10.	Address of Engineer	::	<p>General Manager (Engineering) Haldia Dock Complex ; Kolkata Port Trust.</p> <p><u>Address:</u> Engineering Department Jawahar Tower Complex ; P.O.: Haldia Township; Dist.: Purba Medinipur ; PIN: –721607 West Bengal, India.</p> <p>Telephone no. : + 91-3224-263255</p> <p>E. mail : aganesan.hdc@kolkataporttrust.gov.in</p>
3.11.	Address of the Engineer's representative	::	<p>Shri A. K. Kar, Sr. Dy. Manager (P&E), Haldia Dock Complex, Operational Administrative Building (1st floor), Chiranjibpur; P.O: Haldia; Dist.: Purba Medinipur; PIN: 721 604; West Bengal; India.</p> <p>Telephone no. : + 91-3224-252332</p> <p>Mobile no. : + 91 94340 52489</p> <p>E. mail : akkar.hdc@kolkataporttrust.gov.in</p>

General Manager (Engineering)
Haldia Dock Complex, Kolkata Port Trust

SECTION – IV

Important instructions for E-procurement

4.1 Introduction:

- 4.1.1 Bidders are requested to use internet Browsers Firefox version below 50 / Internet Explorer version 8 or above, and Java 8 Update 151 or 161.**
- 4.1.2 Further, bidders are requested to go through the following information and instructions available on the CPP Portal <https://eprocure.gov.in/eprocure/app> before responding to this e-tender:**
- Bidders Manual Kit
 - Help for Contractors
 - FAQ

Contact person (Haldia Dock Complex):

- (i) Shri A. K. Kar,
Designation: Sr. Dy. Manager (P&E),
Mobile No.: + 91 94340 52489
Landline: + 91-3224-252332
E-mail : akkar.hdc@kolkataporttrust.gov.in
- (ii) Sk. M. Maji,
Designation: Asst. Manager (P&E)
Mobile No.: + 91 9800366397
E-mail : mmaji.hdc@kolkataporttrust.gov.in

Contact persons (CPP Portal):

- (i) Shri Nazmush
Mob: +91 95632 51950
E-mail: webhelpdesk@gmail.com
- (ii) **See CPP Portal for contact details.**

- 4.2 4.2.1** All entries in the tender should be entered in online Technical & Commercial Formats without any ambiguity.
- 4.2.2** E-tender cannot be accessed after the due date and time mentioned in NIT.
- 4.2.3** KoPT reserves the right to cancel or reject or accept or withdraw or extend the tender in full or part as the case may be without assigning any reason thereof.
- 4.2.4** Any order resulting from this tender shall be governed by the terms and conditions mentioned therein.
- 4.2.5** No deviation to the technical and commercial terms & conditions are allowed.
- 4.2.6** The bidders must upload all the documents required as per terms of tender. Any other document uploaded which is not required as per the terms of the tender shall not be considered.
- 4.2.7** The bid will be evaluated based on the filled-in technical & commercial formats.
- 4.2.8** Bidder has fully read and understood the entire Tender Document, GCC, Corrigendum and Addenda, if any downloaded from under the instant e-tender and no other source, and will comply to the said document, GCC, Corrigendum and Addenda” .
A declaration in this regard is to be made by the bidder.
- 4.2.9** (A) Tender will be opened electronically on specified date and time as mentioned in the NIT. Bidder's can witness electronic opening of Bid.

(B) Necessary addendum/corrigendum (if any) of the tender would only be hoisted in the CPP Portal

4.3 Instructions related to Micro & Small Enterprises (MSEs):

- 4.3.1 For exemption of Bid Document Fee and EMD certificate from MSME / Micro & Small Enterprises (MSEs) / DIC / SSI / National Small Industries Corporation (NSIC) or any empowered Central / State Govt. authority is required.
- 4.3.2 **Micro & Small Enterprises (MSEs)** registered with **NSIC under Single Point Registration Scheme (SPRS)** are eligible to get the benefits under new **Public Procurement policies** for MSEs as notified by the **Government of India, Ministry of Micro, Small & Medium Enterprises (MSME)** in **The Gazette of India** vide No. 503, dated 26.03.2012.
- 4.3.3 When splitting of tender quantity is not possible purely on technical ground, Trustees reserve the right not to negotiate price with MSE if their price is within the band of L1+15% in comparison with L1 price of non-MSE for consideration of award of order for 20% of tender quantity against any item as per new public procurement policy.
- 4.3.4 If **Micro & Small Enterprises (MSEs)**, registered with NSIC [under single point registration scheme] intend to participate with respect to items for which they are not registered with NSIC, then they will have to deposit full amount of **Bid Document Fee** and **Earnest Money**, in accordance with the **Schedule of Tender (SoT)**. Otherwise, their offer with respect to such items (for which they are not registered with NSIC) will not be considered.

4.4 Other Instructions related to e-Procurement:

- 4.4.1 All notices and correspondence with the bidder(s) shall be sent by e-mail only during the process till finalization of tender by HDC, KoPT. Hence, the intending bidders are required to ensure that their e-mail IDs provided are valid and updated at the stage of registration of bidders with CPPP (i.e., Service Provider). The intending bidders are also requested to ensure validity of their DSC (Digital Signature Certificate).
- 4.4.2 In all cases, an intending bidder should use their own ID and Password, along with Digital Signature, at the time of submission of their bid. It is mandatory that all bids are submitted with Digital Signature Certificate (DSC), otherwise the same will not be accepted by the system.
- 4.4.3 Addenda, Corrigenda and Queries & Clarifications (with respect to the instant e-Tender), if any, would be hosted in the e-Procurement portal of CPPP.
- Since there is no provision to take out the list of intending bidders downloading the bidding documents from the websites mentioned in the Tender Notice, the intending bidders are requested to check the website of CPPP to ensure that they have not missed any Addenda, Corrigenda and Queries & Clarifications, uploaded against the instant e-Tender, after downloading the bidding documents. The responsibility of downloading such Addenda, Corrigenda and Queries & Clarifications, if any, will be that of the intending bidders.
- 4.4.4 No deviation/variation of the techno-commercial terms and conditions of the bidding documents will be considered by HDC, KoPT. Submission of bid in the e-Tender platform by any bidder confirms their acceptance of the techno-commercial terms and

conditions of the bidding documents.

- 4.4.5** HDC, KoPT reserves the right to accept or reject any bid (in full or part) and to annul the bidding process and to reject all bids, at any time prior to contract award, without assigning any reason thereof and without thereby incurring any liability to the bidders.
- 4.4.6** Any order resulting from this open e-Tender shall be governed by the terms and conditions mentioned therein.
- 4.4.7** All electronic bids submitted during the e-Tender process shall be legally binding on the bidders. Any bid will be considered as the valid bid offered by that bidder and acceptance of the same by HDC, KoPT will form a binding contract, between HDC, KoPT and the bidder, for execution of the work. Such successful bidder shall be called hereafter the 'CONTRACTOR'.
- 4.4.8** The bids will be evaluated based on the filled-in Technical & Commercial formats and the requisite documents submitted (uploaded) by the bidders.
- 4.4.9** The documents uploaded by bidder(s) will be scrutinized. During scrutiny, in case any of the information furnished by the bidder is found to be false, Earnest Money Deposit of such defaulting bidder(s) will be forfeited. Punitive action, including suspension and banning of business, can also be taken against such defaulting bidder(s).
- 4.4.10** HDC, KoPT, at its discretion, may extend the closing date & time of e-Tender, prior to the closing date & time of e-Tender mentioned in the Schedule of Tender (SoT). However, the closing date & time of e-Tender will not be extended, under any situation, after the due date is over.

4.5 Opening of Bid [Pre-qualification & Techno-commercial Bid and Price Bid] :

- 4.5.1** The Bids (Pre-qualification & Techno-commercial Bid and Price Bid) will be opened electronically on specified date and time, as given in the Schedule of Tender (SoT). Bidder(s) can witness electronic opening of bid(s).

SECTION - V

5. INSTRUCTIONS TO THE BIDDERS (ITB)

5.1 Language of Tender and Interpretation of the Tender Document and Other Documents :

5.1.1 Tender Document means all pages of this book, all pages of General Conditions of Contract of Kolkata Port Trust, May 1993. All pages of subsequent addenda (if applicable) are also part of the Tender Document.

If any amendment / revision / correction / modification is done, which is already provided with the tender or with any subsequent addendum (if applicable), in such case the amended / revised / corrected / modified will supersede the concerned previous clause/sub clause of Tender document.

5.1.2 The Tender Documents are drawn up in English and filling up of the required documents by the Tenderer should also be only in English and the interpretation(s) shall be in English. All correspondence and documents relating to the tender, exchanged between the Tenderer and HDC, shall be in the English Language only. The interpretation(s) of the accepting authority shall be final and binding on the bidder.

5.1.3 Any clarification with regard to interpretation or ambiguity, discovered or pointed out after the uploading of the Tender Document, as to the meaning, conditions, instructions or Annexure contained in the Tender Documents shall be valid when such a clarification is made by the authority issuing NIT, through a written document and such clarification / amendment shall form part and parcel of the Tender Document.

5.1.4 The various documents comprising of the full set of Tender Document are complimentary to one another and are to be taken as parts of a whole and mutually explanatory to each other. If stipulation to the various tender conditions are found to be in variance to each other in any respect, one will override other in order of precedence in the descending order as given below :

(i) Description in "Price Schedule".

(ii) Special Conditions of Contract.

(iii) General Conditions of Contract of Kolkata Port Trust, May 1993.

5.2 Intending bidders have to bear all the costs or expenses incurred by them in connection with the preparation and submission of their bids or for any other expenses incurred in connection with such bidding.

5.3 The bidder shall quote his price through on-line (<https://eprocure.gov.in/eprocure/app> of CPPP only) as per the Price Schedule in the Price Bid (Part-II), without any condition or deviation.

5.4 E-Tender Document shall neither be issued by post nor sold.

5.5 Tenderers are not permitted to alter/change/delete/modify any clause of the tender document down loaded from the website. If any deviation / discrepancy is found after submission of tender, the submitted offer will be summarily rejected.

5.6 Earnest Money Deposit (EMD) :

5.6.1 Method of Paying EMD :

As per methodology stipulated in the 'NOTICE INVITING E-TENDER', the intending tenderer must deposit **Earnest Money amounting to Rs. 14,25,200.00 (Indian Rupees: Fourteen lakh twenty five thousand two hundred) only.**

Failing to deposit the Earnest Money, as per the above details, shall make the Tender liable for rejection.

5.6.2 Forfeiture of EMD :

Earnest Money may be liable for forfeiture at the option of the Trustees, if the Bidder withdraws his offer after the schedule date of submission of offer and before expiry of the validity period of the offer; and / or, alters / amends any terms and / or condition and / or quoted rate(s), after the schedule date of submission of offer and before expiry of the validity period of the offer (excepting when option to do the same has been specifically granted by the HDC, KoPT in writing) making it unacceptable to HDC-KoPT and / or, in case of successful bidder, fails to carry out the work or to perform / observe any of the conditions of the Contract; and / or, fails to carry out the work or to perform / observe any of the conditions of the Contract. For the purpose of this provision, the validity period shall include any / all extension thereof agreed by the bidder in writing. The Trustees shall also be at liberty to deduct any of their dues from Earnest Money.

5.6.3 Refund of EMD :

Earnest Money Deposit of unsuccessful bidders shall be released / refunded as per normal procedure of HDC-KoPT on award of contract to the successful bidder.

The Earnest Money of accepted tender/offer shall be retained by the Trustees as part of the Security Deposit, for which a separate Treasury Receipt shall be issued to the Contractor after cancellation of the previous Receipt of Earnest Money.

No interest shall be payable on the account of EMD in any case.

5.6.4 For Micro & Small Enterprises (MSEs) registered with NSIC :

- (i) Micro & Small Enterprises (MSEs) / DICs registered with NSIC (under single point registration scheme) are exempted from depositing Cost of Tender Document and Earnest Money.
- (ii) Micro & Small Enterprises (MSEs) / DICs registered with NSIC under Single Point Registration Scheme (SPRS) / DIC are eligible to get the benefits under new Public procurement policies for MSEs as notified by Govt. of India, Ministry of Micro, Small & Medium Enterprises (MSME) vide Gazette Notification, dated 26.03.2012.
- (iii) If Micro & Small Enterprises (MSEs) / DICs registered with NSIC intends to participate in the tender, for the items they are not registered with NSIC, then they will have to deposit cost of Tender Document, full amount of Earnest Money as per NIT. Otherwise their offer for those items will not be considered.
- (iv) Copies of valid MSE's Certificate / DICs Certificate along with NSIC Certificate with list of items registered must be submitted with tender.

5.7 SUBMISSION OF BIDS AND OPENING OF BIDS (EXCEPT PRICE BID) of Submission of Tender :

5.7.1 Submission of bids :

5.7.1.1 Bidders shall have to submit their bids [both **Pre-qualification & Techno-commercial Bid** and **Price Bid**] on-line **through CPP Portal only**.

5.7.1.2 The Bidder should submit (upload) the scanned copies of all the relevant and required documents, statements, filled up formats, certificates, etc. [in accordance with **ITB**], in the aforesaid portal, in support of their **Pr-qualification Criteria and Techno-commercial Bid**.

5.7.1.3 Before scanning the aforesaid documents, all pages are to be signed by a person duly authorised to sign on behalf of the bidder, pursuant to **ITB**, and are to be embossed with their official seal, owing responsibility for their correctness / authenticity. All pages of the aforesaid documents should be serially marked.

5.7.1.4 Any inter-lineation, erasures, or overwriting, in the aforesaid scanned & uploaded documents, shall be valid only if they are signed by the aforesaid authorised person.

5.7.1.5 The Bidder will have to produce the original documents or any additional documents, if asked for, to satisfy **Haldia Dock Complex, Kolkata Port Trust**.

5.7.1.6 The **Price Bid** comprised the prices only and the same are to be submitted electronically, through the website <https://eprocure.gov.in/eprocure/app> only. **No hardcopy of priced “Price Schedule” is required to be uploaded.**

5.7.2 Techno-commercial offer :

5.7.2.1 No techno-commercial deviation and variation will be considered by KoPT, except where the Techno-commercial terms and conditions, will be found as impossible and irrelevant to the bidder.

5.7.2.2 If the Bidder deliberately gives wrong information or conceals any information / fact in their bid, which shall be favourable for acceptance of their bid, fraudulently, then the right to reject such bid at any stage of execution, without any financial liability, is reserved by **KoPT**.

5.7.3 Priced offer :

The Bidder should quote the offered rate appropriately in the PRICE BID, electronically, through the website of **CPPP** only. *Price indicated anywhere else, in any other form or manner, would not be considered for evaluation of **Price Bid**.*

5.7.4 Deadline for submission of bids :

5.7.4.1 Bids must be submitted within the closing date & time **indicated in the Schedule Of Tender (SOT)**.

5.7.4.2 **KoPT** may, at its discretion, *extend the deadline for the submission of bids, prior to the closing date & time of e-Tendering*, by amending the Bidding Documents, in accordance with **ITB**, in which case all rights and obligations of **KoPT** and bidders previously subject to the deadline shall thereafter be subject to the deadline as extended.

5.7.5 Late Bids :

This e-Procurement System would not allow any late submission of bid, after the closing date & time, as per the **Schedule Of Tender (SOT)** or extension, if any.

5.7.6 Withdrawal of bids :

5.7.6.1 A Bidder may withdraw, substitute, or modify their bid on the e-Procurement System,

before the closing date and time specified, but not beyond.

5.7.6.2 No bid may be withdrawn, substituted, or modified in the interval between the deadline for submission of bids and the expiration of the period of bid validity specified by the bidder on the “**FORM OF TENDER [for Techno-commercial (un-priced) Bid]**.” Or any extension thereof. Modification / Withdrawal of the bid sent through any other means shall not be considered by **KoPT**.

5.7.6.3 Withdrawal of bid during the interval between such closing time on due date and expiring of the bid validity period, may result in forfeiture of EMD in accordance with **ITB**.

5.8 Bid opening [including Price Bid] :

5.8.1 The bids [**including Price Bids**], will be opened at the date & time, indicated in the **Schedule Of Tender (SOT)**.

5.8.2 The on-line bid-opening event may be viewed by the bidders at their remote end, by logging on to the e-Procurement System. A copy of the bid opening record shall be made available on the e-Procurement System.

5.9 Declaration to be submitted by the Tenderers :

The bidder should give the following declarations under their letter head along with the techno-commercial offer as per **Bidding form - IV** of this Tender Document:

5.9.1 A declaration, so that, the bidder has examined carefully, read, understood and accept all the Terms & Conditions of the instant tender including Price Schedule, Special Conditions of Contract, Scope of Work, General Conditions of Contract, May 1993 of Kolkata Port Trust, drawings and all subsequent addenda (as applicable). The bidder would execute and complete the work required to be performed in accordance with all these Terms & Conditions of the instant tender.

5.9.2 A declaration, that there is no deviation from the Terms & Conditions of the instant Tender Document.

5.9.3 A declaration that the bidder has deposited requisite Earnest Money & Bid document fee.

OR

Copies of valid MSE's Certificate / DICs Certificate along with NSIC Certificate with list of items registered must be submitted with the tender in line with Clause No. 5.7 (A) of the tender.

5.9.4 A declaration, that the bidder or their associates have not been banned/de-listed/debarred by any Govt./Quasi-Govt./Public Sector Undertaking in India.

5.9.5 The authorized signatory of the bidding firm should give a declaration that the bidder/his partner/any director of their concern/ company is not associated with any other firm bidding for the instant work.

5.9.6 A declaration, that the bidder has not altered /deleted /added any Terms & Conditions in the tender document.

5.9.7 A declaration that, price quoted only in the Price Bid [Part – II], strictly as per “**Price Schedule**”, **without any extraneous condition**. There is no change in the Format of Un-priced “**Price Schedule**”. Except in the Price Bid the price is not mentioned /

disclosed in any other place of tender / offer.

5.10 Joint Ventures/Consortium and other forms of Association

No joint ventures/ consortium and other forms of Association will be allowed

5.11 Signing of contract agreement:

5.11.1 After placement of order, **contract agreement** [as per the form furnished in **Section- XI**] should be executed between **Kolkata Port Trust** and the **Contractor (Successful Bidder)**. In this respect, within a week of receipt of intimation regarding acceptance of their bid, the successful bidder shall have to submit, at their cost, required **Stamp Paper** [Non-judicial Stamp Paper of worth not less than **Rs. 50.00**] & **dummy papers** (for three sets).

5.11.2 Immediately after receipt of the above papers & documents, **KoPT** will send three sets of **contract agreement form** [one set printed on Stamp Paper & dummy papers and two sets printed on dummy papers], photocopy of **one set of documentary transactions between them and KoPT** (till finalisation & award of the Contract) and **Contract Documents** [incorporating all accepted changes and addenda / corrigenda issued, if any], duly signed by the representative of **KoPT** at appropriate places on each pages.

Within a week, thereafter, the Contractor (Successful Bidder) shall have to return **Contract Agreement forms** (three sets) [after affixing their common seal], the set of **documentary transactions** and **Contract Documents**, duly signed by them at appropriate places on each page.

5.11.3 The **contract agreement form & Contract Documents** should be signed by the authorized persons of the Contractor, authorized in this respect.

5.11.4 After receipt of the **contract agreement forms** (three sets), duly signed by authorised person of **KoPT** & authorized person of the Contractor (Successful Bidder), the same shall be kept under **KoPT**'s custody, after affixing the Common Seal of **KoPT**.

One copy of such **executed contract agreement** (on dummy paper), along with one **photocopy** of signed **documentary transactions** and **Contract Documents** will be handed over to the Contractor for their record & future reference.

5.11.5 Until such contract agreement is executed, the other documents referred to the definition of the term "Contract" [**GCC Clause**], shall collectively be the contract.

5.12 Security Deposit:

5.12.1 The successful tenderer(s) shall have to submit security deposit amount @ 10% of the annual evaluated value of the tender as accepted by Kolkata Port Trust.

5.12.2 The Earnest Money deposited by the successful tenderer will be returned after submission of Security Deposit within a month from the date of commencement of the contract.

5.12.3 The Security Deposit shall be held by the HDC-KoPT as security for the performance of the contractor's obligation under the contract. The Security Money shall be refunded after successful completion of the contract subject to recovery of damage and / or loss incurred, if any, by HDC due to default on the part of the contractor.

5.12.4 The Security Deposit shall remain valid for 6 months from the date of expiry of contract. The Security Deposit will be released within 180 days after successful completion of the contract. KoPT shall encash the Security Deposit in the event the

contractor has defaulted by more than 60 days on expiry of the mobilisation period to commence operation at the order of authorised officer after handing over the order to him or when any amount is to be recovered from the Contractor as penalty or deduction and the contractor fails to remit such amount within 30 days after due notice given in this regard.

The Sr. Dy. Manager (P&E) shall have the right to ask for the extension of the above Bank Guarantee till such time the Contractual obligations are fulfilled and the Contractor will be duty bound to extend the same as asked by Sr.Dy. Manager (P&E).

5.13 Authority in signing the documents for submission of Tender/ Offer: [Save and Except Clause No. 5.10]:

All documents to be uploaded by the bidder should be signed under official seal by –

5.12.1 In case the Tender is submitted by a Proprietorship Firm, the same should be signed either by Proprietor or other person, holding a valid Power of Attorney from the Proprietor, in connection with this Tender. The signature of such Power of Attorney holder should be attested by the Proprietor.

5.12.2 In case the Tender is submitted by a Partnership Firm, the same should be signed either by partner, holding valid Power of Attorney from the partners, in connection with this Tender. The signature of such Power of Attorney holder should be attested by the partners.

5.12.3 In case the Tender is submitted by a Limited Company, the same should be signed by person holding valid Power of Attorney executed in his favour (in connection with this Tender) and the signature of such Power of Attorney holder should also be attested, in accordance with the constitution of the Limited Company.

5.14 Validity of Tender :

The tender shall remain valid for acceptance for a period of **120 days** from the actual date of opening of Techno-Commercial Bid. Prior to the expiry of the Tender validity period, HDC-KoPT may ask to extend the period of validity for a specific time. The request and the response, thereto, shall be made in writing. However, in the event of the bidder agreeing to the request, he shall not be permitted to modify his tender (excepting when option to do the same has been specifically granted by the HDC- KoPT, in writing).

5.15 The bidder to inform himself fully :

5.15.1 This Tender Document (covering all instructions, Special Conditions of Contract and Scope of Work and General Conditions of Contract of Kolkata Port Trust, May, 1993, drawings etc.) should be read in conjunction with any addendum which may be issued subsequently.

5.15.2 The bidder shall be deemed to have examined the Tender Document [covering all instructions, Special Conditions of Contract, Scope of Work and General Conditions of Contract of Kolkata Port Trust, May, 1993, drawing etc.] and visited the worksite and surroundings and to have obtained all necessary information in all the matters whatsoever that might influence while carrying out the work as per the conditions of the tender and to satisfy himself to sufficiency of his tender, etc. The bidder is advised to acquaint himself with the job involved at the site, like availability of labour, means of transport, communication facilities, laws and bye laws in force from Government of West Bengal and Govt. of India and other statutory bodies from time to time. The bidder shall be deemed to have examined and collected all necessary information as to risk, contingencies and other circumstances, which may

influence or affect the tender.

Failure to comply with the requirement of the Tender submission will be at the bidder's own risk. Pursuant to Clause No. 5.18, Tender(s) / Offer(s) of the bidder(s), which are not responsive to the requirement of the Tender Document, will be rejected.

5.15.3 Bidder shall bear all costs associated with the preparation and submission of his tender and HDC- KoPT will in no case be responsible or liable for these costs, regardless of the conduct or outcome of the tendering process.

5.15.4 Before attending the Pre-Bid Techno-Commercial Conference and/or submission of tender, on the basis of formal written request, necessary Gate Pass for entering into the Dock area will be issued to the bidder and / or their authorized representative(s) at chargeable basis, to visit the worksite only for the purpose of inspection and to assess the quantum of work. The bidder will be fully responsible for any injury (whether fatal or otherwise) to himself or his representative(s), for any loss or damage to property, or for any other loss, damage, costs and expenses whatsoever caused which but for the granting of such permission would not have arisen. The bidder will be liable to indemnify the Employer against any loss or damage to the property of the Employer or neighbouring property which may be caused due to any act of bidder or his representative(s). Before visiting the worksite, the bidders are advised to contact with the Section-in-charge of Loco Shed official at Loco Shed of P&E Division. The bidder must have to comply with Clause No. 8.39 regarding prohibition of photography inside the Dock area.

5.16 Amendments:

5.16.1 At any time, prior to the last date for submission of tenders, HDC-KoPT reserves the right to amend and modify the Tender Document by issuing Addenda.

5.16.2 Any Addendum thus issued shall form part of the Tender Document and shall be communicated to all concerned through the websites and press advertisements, prior to the last date for submission of the tender. Such Addendum so carried out shall form part of the tender and shall be binding upon the bidders.

5.17 Errors in the Tender Document:

5.17.1 All documents to be submitted with the Techno-Commercial Bid should be signed, stamped scanned and uploaded as per Clause No. 2.1 & Clause No. 2.2 of 'NOTICE INVITING E-TENDER'.

5.17.2 The bidder shall submit complete tender and the same shall be without alterations, interlineations or erasure effect except those to accord that instructions issued by HDC-KoPT or as may be necessary to correct errors made by the bidders. Person signing the Tender shall, put his signature against all such cancellations, alterations or amendments. The said Tender Document (in full) is to be scanned & uploaded as part of Techno- Commercial Bid.

5.17.3 The bidders are required to quote the rates of all the items, as asked for. In case of non availability of rate of any of the items, the respective offer will be treated as non-responsive and will be rejected.

5.18 Acceptance of Tender:

The Trustees do not bind themselves to accept the lowest tender or any tender and reserve the right to accept the tender in part or full or to cancel the tender as a whole without assigning any reason.

Cost on this account, if any, shall not be reimbursed. Participation in e-tendering process by

any bidder or opening of techno-commercial bid of any bidder shall not construe that such bidder is considered automatically qualified.

5.19 Opening of Bids:

- 5.19.1 Only Part -I i.e. Techno-Commercial Bid(s) would be opened online on the date and time as stipulated in the 'NOTICE INVITING E-TENDER'.
- 5.19.2 Part -II i.e. Price Bid(s) of only those bidder(s) who are found techno-commercially qualified, would be opened, with prior intimation to all concerned.
- 5.19.3 In case of unscheduled Holiday / Bandh on the date of opening of E-Tender, the same will be opened on the next working day.

