

V.O. CHIDAMBARANAR PORT AUTHORITY DRAFT CONCESSION AGREEMENT

Between

**BOARD OF AUTHORITIES FOR V.O. CHIDAMBARANAR PORT
(THE CONCESSIONING AUTHORITY)**

AND

..... LTD.

(THE CONCESSIONAIRE)

For



**DEVELOPMENT OF OUTER HARBOUR CONTAINER TERMINAL PROJECT
INCLUDING DREDGING AND CONSTRUCTION OF BREAKWATER AT VOC PORT
ON DBFOT BASIS**

December, 2024

CONCESSION AGREEMENT

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CONCESSION AGREEMENT

THIS CONCESSION AGREEMENT is made at _____ on this the _____ day of

BETWEEN:

1. **BOARD Members** of V.O.CHIDAMBARNAR PORT AUTHORITY, an Autonomous body functioning under the provisions of the Major Port Authorities Act, 2021 and having its Administrative Office at Tuticorin hereinafter referred to as “the **Concessioneing Authority**” (which expression shall, unless repugnant to the context or meaning thereof, include its successors and permitted assigns);

AND

2. **LIMITED**, a company registered under the Companies Act, 2013, and having its registered office at _____ hereinafter referred to as “the **Concessionaire**” (which expression shall, unless repugnant to the context or meaning thereof, include its successors and permitted assigns).

WHEREAS:

(A) The Concessioneing Authority is desirous of implementing a Project (as defined hereinafter) for “Development of Outer Harbour Container Terminal Project including Dredging and Construction of Breakwater at VOC Port on DBFOT Basis” through private sector participation with VGF support. The Project comprises of two stages i.e. Stage I related to development of berths I and II including construction of Breakwaters, dredging and other common facilities and Stage II related to development of berths III and IV more particularly described in Appendix 4 to this Agreement, hereinafter referred to as Stage I and Stage II;

(B) [In or about _____, the Concessioneing Authority invited applications from the interested parties in accordance with the Request for Qualification (as defined hereinafter), to shortlist competent parties that can subsequently bid for the Project];

(C) [In response to the invitation referred to in recital ‘B’ above, the Concessioneing Authority received applications from various parties including the application dated _____ submitted by the Applicant/ Consortium in accordance with the Request for Qualification];

(D) [The Concessioneing Authority, after evaluating all the applications, shortlisted _____ number of applicants including the Applicant / Consortium and invited proposals from them in accordance with the Request for Proposal (as defined hereinafter), for implementing the

Project];

(E) In response to the Request for Proposal, the Concessioneing Authority received proposals of from the shortlisted applicants including the one submitted by the Applicant/Consortium;

(F) The Concessioneing Authority, after evaluating all the proposals received by it from the shortlisted applicants, accepted the proposal referred to in recital "E" above submitted by the Applicant/Consortium and communicated its acceptance to the Applicant/Consortium vide Letter of Intent for Award of Concession dated _____;

(G) The Applicant/Consortium has/have incorporated the Concessionaire as a special purpose company in India, under the Companies Act, 2013 to implement the Project;

(H) Following the issue of the Letter of Intent for Award of Concession, the Concessioneing Authority has agreed to grant the Concession to the Concessionaire to implement the Project on the terms, conditions and covenants hereinafter set forth in this Agreement.

NOW, THIS AGREEMENT WITNESSETH AS FOLLOWS:

ARTICLE 1

DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Agreement, unless the context otherwise requires the following terms shall have the following meanings assigned/ascribed thereto: -

“Additional Auditor” has the meaning ascribed to it in Article 9.4.

