ANNEXURE-I

Applications from Joint Venture Company (incorporated or un-incorporated) shall be considered subject to following conditions.

1. In case of un-incorporated JV, the same should not comprise of more than 3 (Three) companies.

2. Joint Venture or each member of JV should be registered with statutory authorities and have valid PAN No.

3. An agreement between the Joint Venture (As per Annexure-II) should be submitted along with technical bid. This agreement shall be binding on the parties till the completion of all contractual liabilities of the project.

4. The member of Joint Venture shall be responsible for all the contractual obligations.

5. The company/member of Joint Venture/Consortium if participating individually or as a member of Joint Venture cannot participate as a member of Joint Venture bidding for the project. In case of violation, the tenders of such defaulting company & Joint Venture(s) shall be rejected.

6. The net worth of all the partners individually, should be positive.

7. The members of Joint Venture can fulfill minimum eligibility criteria as given in the para (a) to (e) of NIT, individually or jointly.
JOINT VENTURE AGREEMENT

FOR

Application / Preparation, Submission of Pre-Qualification / Tender and to execute the contract of Construction of Intermodal IWT Terminal at Varanasi (U.P)

This agreement is entered on this ____________ of __________ 2010 at New Delhi

BY AND BETWEEN

____________________ having its registered office at _____________ , hereinafter called “ __________ ” (which expression shall unless repugnant to the context or meaning there-of shall mean & include or shall be deemed to mean & include its successors and assigns, etc.,)

AND

____________________ having its registered office at __________, hereinafter called “ ____________ ” (which expression shall unless repugnant to the context or meaning there-of shall mean & include or shall be deemed to mean & include its successors and assigns, etc.,)

Jointly hereinafter referred to as the “Parties” or solely as the “Party”

WHEREAS, Engineering Projects (I) Limited, Core-3, SCOPE Complex, Lodhi Road, New Delhi -110003 (hereinafter referred to as Employer)

intends to pre-qualify construction contractors for the construction of following work:
Construction of Intermodal IWT Terminal at Varanasi (U.P)

AND WHEREAS, ______ , and, _______ have agreed to form and enter into joint venture Agreement (hereinafter called the “Joint Venture”) to prepare and submit the pre-qualification and tender for the said project and if their tender are successful to conclude and to-execute the contracts (hereinafter called the “Contract”) with the employer on the basis of the submitted Pre-qualification documents, the tender and the further negotiations with the Employer for this project.

On the basis of contents mentioned herein before now it is hereby agreed as follows:

1.0 DEFINITIONS AND INTERPRETATIONS

The following words and expressions shall have meanings assigned to them, except where the context otherwise requires.

1.1 JOINT VENTURE shall mean Joint Venture formed by the parties in accordance with this agreement.

1.2 PRE-QUALIFICATION shall mean the Pre-qualification of the parties as Joint Venture on the basis of information furnished by the parties in the pre-qualification application.

1.3 INVITATION shall mean the invitation of the Employer to the Joint Venture due to their prior Pre-Qualification, to submit a tender for the Project.
1.4 PARTIES shall mean the individual firms or company, which have agreed to enter into a Joint Venture by this Agreement for the performance and completion of the works for the Project.

1.5 LEAD COMPANY shall mean the party mentioned in Sub-Article 3.5 which shall take the lead in the Management of the Joint Venture for liaison with the Employer and/or third parties.

1.6 ‘CONTRACT’ shall mean the agreement/contract with the Employer by Joint-Venture on the basis of Pre-tender document, and Tender negotiation.

1.7 Wherever in this Agreement provision is made for giving or issue of any notice consent, approval certificate or determination by any party, unless, otherwise, specified such notice, consent approval, certificate or determination, shall be in writing and the words “notify”, ”certify” or “determine” shall be construed accordingly. Any such consent, approval certificate or determination, shall not be unreasonably withheld or delayed.

1.8 All recitals and appendices shall be read as an internal part of this Agreement.

2.0 JOINT VENTURE

2.1 The Parties hereby establish a Joint Venture being an unincorporated association under the name of __________ Joint Venture for:

- Preparing and submitting the Pre-qualification documents to the Employer,
- Preparing and submitting the Tender to the Employer in the name of the Joint Venture,
- Providing any further information the Employer may require or to negotiate with the Employer or any matters requiring negotiations in connections with the Pre-Qualifications and or the Tender.
- Entering into contract with the Employer.
- Executing all works and/or other services to be undertaken for the Project by the Joint Venture under the Contract from the ‘Employer’.