5.20 Scrutiny of e-Tenderers:

- 5.21.1 After opening of the Techno-Commercial Bid, the Tender Document(s) submitted by the bidder(s), shall be carefully examined to ascertain that whether all the bidders have submitted the Earnest Money Deposit, Bid Document Fee and all required documents as mentioned in the Tender Document.
- 5.21.2 In connection with scrutiny, evaluation and comparison of tenders, HDC-KoPT may ask bidder individually for clarifications. Request for clarification and response thereto shall be communicated in writing. No change in price or substance of the tender shall be sought, offered or permitted nor the bidder be permitted to withdraw the tender before the expiry of the Validity Period of the tenders in the process of clarifications
- 5.21.3 HDC-KoPT may seek any other detail(s) / document(s) in subsequent course to ascertain and get confirmed about the competence of the bidder.
- 5.21.4 The Trustees reserve the right to disqualify a tender in case they are satisfied that any prize, commission, gift or advantage has been given, promised or offered by or on behalf of any bidder, to any officer, employee or representative of the Trustees or to any person on his or their behalf in relation to the acceptance of the tender.
- 5.21.5 If on scrutiny, **Techno-Commercial Bid** of any bidder is found not acceptable to HDC- KoPT, the **Price Bid** part of such bidder **will not be opened**. "Price Bid" part of other bidder(s) will be opened on a subsequent date as per procedure. Decision of the HDC- KoPT in this regard shall be final and binding on the bidder.
- 5.21.6 During Techno-Commercial evaluation, i.e. evaluation of Part - I of tender, an offer shall be considered **non-responsive** in case :-
 - a. Requisite Earnest Money is not deposited
 - b. Requisite Bid Document Fee is not paid.
 - c. Valid NSIC Certificate for MSEs along with DIC's (DISTRICT INDUSTRIES CENTRE)
 - d. Certificate is not submitted, in case of exemption from depositing Bid Document Fee and Earnest Money.
 - e. Any indication of quoted price anywhere in the document(s) uploaded by the bidder.

5.21 Evaluation Criteria:

- 5.21.1 Evaluation with respect to Priced Price Schedule.
- 5.21.2 **Price to be quoted strictly in accordance with Clause No. 5.8 The Price Bid will be evaluated only for the bidders, who have qualified in the Techno-Commercial Bid.**

While evaluating the Price Bid, the bidder, who quoted lowest price, shall be considered for award of contract.

- 5.21.3 While evaluating the Price Bid, any extraneous condition will not be considered and the tender shall be liable for outright rejection, if any extraneous condition is found in the offer of the bidding firm.**

In case two or more bidders quoting the same Price and their offers become the lowest offer, the respective bidders will be given chance to submit their fresh price bid subject to condition that the fresh price so quoted must be less than the price quoted by the respective bidder earlier.

- 5.21.4 For evaluation purpose: Total evaluated cost = Total price of a + (total price of b x c x d)**

a = Daily hire charge per Locomotive (in Rs)- to be quoted by the bidder.

b = HSD consumption per Locomotive per hour (in Ltrs)- to be quoted by the bidder.

c = No. of hours run per Locomotive per day- not to be quoted by the bidder. HDC has considered its value as 18 (eighteen) hours.

d = Cost of HSD per litre (in Rs)- not to be quoted by the bidder. HDC has considered its value as Rs. 64.12 per Ltr.

Lowest tenderer (L-1) would be determined based on the lowest evaluated cost in totality as stated above.

- 5.21.5** HDC has considered the rate of HSD as Rs. 64.12 per Ltr.

- 5.21.6** Nos. of hours run per locomotive per day (i.e. 03 shifts) is to be considered as 18 hours.

- 5.21.7** While evaluating tenders, regard would be paid to National Defence and Security Considerations.

5.22 Award of Contract:

- 5.22.1** The successful bidder who's bid is accepted by HDC- KoPT shall be duly informed in writing, prior to expiration of the tender validity period, that their tender has been accepted. This notification of award of contract will be treated as **Order Letter** and will constitute the formation of the contract. **Within 15 days** of receipt of intimation regarding acceptance of their bid, the successful bidder shall have to **submit Draft Agreement**, in the format as in **Section – XI** and within a week thereafter the **Contract Agreement** shall be signed between **Kolkata Port Trust** and the **successful bidder**. For this, the successful bidder will submit, at their own cost, required **Stamp Papers** and **Dummy Papers** and **three sets of documentary transactions** between them and Kolkata Port Trust, till finalization of the contract. This Agreement should be signed by the representative of the successful bidder, authorized through a **Power of Attorney** [specimen signature of the Authorized Representative must be attested] in this regard.

- 5.22.2** Kolkata Port Trust reserve the right to accept or reject the tender in part or as a whole and do not bind themselves to accept the lowest tender or any tender, without assigning any reason and no damage claim whatsoever will be payable by Kolkata Port Trust in this regard. Mere participation in e-tender by any bidder or opening of techno-commercial bid of any bidder shall not construe that such bidder is considered automatically qualified for award of contract. Such qualification may also include information regarding performance of bidder from any other source.

5.23 Stamp Duty and Other Expenses:

All costs, charges and expenses etc. to be incurred in connection with Contract Agreement / Bank Guarantee(s) etc. including Stamp Duty in connection with contract shall be borne by the successful bidder.

SECTION - VI

SCOPE OF WORK & TECHNICAL SPECIFICATION

6

6.1

Introduction:

HDC is primarily a dry bulk and liquid cargo handling Port and the Port is well connected to the various industries in the hinterland through railway network. Due to smooth evacuation/aggregation of cargo through rail movement, more and more users are attracted towards Haldia and thus it is felt that the strengthening of the railway operation at Haldia is absolute necessity.

HDC- KoPT having Railway System which is spread over an area of approx. 65 hectares with 115 KM of track length and 11.5 KM of route length having 15 nos. of railway sidings within the Dock Zone and 9 sidings outside the dock Zone is catering to bulk, break bulk and containerized cargo. HDC railway is working as Terminal Agent of SE Rly. as per the working agreement. HDC Railway, apart from meeting the aggregation and evacuation requirement of Port bound cargo is also catering to the demand of port based industries.

At present, on an average, 17 out bound rakes and 17 in bound rakes are required to be handled daily at various sidings and the number of in bound and out bound rakes are likely to increase substantially in the near future due to increased volume of rail borne cargo expected to be handled at this port.

Handling of rail borne traffic involves not only placement and withdrawal of rake but also attachment and detachment of sick/reject wagons, weighment of the rake and formation of outward rakes to avoid detention.

6. 2.

Scope of work :

A.

Scope of Contractor:

(i) Deployment of 2 nos. Diesel Electric/ Diesel Hydraulic High power Locomotive, on hiring basis, with Engine capacity 1400 HP and above and hauling capacity 5,500 MT (minimum) at curves and gradient prevalent in HDC site conditions on wet lease basis for a period of 5 years including complete operation & maintenance by deploying trained manpower and spares, consumables etc. except fuel (to be supplied by HDC).

- The locomotives would be utilized round the clock basis for shunting, marshalling, hauling, coupling & decoupling, recoupling, empty collection, placement, withdraw, train formation etc. deploying trained manpower by the contractor. The sequence of work shall have to be suitably programmed by the contractor in consultation with the Officer on duty at Railway Control or his authorised representative under Traffic department without hampering other normal operational activities.
- Round the clock manning of Diesel Loco Driver along with adequate shunting staff for operation of Locomotive as per scope of work.
- Placement of wagons over Wagon tippler shall be done as per site requirement.
- Formation of empty rakes and taking the rake to empty line as well as re-marshalling as and when needed by HDC – KoPT.

(ii) Hired Loco to be Diesel Electric / Diesel Hydraulic with engine capacity 1400 HP

and above, turbo charged, with DC-DC / AC-AC / AC-DC transmission and hauling capacity of 5,500 MT (minimum) at curves and gradient prevalent in HDC site conditions. The bidders may visit HDC to have a knowledge about HDC's railway network before quoting the price. Details of locomotive to be deployed for hiring have to be furnished in Annexure- IV.

(iii) The age of the Locomotives should not be more than 10 (Ten) years as on the last date of the submission of the tender.

(iv) The firm should have knowledge about Railway Operations and Locomotive related traffic operation and maintenance work.

(v) The contractor will carry out complete operation and maintenance of the Locomotives including supply of spares, consumables etc. during the contract period of 5 years and the extended period, if any, as will be mutually agreed upon.

(vi) The contractor will deploy trained manpower in the hired locomotive as per the work requirement of HDC. The manpower will have to be provided during operation on round the clock basis including Sundays and Holidays as per the advice of traffic Rly, Division, HDC and considering leave reserve and roster off.

6.3 **Re-railment**

It is the responsibility of the contractor for the Loco re-railment. However, based on the request of the contractor, the same may be done by HDC on chargeable basis. The charge will be the actual cost of manpower and 19.25% over head and the same will be deducted from the running bill of the contractor.

6.4 **Coordination:**

The operation of the Locomotive will be carried out as per the direction of Traffic Railway Division, HDC. Also, the contractor will keep their responsible person in each shift for supervision and coordination with port officials for operation and withdrawal of Locomotive for maintenance purpose with prior notice.

6.5 **Diesel Engine HP:**

Certificate from OEM or Authorised Service provider of OEM regarding Diesel Engine HP need to be submitted along with the bid. The certificate should not be older than six months from the date of submission of bid.

6.6 HDC-KoPT reserves the right to send the Diesel Engine, installed on the Locomotive, to either OEM or Authorized Service Provider of OEM of Diesel Engine to check the hauling capacity. In case the Diesel Engine does not fulfil the requisite hauling capacity, the said Diesel Engine is required to be replaced by a suitable one. Hiring charges will not be applicable during the said period of uninstallation of Diesel Engine on the Locomotive. All expenses will be on contractors account.

6.7 **Calibration :**

Calibration of Locomotive fuel tank's gauge by Legal Metrology, Govt of West Bengal or any competent agency as approved by HDC, KoPT , once in a year to be arranged by the contractor at their own cost and arrangement. Valid calibration certificate to be displayed on Locomotive and copies to be submitted to TO Railway Division and P&E Division.

Route permission and first time placement of Locomotive in HDC-KoPT site will be entirely arranged by the contractor with all costs and incidentals

6.8 **Breakdown Maintenance :**
Detention time will start from the time of breakdown of Locomotive till the time of deployment of Locomotive for commercial operation by T.O.(Railway) Division under Traffic Dept. Deployment time for this purpose to be counted from the time, when TO (Railway), HDC intimates the contractor for commencement of work.

6.9 **Availability of Locomotives:**
Availability of each Loco will be 90%. Each Loco may be allowed to carry out maintenance for 48 hrs. per month maximum. Although the contractor is entitled to 48 hrs. shutdown, in totality as free time during a month for preventive/breakdown maintenance but 48 hrs. shutdown would not be given at a stretch. No unused free time in a month would be carried forward to the next month. The utilization of each Loco will be 18 hrs. per day.

B. **Scope of HDC.**

(i) Fuel (HSD) will be supplied by HDC. However, supply of fuel will be made on actual consumption basis, subject to upper ceiling which would be the lesser one of the followings:

- (a) 32 litres/hr (upper ceiling)
- (b) The fuel consumption quoted per hour.
- (c) Actual consumption of fuel/hour.

During the course of deployment, if the fuel consumption is found to be above the admissible quantity as stated above, the cost towards the excess consumption of fuel will be recovered from the charges payable and cost of fuel will be considered on the basis of the highest rate during the calendar month.

(ii) HDC will provide the existing facility of Loco Shed i.e. pit, Loco Lifting Jack, available Tools and Tackles etc. for maintenance of Locomotive at free of cost. In such case, necessary intimation to be given in advance to HDC.

(iii) In case of any damage of railway line due to any accident / mal operation of Locomotive, the same may be rectified / replaced by HDC on chargeable basis which will be deducted from the running bill of the contractor at actual plus 19.25% overhead.

SECTION VII

GENERAL CONDITIONS OF CONTRACT (GCC)

Table of Clauses

A.	GENERAL PROVISIONS
1)	Definitions
2)	Contract documents
3)	Interpretations
4)	All Drawings are Trustees' property
5)	Language
6)	Notices
7)	Governing Law
8)	Patent Rights
9)	Stamp duty & other expenses
10)	Indemnity
11)	Employer's lien
12)	Additions and alterations
B.	THE ENGINEER
13)	Instructions of the Engineer or Engineer's Representative
14)	Engineer's power and authority
15)	Power of Engineer's Representative
16)	Limitation of Engineer's Representative's power
17)	Engineer's over-riding power
18)	Replacement of the Engineer
19)	Determinations
C.	THE CONTRACTOR
20)	Performance Guarantee / Security Deposit

21)	Contractor's personnel and Contractor's representative
22)	Assignment and sub-contracting
23)	Access to site
24)	Transportation of materials
25)	Contractor's equipment
26)	Supply of water and Electricity
27)	Use of ground and land / covered space for Contractor's establishment
28)	Existing services
29)	Contractor to prepare working / progress drawings
30)	Contractor's price is inclusive of all costs
31)	Contractor is responsible for all construction process, except for correctness of design and specification formulated by the Engineer
32)	Contractor to submit his programme of work
33)	Contractor to supervise the works
34)	Contractor is responsible for line, level, setting out, etc.
35)	Contractor is responsible to protect the work
36)	Contractor is responsible for all damages to other structures / persons caused by him in executing the work
37)	Fossils, Treasure troves, etc. are Trustees' property
38)	Contractor to indemnify the Trustees against all claims for loss, damage, etc.
39)	Dismantled materials Trustees' property
40)	Contractor's quoted rates / price must be all inclusive
41)	Notice to Contractor
42)	Contractor not to publish photograph or particulars of work
43)	Contractor to provide facilities to outsiders
44)	Work to cause minimum possible hindrance to traffic movement
D.	STAFF AND LABOUR

45)	Engagement of staff and labour
46)	Labour Laws
47)	Health and safety
48)	Labour licence
49)	Employees' Provident Fund & Employees' State Insurance
E.	PLANT, MATERIALS AND WORKMANSHIP
50)	Materials to be supplied by the Employer
51)	Contractor's arrangement for execution of the work
52)	Inspection and testing
53)	Contractor to replace materials/work not acceptable to the Engineer or his Representative
54)	Removal of materials on completion
55)	Workmanship and secrecy
F.	COMMENCEMENT, EXECUTION & COMPLETION OF WORK, HANDING OVER AND TAKING OVER
56)	Preliminary time to commence work and maintenance of steady rate of progress
57)	Contractor's site office
58)	Contractor to observe Trustees' working hours
59)	Contractor to supply all materials as per requirement of the Engineer or his Representative
60)	Materials and works
61)	Contractor to submit samples for approval
62)	Contractor to seek approval of Engineer or his Representative before covering up any portion of work
63)	Contractor to suspend work on order from Engineer or his Representative
64)	Completion Certificate
65)	Completion period
66)	Taking over of the Contract job by KoPT
67)	Defect Liability Period (DLP)

68)	Defects after taking over
69)	Extension of completion period and liquidated damage
G.	CONTRAT PRICE , PAYMENT AND DEDUCTIONS
70)	Contract Price
71)	Terms of payment
72)	Extra expenses incurred by the Employer
73)	Recovery of deducted amount
74)	Variation and its valuation
H.	TERMINATION BY EMPLOYER
75)	Notice to correct
76)	Termination by Employer
77)	Valuation at date of termination
78)	Payment after termination
79)	Employer's entitlement to termination for convenience
80)	Corrupt or fraudulent practices
I.	SUSPENSION AND TERMINATION BY CONTRACTOR
81)	Contractor's entitlement to suspend work
82)	Termination by Contractor
83)	Cessation of work and removal of Contractor's equipment
84)	Payment on termination
J.	INSURANCE
85)	General requirements for insurances
K.	FORCE MAJEURE
86)	Definition of Force Majeure
87)	Notice of Force Majeure
88)	Duty to minimise delay

89)	Consequences of Force Majeure
90)	Optional termination, payment and release
L.	CLAIMS, DISPUTES AND ARBITRATION
91)	Engineer's decision
92)	Amicable settlement
93)	Arbitration
94)	Failure to comply with Engineer's decisions
95)	Progress of work not to be interrupted

General Conditions of Contract (GCC)

A. GENERAL PROVISIONS

7.1 Definitions

In the conditions of contract (“these conditions”), which includes particular conditions and these general conditions, the following words and expressions shall have the meanings stated. Words indicating persons or parties include corporations and other legal entities, except where the context requires otherwise.

7.1.1 The Contract:

- a) **“Contract”** means and includes these **bidding documents** in entirety (**including** all Addenda and Corrigenda, if any), the **specification**, the **drawings**, the **PRICE SCHEDULE**, the **bid / offer**, the **Letter Of Acceptance**, the **Contract Agreement** (when Contract Agreement would be completed in all respect) and such further documents as may be expressly incorporated in the **Letter Of Acceptance or Contract Agreement** (when Contract Agreement would be completed in all respect).
- b) **“Contract Agreement”** means the executed Contract Agreement referred to in **ITB Clause No. 5.37 [Signing of Contract Agreement]**.
- c) **“Contract documents”** means the documents listed in the Contract Agreement, including any amendments thereto.
- d) **“Letter Of Acceptance (LOA)”** or **“Work order”** or **“Order letter”** means the formal acceptance of the bid (and placement of order with the successful bidder), issued by or on behalf of the Employer, including any adjustments or variation to the bid agreed between the Employer and the successful bidder and includes its enclosure(s), annexure(s), etc., if any.
- e) **“Specification”** means the specification of the work included in the contract and any modification thereof or addition thereto made under **GCC Clause No. 7.12 [Additions and alterations]** or submitted by the Contractor and approved by the Engineer, in writing.
- f) **“Drawings”** means **all drawings, calculations and technical information**, etc., provided by the Engineer to the Contractor under the contract and all **drawings, calculations, samples, patterns, models**, etc., including modification, if any, and other **technical information & manuals** of a like nature, submitted by the Contractor and approved by the Engineer.
- g) **“Tender”** or **“Bid”** means the proposal (priced offer), along with all supporting documents, submitted by the bidder to the Employer for consideration.
- h) **“Price Schedule”** means the priced schedule of items, forming part of the bid.

- i) **“Tenderer”** or **“Bidder”** means the individual firm, who submits the bid, duly filled up and signed, along with all the required documents and payment instruments, in strict compliance of the conditions / requirements stipulated in these bidding documents.
- j) **“Contract data”** means the pages completed by the Employer entitled **CONTRACT DATA**.

7.1.2 Parties and persons :

- a) **“Party”** means the **Employer** or the **Contractor**, as the context requires.
- b) **“Employer”** or **“Board”** or **“Trustees”** or **“Kolkata Port Trust”** or **“KoPT”** means the Board of Trustees for the Port of Kolkata (Calcutta), a body corporate under **Section 3** of the **Major Port Trusts Act, 1963** (as amended from time to time), including their successors, representatives and assigns.
- c) **“Contractor”** or **“Successful bidder”** or **“Successful tenderer”** means the person or persons, firm or company, whose bid / offer has been accepted by the Employer and is named as such in the Contract Agreement or his representative(s), who is/are duly authorised to deal the contract.
- d) **“Contractor’s representative”** means the person(s) named by the Contractor in the contract or appointed from time to time by the Contractor, under **GCC Clause No. 7.21 [Contractor’s personnel and Contractor’s representative]**, who acts on behalf of the Contractor.
- e) **“Sub-contractor”** shall mean a person or persons, firm or company to whom a part of the work has been sub-contracted by the Contractor, with prior consent of the Employer.
- f) **“Contractor’s personnel”** means the Contractor’s representative and all personnel whom the Contractor utilises on site, who may include staff, labour and other employees of the Contractor and of each Sub-contractor, and any other personnel assisting the Contractor in the execution of the work.
- g) **“Engineer”** means the person appointed by the Employer to act as the Engineer for the purposes of the contract and named in the **Contract data**, or other person appointed from time to time by the Employer and notified to the Contractor under **GCC Clause No. 7.18 [Replacement of the Engineer]**.
- h) **“Engineer’s Representative”** means any sub-ordinate Engineer or assistant to the Engineer or any other official appointed from time to time by the Engineer to perform the duties set forth in **GCC Clause Nos. 7.13 to 7.15** hereof.
- i) **“Engineer-in-charge”** means employee of KoPT, authorised by the Engineer to look after the physical execution of the contract, at site level.
- j) **“Haldia Dock Complex”** or **“HDC”** means a Dock Complex

situated at Haldia, under **Kolkata Port Trust**.

- k) **“Chairman”** means the Chairman of the Board of Trustees for the Port of Kolkata (Kolkata Port Trust) and includes the person appointed to act in his place under Sections 14 and 14A of the Major Port Trusts Act, 1963.
- l) **“Deputy Chairman”** means the Deputy Chairman, Haldia Dock Complex and includes the person appointed to act in his place.
- m) **“General Manager (Engineering)”** means the Officer appointed to take charge of Plant & Equipment Division, Infrastructure & Civic Facilities Division and Materials Management Division of HDC, under the supervision of the Deputy Chairman, HDC.
- n) **“Senior Deputy Manager (P&E)”** means the Officer of Plant & Equipment Division of HDC, reporting to the General Manager (Engineering).

7.1.3 Dates and periods:

- a) **“Completion period”** means the time of completion/period of execution notified under 7.65 [Completion period].
- b) **“Month”**, for the purpose of this contract, shall mean the period starting from the date of commencement in any month to the previous date of the following month, as per English Calendar.
- c) **“Week”**, for the purpose of this contract, shall mean any period of 7 (seven) consecutive English Calendar Days.
- e) **“Day”**, for the purpose of this contract, means English Calendar Day.

7.1.4 Money and payments:

- a) **“Contract price”** or **“Contract value”** means the sum named in the **“Letter of Acceptance (LOA)”** [excluding GST] of the bid /offer of the Contractor, subject to such additions thereto and deductions therefrom, as may be made by the Engineer, under the provisions contained in this bidding document.
- b) **“Cost”** means all expenditure reasonably incurred (or to be incurred), by the Contractor, whether on or off the site, including overhead and similar charges, but does not include profit.
- c) **“Foreign Currency”** means the currency other than Indian Currency.

7.1.5 Work:

- a) **“Work”** means the work to be executed in accordance with the contract and includes authorised **“Extra work”**, **“Excess work”** and **“Temporary work”**.
- b) **“Temporary work”** means all temporary work of every kind required in or about the execution, completion or maintenance of the work and includes (without thereby limiting the foregoing definitions) all temporary erections, scaffolding, ladders, timbering soaking vats, site offices, cement and other godowns, platforms and

bins for stacking building materials, gantries, temporary tracks and roads, temporary culverts and mixing platforms.

- c) **“Excess work”** means the required quantities of work, in excess of the provision made in the contract, against any item of the **“Price Schedule”**.
- d) **“Extra work”** means those work, required by the Engineer for completion of the contract, which were not specifically and separately included in the schedule of items of the work (i.e. **“Price Schedule”**) of the bidding document.
- e) **“Related Services”** means the services incidental to the supply of goods / contract job, such as insurance, installation, training, initial maintenance and other obligations of the Contractor, under the contract.

7.1.6 Other definitions

- a) **“Constructional plant”** means all appliances or things, of whatsoever nature, required in or about the execution, completion or maintenance of the work or temporary work and includes (without thereby limiting the foregoing definition) all machinery and tools, but does not include materials or other things intended to form or forming part of the permanent work.
- b) **“Site”** means the land and other places, on, under, in or through which the contract is to be executed or carried out and any other lands or places provided by the Employer for the purpose of the contract.
- c) **“Excepted Risks”** means riot, in so far as it is uninsurable, war, invasion, act of foreign enemies, hostilities (whether war be declared or not), Civil War, rebellion, revolution, insurrection or military or usurped power or use or occupation by the Trustees of any portion of the works in respect of which a certificate of completion has been issued (all of which are herein collectively referred to as the excepted risks).
- d) **“Approved / approval”** means approval in writing.
- e) **“Test on Completion”** means such tests, prescribed by the applicable Design Standard, codes and described in the bidding document, to be performed by the Contractor before the equipment / items / installations are supplied, delivered and taken over by the Employer.
- f) **“Defect Liability Period (DLP)”** means the period defined in the **GCC Clause No. 7.67**.
- g) **“Force Majeure”** is defined in **GCC Clause No. 7.86 [Definition of Force Majeure]**.

7.2 **Contract documents**

- 7.2.1 The several documents forming the contract are to be taken as mutually explanatory of one another and should anything appear in one, which is not

described in the other, no advantage shall be taken of any such omission.

- 7.2.2 In case, any discrepancies or inconsistencies however appear or should any misunderstandings arise as to the meaning and of the specifications or drawings or as to the dimensions or the quality of the materials or the due and proper execution of the work or as to the measurement or quality and valuation of the work executed under this contract or as extra thereupon, the same shall be explained by the Engineer or his authorised representative.
- 7.2.3 The explanation of Engineer or his authorised representative shall be final and binding upon the Contractor and the Contractor shall execute the work according to such explanations, and without extra charge or deductions and do all such work and things as may be necessary for the proper execution of the contract as implied by the specification and drawings, even though such work and things are not specifically shown and described therein.

7.3 Interpretations

- 7.3.1 In the contract, except where the context requires otherwise:
- a) words indicating one gender include all genders;
 - b) words indicating the singular also include the plural and words indicating the plural also include the singular;
 - c) provisions including the word “agree”, “agreed” or “agreement” require the agreement to be recorded in writing;
 - d) **“written”** or **“in writing”** means hand-written (manuscript), type-written, printed or Electronically made, and resulting in a permanent record, under or over signature and seal, as the case may be;
and
 - e) the word “tender” is synonymous with “bid”, and “tenderer” with “bidder” and the words “tender documents” with “bidding documents”.

7.4 All Drawings are Trustees’ property

- 7.4.1 The Drawings, referred to in the Special Conditions of Contract / Technical Specification / Price Schedule, if and as applicable, shall be furnished by the Engineer to the Contractor, free of cost, for his use on the work, but these shall remain the property of the Trustees and hence, the Contractor shall return them to the Engineer or his Representative on completion of the work, if not torn or mutilated on being regularly used at site.

7.5 Language

- 7.5.1 The contract as well as all correspondence and documents relating to the contract, exchanged between the Contractor and the Employer/Engineer, shall be written in **English Language only**. If any documents/manuals/printed literature/drawings is submitted by the Contractor in other language(s), the same should be accompanied by an accurate translation of the relevant pages in the English language. In that

case, for the purposes of interpretation of the contract, such translation shall govern.

- 7.5.2 The Contractor shall have to bear all costs of translation to the English Language and all risk of the accuracy of such translation, for documents provided by the Contractor.

7.6 Notices

- 7.6.1 Any notice, given by one party to the other, pursuant to the contract, shall be in writing, to the address specified in the **Contract data**. The term “in writing” means communicated in written form, with proof of receipt.
- 7.6.2 A notice shall be effective when delivered or on the notice’s effective date, whichever is later.

7.7 Governing Law

- 7.7.1 The contract shall be governed by and interpreted in accordance with the relevant Indian Acts [considering latest amendment thereof], as applicable, within the jurisdiction of the Honourable High Court of Kolkata [Calcutta High Court] , India, including the following Acts:

- i) The Indian Contract Act, 1872.
- ii) The Major Port Trust Act, 1963.
- iii) The Workmen’s Compensation Act, 1923.
- iv) The Minimum Wages Act, 1948.
- v) The Payment of Wages Act, 1936.
- vi) The Payment of Bonus Act, 1965.
- vii) The Payment of Gratuity Act, 1972.
- viii) The Equal Remuneration Act, 1976.
- ix) The Employees Provident Fund Act, 1952.
- x) The Employees State Insurance Act, 1948 & The Employees State Insurance (Amendment) Act, 1989.
- xi) The Contract Labour (Regulation & Abolition) Act, 1970; Rules 1971.
- xii) Child Labour (Prohibition & Regulation) Act, 1986.
- xiii) The Maternity Benefits Act, 1961.
- xiv) Interstate Migrant Workmen (Regulation of Employment & Conditions of Service) Act, 1979.
- xv) The Dock Workers (Regulation of Employment) Act, 1948.
- xvi) The Dock Workers (Safety, Health & Welfare) Act, 1986.
- xvii) The Indian Arbitration and Conciliation Act, 1996 [considering its latest amendment in 2015].

- 7.7.2 Unless otherwise specified, all the laws / rules / acts, etc., mentioned in

different clauses of this bidding document, should be considered as laws / rules / acts, etc. applicable in India.

- 7.7.3 The Contractor shall indemnify KoPT for any proceeding taken or commenced by any authority against the Employer for any contravention of any of such laws, bye laws, rules, regulations, orders, etc., by the Contractor or their personnel / workmen / agent / supplier, etc. If, as a result of the Contractor's failure, negligence, omission, default or non-observance of any provisions of any law, bye law, rule, regulation, order, etc., the Employer is called upon by any authority to pay or reimburse or is required to pay or reimburse any amount, the Employer shall be entitled to deduct the same from any amount due or that may become due to the Contractor under this contract or any other contract or by any other means or may otherwise recover from the Contractor any sum which KoPT is required or called upon to pay or reimburse on behalf of the Contractor.

7.8 **Patent Rights**

- 7.8.1 The Contractor shall fully indemnify KoPT against any action, claim or demand, costs or expenses arising from or incurred by reason of any infringement or alleged infringements of letters, patents, design, trademark or name, copyright or other protected rights in respect of any machine, plant, work, materials or things, system or methods of using, fixing working or arrangement used for fixed or supplied by the Contractor in India, or elsewhere.
- 7.8.2 All payments, or otherwise shall be deemed to be included by the Contractor in the prices named in the bid and shall be paid by them to whom they may be payable.
- 7.8.3 In the event of any claim being made or action brought against KoPT in respect of any such matter as aforesaid, the Contractor shall be immediately notified thereof and they shall with the assistance, if they so require, of KoPT but at the sole expense of the Contractor conduct all negotiations for the settlement of the same or any litigation that may arise there from, provided that the conduct of such negotiations or litigations shall be conditional upon the Contractor giving to KoPT such security, as shall from time to time, by reasonably required by KoPT to recover the ascertained or agreed amount, as the case may be, of any compensation, damages, expenses and cost, which might be payable by the Trustees in respect of or as a result of any such negotiation or litigation.

7.9 **Stamp duty & other expenses**

- 7.9.1 All the costs, charges and expenses to be incurred in connection with **Contract Agreement, Indemnity Bond, Bank Guarantees, Integrity Pact**, etc., including stamp duty, shall be borne by the Contractor.

7.10 **Indemnity**

- 7.10.1 Notwithstanding that all reasonable and proper precautions may have been taken by the Contractor, at all times during the progress of the work, the Contractor shall, nevertheless, be wholly responsible for all damages, whether to the works themselves or to any other property of KoPT or to the lives, persons, property of others during the progress of the work.

- 7.10.2 In case any damage occurs to the existing structure due to the Contractor's operation, the same shall be made good by the Contractor, at their own risk and cost. The areas, which are likely to be unsafe for use, shall be barricaded and all necessary precautionary measures, like displaying notices, shall be taken by the Contractor, during the contract period.
- 7.10.3 In case any material, spare parts, components, sub-assemblies, accessories, etc., related to the work (under the scope of the Contractor), is required to be taken out of the Dock premises by the Contractor, for some specialised servicing, repairs, overhauling, etc. or for any other reason whatsoever, the Contractor shall have to obtain permission from the Employer. For this the Contractor shall have to submit an “**Indemnity Bond**” [in the form furnished in **Section-XI**]. Maximum liability will not exceed the total supply value.

7.11 **Employer's lien**

- 7.11.1 All constructional plant, temporary work and materials, when brought to the site by the Contractor, shall be deemed to be the property of the Employer, who will have lien on the same, until the satisfactory completion of the work and shall only be removed from the site, in part or in full, with the written permission of the Engineer or his Representative.
- 7.11.2 The Employer shall have a lien on and over all or any money that may become due and payable to the Contractor under this contract or any other contract or from any amount lying with them or under their control and in respect of any debt or sum that may become due and payable by the Employer to the Contractor, either alone or jointly with another or other and either under this contract or under any other contracts or transaction of any nature whatsoever between the Employer and the Contractor.

7.12 **Additions and alterations**

- 7.12.1 KoPT shall have power and authority, from time to time and at all times, to make amendments or additions or alterations or changes in the **Technical Specification** and give such further instructions and directions, as may appear necessary and proper to KoPT for the guidance of the Contractor and good & efficient execution of the work.
- 7.12.2 The Contractor shall receive, obey and be bound by the same, according to the true intent and meaning thereof, as if the same had been mentioned or referred to in the **Technical Specification**.
- 7.12.3 KoPT may also vary or alter the levels or positions of any of the work contemplated by approved specification or may order any of the work contemplated thereby to be omitted, with or without substitution of any other works in lieu thereof, or may order any work or any portion of works executed or partially executed, to be removed, changed or altered, if required.
- In this connection, KoPT may increase or decrease or split the quantity of work included in the contract or execute additional work of any kind necessary for good & efficient execution of the work.
- 7.12.4 The Engineer shall have the power to order for the above amendments (additions/alterations/changes, etc.) and any difference in the cost occasioned by any such diminution or alteration so ordered and directed

shall be added to or deducted from the amount accepted under the contract based on the rate(s) available in the contract. Where the rate(s) is/are not available in the contract, such difference in the cost shall be determined by the Engineer, taking into account the market rate and labour cost at site for similar work, backed up by rate analysis, (to be submitted by the Contractor and agreed upon between the Contractor and KoPT).

In the event of disagreement, KoPT shall fix such rates or prices as shall, in their opinion, be reasonable and proper having regard to the circumstances.

B. THE ENGINEER

7.13 Instructions of the Engineer or Engineer's Representative

7.13.1 The Contractor shall execute, complete and maintain the works in terms of the contract to the entire satisfaction of the Engineer and shall comply with the Engineer's direction on any matter whatsoever. However, the Engineer shall exercise his discretion impartially, within the terms of the contract and have regard to all the circumstances.

The Contractor shall take instructions from the Engineer and subject to limitation indicated in **GCC Clause No. 7.16.1** hereof, from the Engineer's Representative.

7.14 Engineer's power and authority

7.14.1 The Engineer shall have full power and authority:

- a) to supply to the Contractor, from time to time, during the progress of the works, such further drawings and instructions as shall be necessary for the purpose of proper and adequate execution and maintenance of the works and the Contractor shall carry out and be bound by the same.
- b) to alter or modify the specification of any material and workmanship and to inspect the work at any time.
- c) to order for any variation, alteration and modification of the work and for extra works.
- d) to issue certificates as per contract.
- e) to settle the claims & disputes of the Contractor.
- f) to grant extension of completion time.

7.15 Power of Engineer's Representative

7.15.1 The Engineer's Representative shall:

- a) watch and supervise the work.
- b) test and examine any material to be used or workmanship employed in connection with the work.
- c) have power to disapprove any material and workmanship not in accordance with the contract and the Contractor shall comply with his direction in this regard.

- d) take measurements of work done by the Contractor for the purpose of payment or otherwise.
 - e) order demolition of defectively done work for its reconstruction all by the Contractor at his own expense
 - f) have powers to issue alteration order not implying modification of design and extension of completion time of the work.
- And
- g) have such other powers and authorities vested in the Engineer, which have been delegated to him, in writing, by the Engineer under intimation to the Contractor.

7.16 Limitation of Engineer's Representative's power

7.16.1 Provided always that the Engineer's Representative shall have no power:

- a) to order any work involving delay or any extra payment by the Trustees,
 - b) to make variation of or in the work,
- And
- c) to relieve the Contractor of any of his duties or obligations under the contract.

7.17 Engineer's over-riding power

7.17.1 Provided also as follows:

- a) Failure of Engineer's Representative to disapprove any work or materials shall not prejudice the power of the Engineer thereafter to disapprove such work or materials and to order the pulling down, removal, breaking-up thereof and re-constructing at the Contractor's cost and the Contractor shall have no claim to compensation for the loss sustained by them.
- b) If the Contractor shall be dissatisfied by reason of any decision of the Engineer's Representative, they shall be entitled to refer the matter to the Engineer, who shall thereupon confirm, reverse or vary such decision which will be final, conclusive and binding on the parties.
- c) Any written instructions or written approval given by the Engineer's Representative to the Contractor, within the terms of delegation of power and authority vested in the Engineer to his representative, in writing, shall bind the Contractor and the Trustees as though it had been given by the Engineer, who may, from time to time, make such delegation.

7.18 Replacement of the Engineer

7.18.1 If the Employer intends to replace the Engineer, the Employer shall give notice to the Contractor in this respect.

7.19 Determinations

- 7.19.1 Whenever these conditions provide that the Engineer shall proceed, in accordance with this clause, to agree or determine any matter, the Engineer shall consult with each party, in an endeavour to reach agreement. If agreement is not achieved, the Engineer shall make a fair determination, in accordance with the contract, taking due regard of all relevant circumstances.

The Engineer shall give notice to both parties of each agreement or determination, with supporting particulars **within 28 (twenty-eight) days** from the receipt of the corresponding claim or request, except when otherwise specified. Each party shall give effect to each agreement or determination, unless and until revised under **GCC Clause Nos. 7.94 to 7.98 [Claims, Disputes and Arbitration]**.

C. THE CONTRACTOR

7.20 Performance Guarantee / Security Deposit

- 7.20.1 As specified in the SCC, the Contractor shall have to provide **Performance Guarantee / Security Deposit** towards guaranteeing the performance of the Contractor in execution of the contract.

- 7.20.2 The **Performance Bank Guarantee(s)** shall be denominated in the currency(ies) of payment in the contract, and shall be in the form furnished in **Section-XI**.

- 7.20.3 The original Bank Guarantee should be sent by the issuing Branch of the Bank, directly to the Employer, under Registered Post (A.D), at the following address:

General Manager (Finance),
Haldia Dock Complex (HDC),
Jawahar Tower Complex,
P.O: Haldia Township,
Dist.: Purba Medinipur,
PIN – 721 607,
West Bengal, India.

A photocopy of the Bank Guarantee should also be sent to the Engineer, by the Contractor, for record.

The General Manager (Finance), HDC may require Bank's confirmation for having issued the Guarantee. In that case, the issuing Branch of the Bank should send a confirmation letter, directly to the Employer, under Registered Post (A.D), at the above address.

- 7.20.4 Failure of the Contractor to submit the required Performance Bank Guarantee, as mentioned in **GCC Clause No. 7.20.1** and in the manner stated in the SCC, shall constitute sufficient grounds for termination of the contract and forfeiting the Earnest Money Deposit.

- 7.20.5 The proceeds of **Performance Guarantee / Security Deposit** shall be payable to the Employer, as compensation, for any loss resulting from the Contractor's failure to complete its obligations under the contract.

- 7.20.6 **Performance Guarantee/Security Deposit** shall be liable to be forfeited, at the option of the Employer, if the Contractor fails to carry out the work or to perform / observe any of the conditions of the contract.
- 7.20.7 The Employer shall be at liberty to deduct/recover any of their dues from **Security Deposit/Performance Guarantee**.
In that case, if **Security Deposit / Performance Guarantee** is reduced by reason of any such deduction or encashment, the Contractor shall have to, **within 15 (fifteen) days thereafter**, make good the amount so reduced.
- 7.20.8 The cost of obtaining **Performance Bank Guarantee** or any other Bank Guarantee and / or revalidation thereof, whenever required, has to be borne by the Contractor and it shall be their sole responsibility to arrange for timely revalidation of such Bank Guarantee, failing which and for non-fulfilment of any contractual obligation by the Contractor, the Engineer and/or the Employer shall be at liberty to raise claim / demand under Performance Guarantee and/or enforce the same unilaterally.
No interest/charge, of whatsoever nature, shall be paid by the Employer on the amount of **Security Deposit / Performance Guarantee** held by the Employer, at any stage.
- 7.20.9 On completion of execution of the work, the Contractor shall maintain the same during the “**Defect Liability Period**”, as specified in **GCC Clause No. 7.67**, from the date mentioned in the “**Certificate of Completion of Work**” [as per the form furnished in **Section-XI**]. Any defect / fault, which may appear in the work during the aforesaid warranty period, arising, in the sole opinion of the Engineer or his Representative, from materials or workmanship not in accordance with the contract or the instruction of the Engineer or his Representative, shall, upon the written notice of the Engineer or his Representative, be amended and made good by the Contractor, at his own cost, within 7 (seven) days of the date of such notice, to the satisfaction of the Engineer or his Representative, failing which, the Engineer or his Representative shall have the defects amended and made good through other agency at the Contractor’s risk and cost and all expenses, consequent thereon or incidental thereto, shall be recoverable from the Contractor in any manner deemed suitable by the Engineer.
- 7.20.10 The contract shall not be considered completed and the work shall not be treated as finally accepted by the Trustees, until a “**Certificate of Final Completion**” [as per the form furnished in **Section-XI**] shall have been signed and issued by the Engineer, after all obligations under the contract, including that in the Defect Liability Period (DLP), if any, have been fulfilled by the Contractor. Previous entry on the works or taking possession, working or using thereof by the Trustees shall not relieve the Contractor of his obligations under the contract for full and final completion of the work.
- 7.20.11 Refund of **Performance Guarantee / Security Deposit** would be guided by the procedure detailed in the **SCC**.
- 7.21 **Contractor’s personnel and Contractor’s representative**
- 7.21.1 The Contractor’s personnel shall be appropriately qualified, skilled and experienced in their respective trades or occupations. The Engineer may

require the Contractor to remove (or cause to be removed) any person employed on the site of work, including the Contractor's representative, if applicable, who:

- a) persists in any misconduct or lack of care,
- b) carries out duties incompetently or negligently,
- c) fails to conform with any provisions of the contract, or
- d) persists in any conduct, which is prejudicial to safety, health or protection of the environment.

If appropriate, the Contractor shall then appoint (or cause to be appointed) a suitable replacement person.

- 7.21.2 The Contractor shall have to communicate the names of their officials/representatives, authorized by them through **Power of Attorney** (specimen signature of such authorized representative should be attested), to make all correspondences and sign all documents/papers in relation to this contract.

Written orders or instructions, which the Employer may issue to such authorized officials/ representatives of the Contractor, shall be deemed to have been given to the Contractor.

- 7.21.3 In case any of such authorised persons fails to act as Contractor's representative, the Contractor shall similarly communicate the name and particulars of another suitable person for such authorization.

The Contractor shall have to notify the Engineer, immediately after revoking the appointment of the Contractor's representative and appointment of a replacement.

- 7.21.4 If any of the Contractor's representatives/officials is required to be temporarily replaced during the period of contract, the name of the person temporarily authorised [by any one of the authorised officials/representatives, authorized earlier through **Power of Attorney**], shall have to be notified. Specimen signature of such temporarily authorised representative(s) should be attested [by the said authorised official/representative].

7.22 Assignment and sub-contracting

- 7.22.1 The Contractor shall not, directly or indirectly, transfer, assign, sublet or sub-contract the whole of the work.

Unless otherwise stated in the contract, the Contractor shall not, directly or indirectly, transfer, assign, sublet or sub-contract any part of the work without prior consent of the Engineer. Any such consent shall not relieve the Contractor from any of their liabilities or obligations under the contract and they shall be responsible for :

- a) the acts, defaults and neglect of any Sub-contractor, their agents, servants or workmen as fully as if these were the acts, defaults or neglects of the Contractor, their agents, servants or workmen,
- b) their full and entire responsibility of the contract and active superintendence of the work by them despite being sublet.

Provided that the Contractor shall not be required to obtain such permission for:

- i) the provision of labour engaged on piece-work basis/daily rate basis,
- ii) the purchase of materials/services which are in accordance with the standards specified in the contract,
- or
- iii) the sub-contracting of any part of the work, for which the Sub-contractor is named in the contract.

The Contractor shall be responsible for observance, by all Sub-contractors, of labour laws applicable in India (for the portion of work that would be executed in India) and all other provisions of the contract.

- 7.22.2 No **participating bidder** [in connection with the instant tender] will be allowed to act as a **Sub-contractor** of the successful bidder (Contractor).
- 7.22.3 In the event of the Contractor contravening aforesaid condition [**GCC Clause No. 7.22.2**], the Employer shall be entitled to terminate the contract forthwith and award a fresh contract to some other parties at **risk and cost of the Contractor**, who shall be liable for any loss or damage, which KoPT may sustain in consequence to arising out of such replacement of the Contractor.
- 7.22.4 The Contractor shall not assign their right and interest in these presents nor assume a fresh partner or partners, dissolve the partnership existing between them in reference to this contract, without the prior written permission of the Employer.

7.23 Access to site

- 7.23.1 The Contractor shall have to abide by the **rules and regulations of Kolkata Port Trust (KoPT)** in respect of entry / exit and movement in the dock premises.
- 7.23.2 Necessary **Gate Pass / Dock Entry Permit**, for entering into the Dock area, will be issued to the personnel of the Contractor [including that of approved Sub-contractor(s)] directly connected with the work, **on chargeable basis** [as per the extant “**Scale of Rates**” of KoPT, available at <http://www.kolkataporttrust.gov.in/> of **Kolkata Port Trust**], on receipt of a formal written request.

However, for issuing such Gate Pass, the following would be required:

- i) **For Indian nationals:** A photocopy of the Voter’s Identity Card/any other Photo Identity Card.
- ii) **For foreign nationals (excluding from Nepal and Bhutan):** **Permission in the form of “No objection” for entering Haldia Dock**, from the office of the **Superintendent of Police, Purba Medinipur, West Bengal, India**, which acts as the **District Registration Office** for foreigners.

Dock Entry Permits shall not be issued to the mentioned foreign nationals without the aforesaid permission.The aforesaid “No

objection”, along with photocopies of Passport and Visa of the foreign national, has to be submitted to the Administration Division of HDC, KoPT, with an application for obtaining Dock Entry Permit(s).

- 7.23.3 The Contractor will be fully responsible for any injury (whether fatal or otherwise) to their personnel [including that of approved Sub-contractor(s)], for any loss or damage to property or for any other loss, damage, costs and expenses, whatsoever caused, which, but for the granting of such permission, would not have arisen.
- 7.23.4 The Contractor will be liable to indemnify the Employer against any loss or damage to the property of the Employer or neighbouring property, which may be caused due to any act of the Contractor or their personnel [including that of approved Sub-contractor(s)].
- 7.23.5 **No photograph within the Dock Area** shall be taken by the Contractor, without prior permission of the Engineer.

7.24 **Transportation of materials**

- 7.24.1 All materials, spare parts, tools, tackles, service equipment, including consumables, required under this contract, will have to be packed, securely placed and protected by the Contractor during transportation. The Contractor will be held responsible for the inefficient packing, storing and protection of the materials.

7.25 **Contractor’s equipment**

- 7.25.1 The Contractor shall be responsible for all the equipment of the Contractor. When brought on to the site, the Contractor’s equipment shall be deemed to be exclusively intended for the execution of the work. The Contractor shall not remove from the site any major items or Contractor’s equipment without the consent of the Engineer. However, consent shall not be required for vehicle(s) transporting goods or Contractor’s personnel off site.

7.26 **Supply of water and Electricity**

7.26.1 **Supply of water:**

Drinking water supply at the **Contractor’s site office, store, workshop, assembly/erection yard, etc.** will be given **on chargeable basis**. For this, the Contractor shall have to make **all arrangements, including installation of Water Meter and laying of pipelines from the source(s) identified by KoPT, at their cost**. The Contractor will be responsible for maintenance and calibration of such water meter also. Billing against water supply will be done in line with SCC.

KoPT do not guarantee uninterrupted supply of water and the Contractor shall not be compensated for any delay or irregularity in supplying water. The Contractor shall have to arrange for the supply of water at his own cost during such periods.

However, water supply, if required for the **actual work (including erection, commissioning & cleaning work) at the site only** and / or **maintenance, repair & cleaning work** (required to be carried out at site during the “Defect Liability Period”) will be provided free of cost. The Contractor shall have to make **all arrangements for laying of pipelines**

from the source(s) identified by KoPT, at their cost.

7.26.2 **Supply of Electricity:**

Supply of Electricity at the **Contractor's site office, store, workshop, assembly / erection yard, etc.** will be on **chargeable basis**. The Contractor shall have to make all arrangements, including **installation of Energy Meter and laying of Cables from the source(s) identified by KoPT, at their cost**. The Contractor will be responsible for maintenance and calibration of such Energy Meter also. Billing against **electricity charges** will be done in line with SCC.

KoPT do not guarantee uninterrupted supply of Electricity and the Contractor shall not be compensated for any delay or irregularity in supplying Electricity. The Contractor shall have to arrange for Electricity at his own cost during such periods.

However, Power supply, required for the **actual work (including erection and commissioning) at the site only** and/or **maintenance and repair** (required to be carried out at site during the "Defect Liability Period") will be provided free of cost. The Contractor shall have to make all arrangements for **laying of Cables from the source(s) identified by KoPT, at their cost**.

7.27 **Use of ground and land/covered space for Contractor's establishment**

7.27.1 The Contractor shall be allowed to use a suitable land (open space), which in the opinion of KoPT may be absolutely necessary for the proper and efficient execution of works. For this, a token lump sum licence fee of **Rs.10.00 per month or part thereof** will be charged during pendency of the contract and extension thereof, if any.

7.27.2 On completion of work or termination of the contract, the Contractor shall have to clear away all their tools, plants, rubbish and other materials, **within a fortnight** and hand over vacant and peaceful possession of the same to KoPT, in a tidy and clean condition. The same license fee (**Rs.10.00 per month or part thereof**) will be applicable for this additional period (if any) for clearing the space. If the Contractor fails to clear the space and handover the same to the Employer in a clean and tidy condition, within the period mentioned above, KoPT's "Schedule of Rate" will be applicable for the period beyond that.

7.27.3 The Contractor shall be allowed to erect any temporary structures on this land [as stated in **GCC Clause No. 7.27.1**] for **office and / or store and / or workshop**, etc. and make all suitable arrangement for water supply, Electricity supply and sanitary arrangements for the same, at their own cost.

7.27.4 In case the Contractor is interested in taking **covered space, office room**, etc. of KoPT for the purpose of making a site office and store in the Dock area, the same may also be allotted subject to availability. The rents for such covered spaces or office room of KoPT, to be allotted to the Contractor, shall have to be paid by the Contractor, as per the 'Schedule of Rent of KoPT, prevailing at that time. In addition to the rent, **water consumption charges** [as per **GCC Clause Nos. 7.26.1**] and **Electricity consumption charges** [as per **GCC Clause No. 7.26.2**] (if Electricity / water is supplied from KoPT sources) and other applicable charges, as per the notifications of

Tariff Authority of Major Ports (TAMP), have to be paid by the Contractor. The Contractor will be responsible for installation, maintenance and calibration of Water Meter and / or Energy Meter also.

7.28 Existing services

- 7.28.1 Drains, Pipes, Cables, overhead wires and similar services, whether above or below the ground, which may be encountered in the course of the work, shall be saved and kept harmless from injury and/or loss or damages by the Contractor, at their own costs and expenses, so that they continue to be in full and uninterrupted use to the Employer.
- 7.28.2 The Contractor shall not store any materials or otherwise occupy any part of the site in a manner likely to hinder the operation of such services. The Contractor shall, at their own costs and expenses and without any delay, repair and make good, to the satisfaction of the Employer, any injury and/or loss or damage caused by the Contractor to the same.

7.29 Contractor to prepare working/ progress drawings

- 7.29.1 The Contractor shall provide and make, at his own expense, any working or progress drawings, required by him or necessary for the proper execution of the works, and shall, when required, furnish copies of the same, free of cost, to the Engineer for his information and/or approval, without meaning thereby the shifting of Contractor's responsibility on the Engineer, in any way, whatsoever.

7.30 Contractor's price is inclusive of all costs

- 7.30.1 Unless otherwise specified, the Contractor shall be deemed to have included in his bid / offer all his cost for supplying and providing all constructional plant, temporary work, materials (both for temporary and permanent works), labour (including supervision thereof), transporting to and from the site and in and about the work, including loading, unloading, fencing, watching, lighting, payment of fees, taxes and duties to the appropriate authorities and other things of every kind required for the construction, erection, completion and maintenance of the work.

7.31 Contractor is responsible for all construction process, except for correctness of design and specification formulated by the Engineer

- 7.31.1 The Contractor shall be solely responsible for the adequacy, stability and safety of all site operations and methods of construction, even if any prior approval thereto has been taken from the Engineer or his Representative. The Contractor shall not be responsible for the correctness of the design or specification of the temporary and permanent works formulated by the Engineer, but the Contractor shall be fully responsible for the correct implementation thereof, as also for any design and specification prepared/proposed/used by the Contractor.

7.32 Contractor to submit his programme of work

- 7.32.1 Whenever required by the Engineer or his Representative, the Contractor shall submit to him the details of his
- (a) programme for execution of the work,
 - (b) proposed procedure and methods of work,

(c) proposed deployment of plant, equipment, labour, materials and temporary works.

The submission to and/or any approval by the Engineer or his Representative to any such programme or particulars shall not relieve the Contractor of any of his obligations under the contract.

7.32.2 If, for any reason, the Contractor be unable to adhere to his earlier programme, he shall submit his revised programme for completion of work within the stipulated time, whenever asked to do so.

7.33 Contractor to supervise the works

7.33.1 Necessary and adequate supervision shall be provided by the Contractor during execution of the works and as long thereafter as the Engineer or his Representative shall consider necessary during the Defect Liability Period (DLP). The Contractor, or his competent and authorised agent or representative, shall be constantly at site and instructions given to him by the Engineer or his Representative, in writing, shall be binding upon the Contractor subject to limitation in **GCC Clause No. 7.16** hereof. The Contractor shall inform the Engineer or his Representative in writing about such representative/agent of him at site.