3.0 PREPARATION AND SUBMISSION OF THE PRE-QUALIFICATION AND/OR TENDER

3.1 The preparation and submission of the pre-qualification and/or tender shall be undertaken jointly by the parties as single package. Each party has to define its scope of work which is described in the schedule hereto.

3.2 The Parties to this Agreement shall mutually agree on the pre-qualification and/or final Tender price and condition, prior to the submission of the tender to the employer. In this context, every effort shall be undertaken by the parties to reconcile any upcoming diverging opinions on the pre-qualifications and/or tender price and the conditions of the Tender.

3.3 The Parties shall enter into the contract, if it is awarded to the Joint Venture in accordance with the tender or as amended subsequently, to its submission, by agreement between the Employer and the Joint Venture.

3.4 Each Party shall be obliged to transfer all the information and data, either requested by the other party or not, to the other party to enable it to prepare a complete and proper qualification details and tender and, after
having been determined, for each party’s scope of work, and to submit a complete and proper qualification details and tender to the Employer on behalf of the Joint Venture.

3.5 ____________ shall be the lead Company of the Joint Venture and is duly authorized to be and act as an official representative of the Joint Venture for all purpose and shall be authorized to and act as the official representative of the Joint Venture vis-à-vis the Employer and/or third parties for all purpose from the Tender stage as well as for the execution of the contract and performance and completion of the work for the project, The Tender shall be signed by both the parties. Prior to any negotiations with the Employer and/or third parties, the Lead Company shall be obliged to inform the other party of any upcoming negotiations and shall obtain the other party’s consent in writing. The Lead Company with prior consent of the other party shall be authorized to conduct any negotiations with the Employer and/or the third parties and to sign any document and/or the contract on behalf of the Joint Venture. The other Party shall have the right, and/or upon request by the Lead Company shall be obliged, to attend all negotiations with the Employer. In case the other party waives in writing its right from time to time to amend such negotiations, the Lead Company shall only be authorized to give binding statement on behalf of the joint Venture upon prior written confirmation from the other party and the lead Company shall be obliged to inform the other Party immediately on the results of such negotiations.

4.0 PARTICIPATION OF THE PARTIES

4.1 The project to be performed under the ‘contract’ shall be carried out in accordance with the terms and conditions of the ‘contract’ and this
Construction of Intermodal IWT Terminal at Varanasi (U.P)

agreement. In the event if any inconsistency between the terms of the contract and this Agreement regarding the performance of the Project, the contract shall prevail. The Joint Venture shall be backed by the full resource of the parties who shall be jointly and severally responsible for due and proper discharge of obligations under the contract and in good faith and spirit.

4.2 The Joint Venture between the parties shall be on “work sharing basis” and each party shall be responsible as per the contract for their respective portion of work including profit and loss, its liabilities etc. The share of work of each party shall be as under:

Name of the Organization (Leader)
(Scope of work to be executed by the leader to be defined)

Second Party
(Scope of work to be executed by the second party to be defined)

Third Party (If applicable)
(Scope of work to be executed by the third party to be defined)

The above is broad and illustrative breakup of sharing of work between the parties. The exact sharing of work between the parties shall be mutually decided before submission of tender. Each of the parties to the Joint Venture agrees and undertakes to place at the disposal of the Joint Venture benefits of its individual experience, technical knowledge and shall in all respect bear
Construction of Intermodal IWT Terminal at Varanasi (U.P)

its share of the responsibility including the provision of information, advice and other assistance required in connection with the works. The share and the participation of these partners in the Joint Venture shall broadly be as follows:

<table>
<thead>
<tr>
<th>Name of the Organization</th>
<th>% Share</th>
</tr>
</thead>
</table>

4.3 The Parties hereto shall be jointly and severally liable to the employer for all acts, deeds and things pertaining to the contract. The contract for the works shall be signed by ___________ to whom necessary General Power of Attorney signed by all signatory/ies, suitable as described above shall be issued by the Joint Venture and delivered to the Employer.

4.4 ___________ being a lead company of the Joint Venture shall have the Power to Control and manage the affairs of the Joint Venture.

4.5 All payments made under the contract shall be made in to the Joint Venture’s bank Account as mentioned in clause No.5.1.