7.34 Contractor is responsible for line, level, setting out, etc.

7.34.1 The Contractor shall be responsible for the true and proper setting out of the works, in relation to reference points / lines / levels given by the Engineer, in writing. The checking of any setting out or of any alignment or level by the Engineer or his Representative shall not, in any way, relieve the Contractor of his responsibility for the correctness thereof and he shall fully provide, protect and preserve all stakes, templates, bench marks, sight rails, pegs, level marks, profile marks and other things used in setting out the works.

7.35 Contractor is responsible to protect the work

7.35.1 From the commencement of the works till issue of the “Certificate of Completion of Work”, vide **GCC Clause No. 9.65** hereof, the Contractor shall take full responsibility for the care thereof. Save for the excepted risks, any damage, loss or injury to the work, or any part thereof, shall be made good by the Contractor, at his own cost, as per instruction and to the satisfaction of the Engineer, failing which, the Engineer or his Representative may cause the same to be made good by any other agency and the expenses, incurred and certified by the Engineer, shall be recoverable from the Contractor, in whatever manner the Engineer shall deem proper. This clause will not apply to that part of the work, which might have been taken over by the Trustees on partial completion of the work and in such case, the Contractor’s obligation will be limited to repairs and replacement for manufacturing or construction defects during the Defect Liability Period, as per the directions of the Engineer, as also for defects/damages, if any, caused to the work by the Contractor during such repairs and replacement during the Defect Liability Period.

7.36 Contractor is responsible for all damages to other structures / persons caused by him in executing the work

7.36.1 The Contractor shall, at his own cost, protect, support and take all precautions in regard to the personnel or structure or services or properties belonging to the Trustees or not, which may be interfered with or affected or disturbed or endangered and shall indemnify and keep indemnified the Trustees against claim for injury, loss or damage caused by the Contractor in connection with the execution and maintenance of the work to the aforesaid properties, structures and services and / or to any person, including the Contractor's workmen. Cost of Insurance Cover, if any, taken by the Contractor, shall not be reimbursed by the Trustees, unless otherwise stipulated in the contract.

7.37 Fossils, Treasure troves, etc. are Trustees' property

7.37.1 The Contractor shall immediately inform the Engineer's Representative if any fossil, coins, articles of value or antiquity and structures and other remains or things of geological or archaeological importance be discovered at site, which shall remain the property of the Trustees, and protect them from being damaged by his workmen and arrange for disposal of them, at the Trustees' expense, as per the instruction of the Engineer's Representative.

7.38 Contractor to indemnify the Trustees against all claims for loss, damage, etc.

7.38.1 The Contractor shall be deemed to have indemnified the Trustees against all claims, demands, actions and proceedings and all costs arising there from on account of:

- (a) Infringement of any patent right, design, trademark or name or other protected right, in connection with the works or temporary work.
- (b) Payment of all royalties, rent, toll charges, local taxes, other payments or compensation, if any, for getting all materials and equipment required for the work.
- (c) Unauthorised obstruction or nuisance caused by the Contractor in respect of Public or Private road, railway tracks, footpaths, crane tracks, waterways, quays and other properties belonging to the Trustees or any other person.
- (d) Damage/injury caused to any highway and bridge on account of the movement of Contractor's plants and materials in connection with the work.
- (e) Pollution of waterway and damage caused to river, lock, sea-wall or other structure related to waterway, in transporting Contractor's plants and materials.
- (f) The Contractor's default in affording all reasonable facilities and accommodation, as per the direction of the Engineer or his Representative, to the workmen of the Trustees and other agencies employed by or with the permission and/or knowledge of the Trustees on or near the site of work.

7.39 Dismantled materials Trustees' property

- 7.39.1 Debris and materials, if obtained by demolishing any property, building or structure, in terms of the contract, shall remain the property of the Trustees.

7.40 Contractor's quoted rates / price must be all inclusive

- 7.40.1 The Contractor's quoted rates shall be deemed to have been inclusive of the following:
- (a) Keeping the site free of unnecessary obstruction and removal from site of constructional plant wreckage, rubbish, surplus earth or temporary works no longer required.
 - (b) Cleaning and removal from site all the surplus materials, of every kind, to leave the site clean and tidy after completion of the work, without which payment against final bill may be liable to be withheld.
 - (c) Precautionary measures to secure efficient protection of Docks, the River Hooghly and other waterways against pollution, of whatever nature, during execution and maintenance of the works and to prevent rubbish, refuse and other materials from being thrown into the water by the Contractor's men or those of his agency.
 - (d) Making arrangements for deployment of all labourers and workers, local or otherwise, including payment for their wages, transport, accommodation, medical and all other statutory benefits and entry permits, wherever necessary.
 - (e) Making arrangements, in or around the site, as per the requirements of Calcutta Municipality Corporation or other local authority or the Engineer or his Representative, for preventing
 - (i) spread of any infectious disease like smallpox, cholera, plague, malaria or dengue, by taking effective actions for destruction of rats, mice, vermin, mosquitoes, etc. and by maintaining healthy and sanitary condition,
 - (ii) illegal storage and distribution of Drugs, Narcotics, Alcoholic liquor, Arms and Ammunitions,
 - (iii) unlawful, riotous or disorderly conduct of the Contractor's or his Sub-contractor's workmen,
 - (iv) deployment of workmen of age less than 16 (sixteen) years.

7.41 Notice to Contractor

- 7.41.1 Every direction or notice to be given to the Contractor shall be deemed to have been duly served on or received by the Contractor, if the same is posted or sent by hand to the address given in the bid or to the Contractor's Site Office or, in case of Trustee's enlisted Contractor, to the address as appearing in the Trustee's Register or to the Registered Office of the Contractor. The time mentioned in these conditions for doing any act after direction or notice shall be reckoned from the time of such posting or despatch.

7.42 Contractor not to publish photograph or particulars of work

7.42.1 The Contractor and his Sub-contractor or their agents and men and any firm, supplying plant, materials and equipment, shall not publish or caused to be published any photographs or description of the works, without the prior authority of the Engineer in writing.

7.43 Contractor to provide facilities to outsiders

7.43.1 The Contractor shall, at the Trustees' cost to be decided by the Engineer, render all reasonable facilities and co-operation, as per direction of the Engineer or his Representative, to any other Contractor engaged by the Trustees and their workmen, to the Trustees' own staff and to the men of other Public Body, on or near the site of work, and in default, the Contractor shall be liable to the Trustees for any delay or expense incurred by reason of such default.

7.44 Work to cause minimum possible hindrance to traffic movement

7.44.1 The work has to be carried out by the Contractor causing minimum hindrance for any maritime traffic or surface traffic.

D. STAFF AND LABOUR

7.45 Engagement of staff and labour

7.45.1 The labour, as mentioned in the respective clauses, shall include all labourers of the approved sub-contractor(s), with respect to this contract.

7.45.2 The Contractor shall have to make their own arrangements for the engagement of all staff and labour, for doing the work at site or in respect of or in connection with the execution of work, as also for the transport, housing, feeding. They shall have to ensure making payment to the above staff and labours, to be engaged by them (including the labours, to be engaged by the approved Sub-contractor, if any).

7.45.3 KoPT's store shall mean any store of Haldia Dock Complex, situated at Haldia.

7.45.4 It is expressly made clear that both before and after the completion of the work or termination of the contract, **KoPT shall have no liability, whatsoever, for the personnel to be engaged by the Contractor [or by the approved Sub-contractor(s)] for the work under this contract.**

7.46 Labour Laws

7.46.1 The Contractor shall, at all times, during the pendency of the contract [including the period of making good/rectification of deficiencies/defects, if any], have to comply fully with all existing **Acts, Regulations and Byelaws**, including all **statutory amendments** and re-enactment of **State or Central Government** and other **Local Authorities** and any other enactments and acts that may be passed in future either by the **State** or the **Central Government** or **Local Authority**, including **Workmen's Compensation Act, Labour Laws and Equal Remuneration Act, Factories Act, Minimum Wages Act, Contract Labour (Regulation & Abolition) Act**, etc., if applicable and/or as applicable.

- 7.46.2 If, as a result of the Contractor's failure, negligence, omission, default or non-observance of any provisions of any laws, the Employer is called upon by any authority to pay or reimburse or required to pay or reimburse any amount, the Employer shall be entitled to deduct the same from any moneys due or that become due to the Contractor under this contract or any other contract or otherwise recover from the Contractor any sums, which the Employer is required or called upon to pay or reimburse on behalf of the Contractor.

All **registration** and **statutory inspection fees**, in connection with labour engagement, with respect to this contract, shall have to be paid by the Contractor, if applicable and/or as applicable.

- 7.46.3 The Contractor shall have to, immediately after the occurrence of any accident, at or near the site or in connection with the execution of the work under the contract, report (over phone or otherwise) to the Engineer or his representative(s) and shall make every arrangement to render all possible assistance to the victim(s) of such accident.

The Contractor shall also have to report such accident to the Engineer, in writing (giving reference to the earlier communication made). Based on such report, necessary communication with the competent authority would be made whenever such a report is required by law.

- 7.46.4 For any accident occurred within the entire operational area covered under the contract, the Contractor shall have to arrange prompt investigation into the matter through recording of statement of the personnel witnessing the accident. Such "Accident Report", containing the findings, along with the statements so recorded, shall have to be forwarded by the Contractor to the Engineer at the earliest.

- 7.46.5 The Contractor shall have to provide full medical treatment to their staff & labourers, in case of "**Accident on Duty**", which will inter alia include their obligations under the **Workmen's Compensation Act, 1923**, including all amendments thereof.

The Employer shall in no manner be liable to the Contractor or any person engaged/employed by them [including that of Sub-contractor] or any other person, for injuries or death caused as a result of accidents occurred, either within or outside the site of work, under the contract. The Contractor shall be responsible for such contingencies and will make good all claims for compensation, claim by their personnel/workmen or the families of the sufferer(s), as the case may be, or as per the decision of the appropriate authority/tribunal or other involved persons.

- 7.46.6 The Contractor shall have to indemnify KoPT, in the event of KoPT being held liable to pay compensation for injury to any Contractor's servants or workmen [including that of Sub-contractor] under the **Workmen's Compensation Act, 1923**, as amended from time to time.

- 7.46.7 Whenever the contract comes to an end with the efflux of time or otherwise or is terminated, the Contractor shall be required to fulfil all their obligations towards their workmen in terms of applicable labour laws and submit necessary documents towards such effect, to the Employer in support of the same. Any deposit, which may be lying with KoPT to their

credit, will be liable to be applied for this purpose, if the Contractor fails to comply with the same. In case such documents are not furnished by the Contractor, the Employer will not release the **Performance Guarantee/ Security Deposit** and any other amount as may remain due to the Contractor

7.47 **Health and safety**

7.47.1 In the event of any outbreak of illness or an epidemic nature, the Contractor shall have to comply with and carry out such regulations, orders & requirements, as may be made by the Government, or the local medical or sanitary authorities, for the purpose of dealing with and overcoming the same.

7.47.2 The Contractor shall have to ensure safety of all their working personnel to the fullest compliance of the provisions of **general safety rules/regulations**, including **Dock Workers' (Safety, Health & Welfare) Regulations, 1986**.

The Contractor shall be solely responsible for consequences arising out of non-compliance or violation of safety rules/ regulations.

7.47.3 The Contractor [including approved Sub-contractor(s)] shall have to provide (at their own expenses) all required **Personal Protection Equipment (PPE)** [such as **Helmets, Nose Masks, Hand Gloves**, etc.] & **Safety Gears** for all personnel and labourers engaged during the work and in case of their failing to do so, the Employer shall provide the same and recover the cost thereof from any amount due, or which may become due to the Contractor or from any amount lying with them or under their control.

7.48 **Labour licence**

7.48.1 Within 7 (seven) days from the date of issuance of the order, the Contractor shall have to apply for **labour licence** for the maximum number of workers proposed to be deployed for this work. Necessary certificate shall be issued by the Engineer against a request from the Contractor.

Photocopy of the application shall have to be furnished to the Engineer, immediately. However, payment will be released only on furnishing the copy of the **Labour Licence** to the Engineer. However, such license should be kept valid throughout the actual duration of contract.

7.49 **Employees' Provident Fund & Employees' State Insurance**

7.49.1 The Contractor should have their establishment (with respect to this contract) registered with the concerned authorities under the provision of **Employees' Provident Fund & Miscellaneous Provision Act, 1952** and **Employees' State Insurance Act, 1948**. The Contractor shall have to submit the proof of registration as mentioned above immediately after commencement of work.

7.49.2 As per the above mentioned Act, the Contractor is liable for remittance of monthly subscription contribution in respect of **Employees' Provident Fund (EPF)** and **Employees' State Insurance (ESI)** for the workers engaged by them, wherever applicable. The Contractor shall have to submit the authenticated copy of the challans with respect to subscription / contribution of **Employees' Provident Fund** and **Employees' State**

Insurance (against their respective Code Numbers issued by the **Employees' Provident Fund** and **Employees' State Insurance Authorities**) by 7th day of every English Calendar Month (during the currency of the contract) along with the list of labourers for whom such deposits have been made.

Payment will be held up if the up-to-date **Employees' Provident Fund** and **Employees' State Insurance** remittance challan is not submitted in time.

- 7.49.3 In case, registration with the EPF and ESI Authorities is not applicable for the employees of the Contractor [or for the employees of the Sub-contractor(s)], documentary evidence to establish non-applicability to be submitted by the Contractor.
- 7.49.4 In case of sub-contracting any part of the work, above requirements should also be fulfilled by the approved Sub-contractor and necessary documents shall have to be submitted in time, as indicated above.

E. PLANT, MATERIALS AND WORKMANSHIP

7.50 Materials to be supplied by the Employer

- 7.50.1 Regarding supply of any materials by the Trustees to the Contractor, in accordance with the contract, the following conditions shall apply:
- a) The Contractor shall, at his own expense, arrange for transporting the materials from the Trustees' Store [store of Haldia Dock Complex, situated at Haldia], watching, storing and keeping them in his safe custody, furnishing of statement of consumption thereof in the manner required by the Engineer or his Representative, return of surplus and empty container to the Trustees' Stores, as per the direction of the Engineer or his Representative.
 - b) Being the custodian of the Trustees' materials, the Contractor shall remain solely responsible for any such materials issued to him and for any loss or damage thereof for any reason other than "Excepted Risks", the Contractor shall compensate the Trustees', in the manner decided by the Engineer, and shall, at no stage, remove or cause to be removed any such material from the site, without his permission.
 - c) The Trustees' materials will generally be supplied in stages and in accordance with the rate of progress of work, but, except for grant of suitable extension of completion time of work as decided by the Engineer, the Contractor shall not be entitled to any other compensation, monetary or otherwise, for any delay in the supply of Trustees' materials to him. The Contractor shall, however, communicate his requirement of such materials to the Engineer from time to time.
 - d) Unless stipulated otherwise in the contract, the value of the Trustees' materials issued to the Contractor shall be recovered from the Contractor's bills and/or any of his other dues, progressively, according to the consumption thereof on the work and/or in the manner decided by the Engineer or his Representative and at the rate(s) stipulated in the contract. These rates shall only be considered by the Contractor in the preparation of his bid/offer and

these will form the basis of escalation/variation, if in future the Contractor is required to procure and provide any such material on the written order of the Engineer, consequent on the Trustees' failure to effect timely supply thereof.

- e) If the Engineer decides that due to the Contractor's negligence, any of the Trustees' materials, issued to the Contractor, has been – (i) lost or damaged, (ii) consumed in excess of requirement and (iii) wasted by the Contractor in excess of normal wastage, then the value thereof shall be recovered from the Contractor's bills, or from any of his other dues, after adding 19.25 % extra over the higher one of the followings:
 - i) The issue rate of the materials at the Trustees' Stores, and
 - ii) The market price of the material on the date of issue, as would be determined by the Engineer.

7.51 Contractor's arrangement for execution of the work

- 7.51.1 The Contractor will have to arrange and provide all types of materials, etc. [in line with the Technical Specification] throughout the execution of the contract.
- 7.51.2 KoPT will not take any responsibility regarding **non-availability** of any such materials for which Contractor is responsible as per contract. The Contractor shall have to assess the requirement of such materials and keep sufficient stock.
- 7.51.3 The Contractor shall have to provide all equipment, including tools, tackles, lifting machineries, air compressor, scaffolding arrangement, different vehicular transport, etc., necessary to execute the work.
- 7.51.4 All tools & machineries to be used by the Contractor should be suitable for the particular requirement (i.e. capacity should be adequate) and the same should be checked for fitness before use. They should maintain the said equipment properly to ensure their efficient working.
- 7.51.5 The Contractor shall, at their own costs and expenses, have to provide all labour, plant, haulage, transportation of plant and equipment to be used for executing the contract, all materials, stores, etc. (except the equipments & materials to be provided by KoPT, as per contract) required for efficiently carrying out the work to the satisfaction of the Employer.
- 7.51.6 The Contractor should use calibrated measuring & testing instruments and should also ensure revalidation of such calibration as and when required. In this regard, initially the Contractor shall have to submit a list of **measuring and testing instruments** (mentioning the period of validity of Calibration Certificates) to be used. The photocopies of the Calibration Certificates (including the revalidations) of the said measuring and testing instruments, shall have to be submitted to the Engineer.

7.52 Inspection and testing

- 7.52.1 The Engineer or his authorised Representative shall have, at all reasonable time, access to the Contractor's premises or work site or other premises [if a part of the work is being executed there or some **maintenance repair** work

(during **Defect Liability Period**) is being done there] and shall have the power, at all reasonable time, to **inspect, examine and test the materials and workmanship**, as well as the **documents, equipment, tools, measuring & testing instruments**, as applicable, in connection with the instant contract (including **Defect Liability Period**).

- 7.52.2 The Engineer or his authorised Representative, on giving 7 (seven) days' notice, in writing, to the Contractor, setting out any ground of objections, in respect of the work, shall be at liberty to reject all or any material and/or workmanship in the subject of any of the said grounds of objection, which are not in accordance with the contract.
- 7.52.3 Quality of materials, to be provided by the Contractor under this contract, should be as per the satisfaction of the Engineer. Whenever asked, the Contractor shall have to provide free sample for testing.
- 7.52.4 If found necessary, KoPT reserves the rights to get the materials inspected from a **Government or Government recognized Laboratory/Test House**.
- 7.52.5 In case of sub-letting to other Contractors or manufacturers or suppliers by the Contractor, the Engineer will reserve the right as follows:
- i) that inspection and / or testing will be carried at the Sub-contractor's works; or
 - ii) that inspection will be carried out at site; or
 - iii) that inspection will be waived, subject to the Contractor furnishing a certificate of compliance with specification by a competent authority recognised by national/international institutes.
- 7.52.6 The Employer may appoint a **Third Party Inspection Agency**, as detailed at SCC, at the cost of the Employer, for stage-wise technical inspection and certification of **materials & workmanship**, including **painting, erection, commissioning**, etc. [in connection with the contract job, in part or as a whole]. In that case The relevant Certificates shall be produced by the **Third Party Inspection Agency** to the Engineer or his authorised Representative.
- 7.52.7 The stage-wise technical inspection will be carried out by the representative of the Engineer [or **Third Party Inspection Agency**] based on the approved **Quality Assurance Plan (QAP) & Field Quality Assurance Plan (FQAP)** [considering the Technical Specification of the bidding documents].
- 7.52.8 The Contractor shall have to submit a **Quality Assurance Plan (QAP)** and a **Field Quality Assurance Plan (FQAP)**, based on the Technical Specification and other terms & conditions stipulated in the bidding documents. The **QAP & FQAP** shall be approved by the "**Engineer**".
- 7.52.9 In all cases where tests are required, within the purview of QAP & FQAP, whether at the premises of the Contractor or any Sub-contractor or elsewhere, the Contractor, except where otherwise specified, shall provide free of charges such labour, materials, electricity, fuel, water, stores, apparatus and instruments, as may reasonably be demanded, to carry out sufficiently such tests and shall, at all times, facilitate the Engineer or his Representative [and / or the Third Party Inspection Agency] , to accomplish

such testing.

7.52.10 The cost of all tests and / or analyses, within the purview of QAP & FQAP, effected at the Contractor's or Sub-contractor's works and on the site, shall be borne by the Contractor. The Contractor will be called upon to pay all expenses incurred by the Employer in respect of any work found to be defective or of inferior quality, adulterated or otherwise unacceptable.

7.52.11 If, during inspection by the **Third Party Inspection Agency [if appointed by KoPT]**, any material or test [within the purview of QAP & FQAP] fails to fulfil the contract conditions for **more than 2 (two) times**, **any additional amount charged by the Third Party Inspection Agency towards inspection of the same from the 3rd time onwards shall have to be borne by the Contractor**. If the Contractor fails to make such payment to the **Third Party Inspection Agency**, the same shall be deducted from the bill(s) of the Contractor and paid to the **Third Party Inspection Agency**

7.52.12 **Tests on completion:**

On **completion of installation**, the contractor with give a **7 (seven) days'** notice to the Engineer, in writing (informing the date on which they will be ready to make the tests), before carrying out such tests, in accordance with and in the manner prescribed in the specifications. The procedure specified in SCC shall be followed in this respect.

7.52.13 Notwithstanding the fact that the materials or installations have passed the inspection, the Contractor is not relieved from his obligations to conform to the quality, workmanship, guaranteeing the performance, etc., as per the contract.

7.53 Contractor to replace materials/work not acceptable to the Engineer or his Representative

7.53.1 The Engineer or his Representative shall have the power to inspect any material and work at any time and to order at any time

- a) for removal from the site of any material, which, in his opinion, is not in accordance with the contract or the instruction of the Engineer or his Representative,
- b) for the substitution of proper and suitable materials, or
- c) the removal and proper re-execution of any work, which, in respect of material and workmanship, is not in accordance with the contract or the instructions of the Engineer.

The Contractor shall comply with such order at his own expense and within the time specified in the order. If the Contractor fails to comply, the Engineer shall be at liberty to dispose any such materials and re-do any work in the manner convenient to the Trustees by engaging any outside agency, at the risk and expense of the Contractor and after giving him a written prior notice of 7 (seven) days.

7.54 Removal of materials on completion

- 7.54.1 The Contractor shall, on completion of the contract or when directed by the Employer, shall have to remove all plant, equipment, tools, materials, temporary constructions, etc. and rubbish garbage, waste, which may have accumulated during the execution of the contract, other than those permanently used into the work, at Employer's site.

7.55 Workmanship and secrecy

- 7.55.1 The Contractor shall carry out the services in conformity with generally accepted norms and sound standards of Engineering. The Contractor shall be responsible for the technical soundness of the services rendered. In the event of any deficiency in those services, the Contractor shall promptly re-do the same, at no additional cost to the Employer.
- 7.55.2 The Contractor shall use all the documents, drawings and other data & information, of proprietary nature, received from the Employer, solely for the purpose of performing and carrying out the obligations on his part under the Agreement in the performance of the works for the project and maintain utmost secrecy, in this regard. The documents, drawings and other data & information, received from the Employer, shall not be used by the Contractor for any other purpose.

F. COMMENCEMENT, EXECUTION & COMPLETION OF WORK, HANDING OVER AND TAKING OVER

7.56 Preliminary time to commence work and maintenance of steady rate of progress

- 7.56.1 The Contractor shall commence the work within 7 (seven) days of the receipt of Engineer's letter informing acceptance of the Contractor's bid / offer by the Trustees or within such preliminary time as mentioned by the Contractor in the "Form of Tender" or the time accepted by the Trustees. The Contractor shall then proceed with the work with due expedition and without delay, except as may be expressly sanctioned or ordered by the Engineer or his Representative, time being deemed the essence of the contract on the part of the Contractor.

7.57 Contractor's site office

- 7.57.1 The Contractor shall provide and maintain a suitable office at or near the site to which the Engineer's Representative may send communications and instructions for use of the Contractor.

7.58 Contractor to observe Trustees' working hours

- 7.58.1 Unless specified otherwise in the contract or prior permission of the Engineer has been taken, the Contractor shall not execute the work beyond the working hours observed by the Engineer's Representative and on Sundays and Holidays observed in the Trustees' system, except in so far as it becomes essential on account of tidal work or for safety of the work. If the progress of the work lags behind schedule or the work has been endangered by any act or neglect on the part of the Contractor, then the Engineer or his Representative shall order and the Contractor, at his own

expense, shall work by day and by night and on Sundays and Public Holidays. Any failure of the Engineer or his Representative to pass such an order shall not relieve the Contractor from any of his obligations. The Engineer's decision, in this regard, shall be final, binding and conclusive.

7.59 Contractor to supply all materials as per requirement of the Engineer or his Representative

7.59.1 Unless stipulated otherwise in the contract, all materials required for the work shall be procured and supplied by the Contractor with the approval of the Engineer or his Representative and subject to subsequent testing, as may be required by the Engineer or his Representative. The Engineer shall exercise his sole discretion to accept any such materials.

7.60 Materials and works

7.60.1 Unless stipulated otherwise in the contract, all materials, workmanship and method of measurement shall be in accordance with the relevant Codes (Latest Revision) of the Bureau of Indian Standards and the written instructions of the Engineer or his Representative. Where no specific reference is available in the contract, the material and workmanship shall be of the best of their respective kinds to the satisfaction of the Engineer.

7.61 Contractor to submit samples for approval

7.61.1 Samples shall be prepared and submitted for approval of the Engineer or his Representative, whenever required to do so, all at the Contractor's cost.

7.62 Contractor to seek approval of Engineer or his Representative before covering up any portion of work

7.62.1 No work shall be covered up and put out of view by the Contractor without approval of the Engineer or his Representative and whenever required by him, the Contractor shall uncover any part or parts of the work or make openings in or through the same as may be directed by the Engineer or his Representative from time to time and shall reinstate or make good those part of works thus affected, to the satisfaction of the Engineer, all at the cost of the Contractor.

7.62.2 The Trustees shall reimburse such cost, as determined by the Engineer, if the initial covering up was with prior written order of the Engineer or his Representative.

7.63 Contractor to suspend work on order from Engineer or his Representative

7.63.1 On a written order of the Engineer or his Representative, the Contractor shall delay or suspend the progress of the work, till such time the written order to resume the execution is received by him. During such suspension, the Contractor shall protect and secure the work to the satisfaction of the Engineer or his Representative. All extra expenses, in giving effect to such order, shall be considered by the Trustees, unless such suspension is:

- a) for removal from the site of any material, which, in his opinion, is not in accordance with the contract or the instruction of the Engineer or his Representative,
- b) otherwise provided for in the contract, or

- c) necessary by reason of some default on the part of the Contractor, or
- d) necessary by reason of climatic conditions on the site, or
- e) necessary for proper execution of the works or for the safety of the works or any part thereof.

7.63.2 The Engineer shall settle and determine such extra payment and/or extension of completion time to be allowed to the Contractor, as shall, in the opinion of the Engineer, be fair and reasonable.

7.63.3 If at any time, before or after commencement of the work, the Trustees do not require the whole of the work tendered for, the Engineer shall notify the same to the Contractor in writing and the Contractor shall stop further works in compliance of the same. The Contractor shall not be entitled to any claim for compensation for underived profit or for such premature stoppage of work or on account of curtailment of the originally intended work by reason of alteration made by the Engineer in the original specifications, drawings, designs and instructions.

7.64 **Completion Certificate**

7.64.1 When the whole of the work [as detailed in **GCC Clause No. 7.65 (Completion period)**] has been completed to the satisfaction of the Engineer, the Contractor shall, within 21 (twenty one) days of submission of his application to the Engineer, be entitled to receive from him a certificate for completion of work as per the form furnished in **Section – XI**.

7.65 **Completion period**

7.65.1 All the jobs, as per contract, are to be completed within the period stipulated in the SCC.

7.66 **Taking over of the Contract job by KoPT**

7.66.1 The **Contract job** will be taken over by HDC, KoPT after completion of the works in accordance with the contract, having passed all the tests under “Tests on completion”.

7.66.2 However, the actual date of completion of the contract will be considered as per **GCC Clause No. 7.65 [Completion period]**.

7.67 **Defect Liability Period (DLP)**

7.67.1 “**Defect Liability Period**” shall mean the **Warranty Period**, as specified in SCC.

7.67.2 During “**Defect Liability Period**” [as specified in SCC], the Contractor shall nominate 1 (one) competent, experienced and responsible technical person, to co-ordinate and execute all works to be attended by the Contractor, as per contractual obligations, without any extra cost to HDC, KoPT.

7.67.3 The Contractor shall be responsible for making good (including replacement of defective items, if required), with all possible speed, at their

expense, any defect in or damage to any portion of the work, which may appear or occur after the Contract job has been taken over [as per GCC Clause No. 7.66 (Taking over of the Contract job by KoPT)] and before expiry of Defect Liability Period [as specified in SCC] and which arises either:

- a) from any defective materials, workmanship or design, or
- b) from any act or omission of the Contractor done or omitted during the said period.

7.68 Defects after taking over

- 7.68.1 If any such defects shall appear or damage occur (as detailed in **7.67.3**), the Engineer shall forthwith inform the Contractor thereof, stating in writing the nature of defect or damage.

The provision of this clause shall apply to all replacements or renewals carried out by the Contractor to remedy defects and damage as if the said replacements and renewals had been taken over on the date they were completed to the satisfaction of Engineer. After the taking over, if the Contract job cannot be used (for the purpose for which it is intended), during any period, by the reason of a defect or damage, the **Defect Liability Period** for the defected part shall be extended up to the resolving of the issue not exceeding 15 days over and above the warranty period.

- 7.68.2 If any such defect or damage be not remedied by the Contractor within a reasonable time, HDC, KoPT may proceed to do the work at the Contractor's risk and expense, but without prejudice to any other rights which HDC, KoPT may have against the Contractor in respect of such defects.

- 7.68.3 All inspection, adjustments, replacement or renewal carried out by the Contractor during the period referred in this clause shall be subject to the conditions of this contract, which shall be binding on the contractor in all respects during the **Defect Liability Period** and its extension, if any.

7.69 Extension of completion period and liquidated damage

7.69.1 Extension of completion period:

Should the quantum of extra or additional work of any kind or delayed availability of the Trustees' materials to be supplied as per contract or **Force Majeure** condition (as per **GCC Clause No. 7.86**) or other special circumstances, of any kind, beyond the control of the Contractor or any other reason not attributable to the Contractor [including hindrance at site of work, causes indicated as "**Excepted Risks**", etc.] cause delay in completing the work, the Contractor shall apply to the Engineer, in writing, for suitable extension of completion period, within **7 (seven) days** from the date of occurrence of the reason and the Engineer shall thereupon consider the stated reasons in the manner deemed necessary and shall either reject the application or determine and allow, in writing, the extension period as he would deem proper for completion of the work, with or without the imposition of "**Liquidated Damage**" (**GCC Clause No. 7.69.2** hereof) on the Contractor and his decision shall be binding on the Contractor. If an extension of completion period is granted by the Engineer, "**Liquidated**

Damage” (GCC Clause No. 7.69.2 hereof) shall apply from its date of expiry, if the work be not completed within the extended time, unless stated otherwise in the decision communicated by the Engineer, as aforesaid.

7.69.2 **Liquidated Damage:**

If the Contractor fails to complete the work within the stipulated dates [as per **GCC Clause No. 7.65 (Completion period)**] or such extension thereof, as communicated by the Engineer, in writing, the Contractor shall pay as compensation (**Liquidated Damage**) to the Trustees and not as a penalty, as per the following:

In case of handing over the Contract Job after the scheduled completion period, **Liquidated Damage @ ½% of the Contract Price [excluding GST]**, for every week or part thereof, beyond the scheduled date of completion, will be deducted from the Contractor’s bill. Provided always the amount of such compensation shall not exceed **10 %** of the cost the Contract Price [excluding GST].

7.69.3 Without prejudice to any of their legal rights, the Trustees shall have the power to recover the said amount of compensation/damage, as per **GCC Clause No. 7.69.2** from any money due or likely to become due to the Contractor. The payment or deduction of such compensation/damage shall not relieve the Contractor from his obligation to complete the work or from any of his other obligations/liabilities under the contract and in case of the Contractor’s failure and at the absolute discretion of the Engineer, the work may be ordered to be completed by some other agency, at the risk and expense of the Contractor, after a minimum **3 (three) days** notice, in writing, has been given to the Contractor by the Engineer or his Representative.

G. CONTRACT PRICE , PAYMENT AND DEDUCTIONS

7.70 Contract Price

7.70.1 Price charged by the Contractor for the related services performed under the contract shall not vary from the rates accepted by the Employer, based on the bid/offer of the successful bidder and stated in the “Letter Of Acceptance”, with the exception of any price adjustment, if provided for in the contract.

7.70.2 Changes **in statutory taxes & duties will be adjusted** time to time.

7.70.3 No claim whatsoever of the Contractor for their man & material resources remaining idle for any reason or for any other expenses incurred by them due to the flow of work not being continuous or for stoppage of work, will be entertained by the Employer.

7.71 Terms of payment

7.71.1 **Payment of Goods & Services Tax (GST):**

Amount of GST will be borne by HDC, KoPT on production of suitable document(s) by the Contractor.

7.71.2 **Time of payment:**

The Contractor shall have to submit **bills in triplicate** to the Engineer, in

accordance with the stage-wise payments specified in **SCC**. In normal circumstances, payment of the bills, accompanied by **Inspection Certificates** & other relevant documents, duly recommended by the Engineer, will be passed within 30 (thirty) days from the date of receipt of such bills, if found in order.

7.71.3 **Income Tax deduction:**

Income Tax, if any, as per the relevant provision of the Income Tax Act, shall be **deducted at source** from amount payable to the Contractor.

7.71.4 **No interest on account of delayed payments:**

Any claim for interest will not be entertained by KoPT with respect to any delay on the part of KoPT for making payment, or for any dispute. The decision of the Engineer is final in such matters.

7.72 **Extra expenses incurred by the Employer**

7.72.1 Any extra expenses incurred in connection to the work by the Employer in the performance of the work owing to the neglect or omission on the part of the Contractor in any of the case mentioned in this contract shall be deducted from any sum due or which may thereafter become due to the Contractor or from any amount lying with them or under their control or they may be called upon to pay the amount of such extra expense to such person or persons as the Employer may appoint to receive the same and in the event of the Contractor failing to make such payment, the said amount shall be recoverable from them in such manner as the Employer may determine,

7.73 **Recovery of deducted amount**

7.73.1 Without prejudice to any of their legal rights, the Trustees shall have the power to recover the amount of **DEDUCTION**, from any money due or likely to become due to the Contractor. Such payment or deduction shall not relieve the Contractor from their obligation to complete the work or from any of their other obligations / liabilities under the contract.

7.74 **Variation and its valuation**

7.74.1 The Engineer shall have the power to order the Contractor, in writing, to make any variation of the quantity, quality or form of the works or any part thereof that may, in his opinion, be necessary and the Contractor upon receipt of such an order shall act as follows:

- a) Increase or decrease the quantity of any work included in the contract.
- b) Omit any work included in the contract.
- c) Change the character or quality or kind of any work included in the contract.
- d) Change the levels, lines, position and dimensions of any part of the work, and
- e) Execute extra and additional work, of any kind, necessary for completion of the works.

7.74.2 No such variation shall, in any way, vitiate or invalidate the contract or be treated as revocation of the contract, but the value (if any) of all such

variations, evaluated in accordance with the Engineer's sole decision, shall be taken into account and the contract price shall be varied accordingly.

- 7.74.3 Provided always that written order of the Engineer shall not be required for increase or decrease in the quantity of any work up to 15%, where such increase or decrease is not the result of any variation order given under this clause but is the result of the quantities exceeding or being less than those stated in the "Price Schedule". Provided also that verbal order of variation from the Engineer shall be complied with by the Contractor and the Engineer's subsequent written confirmation of such verbal order shall be deemed to be an order in writing within the meaning of this clause.
- 7.74.4 The Contractor shall not be entitled to any claim of extra or additional work, unless they have been carried out under the written orders of the Engineer.
- 7.74.5 The Engineer shall solely determine the amount (if any) to be added to or deducted from the sum named in the tender in respect of any extra work done or work omitted by his order.
- 7.74.6 All extra, additional or substituted work done or work omitted by order of the Engineer shall be valued on the basis of the rates and prices set out in the contract, if in the opinion of the Engineer, the same shall be applicable. If the contract does not contain any rates or prices directly applicable to the extra, additional or substituted work, then the Engineer may decide the suitable rates on the basis of "Schedule of Rates" (including surcharge in force at the time of acceptance of bid), if any, adopted by the Trustees with due regard to the accepted contractual percentage, if any thereon. In all other cases, the Engineer shall solely determine suitable rates in the manner deemed by him as fair and reasonable and his decision shall be final, binding and conclusive.
- 7.74.7 If the nature or amount of any omission or addition relative to the nature or amount of the whole of the contract work or to any part thereof shall be such that, in the opinion of the Engineer, the rate of prices contained in the contract for any item of the works or the rate as evaluated under **GCC Clause Nos. 7.74.5 & 7.74.6**, is by reason of such omission or addition rendered unreasonable or in-applicable, the Engineer shall fix such other rate or price as he deems proper and the Engineer's decision shall be final, binding and conclusive.

H. TERMINATION BY EMPLOYER

7.75 Notice to correct

- 7.75.1 If the Contractor fails to carry out any of their obligations under the contract, the Engineer may give notice to the Contractor, requiring them to make good the failure and to remedy the same within a specified reasonable time.

7.76 Termination by Employer

- 7.76.1 The Employer shall be entitled to terminate the contract if:
- a) the Contractor fails to comply with **GCC Clause No. 7.20 [Performance Guarantee / Security Deposit]**

- or
- with a notice under **GCC Clause No. 7.75 [Notice to correct]**,
- b) the Contractor **abandons** the work, or **repudiates** the contract, or otherwise plainly demonstrates the intention not to continue performance of their obligations under the contract,
 - c) the Contractor, without reasonable or lawful excuse under this contract,
 - i) fails to proceed with the work, **within 14 days** from the scheduled date for commencement of work, in accordance with **GCC Clause No. 7.56 [Preliminary time to commence work and maintenance of steady rate of progress]**,
 - ii) keeps the work suspended for **at least 14 days**, despite receiving Engineer's written notice to proceed with the work,
- or
- iii) fails to comply with a notice issued regarding rejection of material(s)/work and/or remedial work, **within 28 days** after receiving it,
 - d) the Contractor **assigns/sub-contracts the whole of the work**
- Or
- sub-contracts any portion of the work**, without the required consent, in line with **GCC Clause No. 7.22**.
- e) the Contractor becomes **bankrupt** or **insolvent**, goes into liquidation, have a receiving or administrative order made against them, compounds with their creditors, or carries on business under a receiver, trustees or manager for the benefit of their creditors, or if any act is done or event occurs which (under applicable laws) has a similar effect to any of these acts or events,
 - f) the Contractor gives or offers to give (directly or indirectly) to any person any bribe, gift, gratuity, commission or other thing of value, as an inducement or reward,
 - i) for doing or forbearing to do any action in relation to the contract, or
 - ii) for showing or forbearing to show favour or disfavour to any person in relation to the contract,

or, if any of the Contractor's personnel, Agents or Sub-contractors gives or offers to give (directly or in directly) to any person any such inducement or reward as is described in this **sub-paragraph (f)**. However, lawful inducement and reward to the Contractor's personnel shall not entitle termination
 - g) the Contractor fails to execute the work in accordance with the contract
- or
- persistently or flagrantly neglects to carry out their obligations under the contract.

- h) the Contractor fail to make payment of wages to their personnel in relation to this contract,
- i) the Contractor fails to carry out the work satisfactorily (as stated in these bidding documents or otherwise decided by the Engineer) or may not be able to complete the work within the agreed period on account of Contractor's lapses.
- j) any accident occurs due to improper way of working by the Contractor's personnel, or
- k) any misconduct done by Contractor's personnel (including that of Agents or Sub-contractors) to KoPT's employees.

In any of these event or circumstances, the Employer may, upon giving a **minimum 14 days' notice** [communicated by the Engineer] to the Contractor, **terminate the contract** and expel the Contractor from the site, without being liable for any compensation to the Contractor. However, in case of **sub-paragraph (e) or (f)**, the Employer may, by notice [communicated by the Engineer], terminate the contract immediately.

The Employer's election to terminate the contract shall not prejudice any other rights of the Employer, under the contract or otherwise.

- 7.76.2 Upon receipt of the letter of termination of work, which may be issued by the Engineer on behalf of the Employer, the Contractor shall have to leave the site of work and deliver any **required goods**, all **Contractor's documents**, and other **design documents**, made by or for them, all the **Trustees' tools, plant and materials** issued to them, at the place to be ascertained by the Engineer, **within 7 days** of receipt of such letter. However, the Contractor shall use their best efforts to comply immediately with any reasonable instructions included in the notice

- i) for the assignment of any Sub-contractor,

And

- ii) for the protection of life or property or for the safety of the equipment/work.

The Contractor shall not be released from any of their obligations or liability under the contract and the rights & authorities conferred on the Employer and Engineer, by the contract, shall not be affected.

- 7.76.3 Upon such termination of work, the Employer shall have the power to complete the work by **themselves** and/or through **any other agency** at the **Contractor's risk & expense** and the Contractor shall be debited **any sum or sums that may be expended in completing the work beyond the amount that would have been due to the Contractor, had they duly completed the whole of the work in accordance with the contract.**

The Employer or such other agency may use, for such completion, so much of the Contractor's documents, other design documents, made by or on behalf of the Contractor, Contractor's equipment, temporary work, plant & materials, as they think proper.

Upon completion of the work, or at such earlier date, as the Engineer shall

give notice that the Contractor's equipment and temporary work will be released to the Contractor at or near the site, the Contractor shall remove or arrange removal of the same from such place without delay and at their risk & cost. However, if by this time the Contractor has failed to make a payment due to the Employer, these items may be sold by the Employer in order to recover this payment. Any balance of the proceeds shall be paid to the Contractor.

7.77 Valuation at date of termination

- 7.77.1 As soon as practicable after a notice of termination under **GCC Clause No. 7.76 [Termination by Employer]**, has taken effect, the Engineer shall proceed in accordance with **GCC Clause No. 7.19 [Determinations]** to agree or determine the value of the work, goods & Contractor's documents, and any other sums due to the Contractor for work executed, in accordance with the contract. The value of such work (executed in accordance to the Contract) shall be determined based on measurements of actual work done and approved rate(s), as per contract or other rates, as decided by the Engineer. The Engineer's decision, in such case, shall be final, binding and conclusive.

7.78 Payment after termination

- 7.78.1 After a Notice of termination, under **GCC Clause No. 7.76 [Termination by Employer]** has taken effect, the Employer may
- a) give notice to the Contractor, indicating the particulars, for which Employer is entitled to any payment under any Clause or otherwise in connection with the contract, and or any extension of the **Defect Notification Period**.

However , Notice is not required for payments due under **GCC Clause No. 7.26 [Supply of water and Electricity]**, under **GCC Clause No. 7.27 [Use of ground and land/covered space for Contractor's establishment]**, or for other services requested by the Contractor,
 - b) withhold further payments to the Contractor until the cost of execution, completion and remedying of any defects, damage, and all other costs incurred by the Employer, have been established, and / or
 - c) recover from the Contractor any losses and damages incurred by the Employer and any extra costs of completing the work, after allowing for any sum due to the Contractor under **GCC Clause No. 7.77 [Valuation at date of termination]**. After recovering any such losses, damages and extra costs, the Employer shall pay any balance to the Contractor.

7.79 Employer's entitlement to termination for convenience

- 7.79.1 The Employer, by notice [communicated by the Engineer] sent to the Contractor, may terminate the Contract, in whole or in part, at any time **for Employer's convenience**. Such termination shall take effect **28 days** after the date on which the Contractor receives this notice or the Employer returns the Performance Guarantee. The notice of such termination shall specify that termination is for **Employer's convenience**, the extent to which

performance of the Contractor under the contract is terminated, and the date upon which such termination become effective.

The Employer shall not terminate the contract under this Sub-clause in order to execute the work exclusively by themselves or to arrange for work to be executed exclusively by another Contractor or to avoid a termination of the contract by the Contractor under **GCC Clause No. 7.82 [Termination by Contractor]**.

After such termination, the Contractor shall proceed in accordance with **GCC Clause No. 7.83 [Cessation of work and removal of Contractor's equipment]** and shall be paid in accordance with **GCC Clause No. 7.90 [Optional termination, payment and release]**.

7.80 Corrupt or fraudulent practices

7.80.1 If the Employer determines that the Contractor has engaged in **corrupt, fraudulent, collusive, coercive, or obstructive** practices, in competing for or in executing the Contract, then the Employer may, after giving **14 days notice** to the Contractor, terminate the Contractor's employment under the Contract and expel them from the Site, and the provisions of **GCC Clause Nos. 7.75 to 7.78** shall apply as if such expulsion had been made under **GCC Clause No. 7.76 [Termination by Employer]**.

Should any employee of the Contractor be determined to have engaged in corrupt, fraudulent, collusive, coercive, or obstructive practice during the execution of the work, then that employee shall be removed in accordance with **GCC Clause No. 9.21 [Contractor's personnel and Contractor's representative]**.

For the purposes of this clause:

- i) "corrupt practice" is the offering, giving, receiving or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another party;
- ii) "fraudulent practice" is any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation;
- iii) "collusive practice" is an arrangement between two or more parties designed to achieve an improper purpose, including to influence improperly the actions of another party;
- iv) "coercive practice" is impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party;
- v) "obstructive practice" is deliberately destroying, falsifying, altering or concealing of evidence material to the investigation or making false statements to investigators in order to materially impede the Employer investigation into allegations of a corrupt, fraudulent, coercive or collusive practice; and / or threatening, harassing or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation.

I. SUSPENSION AND TERMINATION BY CONTRACTOR

7.81 Contractor's entitlement to suspend work

- 7.81.1 The Contractor may, if the Employer fails to pay the Contractor the amount due under any certificate of the Engineer **within 28 days** after the expiry of the time stated in **GCC Clause No. 7.71 [Terms of payment]** within which payment is to be made, subject to any deduction that the Employer is entitled to make under the Contract, after giving 28 days' prior notice to the Employer, with a copy to the Engineer, suspend work or reduce the rate of work.
- 7.81.2 If the Contractor subsequently receives the due payment (as described in the relevant Clause and in the above notice) before giving a notice of termination, the Contractor shall resume normal working as soon as is reasonably practicable.
- 7.81.3 If the Contractor suspends work or reduces the rate of work in accordance with the provisions of this Clause and thereby suffers delay, the Engineer shall, after due consultation with the Contractor, determine any extension of time or minimum criteria for satisfactory performance, to which the Contractor is entitled and shall notify the Contractor accordingly.

7.82 Termination by Contractor

- 7.82.1 The Contractor will be entitled to terminate the Contract if:
- a) the Contractor does not receive the reasonable evidence within **42 days after** giving notice under **GCC Clause No. 7.81 [Contractor's entitlement to suspend work]** in respect of a failure of the Employer to pay the Contractor the amount due,
 - b) the Employer obstruct or refuse any required approval to the issue of any such certificate, which is essentially required for further progress of the work without notifying any reason for such obstruction or refusal for a unreasonably long period of time, or
 - c) the Employer become bankrupt or insolvent, go into liquidation, or enter into composition with the creditors,
- or
- d) the Employer give notice to the Contractor that for unforeseen reasons, due to economic dislocation, it is impossible for them to continue to meet their contractual obligations.

In any of these events or circumstances, the Contractor may, upon giving **28 days' notice** to the Employer (with a copy to the Engineer), terminate the Contract.

The Contractor's election to terminate the Contract shall not prejudice any other rights of the Contractor, under the Contract or otherwise.

7.83 Cessation of work and removal of Contractor's equipment

7.83.1 After a notice of termination under **GCC Clause No. 7.79 [Employer's entitlement to termination for convenience]**, **GCC Clause No. 7.82 [Termination by Contractor]** or **GCC Clause No. 7.90 [Optional termination, payment and release]** has taken effect, the Contractor shall promptly:

- a) cease all further work, except for such work as may be necessary and instructed by the Engineer for the purpose of making safe or protecting those parts of the work already executed and any work required to leave the site in a clean and safe condition.
- b) hand over all construction documents, Plant and Materials for which the Contractor has received payment.
- c) hand over those other parts of the Works executed by the Contractor up to the date of termination
- d) remove all Contractor's equipment, which is on the site and repatriate all their staff and labour from the site.

and

- e) remove all other goods from the site, except as necessary for safety, and leave the site.

Any such termination shall be without prejudice to any other right of the Contractor under the contract.

7.84 Payment on termination

7.84.1 After a notice of termination under **GCC Clause No. 7.82 [Termination by Contractor]** has taken effect, the Employer shall promptly:

- a) return the Performance Guarantee / Security Deposit to the Contractor
 - b) pay the Contractor in accordance with **GCC Clause No. 7.90 [Optional termination, payment and release]** ,
- and
- c) pay to the Contractor the amount of any loss or damage sustained by the Contractor as a result of this termination.

J. INSURANCE

7.85 General requirements for insurances

7.85.1 The contractor during the contract period shall provide for insurance of 110% of the contract value including manning upto the commissioning and taking over of the installation.

K. FORCE MAJEURE

7.86 Definition of Force Majeure

7.86.1 In this clause “**Force Majeure** “ means an exceptional event or circumstance

- a) which is beyond the control of the Employer and the Contractor,

- b) which such party (Employer / Contractor) could not reasonably have provided against before entering into the contract,
- c) which, having arisen, such party could not reasonably have avoided or overcome,
- and
- d) which is not attributable to other party.

Force Majeure may include, but not limited to, exceptional events or circumstances of the kind listed below, so long as conditions a) to d) above are satisfied:

- i) **war, hostilities** (whether war be declared or not) , **invasion, act of foreign enemies;**
- ii) **rebellion, terrorism, sabotage by persons other than the Contractor's personnel, revolution, insurrection , military or usurped power, or Civil War;**
- iii) **riot, commotion, disorder, strike or lockout by persons other than the Contractor's personnel;**
- iv) **munitions of war, explosive materials, ionisation radiation or contamination by radio-activity,** except as may be attributable to the Contractor's use of such munitions, explosives, radiations or radio-activity;
- v) **natural catastrophes** such as **earthquake, tsunami** (caused by earthquake at the ocean bed),**fire, floods, hurricane, cyclone, typhoon or volcanic activity,**
- and
- vi) **pressure waves** caused by air craft or other aerial devices travelling at sonic or supersonic speed at the site of the work.

7.87 Notice of Force Majeure

- 7.87.1 If a party is or will be prevented from performing its obligations under the Contract by Force Majeure, then it shall give notice to the other party of the event or circumstances constituting the Force Majeure and shall specify the obligations, the performance of which is or will be prevented. The notice shall be given **within 48 (forty eight) hours** of the alleged beginning of the relevant event or circumstance constituting Force Majeure, giving full particulars and satisfactory evidence.

The party shall, having given notice, be excused performance of its obligations for so long as such Force Majeure prevents it from performing them.

Notwithstanding any other provision of this clause, Force Majeure shall not apply to obligations of either party to make payments to the other party under the contract.

7.88 **Duty to minimise delay**

7.88.1 Each party shall at all times use all reasonable endeavours to minimise any delay in the performance of the contract as a result of Force Majeure.

A Party shall give notice to the other party when it ceases to be affected by the Force Majeure, **within 48 (forty eight) hours** of such ending.

7.89 **Consequences of Force Majeure**

7.89.1 If the Contractor is prevented from performing its substantial obligations under the Contract by Force Majeure of which notice has been given under **GCC Clause No. 7.87 [Notice of Force Majeure]**, and suffers delay and/or non-performance as per the contractual obligations, by reason of such Force Majeure, the Contractor shall be entitled, subject to **GCC Clause No. 7.91 [Engineer's decision]**, to:

a) an extension of time for any such delay, if completion is or will be delayed, under **GCC Clause No. 7.69 [Extension of completion period and liquidated damage]**,
and

b) non-imposition of penalty due to non-performance as per the contractual obligations.

After receiving this notice, the Engineer shall proceed in accordance with **GCC Clause No. 7.19 [Determinations]** to agree or determine these matters.

7.90 **Optional termination, payment and release**

7.90.1 If the execution of all the work in progress is prevented for a **continuous period of 84 days** by reason of **Force Majeure** of which notice has been given under **GCC Clause No. 7.87 [Notice of Force Majeure]**, or for **multiple periods which total more than 140 days** due to the same notified Force Majeure, then either party may give to the other party a notice of termination of the contract. In this event, the **termination shall take effect 7 days after the notice is given**, and the Contractor shall proceed in accordance with **GCC Clause No. 7.83 [Cessation of work and removal of Contractor's equipment]**.

Upon such termination, the Engineer shall determine the value of the work done and issue a payment certificate which shall include:

- a) The amounts payable for any work carried out for which a price is stated in the Contract;
- b) the cost of plant and materials ordered for the work which have been delivered to the Contractor, or of which the Contractor is liable to accept delivery. Such Plant and Materials shall become the property of (and be at the risk of) the Employer when paid for by the Employer and the Contractor shall place the same at the Employer's disposal;
- c) any other cost or liability, which in the circumstances was reasonably incurred by the Contractor in the expectation of completing the Works;
- d) the **reasonable Cost** of removal of temporary work and Contractor's equipment from the site and the return of such items to the

Contractor's premises,

and

- e) the reasonable cost of repatriation of the Contractor's staff and labour employed wholly in connection with the work at the date of such termination.