4.6 All men, materials, machinery, tools and plants, equipment, infrastructure, resources etc. as required for execution of respective portion of work as mentioned in clause 4.2 above shall be provided and arranged by the respective parties. The rates quoted by the party in the final tender for their portion of work shall include all charges, all direct and indirect cost of works, material, labour, plant, and equipments, transportation, electricity and / water charges and for all the overheads such as site offices expenses for labour camp, bank guarantee charges EPF/CPF/Statutory Contributions, third party risk coverage all duties, taxes, water electricity charges, profit, turnover tax/sales tax on works contracts, Service Tax,
common Joint Venture expenses and other expenses whatsoever incurred on execution, completion and maintenance of their respective portions of the works the parties shall comply with all the requirements laid down by the employer for execution of respective works. Parties shall unconditionally abide by their quoted rates for execution of works as per terms, conditions, specifications, drawings, documents etc., for the completion, handing over, maintenance period etc, of the project. All financial guarantees, counter guarantees, securities etc., as per the requirements of contract with Employer in proportion to their share of work in total works in the name of Joint Venture, shall be provided and arranged by the respective parties.

4.7 Each of the parties of the Joint Ventures shall be jointly and severally liable towards the Employer and/or third parties for the execution of the contract and for all obligations arising out of same.

4.8 The execution and carrying out of the works for the project shall be supervised, coordinated, managed and erected by a full time Project Director selected by mutual consent of both the parties and appointed by the Governing Board.

4.9 A Governing Board consisting of ____________ members with representatives……….. and one senior representative from …………….. each shall be formed and shall exist throughout the life of the contract.

4.10 All the parties to the Joint Venture will appoint their Project Manager and other suitable experienced personnel at site for the purpose of General Planning, coordination, Site Management and Plant Operations, etc during whole executions of the Project for their respective portion of
work. The cost of these personnel shall be borne by the respective parties.

The Governing Board will approve a project execution philosophy, and evaluate the status of the project and performance of project personnel to ensure that the project is being provided with the necessary attention and support throughout from the Joint Venture and the party’s affiliates.

4.11 The Governing Board shall meet monthly or early, at schedule intervals exceed on the demand of any Governing Board Members to consider items of significant importance, which may affect overall execution of the project work.

4.12 All costs and expenses associated with this Board Meeting shall to be account of the Joint Venture excluding travel, lodging & boarding expenses of the representatives of the parties, which shall be borne by respective parties. No remunerations shall be paid to the members Governing Board for attending Board Meetings.

4.13 The Chairman of the Governing Board shall be a representative of the Lead Party

4.14 Decision of the Governing Board should be taken unanimously as far as possible. Decision by the Governing Board, which shall be by majority voting shall be required for the following:

i. Replacement of key members of the Project team.

ii. Acceptability of the contract, amendments to the contract and this agreement.

iii. Major changes in the scope of work.
iv. Resolution of technical, commercial or contractual questions which cannot be satisfactorily resolved by the Project Director, and

v. Matters relating to the Performance of the work that are referred to it for decision by the Project Director. However proposal affecting financial position will be dealt with only by the Board.

vi. Decision for rescission of contract or withdrawal from the work.

vii. Decision to enter into amicable settlement between JV and Employer in connection with their respective claims, Payment, dues etc.

4.15 For any matters, which are primary or exclusive responsibility of a single party, the Board shall not intervene and such party shall not make any action, which would be detrimental to the interest of any other party.

4.16 The Governing Board shall act by the means of written directives given to the Project Director, who shall carry out such directives.

i. The Project Director, who will be designated by the mutual consent shall be vested with full authority to manage all phases of Construction of Project and will act for the JV in all matters affecting the execution of the Project except for financial matters.

ii. The Project Director, who shall serve as an ex-officio member of the Governing Board and shall prepare reports for the purpose of the project at intervals as specified by the Governing Body.

4.17 All communications with Employer related to the Project shall be directed by the Project Director who will be the focal point of responsibility, authority and accountability for the overall execution, supervision and progress of the work and for the coordination of the Project tasks with all other participating entities.
4.18 The Project Director will exercise control on schedule, performance and quality of the work being performed. More specifically he will:

i. Direct and control the entire Project effort;

ii. Organize a “task force” of Project Managers of the parties to execute the work, working side by side in various locations as the work demands.

iii. Establish formal lines of communications with participating offices which he will visit regularly to coordinate their activities, and

iv. Meet weekly with the Employer Project Management Team.

5.0 JOINT VENTURE ACCOUNT

5.1 Immediately after the signing of contract with Employer, the parties shall open a Joint Venture Bank account in a Nationalized Bank in the name Joint Venture. All the payments, receipts, advances, etc. received from the Employer relating to the contract shall be credited in the JV account. This Joint Venture account shall be operated jointly by the parties, with the signatory’s, one from each party (hereinafter referred to as Joint Signatories). For this purpose all the parties shall nominate their respective signatories and their alternates.