L. CLAIMS, DISPUTES AND ARBITRATION

7.91 Engineer's decision

- 7.91.1 If a dispute of any kind whatsoever arises between the Employer and the Contractor in connection with, or arising out of, the contract or the execution of the works, whether during the execution of the works or after their completion and whether before or after repudiation or other termination of the contract, including any dispute as to any opinion, instruction, determination certificate or valuation of the Engineer, the matter in dispute shall, in the first place, be referred, in writing, to the Engineer within **30 (thirty) days**, with a copy to the other party. Such reference shall state that it is made pursuant to this clause. No later than the **thirtieth day** after the day on which he received such reference, the Engineer shall give notice of his decision to the Employer and the Contractor. Such decision shall state that it is made pursuant to this clause.

Unless the contract has already been repudiated or terminated, the Contractor shall, in every case, continue to proceed with the works with all due diligence and the Contractor and the Employer shall give effect forthwith to every such decision of the Engineer unless and until the same shall be revised, as hereinafter provided, in an amicable settlement or an arbitral award.

If either the Employer or the Contractor be dissatisfied with any decision of the Engineer, or if the Engineer fails to give notice of his decision on or before the **thirtieth day** after the day on which he received the reference, then either the Employer or the Contractor may, on or before the **seventieth day** after the day on which he received notice of such decision, or on or before the seventieth day after the day on which the said period of thirty days expires, as the case may be, give notice to the other party, with a copy for information to the Engineer, of his intention to commence arbitration, as hereinafter provided, as to the matter in dispute. Such notice shall establish the entitlement of the party giving the same to commence arbitration, as hereinafter provided, as to such dispute and, subject to **GCC Clause No. 7.94 (Failure to comply with Engineer's decision)**, no arbitration in respect thereof may be commenced unless such notice is given.

If the Engineer has given notice of his decision as to a matter in dispute to the Employer and the Contractor and no notice of intention to commence arbitration as to such dispute has been given by either the Employer or the Contractor on or before the **seventieth day** after the day on which the parties received notice as to such decision from the Engineer, the said decision shall become final and binding upon the Employer and the Contractor.

7.92 Amicable settlement

- 7.92.1 Where notice of intention to commence arbitration as to a dispute has been given in accordance with **GCC Clause No. 7.91 (Engineer's decision)** above, both parties shall attempt to settle the dispute amicably before the commencement of arbitration. However, unless both parties agree otherwise, arbitration may be commenced on or **after the fifty-sixth day after the day on which a notice of intention to commence arbitration of such dispute was given**, even if no attempt at amicable settlement thereof has been made.

7.93 Arbitration

- 7.93.1 Any dispute in respect of which
- a) the decision, if any, of the Engineer, has not become final and binding pursuant to **GCC Clause No. 7.91 (Engineer's decision)** and
 - b) amicable settlement has not been reached within the period stated in **GCC Clause No. 7.92 (Amicable settlement)**,
- shall be finally settled by arbitration, in accordance with the **Arbitration and Conciliation Act, 1996 (considering its amendment in 2015)** or any statutory modification or re-enactment thereof and rules made there under and for the time being in force. The **Arbitration Tribunal** shall be composed as per provision of the **Arbitration and Conciliation Act, 1996 (considering its amendment in 2015)** or any statutory modification or re-enactment thereof and rules made there under and for the time being in force.
- 7.93.2 In connection with the instant contract:
- a) the place of arbitration shall be **Kolkata** or **Haldia**, West Bengal, India,
 - b) the arbitration shall be conducted in **English language**,
and
 - c) the fees, if any, of the Arbitrators, if required to be paid before the award of work in respect to disputes is made and published, shall be shared equally by each of the parties
- 7.93.3 The Arbitrators shall have full power to open up, review and revise any certificate, determination, instruction, opinion, valuation or decision of the Engineer, relevant to the dispute. Nothing shall disqualify representatives of the parties and the Engineer from being called as a witness and giving evidence before the Arbitrators on any matter, whatsoever, relevant to the dispute.
- 7.93.4 Neither party shall be limited in the proceedings before such Arbitrators to the evidence or arguments put before the Engineer for the purpose of obtaining his said decision pursuant to **GCC Clause No. 7.91 (Engineer's decision)**. No such decision shall disqualify the Engineer from being called as a witness and giving evidence before the Arbitrators on any matter whatsoever relevant to the dispute.
- 7.93.5 Arbitration may be commenced prior to or after completion of the works,

provided that the obligations of the Employer, the Engineer and the Contractor shall not be altered by reason of the arbitration being conducted during the progress of the works.

7.94 Failure to comply with Engineer's decisions

7.94.1 Whether neither the Employer nor the Contractor has given notice of intention to commence arbitration of dispute within the period stated in **GCC Clause No. 7.91 (Engineer's decision)** and the related decision has become final and binding, either party may, if the other party fails to comply with such decisions, and without prejudice to any other rights it may have, refer the failure to arbitration, in accordance with **GCC Clause No. 7.93 (Arbitration)**. The provision of **GCC Clause No. 7.91 (Engineer's decision)** and **GCC Clause No. 7.92 (Amicable settlement)** shall not apply to any such reference.

7.95 Progress of work not to be interrupted

7.95.1 The Contractor must, at all the times, fulfil their obligations under the contract and shall not slow down or stop the progress of work during the period any dispute is under settlement either through reference to the Engineer or through arbitration, pursuant to the preceding clauses. Even if the works to be carried out during such a period involve matters under dispute, the Contractor shall nevertheless proceed with the works as per direction of the Engineer, pending settlement of the dispute. Failure of the Contractor, in this respect, shall constitute default on their part and render them liable to actions under the provisions of **GCC Clause No. 7.76 [Termination by Employer]**.

SECTION – VIII

SPECIAL CONDITIONS OF CONTRACT (SCC)

8.1 Definition and Interpretation:

For definitions of different words used in this Tender Document, KoPT's General Conditions of Contract, May 1993 are to be followed.

8.1.1 In the event of the Contractor contravening this condition, HDC-KoPT shall be entitled to terminate the contract forthwith and award a fresh contract to some other parties at risk and cost of the Contractor, who shall be liable for any loss or damage, which HDC-KoPT may sustain in consequence to arising out of such replacement of the Contractor.

8.1.2 The contractor shall not assign his right and interest in these presents nor assume a fresh partner or partners, dissolve, the partnership existing between him in reference to this contract without the written permission of HDC-KoPT.

8.1.3 No participating bidder shall be allowed to act as a subcontractor of the successful bidder.

8.2 Patent Rights:

8.2.1 The contractor shall fully indemnify HDC-KoPT against any action, claim or demand, costs or expenses arising from or incurred by reason of any infringement or alleged infringements of letters, patents, design, trademark or name, copyright or other protected rights in respect of any machine, plant, work, materials or things, system or methods of using, fixing working or arrangement used for fixed or supplied by the contractor in India, or elsewhere.

8.2.2 All payments, or otherwise shall be deemed to be included by the contractor in the prices named in the tender and shall be paid by him to whom they may be payable.

8.2.3 In the event of any claim being made or action brought against HDC-KoPT in respect of any such matter as aforesaid, the contractor shall be immediately notified thereof and he shall with the assistance, if he so requires of HDC-KoPT but at the sole expense of the contractor conduct all negotiations for the settlement of the same or any litigation that may arise there from provided that the conduct of such negotiations or litigations shall be conditional upon the contractor giving to HDC-KoPT such security as shall from time to time by reasonably required by HDC-KoPT to recover the ascertained or agreed amount as the case may be of any compensation, damages, expenses and cost, which might be payable by the Trustees in respect of or as a result of any such negotiation or litigation.

8.3 Power Supply & water:

8.3.1 **Supply of Electricity:**

For execution of work, electricity will be supplied on chargeable basis. The contractor will provide cables; switch gears etc. to receive electricity from HDC's nearest electric supply source. **Electricity charges** will be determined on the basis of **Chargeable Unit (kWh)** [actual **Unit (kWh) consumed** (recorded through Energy Meter) **plus 3%** on actual Unit consumed] and applicable rate of **West Bengal State Electricity Distribution Company Limited (WBSEDCL)**. Billing will be done on the basis of **Electricity charges** and overhead charges @ 19.25% [on the aforesaid **Electricity charges**] as per the notifications of **Tariff Authority of Major Ports (TAMP)**.

The **Electricity consumption charges** [based on the prevalent rates of **WBSEDCL**, as

may be amended from time to time] shall have to be paid by the Contractor immediately, on receipt of the bill from the office of Finance Division, Haldia Dock Complex. All payment on this account should be updated, otherwise the pending bill amount, along with late payment surcharge, will be recovered from the Contractor's bill(s).

Supply of water:

Fresh Water for use of the staff members as well as for requirement of the Locomotive will be provided on chargeable basis by HDC-KoPT. The Contractor will have to take the delivery of fresh water for Locomotive from specified points. Necessary arrangement like flow meter, pipe & pipe fittings etc. to be arranged by the contractor

Billing against supply of water will be done on the basis of actual consumption recorded through water meter at the rate **INR 38.65 (including overhead charges @ 19.25%) per KL of Fresh Water** [As directed by **TAMP (Tariff Authority for Major Ports)**], with **escalation @ 5% per annum**.

The **water consumption charges** [based on the prevalent rates of KoPT, as may be amended from time to time] shall have to be paid by the Contractor immediately, on receipt of the bill from the office of the Finance Division, Haldia Dock Complex. All payment on this account should be updated, otherwise the pending bill amount, along with late payment surcharge, will be recovered from the Contractor's bill(s).

8.4 Use of Land :

For the purpose of setting up a site office to carry out the activities in connection with the contract, land as available, may be allotted to the firm by HDC, KoPT, on chargeable basis, at applicable rate, at the nearby area of the Loco shed for which the firm will have to submit written application. It is emphasized that the construction of such site office, if required, shall in no way hinder any other operation inside the dock or elsewhere.

If the contractor does not handover the land allotted to him and/or does not remove the temporary structure erected on the said land within a fortnight, then the contractor will have to pay compensation to HDC equivalent to three times the applicable licence fee from the plot concerned as per schedule rent of KoPT's land and building at Haldia.

8.5 Access to Site:

The contractor shall have to abide by the rules and regulations of HDC-KoPT, which may be varied time to time, in respect of entry / exit and movement in the premises. Necessary Gate Pass for entering into the Dock area will be issued for the personnel, equipment, machineries, materials etc. of the contractor for execution of the instant work at chargeable basis as per rules then prevailing, on the basis of written request from the contractor. The contractor will be fully responsible for any injury (whether fatal or otherwise) to himself or his representative(s), for any loss or damage of property, or for any other loss, damage, costs and expenses whatsoever caused which but for the granting of such permission would not have arisen. The Contractor will be liable to indemnify HDC-KoPT against any loss or damage to the property of HDC-KoPT or neighbouring property, which may be caused due to any act of the contractor or his representative(s).

8.6 Contract Document Mutually Explanatory:

- 8.6.1 The several documents forming the contract are to be taken as mutually explanatory of one another and should anything appear in one, which is not described in the other, no advantage shall be taken of any such omission.
- 8.6.2 In case, any discrepancies or inconsistencies however appear or should any misunderstandings arise as to the meaning and of the specifications or drawings or as to the dimensions or the quality of the materials or the due and proper execution of the work or as to the measurement or quality and valuation of the work executed under this contract or as extra thereupon, the same shall be explained by the Engineer or his authorized representative.
- 8.6.3 The explanation of Engineer or his authorized representative shall be final and binding upon the contractor and the contractor shall execute the work according to such explanations, and without extra charge or deductions to/from the prices specified in the Price Schedule and do all such work and things as may be necessary for the proper completion of the work as implied by the specification and drawings, even though such work and things are not specifically shown and described therein.

8.7 Existing Services:

- 8.7.1 Drains, pipes, cables, overhead wires and similar services whether above or below the ground which may be encountered in the course of the work shall be saved and kept harmless from injury and/or loss or damages by the contractor at their own costs and expenses so that they continue to be in full and uninterrupted use to HDC-KoPT.
- 8.7.2 The contractor shall not store any materials or otherwise occupy any part of the site in a manner likely to hinder the operation of such services. The contractor shall at his own costs and expenses and without any delay repair and make good, to the satisfaction of the employer, any injury and/or loss or damage caused by the contractor to the same.

8.8 Labour:

- 8.8.1 The contractor shall make their own arrangements for the engagement of all labour for doing the work at site or in respect of or in connection with the execution of work as also for the transport, housing/residential accommodation, medical treatment, feeding/canteen facility and payment thereof. Therefore HDC-KoPT will have no obligation for the labours engaged by the contractor. Since time is the essence of this contract, adequate strength of labour force has to be deployed, so as to supply including operation and maintenance of locomotive under HDC-KoPT as stipulated in the tender.
- 8.8.2 In the event of any outbreak of illness or an epidemic nature, the contractor shall comply with and carry out such regulations, orders and requirements as may be made by the Government, or the local medical or sanitary authorities for the purpose of dealing with and overcoming the same.
- 8.8.3 Contractor shall at all times take all reasonable precautions to prevent any unlawful, riotous or disorderly conduct by or amongst his employees and for the preservation of peace and protection of persons and property in the neighbourhood of the works against the same.

8.8.4 Contractor shall at all times during the continuance of the contract comply fully with all Acts, Rules, Regulations and Byelaws then prevailing including all statutory amendments and re-enactment by the State or Central Government and other Local Authorities and any other enactments and acts that may be passed in future either by the State or the Central Government or Local Authority, including Indian Workmen's Compensation Act, Labour Laws and Equal Remuneration Act, 1976, Factories Act, Minimum Wages Act, The Contract Labour (Regulation & Abolition) Act, 1970; Employees' Provident Fund & Miscellaneous Provision Act, 1952; Employees' State Insurance Act, 1948; Dock Workers, (Safety, Health and Welfare) Act, 1986 etc.

8.8.5 If as a result of contractor's failure, negligence, omission, default or non-observance of any provisions of any law, HDC-KoPT is called upon by any authority to pay or reimburse or required to pay or reimburse any amount, HDC-KoPT shall be entitled to deduct the same from any moneys due or that become due to the contractor under this contract or any other contract or other wise recover from the contractor any sum, which HDC-KoPT is required or called upon to pay or reimburse on behalf of the contractor. All registration and statutory inspection fees in respect of his work pursuant to the contract shall be paid by the contractor.

8.8.6 The contractor shall pay the labourer engaged by him for this instant work not less than a fair wage, under the Minimum Wages Act for corresponding workforce working in Haldia, West Bengal, India.

8.9 Labour Licence:

Before commencement of the work at site (within Dock area), the Contractor shall have to apply for Labour Licence (if applicable) for the maximum number of workers proposed to be deployed for operation & maintenance of Locomotive. Necessary certificate shall be issued by the concerned Sr. Dy. Manager (Rly.) under Traffic Department against a request from the contractor. Photocopy of the application shall have to be furnished to the concerned Sr. Dy. Manager (Rly) under Traffic Department.

8.10 Report of Accident:

The contractor shall, inform immediately without delay of the occurrence of any accident, at or near the site or in connection with the execution of the work under the contract, report the accident to the concerned Sr. Dy. Manager (Rly.) or his authorized representative(s) and shall make every arrangement to render all possible assistance to the victim(s) of such accident. The contractor shall also report such accident to the competent authority whenever such a report is required by law. For any accident occurred within the entire operational area covered under the contract, the contractor shall ensure prompt investigation into the matter through recording of statement of the personnel witnessing the accident. The report containing the findings along with the statements so recorded will then be forwarded by the contractor to the concerned Sr. Dy. Manager (Rly.) or his authorized representative(s) at the earliest. At the first instance, an 'Accident Report' shall be prepared (in triplicate) by the concerned Supervisor / Engineer on duty engaged by the Contractor and a copy of the same to be forwarded immediately to the Engineer. Upon getting the first information Report of Accident, a joint Committee, consisting of representatives of I&CF Division, TO (Rly) Division & P&E Division of HDC-KoPT and a member of management cadre of contractor will be formed to investigate the accident.

8.11 Employees' Provident Fund (EPF):

All intending bidders shall have to submit proof of registration of their establishment under the provision of Employees' Provident Fund & Miscellaneous Provisional Act and recent Challan, if applicable. If this is not applicable, documentary evidence to establish non-applicability of the same to be submitted along with the Techno-Commercial Bid.

Please refer to Clause No. 2.2.2 in this regard.

As per the provision of the Act, the contractor is liable for remittance of monthly subscription contribution with respect to Employees' Provident Fund (EPF) for the workers engaged by them, wherever applicable.

8.12 Employees' State Insurance (ESI):

All intending bidders shall have to submit necessary documents along with their techno-commercial offer as to whether they are covered under ESI Act or not. If they are covered under the said Act, proof of registration of their establishment under the provision of Employees' State Insurance Act and recent Challan are to be submitted.

If they are not covered under ESI Act or exempted, necessary documents along with an affidavit affirmed before a First Class Judicial Magistrate to that effect are to be submitted. Such affidavit(s) will be examined by KoPT and the bidder(s) must abide the observation/recommendation in this regard.

Please refer to Clause No. 2.2.2 in this regard.

If the contractor is not under ESI Act, then the contractor must additionally indemnify HDC-KoPT against all damage and accident occurring to his/their labour.

If the contractor is covered under ESI Act, as per the provision of the Act the contractor is liable for remittance of monthly subscription contribution with respect to Employees' State Insurance (ESI) for the workers engaged by them.

8.13 Safety Gears, etc.:

During the execution of contract, the contractor shall have to ensure safety of all their working personnel to the fullest compliance of the provisions of general safety rules/regulations including Dock Workers, (Safety, Health and Welfare) Act, 1986 along with associated Rules & Regulations.

The Contractor shall be solely responsible for consequences arising out of non-compliance or violation of safety rules / regulation.

The contractor shall at his own expenses and arrangement provide all required Personal Protective Equipments (PPE) and Safety Gears for all personnel and labours engaged during the execution of contract.

8.14 Plant and Equipment:

8.14.1 During execution of contract, the contractor shall be responsible for supply, use and maintenance of all the equipments, tools-tackles, lifting appliances, different vehicular transport etc. and the contractor shall ensure that those are suitable for the work and are maintained in such a manner, to ensure their efficient working. The contractor must have to comply with Dock Workers, (Safety, Health and Welfare)

Act, 1986 along with associated Rules and Regulations and other safety rules (as applicable) in this regard.

8.14.2 To execute the contract, the contractor shall at their own costs and expenses provide all labour, plant, haulage, transportation of plant and equipment, all materials, stores, etc. required for efficiently carrying out and completing the work to the satisfaction of Engineer.

8.15 Operation/Business of HDC-KoPT must not be hampered:

8.15.1 During the continuance of the contract, the contractor has to execute the work such a manner, so that, any business/work of HDC-KoPT in the vicinity of worksite must not be hampered in any way.

8.15.2 The work shall be carried out in such a manner so as to enable the other contractors, if any, or the departmental employees to work, without any difficulty / hindrance etc.

8.16 Guaranteed Availability:

8.16.1 The Contractor will have to stand guarantee for the Locomotive's availability for 90% hours of respective month (Month starts from 06:00 of 1st day and ends at 06:00 hours of first day of next calendar month), in fully operational condition. In case the availability of the Locomotive falls below the said minimum guaranteed level, no daily hire charge shall be paid for the 'DEFICIT PERIOD' i.e. Non availability of Locomotive for work as per Scope of Work and in addition to the same, penalty as per clause 8.21 will be applicable.

8.16.2 The firm shall maintain 90% availability of the Locomotives by adjusting schedule maintenance time during lean period of work. There will be no requirement of alternative locomotive or standby for the period of that maintenance. However, substitute equivalent locomotive is required to be provided during P.O.H maintenance.

Formula of availability :

A - Total locomotive hours during the period including holidays = no. of days x 24.

B – Hours loss due to scheduled & plant maintenance.

C – Hours lost due to major/minor breakdown

D – Actual locomotive availability {A-(B+C)}

% of availability i.e. $D/A \times 100$ should be 90%

8.16.3 Locomotive becoming ineffective as a result of accident/ derailment on any account will continue to be shown in availability if reason for the same is attributable to HDC-KoPT.

8.16.4 If the hired Locomotive gets involved in any sort of accident / derailment taking toll of life or materials or both or creating dislocation owing to inadvertent operations or loss of alertness, the firm shall have to submit a detailed report the accident enumerating its cause to HDC-KoPT. HDC in turn shall verify the above submission, if necessary by forming a committee in which one representative of the Firm will be there. In case of Driver / Locomotive being responsible for such accident as may be opined by the committee as aforesaid.

8.16.5 The following detentions will not be attributable to the contractor

Sl. No.	Reason for detention	Remarks
1	Fuelling Time of locomotive	To be certified by TO(Rlys.) of HDC
2	Problem of Railway Track	To be certified by I & CF Division of HDC, KoPT
3	Dense Fog	To be accepted by TO(Rlys.) of HDC
4	Non-availability of Locomotive due to Derailment.	A committee to be formed, as described in the clause No. 8.10 under heading "Report of accident" in this regard. Committee will judge the matter
5	Automatic signalling failure,	To be certified by TO(Rlys.) of HDC

8.17 General Inspection: Inspection and Load testing of the Locomotive will be carried out jointly by the representative of the firm and representative of HDC-KoPT at site. Locomotive should be capable to haul minimum 5500 MT at curves and gradient prevalent in HDC site conditions, failing which the loco will be rejected. A Test run for a period of 24 hours of the offered Locomotive will be conducted at site in presence of representatives of the contractor & HDC-KoPT.

8.18 Operation Mode & Charges:

8.18.1 The Locomotive shall be ready for operation for 24 hours.

8.18.2 On Standby Mode:

The Locomotive shall be deemed to be on standby if the Locomotive is made available to the authorized officer fully ready and fit for operation with sufficient crew & fuel on board whereby the officer can order the Loco Driver to commence operation at 15 minutes notice.

8.19 Accrual of Charges:

The contractual charges are inclusive of all the expenses connected to the operation of the Locomotive including supply of manning and materials for the same. The charges shall accrue to the contractor at the rates quoted by him and accepted by HDC-KoPT.

8.20 Daily Hire Charge: Daily Hire Charge shall be paid for the day the Locomotive is in operation/standby mode as described in clauses 8.18.1 and 8.18.2 above.

8.21 Penalty:

- a) The utilization of Loco will be 18 Hrs. per day and the availability per loco will be 90%. Each loco may be allowed to carry out maintenance for 48 hrs. per month max. Although the contractor is entitled to 48 hours shutdown, in totality, as free time during a month for preventive / breakdown maintenance of locomotive but 48 hrs. Shut-down would not be given at a stretch. No unused free time in a month would be carried forward to the next month. If the

contractor takes the Loco for POH then substitute Loco will have to be provided of the same hauling capacity with prior intimation to HDC. Each Loco have to perform 18 Hrs. per day failing which Rs.500 per loco per hrs will be deducted from their running bill. Moreover, HDC, KoPT will not pay proportionate amount of the scheduled rates for the hours/days for the operation of the Locomotive, is suspended for the reason attributable to the contractor. However, Engineer of the contract may waive the penalty if he is satisfied that the reason for the default were beyond the control of contractor.

- b) If the hired locomotive gets involved in any sort of accident / derailment taking toll of life or material or both or creating dislocation owing to inadvertent operations or loss of alertness, the site –in –charge of the firm shall have to submit a detailed report of the accident enumerating its cause to HDC-KoPT. HDC-KoPT in turn shall verify the above submission, if necessary by forming a committee in which one representative of the firm will be there. In case of driver/Locomotive the committee as aforesaid may opine being responsible for such accident as, the penalty will be at actual and the same to be deducted from the party's monthly RA bill or any other sum payable.
- c) In case the offered Locomotive is not available for operation for a period of more than 7(seven) days, then a substitute Locomotive with similar/ better specification (including age of the locomotive) shall be provided as a replacement by the Contractor at no extra charge within 30 days from the time and date the offered Locomotive is inoperative / broken down. However, supply of fuel to the replacement Locomotive will be restricted only up to the limit permissible for the locomotive originally offered on hire.
- d) If the Contractor fails to deliver the offered/ substituted Locomotive as per specification given in the tender within next 30 days, in such a case Rs.5,000/- per day per Locomotive will be levied on the Contractor from the 31st day onward, and if the Locomotive is not delivered for operation within further 15 days, the same will be termed as default of the contractor and hence, Security Deposit will be forfeited.

8.22 Duration of the contract: This contract will come into effect from the date of signing of agreement and will remain valid for five years from the date of supply and acceptance of the locomotive.

8.23 The Locomotive will normally ply at manoeuvring speed but, may have to be increased or decreased as per operational requirement.

8.24 The Locomotive shall be under the operational command of Sr.Dy.Manager (Rly), HDC or his authorised representatives.

8.25 All transportation costs towards men and material will be the responsibility of the contractor.

8.26 Fuel supply: The contractor, at their cost, will print sufficient number of log books and log abstracts as per HDC-KoPT's approved format. The contractor has to maintain a daily log book for the Locomotive. All particulars of the Locomotive including movement of the Locomotive (From-To), engine's important parameters, daily running hours, Fuel (HSD) position in Fuel tank of Locomotive: Opening Balance (OB) at the beginning of shift & Closing Balance (CB) at the end of shift, fuel oil consumed / received etc. to be logged daily and to be signed by the In-Charge of the Locomotive and countersigned by authorized representative of TO(Rly)Division under Traffic Department of HDC-KoPT. A monthly log abstract to be prepared mentioning all the above stated important parameters duly signed by the In-Charge and same to be submitted with the monthly bill without which no payment will be released. The daily logbook to be retained on Locomotive / office and same to be produced

on demand. In view, HDC is an ISO 9001:2015 organization; the Locomotive will be required to follow ISO 9001: 2015 guidelines.