5.2 Soon after receipt of any payment from the employer in this account, the same shall be shared between the parties in the ratio of party’s share in each payment received from Employer. The share of the Parties in each payment received from Employer shall be as per this agreement and / or as per party’s scope of works executed and paid by Employer in each payment as the case may be.

5.3 The share of each party as per clause 5.2 shall be transferred into the individual account of the party either by way of irrevocable instructions to the bankers by the Joint Signatories or by way of cheque issued by the
Joint Signatories. The transfer to the individual account of the parties shall be done at the same time such that after transfer there is no balance left in this Joint Venture account, except minimum balance stipulated by the bank and some amount to meet the common expenses of Joint Venture of next two months.

5.4 The individual account of each party shall have no lien or claim by any of both the Parties to this agreement.

5.5 At the end of contract, when all payments are received from Employer(including release of EMD, Security Deposit, arbitration award, if any etc.) and after liquidating all liabilities of common expenses of Joint Venture as whole, this Joint Venture account shall be closed.

5.6 All the parties to the Joint Venture shall be responsible to maintain or cause to maintain proper books of accounts in respect of the business of the Joint Venture and the same shall be closed at the end of every financial year.

5.7 The financial year of the Joint Venture shall be the year ended on 31st day of March every year.

5.8 That upon closure of the books of account, Balance Sheet and Profit and Loss Account as to the state of affairs of the Joint Ventures as at the end of the financial year and as to the Profit or Loss made or incurred by the Joint Venture for the year ended on that date, respectively shall be prepared and the same shall be subjected to audit by a Chartered Accountant.
6.0 INDEMNITY

Any Penalty, Liquidated damages imposed by the Employer is connection with or arising out of the contract shall be borne by______________________________.

The Employer’s claim under the contract on account of any due payments, loss and damages etc as determined and or awarded by court of law or Arbitration Tribunal against the JV shall be borne by______________________________.

7.0 LANGUAGE AND LAW

7.1 The ruling of language of this Agreement of all communications and notices as well as for any arbitration Proceedings, shall be the English language.

7.2 The law, which shall apply to this Agreement, shall be the laws of the India.

8.0 EXCLUSIVITY

This agreement between the parties is valid for this project only. The Parties undertake that neither they nor any of their subsidiary firm, shall in any way have any separate dealings with any other company, consortium or joint venture in connection with the submission of the Pre-qualification and /or the tender and /or for the carrying out any Work related to the contract even in case the Contract is not awarded to the Joint Venture. Likewise, no party shall submit a separate pre-qualification and /or tender (s) to the Employer offering the execution of Works, or part thereof in its own and sole name. Each Party shall
undertake that neither they nor any of their associated companies or any other company, in which the respective party has a controlling interest shall in any way have any separate dealings with any other Company consortium or joint venture in connection with the submission of the Tender.

9.0 ASSIGNMENT, CHANGE IN CONSTITUTION AND THIRD PARTIES

9.1 No party shall assign, mortgage, pledge, transfer or dispose off any of its rights or interests under this Agreement, without obtaining prior written consent of the other parties, which shall not be unreasonably withheld.

9.2 This Agreement, which is exclusively for the benefit of the parties shall not be construed as conferring either directly or indirectly any rights or cause of action upon third parties.

9.3 No party shall change the constitution of firm without prior notice and consent from other party to this agreement.

10.0 DURATION OF THIS AGREEMENT

10.1 The Joint Venture and this Agreement shall be terminated automatically, if and when

a) Inability of the parties to appear to mutually agree upon the terms and conditions of the Tender for the project.

Or

b) The Board of Management/Directors of any of the parties and/or any statutory Government authority does not finally approve the formation of this Joint Venture and / or submission of the Tender.

Or
c) The Tender submitted by the Joint Venture is rejected by the Employer.

Or

d) The Joint Venture has officially received the information by the employer that the Project has been awarded to another bidder or the Employer has decided to terminate or to indefinitely postpone the tender process for the project.

Or

e) The Parties to this Joint Venture Agreement mutually agree to terminate the present Agreement prior to the Tender submission date.

Or

f) The Joint Venture is not pre-qualified by the Employer to submit a tender for the project.

AND all obligations of the Joint Ventures and the parties under this Agreement have been fulfilled and the tender Security, if any, has been returned.

10.2 In any case this agreement and the Joint Venture shall be terminated at the latest by ________ provided the Joint Venture has no valid Tender outstanding towards the Employer as such date, the Tender security, if any has been returned and all other obligations of the Joint Ventures has been terminated at the date. This Agreement can be extended in time by the Parties in writing prior to the above mentioned date.
11.0 EXPENSES INCURRED BY THE PARTIES

11.1 Internal costs including on travel, lodging, boarding incurred by each party in the course of preparation of the Tender negotiations shall borne by the respective party, even if the Project is awarded to the Joint-Venture.