- 8.27 Energy conservation: The Contractor shall undertake strict measures for 'Energy Conservation' at all times. HSD will be issued by Loco Section of P&E Division under Engineering Department, HDC-KoPT upon generation of indent by the contractor and countersigned by Sr.Dy.Manager (Rly) or his authorized representative under Traffic Operations (Rlys.) Division. The Fuel would be dispensed during the period from 08:00 Hrs -17:00 Hrs on all days. The indent with date should specify quantity of fuel required (in ltrs), last date of receipt of HSD with quantity of fuel (in Ltrs), current stock of fuel (in ltrs) in Loco Fuel Tank, name & designation of indenting official of contractor, name & designation of countersigning official of TO(Rly) Division under Traffic Department. The fuel(HSD) consumption per operating hour of Locomotive should be maximum 32 Ltrs. or the actual consumption of fuel per locomotive established during test run of Locomotive (Clause no. 8.17 under 'General Inspection') or rate of consumption declared in price bid whichever is lower to be considered as consumption of fuel of the Locomotive throughout the tenure of contract. In case of consumption of fuel more than the consumption as stated above during the pendency of the contract, Contractor will be responsible for such additional consumption and the cost of extra fuel plus 19.25% overhead (along with GST, if applicable) will be recovered from their monthly RA bill.
- 8.28 Responsibility of operating the Locomotive including manning, lubricants, provisions and stores and all other supplies and services required to perform the designated duties wholly rests on the contractor and the costs of the same shall have to be taken in to account while quoting the rates.
- 8.29 Mobilization Period: On placement of Letter of Intent, the Locomotive (if old) is to be made available at Haldia and commence operation within 3 (three) months and in case of new locomotive, it will start operation within 6 (six) months.
- 8.30 Insurance:
The Locomotive, men & materials must have comprehensive insurance including persons deployed shall be insured by the contractor at his own cost during the entire contract period. Documentary evidence should be provided before commencement of work. HDC-KoPT, under no circumstances, shall be responsible for any damage to the Locomotive or for any accident to the personnel engaged by the Contractor during the operation of the locomotive or otherwise. The insurance should cover Damage/ Death of Port property / Persons.

8.31 Terms of Payment:

100% payment against daily hire charges of locomotive should be made against submitted monthly RA Bill, within 30 days, from the date of submission of clear & unambiguous bill along with locomotive log abstract, clearly depicting availability of Locomotive (in Hrs.) during the calendar month, duly certified by Sr. Dy. Manager (Rlys.) or his authorized representative, under Traffic Rlys. Division of HDC-KoPT.

Adjustments, if any, towards supply of HSD to the contractor or other charges to be recovered against electricity, rerailment etc would be done from the bill submitted by the contractor.

HSD issued to the contractor, in excess of their declared HSD consumption by Locomotive, per hour (in Ltrs.), quoted by the contractor in their price bid, would be recovered from the bill of the contractor, at the highest rate of purchase of HSD during that particular calendar month or part thereof, against which the bill has been raised by the contractor.

The contractor will be allowed to submit bill(s) only once in a calendar month.

Any claim for interest will not be entertained by HDC, KoPT with respect to any payment or balance which may be in their hands owing to any disputes between themselves and the contractor or with respect to any delay on the part of HDC, KoPT in making payment.

8.32 Tender Price, Taxes, Duties and other Statutory Levies etc.:

8.32.1 Price is to be quoted ONLINE only in the Price Bid (priced Price Schedule) should strictly as per “Price Schedule”, without any extraneous condition. There should not be any change in the Format of un-priced “Price Schedule”. Except in the Price Bid, the price must not be mentioned / disclosed in any other place of tender/offer.

8.32.2 Tender price shall be inclusive of all charges other than GST. All other incidental charges for the execution of the contract should be included.

8.32.3 Except where otherwise expressly provided, the contractor shall provide all materials, labour, plant and equipment and things necessary in connection with the contract work although everything may not be fully specified and although there may be errors and omissions in the specifications.

8.33 Price Variation:

8.33.1 The prices – other than GST, as applicable – shall be firm and fixed till completion of the contract.

8.33.2 In case of any upward variation in GST, Trustees will consider reimbursement of payment made against such increase of taxes, duties against documentary evidence of such payment made. In case of any downward revision in any taxes, duties and other statutory levies etc. and/ or withdrawal/ abolition of any taxes, duties and other statutory levies etc., the contractor will give due rebate, as would be effected by such revision or withdrawal/ abolition.

8.34 Extra Claim:

No claim for any detention / idle charges for labours, materials, equipments and machines organized by the contractor in connection with the work under the contract shall be payable by HDC-KoPT to the contractor under any circumstances whatsoever.

8.35 Extended Stay Compensation:

Extended Stay Compensation for delay in execution of the contract will not be paid.

8.36 Storage of material:

The safe storage of material shall be the responsibility of the contractor. Any kind of damage (including due to atmospheric condition), theft, pilferage etc. shall be on contractors account.

8.37 Removal of Materials on Completion:

The contractor shall, on completion of the works or as and when directed by the Employer, remove all plant, equipment, tools, materials, temporary constructions, etc. which may have accumulated during the execution of the work at their own cost and arrangement, other than those permanently used into the works, at employer’s site.

During execution of work any type of scrap generated out of HDC-KoPT’s property inside the HDC-KoPT’s premises is to be returned to HDC-KoPT.

8.38 Keeping the Site Clean:

The contractor shall maintain the site such a manner so that, pollution may not be caused due

to stacking of any scrap/surplus materials, rubbish and offensive materials etc. and hindrance in movement of man/equipment may not be happened due to stacking of such type of materials.

8.39 Photography inside the Dock Zone is prohibited:

Without taking any written permission from the appropriate authority of HDC-KoPT any kind of photography whether still or video/movie inside the Dock Zone is prohibited.

In compliance to the above, the contractor must ensure that, any photograph of the work or any part thereof or plant employed by the contractor shall not be taken either by the contractor or by any of the sub-contractor(s) employed by the contractor, without the approval of HDC- KoPT and no such photograph shall be published or otherwise circulated in any manner without the approval of HDC- KoPT. The contractor will be held responsible in case of violation of this clause.

8.40 Advertisement:

Without the written permission of HDC-KoPT the contractor shall not advertise in news paper and/or in electronic media and/or shall not display on any hoarding, fencing, building etc. in connection with this contract.

8.41 Income Tax Deduction:

Income Tax, if any, as per the relevant provision of the Income Tax Act shall be deducted at source from any payment payable to the contractor.

8.42 No Interest on account of Delayed Payments:

Any claim for interest will not be entertained by HDC-KoPT with respect to any payment or balance which may be in their hands owing to any disputes between HDC-KoPT and the contractor or with respect to any delay on the part of HDC-KoPT in making payment.

8.43 Force Majeure:

In the event of either party being rendered unable by Force Majeure to perform any obligations required to be performed by them under the Contract, the relative obligation of the party affected by such Force Majeure shall upon notification to the other party be suspended for the period during which Force Majeure event lasts. The cost and loss sustained by either party shall be borne by respective parties. The term FORCE MAJEURE as employed herein shall mean acts of God, Earthquake, War, Revolt, Riot, Fire, Floods, Sabotage and Hurricane/Cyclone, Strike excluding that of Contractor's Suppliers or Sub-contractor's Employees.

Upon the occurrence of such case and upon its termination the party alleging that it has been rendered unable as aforesaid, shall notify the other party in writing immediately but not later than 48 (forty eight) hours of the alleged beginning and ending thereof giving full particulars and satisfactory evidence in support of its claim.

8.44 Indemnity:

8.44.1 Notwithstanding that all reasonable and proper precautions may have been taken by the contractor at all times during the progress of the work, the contractor shall nevertheless be wholly responsible for all damages, whether to the works themselves or to any other property of HDC or to the lives, persons, property of others during the

progress of the work.

8.44.2 In case any damage occurs to the existing structure due to the contractor's operation, the same shall be made good by the contractor at his own risk and cost. The areas, which are likely to be unsafe for use, shall be barricaded and all necessary precautionary measures, like displaying notices, shall be taken by the contractor, during commissioning and testing of equipment at site.

8.44.3 The contractor has to submit the Indemnity bond as per Format, enclosed in the General Conditions of Contract of Kolkata Port Trust, May 1993

8.45 Workmen's Compensation:

The contractor shall indemnify HDC in the event of HDC being held liable to pay compensation for injury to any contractor's servants or workmen under the Indian Workmen's Compensation Act, 1923, as amended from time to time, and shall take out an insurance policy covering all risks under the Act and shall keep the same renewed, from time to time as necessary, for the duration of the contract and produce the same before completion of work to the General Manager (Engg.).

8.46 HDC-KoPT's Lien:

HDC-KoPT shall have a lien on and over all or any money that may become due and payable to the contractor under this contract or any other contract or from any amount lying with them or under their control and in respect of any debt or sum that may become due and payable by HDC- KoPT to the contractor, either alone or jointly with another or other and either under this contract or under any other contracts or transaction of any nature whatsoever HDC-KoPT and the contractor.

8.47 Employer's Entitlement to Terminate:

8.47.1 The Employer shall be entitled to terminate the Contract, at the Employer's convenience, at any time after giving 56 days prior notice to the Contractor, with a copy to the Engineer's of the Contract Representative, and returning the performance security.

8.47.2 In the event of such termination, the Contractor shall:

- a) cease all further work, except for such work as may be necessary and instructed by the Employer's Representative for the purpose of making safe or protecting those parts of the Works already executed and any work required to leave the site in a clean and safe condition.
- b) hand over all Construction Documents, Plant and Materials for which the Contractor has received payment.
- c) hand over those other parts of the Works executed by the Contractor up to the date of termination and
- d) remove all Contractor's Equipment, which is on the Site and repatriate all his staff and labour from the site.

Any such termination shall be without prejudice to any other right of the Contractor under the Contract.

8.47.3 In the event of such termination, the Employer Representative shall determine the value

of the work done and:

- a) The amounts payable for any work carried out for which a price is stated in the Contract;
- b) the Cost of Plant and Materials ordered for the Works which have been delivered to the Contractor, or of which the Contractor is liable to accept delivery; such Plant and Materials shall become the property of (and be at the risk of) the Engineer's of the Contract when paid for by the Engineer's of the Contract and the Contractor shall place the same all the Engineer's of the Contract disposal;
- c) any other Cost or liability, which in the circumstances was reasonably incurred by the Contractor in the expectation of completing the Works;
- d) the reasonable Cost of removal of Temporary Works and Contractor's Equipment from the site and the return of such items to the Contractor's works (or to any other destination at no greater cost) and
- e) the reasonable cost of repatriation of the Contractor's staff and labour employed wholly in connection with the Works at the date of such termination;
- f) return of HDC's plant, equipment, crane(s), machineries tools and tackles etc. which are deployed for the execution of work in good running condition and make payment accordingly.

8.48 Settlement of Disputes:

If a dispute of any kind whatsoever arises between the Employer and the Contractor in connection with or arising out of the contract or the execution of the works, the same shall be dealt as per relevant provisions of the General Conditions of Contract and THE ARBITRATION AND CONCILIATION (AMENDMENT) ACT, 2015 and any statutory amendment thereof.

8.49 Outbreak of War:

If during the continuance of the contract, there shall be an outbreak of war (whether war is declared or not) in any part of the world which, whether financially or otherwise materially affects the execution of the works, the contractor shall, unless and until the contract is terminated under the provision in this clause contained use his best endeavours to complete the execution of the works provided always that either the Employer or the Contractor shall be entitled at any time after such outbreak of war to terminate this Contract by giving notice in writing to the other and upon such notice being given this contract shall terminate but without prejudice to the rights of either party in respect of any antecedent breach.

8.50 Applicability of Laws on the Contract:

The contract shall be governed by all relevant Indian Acts as applicable only within the jurisdiction of the Honourable Calcutta High Court, India, including the following Acts.

- a) The Indian Contract Act, 1872.
- b) The Major Port Trust Act, 1963.
- c) The Workmen's Compensation Act, 1923.
- d) The Minimum Wages Act, 1948.

- e) The Contract Labour (Regulation & Abolition) Act, 1970.
 - f) Dock Workers (Safety, Health & Welfare) Act 1987.
 - g) The Indian Arbitration Act (1940) (in the case of definite Arbitration Agreement only).
 - h) The Arbitration and Conciliation (Amendment) Act, 2015.
 - i) Indian Electricity Rules, 1956 with latest amendments.
 - j) Other Acts/Rules/Regulations which may be applicable to the contract during execution of the same.
- 8.51 Locomotive driver Profiles: Contractor should submit the profiles of Locomotive Driver as per Format, Annexure- XVIII. The Training Certificates along with the Health Certificates of the Locomotive Drivers to be produced along with the Techno- commercial Bid.
- 8.52 Liquidated Damage :
- If the contractor fails to commence the work within 3 (three) months for old Locomotives and 6 (six) for new Locomotives from the date of placement of LOI /Work order, the contractor shall pay as compensation (Liquidated Damage) the trustees not as a penalty, as per the following:
- Liquidated Damage @ ½% of the contract price (excluding GST), for every week or part thereof beyond the scheduled period, will be deducted from the contractor's bill. However, the amount of such compensation shall not exceed 10% of the total contract value (excluding GST).
- 8.53 Default:
- Occurrence of any one and more of the following will be considered as event of default:
- a) If the contractor does not perform the contractual obligations.
 - b) If availability of the Locomotives are not maintained at 90% for 3 consecutive months.
- In the event of occurrence of default, HDC may proceed for terminating the contract by invoking the termination clause of GCC.
- 8.54 Integrity Pact:
- The bidder will have to submit on the plain paper, the duly filled-in, signed and stamped (on each page) Integrity Pact enclosed with the tender document along with their techno-commercial bid (Cover – I) of their offer, failing which their offer will not be considered any further. Names of the Independent External Monitors (IEMs) for this will be provided, if necessary, after the pre-bid meeting.
- 8.54 Other Terms and Conditions:
- Notwithstanding anything contained herein, the contract will generally be guided by the General Conditions of Contract (GCC) of Kolkata Port Trust, duly approved by the Board of Trustees in May, 1993, as well as the Major Port Trust Act, 1963, and subsequent amendments thereof, if any, unless otherwise specified.

[DOCUMENT TO BE DOWNLOADED, FILLED IN, SIGNED, SCANNED AND UPLOADED]

UNPRICED
PREAMBLE OF PRICE SCHEDULE

- 1 Price is to be quoted ONLINE only in the Price Bid (priced Price Schedule) should strictly be as per “**Price Schedule**”, **without any extraneous condition**. There should not be any change in the Format of un-priced “**Price Schedule**”. Except in the Price Bid, the price must not be mentioned / disclosed in any other place of tender/ offer.
- 2 Tender price shall be inclusive of all charges other than GST. All other incidental charges for the execution of the contract should be included in the price quoted.
- 3 GST as applicable will be paid extra.
- 4 Except where otherwise expressly provided, the contractor shall provide all materials, labour, plant and equipment and things necessary in connection with the contract work although everything may not be fully specified and although there may be errors and omissions in the specifications.
- 5 GST will be applicable on the amount of Liquidated Damage as well as on other recovery i.e. damage, penalty, land rent, electricity charges etc. as applicable, from the contractor.
- 6 Other than the GST, quoted price should be remain firm during the tenure of the contract.
- 7 Work under **Price Schedule** is to be followed as per ‘Scope of Work’, Special Conditions of contract etc. as mentioned in the Tender Document.
- 8 All consumable etc. will be under the scope of the contractor.
- 9 High Speed Diesel (HSD) for operation of Locomotive will be provided by HDC-KoPT.

**Signature of the Tenderer
with Official Seal**

ANNEXURE – I**[DOCUMENT TO BE DOWNLOADED, FILLED IN, SIGNED, SCANNED AND UPLOADED]****Hiring of 2(two) nos diesel electric/ diesel hydraulic locomotive each having hauling capacity 5500MT and power 1400HP and above on wet lease basis for a period of 5(five) years for Haldia****Dock Complex, Kolkata Port Trust.****UNPRICED PRICE SCHEDULE**

Sl. No.	Item Description	Unit In Indian Rupees (INR)	Quantity	Total Price In Indian Rupees (INR)	Remarks
a	Daily Hire Charge per Locomotive		02		NOT TO QUOTE HERE [To be quoted by the bidder in the Price Schedule in the e-platform only].
	i)1 st year				
	ii)2 nd year				
	iii)3 rd year				
	iv)4 th year				
	v)5 th year				
b	HSD consumption per Locomotive per Hour	In Ltrs.	02		NOT TO QUOTE HERE [To be quoted by the bidder in the Price Schedule in the e-platform only].
c	No. of hours run locomotive per day	In Hours	18	-----	Not to be quoted by the bidder. HDC has considered its value as 18 (eightteen) hours.
d	Cost of HSD per Litre	In Indian Rupees (INR)	-----	-----	Not to be quoted by the bidder. HDC has considered its value as Rs 64.12 per Litre.
	Gross Total Cost/ Amount (in Rs)				NOT TO QUOTE HERE

Signature of the
Tenderer
with Official Seal

ANNEXURE – II**SAMPLE FOR QUOTING PRICE PART**

THIS IS A SAMPLE FOR QUOTING PART – II (PRICE BID) OF INSTANT TENDER. BIDDERS ARE REQUESTED NOT TO QUOTE HERE. THE PRICE PART IS TO BE QUOTED ONLINE ONLY.

PRICE SCHEDULE

Sl. No.	Item Description	Unit In Indian Rupees (INR)	Quantity	Total Price In Indian Rupees (INR)	Remarks
a	Daily Hire Charge per Locomotive		02		NOT TO QUOTE HERE [To be quoted by the bidder in the Price Schedule in the e-platform only].
	i)1 st year				
	ii)2 nd year				
	iii)3 rd year				
	iv)4 th year				
	v)5 th year				
b	HSD consumption per Locomotive per Hour	In Ltrs.	02		NOT TO QUOTE HERE [To be quoted by the bidder in the Price Schedule in the e-platform only].
	Gross Total Cost/ Amount (in Rs)				NOT TO QUOTE HERE

**Signature of the Tenderer
with Official Seal**

NOTE

- Evaluation will be done on the basis of 'Gross Total Cost/ amount' (in Rs) including all charges but excluding GST. GST as applicable will be paid extra as actual.
- Reference Evaluation Criteria as at Clause No. 5.21 and Un-priced Price Schedule, the bidder is not required to quote against number of hours run by locomotive per day. HDC has considered its value as 18 (eightteen) hours.
- Reference Evaluation Criteria as at Clause No. 5.21 and Un-priced Price Schedule, the bidder is not required to quote against cost of HSD per Litre. HDC has considered its value as Rs. 64.12 per Litre.
- GST will be paid extra on submission of GST complaint bill mentioning GSTIN of both of the contractor and KoPT.
- Before submitting Price Bid, the bidders are advised to read, understand and accept all the Terms & Conditions of the instant tender including Price Schedule, Special Conditions of Contract, Scope of Work, General Conditions of Contract, May 1993 of Kolkata Port Trust and all subsequent Addenda (as applicable).

Locomotive Driver Profile

Sl. No.	Name	Age of Locomotive Driver	* Training Particulars		Experience in No. of years	Type of Loco operated	*General Health Certificate	
			Name of organisation from where Loco Driver trained.	Duration of Training			Eye sight	Colour blindness

Note: *Contractor should submit the Training certificate of Locomotive drivers & General Health certificate

Annexure- IV**Technical Information of Locomotive**

Sl. No.	General Characteristics	Data to be furnished
1	Class of Locomotive	
2	Service	
3	Type of Locomotive	
4	Transmission	
5	Type of Transmission in case of Diesel Electric Loco	
6	Governor	
7	Type of Control System	
8	Gauge	
9	Installed Engine Horse Power	
10	Traction Horse Power	
11	Hauling Capacity at start	
12	Hauling Capacity at running	
13	Nominal weight of Locomotive in working condition	
14	Axle Arrangement	
15	Maximum Operating Speed	
16	Minimum Continuous Speed	
17	Maximum Tractive Effort at start	
18	Minimum continuous Tractive Effort at shunting speed	
19	Diesel Engine Model & Make	
20	SFC gm/hp/ hr.	
21	Consumption at Idling	
22	Fuel Tank Capacity	
23	Bogie	
24	Loco Brake	
25	Train Brake	
26	Any other information's	

SECTION – IX
BIDDING FORMS

BIDDING FORM – I

MINIMUM ELIGIBILITY CRITERIA

[To be filled up and uploaded, duly signed & stamped]

(I) ANNUAL TURNOVER STATEMENT

The annual turnover of(name of the bidding firm), **for the years 2016-17, 2017-18 and 2018-19** , based on the **Balance Sheets and Profit & Loss Accounts**, are given below:

Financial years	Turnover (as per Auditor's Report / Balance Sheet) [in Rs.]
2016-2017	
2017-2018	
2018-2019	
<i>Total</i>	
<i>Average Annual Turnover</i>	

SIGNATURE OF CHARTERED ACCOUNTANT ::

NAME OF CHARTERED ACCOUNTANT ::

(COMPANY SEAL)

NOTE : Copy of Balance Sheets and Profit & Loss Accounts enclosed with sealed & signed.

(II) TECHNICAL EXPERIENCE

Sl. No.	Contract No. / Order No. and date	Name of the Employer and Place of work	Contract value [in Rs.]	Date of completion of work	Page number(s) of reference / supporting document (s), uploaded.

LIST OF DOCUMENTS

[To be filled up and uploaded, duly signed & stamped]

	Requirement	Submitted/Not submitted [Put ✓ if submitted & X if not submitted]	Validity/ For the month of
a)			
i)	GST Registration Certificate.	<input type="text"/> If submitted, Page Number(s):	Not applicable.
ii)	Document in support of non-applicability.	<input type="text"/> If submitted, Page Number(s):	Not applicable.
b)			
i)	Profession Tax Clearance Certificate (PTCC) <u>OR</u> Profession Tax Payment Challan (PTPC)	<input type="text"/> If submitted, Page Number(s):	
		<input type="text"/> If submitted, Page Number(s):	
ii)	Document in support of non-applicability.	<input type="text"/> If submitted, Page Number(s):	Not applicable.
c)			
i)	Certificate for allotment of EPF Code No.	<input type="text"/> If submitted, Code No.: Page Number(s):	Not applicable.
ii)	Latest EPF Payment Challan.	<input type="text"/> If submitted, Page Number(s):	
iii)	Document in support of non-applicability.	<input type="text"/> If submitted, Page Number(s):	Not applicable.

d)				
i)	Registration Certificate of ESI Authority.	<input type="text"/>	If submitted, Code No.: Page Number(s):	Not applicable.
ii)	Affidavit, Declaration and Indemnity Certificate.	<input type="text"/>	If submitted, Page Number(s):	Not applicable.
e)	PAN Card	<input type="text"/>	If submitted, PAN No.: Page Number(s):	Not applicable.
f)	MSME / MSE / DIC / SSI / NSIC certificate	<input type="text"/>	If submitted, Page Number(s):	
g)	Power of Attorney	<input type="text"/>	If submitted, Page Number(s):	Not applicable.
h)	Integrity Pact	<input type="text"/>	If submitted, Page Number(s):	
i)	Trade licence	<input type="text"/>	If submitted, Page Number(s):	Not applicable.
j)	H P Certificate	<input type="text"/>	If submitted, Page Number(s):	

BIDDING FORM-III

GENERAL INFORMATION OF THE BIDDER

[To be filled up and uploaded, duly signed & stamped]

1.	Bidder's Legal Name (IN CAPITAL LETTERS)		
2.	a)	Country of registration.	
	b)	Year of registration.	
	c)	Legal address in country of registration.	
	d)	URL of the bidder.	
3.	Information regarding bidder's authorised representative(s) / contact person(s)		
	a)	Name(s)	
	b)	Address(es)	
	c)	Telephone number(s)	
	d)	Facsimile number(s)	
	e)	Electronic mail address	

4.	a)	Address of the branch office, if any	
	b)	Name of the contact person at branch office	
	c)	Telephone number(s)	
	d)	Facsimile number(s)	
	e)	Electronic mail address	
5.	Whether the bidder is a Proprietorship Firm or Partnership Firm or Limited Company .		
6.	Details of the Banker(s) :		
	a)	Name of the Banker(s) in full.	
	b)	Address(es) of the Banker(s)	
	c)	Telephone number(s)	
	d)	Facsimile number(s)	
	e)	Electronic mail address	
	f)	Name(s) of the contact person(s)	
7.	Bank details for ECS payment :		
	a)	Bank Account number.	
	b)	Name of the bank.	
	c)	Name of the branch.	
	d)	Address of the branch.	
	e)	RTGS code of the branch.	
	f)	MICR code of the branch.	

8.	Income Tax and Goods & Services Tax (GST) details (if applicable):		
	a)	Permanent Account Number (PAN)	
	b)	GST Registration Number (GSTIN)	
9.	Employees' Provident Fund (EPF) Code No.		
10.	Employees' State Insurance (ESI) Code No.		
11.	Mainlines of business		

BIDDING FORM-IV

FORMAT FOR DECLARATION

[To be printed on the bidder's Letter Head and uploaded after signing]

To,
General Manager (Engg.)
Haldia Dock Complex ;
Kolkata Port Trust.

Name of Work: Hiring of 2(two) nos diesel electric/ diesel hydraulic locomotive each having hauling capacity 5500MT and power 1400HP and above on wet lease basis for a period of 5(five) years for Haldia Dock Complex, Kolkata Port Trust.

Tender No. : SDM(P&E)T/51/2019-2020

E-Tender ID.: 2019_KoPT_496661

I, the authorized signatory of the (Name of the Company /Firm) do hereby declare / confirm that :

* I / We have not been **debarred, banned** or **delisted** by any Government or Quasi-Government Agencies or Public Sector Undertakings in India.

I / we have not made any **addition / modification / alteration** in the **Bidding Documents** (including Bidding Forms & Contract Forms) hosted in the websites.

The prices have been quoted in the Price Bid, electronically, through the website <https://eprocure.gov.in/eprocure/app> only and no direct or indirect mention of the prices has been made by me / us anywhere else in my / our bid.

No extraneous conditions (like “Not Applicable”, conditional rebate, etc.), regarding the Price Bid, have been mentioned anywhere in our bid.

**Signature of authorised person of the
bidder
(with office seal)**

BIDDING FORM-V

FORM OF TENDER

[To be printed on the bidder's Letter Head and uploaded after signing]

To,
General Manager (Engg.)
Haldia Dock Complex ;
Kolkata Port Trust.

Name of Work : *Hiring of 2(two) nos diesel electric/ diesel hydraulic locomotive each having hauling capacity 5500MT and power 1400HP and above on wet lease basis for a period of 5(five) years for Haldia Dock Complex, Kolkata Port Trust.*

Tender No. : SDM(P&E)T/51/2019-2020

E-Tender ID.: 2019_KoPT_496661

I/We (Name of the bidder)of
.....(Address of the bidder) having
examined the site of work, inspected the drawings and read the **bidding documents**
[including **all addenda / corrigenda**, issued i.e. {insert Addendum /
Corrigendum / Extension No(s)}], hereby bid and undertake to execute & complete all the work
related to **“Hiring of 2(two) nos diesel electric/ diesel hydraulic locomotive each having
hauling capacity 5500MT and power 1400HP and above on wet lease basis for a period of
5(five) years for Haldia Dock Complex, Kolkata Port Trust.”**, required to be performed in
accordance with the **Technical Specification, General Conditions of Contract (GCC),
Special Conditions of Contract (SCC)**, etc., at the **rates & prices** quoted in the **Price Bid Bid**
[submitted electronically, through the website <https://eprocure.gov.in/eprocure/app>] within
.....month from the date of order to commence the work , in the event of our bid
being accepted.