11.2 Save as otherwise provided in this Agreement, all expenses for execution of individual share of work shall be borne by each party. All common expenses of Joint Ventures and litigation cost, if any shall be shared in the ratio of participation of these parties in contract value.

11.3 All the bank guarantees to be submitted to employer as per the contract will be arranged by the respective parties in the name of ……………………… Joint Venture for a guarantee, amount equal to the ratio of participation in the total tender value. Bank Guarantee for Earnest Money Deposit to be furnished to the Employer with the tender in the name of …………………….. Joint Venture shall be furnished by ……………….. in ratio of ……………….. All Insurance policies required to be obtained from Government Nationalized Insurance Companies maintained for above said contract shall be also shared by each party in the ratio of participation of the parties in the total tender value.

12.0 JURISDICTION

The agreement shall be executed at New Delhi on non-judicial stamp paper purchased in Delhi and the Courts in Delhi/New Delhi alone will have exclusive jurisdiction to deal with matters arising out of and in connection with this agreement, to exclusion of all other courts. The agreement shall be governed by the laws of the Union of India. No party shall be relieved from its obligations to comply with any of the provision of this agreement during the course of court proceedings.
13.0 PARTIAL NULLITY

In the case that any article, clause provision, term or the like of this agreement be or become infructuous, redundant invalid or illegal or unenforceable, the same shall not affect any other terms of the other articles, clause, provisions, terms or the like thereof shall remain in force. Any invalid or illegal article, clause provision, term or the like as aforesaid shall be deemed to be substituted by an articles, clause, provision, term or the like consistent with the meaning and purpose in the spirit of this agreement. This agreement shall be applicable on this project only.

14.0 CONFIDENTIALITY

All information, systems, procedures or other intellectual property such as patents acquired by any of the parties from the other shall be treated as confidential by the recipients and not be used otherwise than for the purpose of this Agreement without obtaining the prior written consent of the Party providing such information.

a) Is or later becomes public knowledge other than by breach of the foregoing provision, or

b) Is the possession of the recipient with the full right to disclose prior to this receipt from the other party, or

c) Is independently received by the recipient from a party having full right to disclose.

This Article 14 shall survive notwithstanding with any termination or any legal invalidity of this Agreement.
15.0 SOLE AGREEMENT AND VARIATION

This Agreement is the sole Agreement between the Parties and supersedes any previous agreement, Memorandum of Understanding between them relating to the Project and to the matters referred to herein. Variations and addresses may be made to this Agreement only by written instrument which shall be effective with the signatures of the Parties.

16.0 EXCLUSION OF THE PARTNERSHIP

Nothing contained in this Agreement shall constitute or construe or be deemed to constitute a partnership or to form a permanent company or organization between the parties and none of the parties shall have any authority or right to commit the other parties, save and except as expressly provided for in this Agreement.

17.0 NOTICES

Any demand, notice or other communication given in connection with this Agreement shall be given in writing and either be delivered personally, sent by registered mail or first class recorded delivery post or by fax to the other Party’s address (or fax number). The addresses and fax numbers for service of each party shall be its Registered office for the time being and shall be his address and fax number stated hereunder or any other address and fax number notified to the other party or (in absence of any such notification) his last known place of residence. Any demand, notice or other communication given by personal delivery is deemed to have been given and received on the day...
of actual delivery given by registered mail or first class recorded post, on the first business day after the day of transmittal.

FOR (Leader)

FOR (Second Party)

FOR (Third Party)

18.0 FORCE MAJEURE
Except where the nature of happening is such as to prevent the party from doing so, the party suffering from the acts by force______________ shall notify the other party in writing with in _______ days after occurrence of such happening.

19.0 OTHER PROVISION

This agreement constitutes the entire agreement of the parties and may not be altered, unless the same is agreed upon in writing signed and acknowledged by the parties.

This agreement is binding upon the legal heirs, court appointed representatives, assignee, and successors of the parties to this agreement.
Construction of Intermodal IWT Terminal at Varanasi (U.P)

IN WITNESS WHEREOF the PARTIES hereto have caused this Agreement to be executed by their duly Authorized Representatives in conformity with their respective Constitutions, the day and year first above written

Signed by
For and on behalf of
(Leader)

Signed by
For and on behalf of
(Second Party)

Signed by
For and on behalf of
(Third Party)

WITNESS

1.

2.

3.