I/we also undertake to enter into a **Contract Agreement** in the form hereto annexed [Section
XI] with such alterations or additions thereto, which may be necessary to give effect to the
acceptance of the bid and incorporating such **Technical Specification, General Conditions of
Contract (GCC), Special Conditions of Contract (SCC)**, etc. and I/we hereby agree that until
such **contract agreement** is executed, the said **Technical Specification, General Conditions
of Contract (GCC), Special Conditions of Contract (SCC)**, etc. and the bid, together with the
acceptance thereof in writing, by or on behalf of the Employer, shall be the contract.

I / We requiredays preliminary time to arrange and procure the
materials, tools & tackles, etc. required by the work, from the date of acceptance of bid, before
I/we could commence the work.

Hiring of 2(two) nos diesel electric/ diesel hydraulic locomotives for Haldia Dock Complex, Kolkata Port Trust

I / We have deposited **Rs. 14,25,200.00 (Indian Rupees: Fourteen lakh twenty five thousand two hundred)** only as Earnest Money, to Haldia Dock Complex, through DD/Banker Cheque in favour of **Kolkata Port Trust** on any Scheduled/Nationalized Bank payable at **Haldia**, otherwise their offer will be summarily rejected. Copy of the DD/Banker's Cheque should be uploaded. In case the said Earnest Money is not deposited by the bidder, the respective bid will be summarily rejected, treating the same as non-responsive.

I/We agree that the period for which the bid shall remain open for acceptance, shall not be less than **days**, from the last date of submission of bid.

(Signature of authorised person of the bidder)

WITNESS:

Signature:

Name : _____

Name:
(In Block Letters)

Designation : _____

Address:

Date : _____

Occupation:

(Office Seal)

SECTION - X

CHECKLIST

Before scanning and upload the following required documents, all pages are to be signed by a person duly authorised to sign on behalf of the bidder, and are to be embossed with their official seal, owing responsibility for their correctness / authenticity. All pages of the aforesaid documents should be serially marked.

*The offered prices would be given in the “**Price Bid**” (Part-II) electronically, through the website <https://eprocure.gov.in/eprocure/app> only.*

Sl. No.	Particulars	Submitted/ Not submitted [Put √ if submitted and put X if not submitted]	If submitted, <u>page numbers</u>
1.	Filled up checklist.	<input type="checkbox"/>	<input type="checkbox"/>
2.	Proof of Bid Document Fee .	<input type="checkbox"/>	<input type="checkbox"/>
3.	Proof of Earnest Money Deposit (EMD) .	<input type="checkbox"/>	<input type="checkbox"/>
4.	Certificate of getting benefit by MSME / SSI / NSIC for exemption of Bid Document Fee and Earnest Money ,	<input type="checkbox"/>	<input type="checkbox"/>
5.	Bidding Forms		
	i) Bidding Form – I	<input type="checkbox"/>	<input type="checkbox"/>
	ii) Bidding Form - II	<input type="checkbox"/>	<input type="checkbox"/>

Sl. No.	Particulars	Submitted/ Not submitted [Put √ if submitted and <u>put X if not submitted</u>]	If submitted, <u>page numbers</u>
	iii) Bidding Form – III	<input type="checkbox"/>	<input type="checkbox"/>
	iv) Bidding Form - IV	<input type="checkbox"/>	<input type="checkbox"/>
	v) Bidding Form – V	<input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/>

SECTION – XI
CONTRACT FORMS

FORM OF AGREEMENT

(To be submitted on Non- Stamp Paper of worth not less than INR 50.00)

CONTRACT NO. : GM(E)/...../ /AGMT/...../.....

TENDER REFERENCE:

Tender No. : SDM(P&E)T/51/2019-2020

E- Tender ID. : [2019_KoPT_496661](#) for Hiring of 2(two) nos diesel electric/ diesel hydraulic locomotive each having hauling capacity 5500MT and power 1400HP and above on wet lease basis for a period of 5(five) years for Haldia Dock Complex, Kolkata Port Trust.

ORDER REFERENCE: / / /O-... dated

**This agreement made this day of, Two thousand,
BETWEEN**

The Board of Trustees for the Port of Kolkata, a body corporate -- constituted by the Major Port Trust Act, 1963 (hereinafter called the ‘Trustees’, which expression shall unless excluded by or repugnant to the context be deemed to include their successors in office) of the one part

AND

..... (hereinafter called the “**Contractor**”, which expression shall unless excluded by or repugnant to the context be deemed to include its heirs, executors, administrators, representatives and assignees or successors in office) of the other part

[Together hereinafter the “Parties”]

WHEREAS

The Trustees are desirous that certain works should be executed by the Contractor, viz. “Hiring of 2(two) nos diesel electric/ diesel hydraulic locomotive each having hauling capacity 5500MT and power 1400HP and above on wet lease basis for a period of 5(five) years for Haldia Dock Complex, Kolkata Port Trust “ and have accepted a Bid / offer by the Contractor for execution, completion and maintenance of such works, including remedying any defects therein, during the Defect Liability Period.

NOW THIS AGREEMENT WITNESSETH as follows :

1. In this agreement words and expression shall have the same meanings as are respectively assigned to them in **Conditions of Contract** hereinafter referred to.
2. The following documents shall be deemed to form and be read and construed as part of this agreement :
 - a) The said bid / offer.
 - b) The Letter of Acceptance of the bid /offer [vide Order No./ /...../... dated]
 - c) The Conditions of Contract and **Technical Specification** [all terms and conditions of Tender No. SDM(P&E)T/51/2019-2020].
 - d) Addenda [Please insert Addenda Nos.]
 - e) “Price Comparative Statement”, showing the prices quoted (electronically, through the website <https://eprocure.gov.in/eprocure/app>) by the Successful Bidder, in the Price Bid.
 - f) All correspondence, by which the contract is added, amended, varied or modified, in any way, by mutual consent.
3. In Consideration of the payments to be made by the Trustees to the Contractor as hereinafter mentioned, the Contractor hereby covenant with the Trustees to execute, complete & maintain the work, including remedy any defects therein (during the Defect Liability Period”), in conformity with the provisions of the Contract, in all respects.

IN WITNESS whereof the parties hereto have caused this Agreement to be executed the day and year first before written.

The parties hereunto affixed their respective Common Seals (or have hereunto set their respective hands and seals).

For and on behalf of

For and on behalf of

HALDIA DOCK COMPLEX
KOLKATA PORT TRUST
(TRUSTEES)

(CONTRACTOR)

SEAL

SEAL

In presence of

In presence of

INDEMNITY BOND

[To be submitted on Non-judicial Stamp Paper of worth not less than INR .50.00, **duly notarised**]

Reference:

Order No.:/...../...../ ... dated for **Hiring of 2(two) nos diesel electric/ diesel hydraulic locomotive each having hauling capacity 5500MT and power 1400HP and above on wet lease basis for a period of 5(five) years for Haldia Dock Complex, Kolkata Port Trust.**

**Senior Deputy Manager (P&E),
Haldia Dock Complex ;
Operational Administrative Building (1st Floor) ;
Chiranjibpur, P.O.: Haldia ;
Dist. : Purba Medinipur ,
West Bengal, India
PIN : -721 604**

This deed of **Indemnity Bond** made on by having their office at (hereinafter called “the **Contractor**”).

Whereas the General Manager (Engineering), **Haldia Dock Complex, Kolkata Port Trust**, Dist.: Purba Medinipur, West Bengal (hereinafter call “the **Engineer**”) has placed an order, bearing no. dated and some materials, spare parts, components, sub-assemblies, etc. are required to be taken **outside of Haldia Dock Complex** premises for some specialized servicing, repairing, overhauling, etc. or **fault diagnosis & remedial measures** by the Contractor, as per the terms & conditions mentioned in the said order, and which have been mutually agreed upon by the parties hereto,

AND

Whereas in consideration of the said contract, the Contractor has agreed to execute an **Indemnity Bond** for the safe custody on receipt of the said materials, spare parts, components, sub-assemblies, etc., from the **Engineer** until the **completion of servicing / overhauling / repairing / remedial work** and returning back to the Engineer as hereinafter appearing.

Now this deed witnessed that in pursuance of the said agreement and in the premises, the Contractor agrees to indemnify Engineer and at all the terms, to hold themselves liable for all the **damages, loss** due to **pilferage / fire** or negligence on the part of the Contractor or their employees, agents and representatives or from whatever cause, with all losses, interest charges and expenses incurred by the said Engineer on account of the material(s) issued to the Contractor,

Hiring of 2(two) nos diesel electric/ diesel hydraulic locomotives for Haldia Dock Complex, Kolkata Port Trust

AND

It is in terms of the said contract and this **Deed of Indemnity**, the material(s) issued free to the Contractor for servicing / overhauling / repairing / **fault diagnosis & remedial work**, thereon shall be deemed to be the **property of the Engineer**.

It is hereby agreed that the Contractor shall be liable for all injury, losses and damages that may be caused to the, from whatever cause and further that the Contractor shall not part with or delivery possession of the said material(s) to any other party or person, save in compliance with and in performance & provision of contract in respect of which this **Indemnity Bond** is executed, the Contractor having undertaken to delivery the said material (s) in all respect in compliance with the terms of the contract.

This bond and the trust hereby created shall remain valid and binding on the Contractor till such time as the above said order has been fully and finally executed and Contractor has delivered the complete thereon to the Engineer under the terms of the contract.

For and on behalf of (name of the Contractor), under the common seal of the company.

WITNESS

(Signature of the authorised person on behalf of the Contractor)

(Signature)

Name :

Name :

Designation

Designation

Signed in my presence and identified by me

BANK GUARANTEE FOR PERFORMANCE GUARANTEE

[To be submitted on Non-judicial Stamp Paper of worth not less than INR 50.00]

To
The Board of Trustees,
for the Port of Kolkata.

BANK GUARANTEE NO..... DATE.....

Name of Issuing Bank.....

Name of Branch.....

Address.....

In consideration of the **Board of Trustees for the Port of Kolkata**, a body corporate – duly constituted under the Major Port Trusts Act, 1963 (Act 38 of 1963), (hereinafter referred to as “**The Trustees**”) having awarded to Shri / Messrs a Proprietary/ Partnership/Limited / Registered Company, having its Registered Office at (hereinafter referred to as “**The Contractor**”, which expression shall unless repugnant to the context or meaning thereof include its successors, administrators, executors and assigns), a **CONTRACT** by issue of Trustees’ Work Order No. //...../ -..... dated for “**Hiring of 2(two) nos diesel electric/ diesel hydraulic locomotive each having hauling capacity 5500MT and power 1400HP and above on wet lease basis for a period of 5(five) years for Haldia Dock Complex, Kolkata Port Trust**” and the same having been unequivocally accepted by the Contractor resulting in a **CONTRACT** bearing No. and the Contractor having agreed to provide a **BANK GUARANTEE** from a Nationalized / Scheduled Bank of India, in prescribed format for **Rs..... (Indian Rupees)** only, for the faithful and satisfactory performance of the entire contract .

We, ... Branch, Kolkata/Haldia, do, on the advice of the Contractor, hereby undertake to indemnify and keep indemnified the Trustees to the extent of the said sum of **Rs..... (Indian Rupees)** only. We, Branch, Kolkata/Haldia, further agree that if a written demand is made by the Trustees through any of its officials for honouring the Bank Guarantee constituted by these presents, we, Branch, Kolkata/Haldia, shall have no right to decline to cash the same for any reason whatsoever and shall cash the same and pay the sum so demanded to the Trustees within a week from the date of such demand by an A/c Payee Banker's Cheque drawn in favour of "Kolkata Port Trust", without any demur. Even if there be any dispute between the Contractor and the Trustees, this would be no ground for us, (Name of Bank), Branch, Kolkata/Haldia, to decline to

Hiring of 2(two) nos diesel electric/ diesel hydraulic locomotives for Haldia Dock Complex, Kolkata Port Trust

honour the Bank Guarantee in the manner aforesaid. The very fact that we,Branch, Kolkata......./Haldia, decline or fail or neglect to honour the Bank Guarantee in the manner aforesaid, shall constitute sufficient reason for the Trustees to enforce the Bank Guarantee unconditionally without any reference, whatsoever, to the Contractor.

2. We, ' Branch, Kolkata /Haldia, further agree that a mere demand by the Trustees at anytime and in the manner aforesaid, is sufficient for us,Branch, Kolkata /Haldia, to pay the amount covered by this Bank Guarantee in full and in the manner aforesaid and within the time aforesaid without reference to the Contractor and no protest by the Contractor, made either directly or indirectly or through court, can be valid ground for us, Branch, Kolkata/Haldia, to decline or fail or neglect to make payment to the Trustees in the manner and within the time aforesaid.
3. We,..... Branch, Kolkata/Haldia, further agree that the Bank Guarantee herein contained shall remain in full force and effect, during the period that is taken for the due performance of the said contract by the Contractor and that it shall continue to be enforceable till all the dues of the Trustees under and/or by virtue of the terms and conditions of the said contract, have been fully paid and its claim satisfied and/or discharged in full and/or till the Trustees certify that the terms and conditions of the said contract have been fully and properly observed/fulfilled by the Contractor and accordingly, the Trustees have discharged the Bank Guarantee, subject however, that this guarantee shall remain valid upto and inclusive ofday of.....200.....and subject all so that the provision that the Trustees shall have no right to demand payment against this guarantee after the expiry of 6 (six) calendar months from the expiry of the aforesaid validity period upto.....or any extension thereof made by us,Branch, Kolkata......./Haldia, in further extending the said validity period of this Bank Guarantee on Non-judicial Stamp Paper of appropriate value, as required / determined by the Trustees, only on a written request by the Trustees to the Contractor for such extension of validity of this Bank Guarantee.
4. We, Branch, Kolakta /Haldia, further agree that, without our consent and without affecting in any manner our obligations hereunder, the Trustees shall have the fullest liberty to vary from time to time any of the terms and conditions of the said contract or to extend the time for full performance of the said contract including fulfilling all obligations under the said contract by the Contractor or to postpone for any time or from time to time any of the powers exercisable by the Trustees against the Contractor and to forbear or enforce any of terms and conditions relating to the said contract and We,.. .. .
Branch, Kolkata... .. /Haldia, shall not be relieved from our liability by reason of any such variation or extension being granted to the Contractor or for any forbearance, act or commission on the part of the Trustees or any indulgence by the Trustees to the Contractor or by any such matter or thing of whatsoever nature, which under the law relating to sureties would, but for this provision, have effect of so

relieving us,Branch, Kolkata /Haldia.

5. We, Branch, Kolkata /Haldia do also agree that the Trustees at their option shall be entitled to enforce this Guarantee against us Branch, Kolkata /Haldia as principal debtor in the first instance without producing against the Contractor and notwithstanding any security or other guarantee that the Trustees may have in relation to the Contractor's liabilities.
6. We,..... :-Branch, Kolkata... .. /Haldia, lastly undertake not to revoke this Bank Guarantee during its currency except with the previous consent of the Trustees in writing.

SIGNATURE.....

NAME.....

DESIGNATION.....

(Duly constituted attorney for and on behalf of)

BANK. , . . .

BRANCH.....

KOLKATA... .. /HALDIA

(OFFICIAL SEAL OF THE BANK)

Kolkata Port Trust
Haldia Dock Complex
CERTIFICATE OF COMPLETION OF WORK

Contractor : _____

Address : _____

Date of completion : _____

Dear Sir,

Subject : Hiring of 2(two) nos diesel electric/ diesel hydraulic locomotive each having hauling capacity 5500MT and power 1400HP and above on wet lease basis for a period of 5(five) years for Haldia Dock Complex, Kolkata Port Trust

Reference : i) **Work Order No.:**/...../...../... dated
.....
ii) **Contract No./ Agreement No. :**/...../...../ AGMT /
...../

This is to certify that the above work which was carried out by you is, in the opinion of the undersigned, complete in every respect on the _____ day of _____ 20____, in accordance with terms of the contract and you are required to maintain the work in accordance with **GCC Clause No. 7.67** of the General Conditions of Contract and under provisions of the contract.

(Signature of the Engineer/Engineer's Representative)

Name:

Designation:

Date:

(OFFICIAL SEAL)

Hiring of 2(two) nos diesel electric/ diesel hydraulic locomotives for Haldia Dock Complex, Kolkata Port Trust

(“NO CLAIM CERTIFICATE” FROM CONTRACTOR)

[To be submitted on Bidder's Letter Head]

General Manager(Engineering)

Haldia Dock Complex ;

Kolkata Port Trust.

Engineering Department

Jawahar Tower Complex ;

P.O.: Haldia Township;

Dist.: Purba Medinipur ;

PIN: -721607

West Bengal, India.

Dear Sir,

Subject : Hiring of 2(two) nos diesel electric/ diesel hydraulic locomotive each having hauling capacity 5500MT and power 1400HP and above on wet lease basis for a period of 5(five) years for Haldia Dock Complex, Kolkata Port Trust

Reference : i) **Work Order No.:**/...../...../... dated

ii) **Contract No./ Agreement No. :**/...../...../ AGMT /
...../

I/We do hereby declare that I/we have received full and final payment from Haldia Dock Complex, Kolkata Port Trust, for the execution of the subject work, and I/we have no further claim against Haldia Dock Complex, Kolkata Port Trust in respect of the above mentioned job.

Yours faithfully,

(Signature of Contractor)

Date :

Name of Contractor :

Address :

(OFFICIAL SEAL OF THE CONTRACTOR)

Hiring of 2(two) nos diesel electric/ diesel hydraulic locomotives for Haldia Dock Complex, Kolkata Port Trust

Integrity Pact

Between

Kolkata Port Trust (KoPT) hereinafter referred to as “The Principal/Employer”

And

..... hereinafter referred to
The Bidder/Contractor”

Preamble

The Principal intends to award, under laid down organizational procedures, contract/s for **“Hiring of 2(two) nos diesel electric/ diesel hydraulic locomotive each having hauling capacity 5500MT and power 1400HP and above on wet lease basis for a period of 5(five) years for Haldia Dock Complex, Kolkata Port Trust”** The Principal values full compliances with all relevant laws of the land, rules, regulations, economic use of resources and of fairness / transparency in its relations with its Bidder(s) and/or Contractor(s).

In order to achieve these goals, an Independent External Monitor (IEM) appointed by the principal, will monitor the tender process and the execution of the contract for compliance with the principles mentioned above.

NOW, THEREFORE,

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

Enabling the PRINCIPAL/EMPLOYER to get the contractual work executed and/or to obtain/dispose the desired said stores/equipment at a competitive price in conformity with the defined specifications/scope of work by avoiding the high cost and the distortionary impact of corruption on such work/procurement/disposal and Enabling BIDDERS/CONTRACTORS to abstain from bribing or indulging in any corrupt practice in order to secure the contract by providing assurance to them that their competitors will also abstain from bribing and other corrupt practices and the PRINCIPAL/EMPLOYER will commit to prevent corruption, in any form, by its officials by following transparent procedures.

Section-1 – Commitments of the Principal/Employer:

- (1) The Principal commits itself to take measures necessary to prevent corruption and to observe the following principles:
 - a. No employee of the Principal, personally or through family members, will, in connection with the tender for, or the execution of a contract, demand, take a promise for or accept, for self or third person, any material or immaterial benefit which the person is not legally entitled to.

- b. The Principal will, during the tender process, treat all Bidder(s) with equity and reason. The Principal will, in particular, before and during the tender process, provide to all Bidder(s) the same information and will not provide to any Bidder(s) confidential/additional information through which the Bidder(s) could obtain an advantage in relation to the tender process or the contract execution.
 - c. The Principal will exclude from the process all known prejudiced persons.
- (2) If the Principal obtains information on the conduct of any of its employees which is a criminal offence under the Indian Penal Code (IPC)/Prevention of Corruption (PC) Act, or if there be a substantive suspicion in this regard, the Principal will inform the Chief Vigilance Officer and in addition can initiate disciplinary actions.

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

- (1) The Bidder(s)/Contractor(s) commit himself to take all measures necessary to prevent corruption. He commits himself to observe the following principles during his participation in the tender process and during the contract execution.
- a. The Bidder(s)/Contractor(s) will not, directly or through any other person or firm, offer, promise or give to any of the Principal's employees involved in the tender process or the execution of the contract or to any third person any material or other benefit which he/she is not legally entitled to, in order to obtain in exchange any advantage of any kind whatsoever during the tender process or during the execution of the contract.
 - b. The Bidder(s)/Contractor(s) will not enter with other Bidders into any undisclosed agreement or understanding, whether formal or informal. This applies in particular to prices, specifications, certifications, subsidiary contracts, submission or non-submission of bid or any other actions to restrict competitiveness or to introduce cartelization in the bidding process.
 - c. The Bidder(s)/Contractor(s) will not commit any offence under the relevant IPC/PC Act; further the Bidder(s)/Contractor(s) will not use improperly, for purpose of competition or personal gain, or pass on to others, any information or document provided by the Principal as part of the business relationship, regarding plans, technical proposals and business details including information contained or transmitted electronically.
 - d. The Bidder(s)/Contractor(s) of foreign origin shall disclose the name and address of the Agents/representative in India, if any. Similarly the Bidder(s)/Contractor(s) of Indian Nationality shall furnish the name and address of the foreign principals, if any. Further details as mentioned in the "Guidelines on Indian Agents of Foreign Suppliers" shall be disclosed by the Bidder(s)/Contractor(s). Further, as mentioned in the Guidelines, all the payments made to the Indian Agent/representative have to be in Indian Rupees only. Copy of the "Guidelines on Indian Agents of Foreign Suppliers" is annexed and marked as Annex-"A".

- e. The Bidder(s)/Contractor(s) will, when presenting his bid, disclose any and all payments he has made, is committed to or intends to make to agents, brokers or any other intermediaries in connection with the award of the contract.
- (2) The Bidder(s)/Contractor(s) will not instigate third persons to commit offences outlined above or be an accessory to such offences.

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

If the Bidder(s)/Contractor(s), before award or during execution has committed a transgression through a violation of Section 2 above, or in any other form such as to put his reliability or credibility in question, the Principal is entitled to disqualify the Bidder(s)/Contractor(s) from the tender process or take action as considered appropriate.

Section-4 – Compensation for damages:

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

Section-5 – Previous transgression:

- (1) The Bidder declares that no previous transgressions occurred in the last 3 years from the date of signing the Integrity pact with any other Company in any country conforming to the anti corruption approach or with any other Public Sector Undertakings/Enterprise in India, Major Ports/Govt. Departments of India that could justify his exclusion from the tender process.
- (2) If the Bidder makes incorrect statement on this subject, he can be disqualified from the tender process or action can be taken as considered appropriate.

Section-6 – Equal treatment of all Bidders/Contractors/Sub-contractors:

- (1) The Bidder(s)/Contractor(s) undertake(s) to demand from all subcontractors a commitment in conformity with this Integrity Pact, and to submit it to the Principal before contract signing.
- (2) The Principal will enter into agreements with identical conditions as this one with all Bidders, Contractors and Sub-contractors.
- (3) The Principal will disqualify from the tender process all Bidders who do not sign this Pact or violate its provisions.

Section-7– Other Legal actions against violating Bidder(s)/Contractor(s)/Sub-contractor(s):

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

Section-8 –Role of Independent External Monitor (IEM):

- (a) The task of the Monitors shall be to review independently and objectively, whether and to what extent the parties comply with the obligations under this pact.
- (b) The Monitors shall not be subject to instructions by the representatives of the parties and shall perform their functions neutrally and independently.
- (c) Both the parties accept that the Monitors have the right to access all the documents relating to the contract.
- (d) As soon as the Monitor notices, or has reason to believe, a violation of this pact, he will so inform the authority designated by the Principal and the Chief Vigilance Officer of Kolkata Port Trust.
- (e) THE BIDDER(s)/CONTRACTOR(s) accepts that the Monitor has the right to access without restriction to all contract documentation of the PRINCIPAL including that provided by the BIDDER/CONTRACTOR. The BIDDER/CONTRACTOR will also grant the Monitor, upon his request and demonstration of a valid interest, unrestricted and unconditional access to his contract documentation, if any. The same is applicable to subcontractors. The Monitor shall be under contractual obligation to treat the information and documents of the Bidder/Contractor/Sub-contractor(s) with confidentiality.
- (f) The Principal/Employer will provide to the Monitor sufficient information about all meetings among the parties related to the contract provided such meetings could have an impact on the contractual relations between the Principal and the Contractor. The parties offer to the Monitor, the option to participate in such meetings.
- (g) The Monitor will submit a written report to the designated Authority of Principal/Employer/Chief Vigilance Officer of Kolkata Port Trust within 8 to 10 weeks from the date of reference or intimation to him by the Principal/Employer/Bidder/Contractor and should the occasion arise, submit proposals for correcting problematic situation. BIDDER/CONTRACTOR can approach the Independent External Monitor(s) appointed for the purposes of this Pact.
- (h) As soon as the Monitor notices, or believes to notice, a violation of this agreement, he will so inform the Management of the Principal and request the Management to discontinue or to take corrective action, or to take other relevant action. The Monitor can in this regard submit non-binding recommendations. Beyond this, the Monitor has no right to demand from the parties that they act in a specific manner, refrain from action or tolerate action.
- (i) If the Monitor has reported to the Principal substantiated suspicion of an offence under the relevant IPC/PCA, and the Principal/Employer has not, within reasonable time, taken

visible action to proceed against such offence or reported to the Chief Vigilance Officer, the Monitor may also transmit this information directly to the Central Vigilance Commissioner, Government of India.

- (j) The word 'Monitor' would include both singular and plural.

Section-9 – Facilitation of Investigation:

In case of any allegation of violation of any provisions of this Pact or payment of commission, the PRINCIPAL/EMPLOYER or its agencies shall be entitled to examine all the documents including the Books of Accounts of the BIDDER/CONTRACTORS and the BIDDER/CONTRACTOR shall provide necessary information and documents **in English** and shall extend all possible help for the purpose of such examination.

Section-10 – Pact Duration:

The Pact begins with when both parties have legally signed it and will extend up to 2 years or the complete execution of the contract including warranty period whichever is later. In case bidder/contractor is unsuccessful this Integrity Pact shall expire after 6 months from the date of signing of the contract.

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

Section-11 – Other Provisions:

- (1) This agreement is subject to Indian Law. Place of performance and jurisdiction is the Registered Office of the Principal in Kolkata.
- (2) Changes and supplements as well as termination notices need to be made in writing in English.
- (3) If the Contractor is a partnership or a consortium, this agreement must be signed by all partners or consortium members.
- (4) Should one or several provisions of this agreement turn out to be invalid, the reminder of this agreement remains valid. In this case, the parties will strive to come to an agreement to their original intentions.

(For & on behalf of the Principal)

(For & on behalf of Bidder/Contractor)

(Office Seal)

(Office Seal)

Place:

Date :

Witness 1:
(Name & address)

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Witness 1:
(Name & address)

Witness 2:
(Name & address)

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Witness 2:
(Name & address)