“Additional Termination Payment” means the amount payable upon termination in respect of Specified Assets, if any, as limited by the provision of Clause 17.8;

“Adjusted Depreciated Value” means the amount arrived at after adjusting the depreciated book value of an asset (as stated in the books of account of the Concessionaire, save and except, in the case of buildings and permanent structures where the depreciated book value shall be determined by applying an annual depreciation rate of 3% based on the written down value method) to reflect the variation occurring in Price Index between the date of procurement thereof and the Transfer Date;

“Adjusted Equity” means the Equity funded in Indian Rupees and adjusted on the first day of the current month (the **“Reference Date”**), in the manner set forth below, to reflect the change in its value on account of depreciation and variations in Price Index, and for any Reference Date occurring:

- (a) on or before COD, the Adjusted Equity shall be a sum equal to the Equity funded in Indian Rupees and expended on the Project, revised to the extent of one half of the variation in Price Index occurring between the first day of the month of Date of Award of Concession and the Reference Date;
- (b) from COD and until the 4th (fourth) anniversary thereof, an amount equal to the Adjusted Equity as on COD shall be deemed to be the base (the **“Base Adjusted Equity”**) and the Adjusted Equity hereunder shall be a sum equal to the Base Adjusted Equity, revised at the commencement of each month following COD to the extent of variation in Price Index occurring between COD and the Reference Date; and
- (c) after the 4th (fourth) anniversary of COD, the Adjusted Equity hereunder shall be a sum equal to

the Base Adjusted Equity, reduced by 0.22% (zero point two two per cent) thereof at the commencement of each month following the 4th (fourth) anniversary of COD and the amount so arrived at shall be revised to the extent of variation in Price Index occurring between COD and the Reference Date;

For the avoidance of doubt, the Adjusted Equity shall, in the event of termination, be computed as on the Reference Date immediately preceding the Transfer Date; provided that no reduction in the Adjusted Equity shall be made for a period equal to the duration, if any, for which the Concession Period is extended, but the revision on account of Price Index shall continue to be made;

“Adverse Impact” shall have the meaning as set forth in Clause 13.1.2;

“Affected Party” shall have the meaning as set forth in Clause 14.1;

“Affiliate/Associate” means, with respect to any Party and/or with respect to the Applicant and/or with respect to any member of Consortium, any other Person directly or indirectly controlling, controlled by or under common control with such Party, Applicant and/or member of Consortium. For the purposes of this definition, the term “control” (including with correlative meaning, the terms “controlled by” and “under common control with”) as applied to any Party or Applicant or a member of Consortium, means the possession, directly or indirectly, of the power to direct or cause the direction of the management of that Party or Applicant or a member of Consortium whether through ownership of 50 (fifty) % or more of the voting securities, or by operation of law, or by contract, or otherwise.

“Agreement” means this agreement as of date hereof, including Appendices 1 through 17 as may be amended, supplemented or modified in accordance with the provisions hereof.

“Appendix” means the schedules, supplements or documents, appended to this Agreement

“Applicable Laws” means all laws, brought into force and effect by GOI or the State Government including rules, regulations and notifications made thereunder, treaties and conventions having the force of law and judgements, decrees, injunctions, writs and orders of any court of record, applicable to this Agreement and the exercise, performance and discharge of the respective

rights and obligations of the Parties hereunder, as may be in force and effect during the subsistence of this Agreement

“Applicable Permits” means any and all permissions, clearances, licenses, authorizations, consents, no-objections, approvals and exemptions under or pursuant to any of the Applicable Laws or from any Government Authority required in connection with the Project and for undertaking, performing or discharging the obligations contemplated by this Agreement or any other Transaction Document

“Applicable Tariff Guidelines” shall have the same meaning ascribed to it in Article 8.1.

“Applicant” means [●]

“Approved Valuer” means a firm of valuers recognised as such by the Income Tax Department and having experience of valuing at least 5 (five) properties exceeding Rs. 100 cr. (Rupees one hundred crore) each in value.

“Average Daily Tariff” means the amount arrived at by dividing the total Tariff collected in the immediately preceding Accounting Year by 365 (three hundred and sixty-five), and increasing the quotient thereof by 5%; provided that the Average Daily Tariff for any period prior to completion of the first Accounting Year following COD shall be a simple average of the Tariff collected every day during the period between COD and the last day of the month preceding the date on which the event requiring calculation hereof occurred, and in the event that the Tariff payable by any segment of cargo has not been realized for any reason, an assessment thereof shall be made by the Independent Engineer to form part of the Average Daily Tariff for such period.

“Bank Rate” means the rate of interest specified by the Reserve Bank of India from time to time in pursuance of section 49 of the Reserve Bank of India Act, 1934 or any replacement of such Bank Rate for the time being in effect;

“Bid” means the proposal and the entire set of documents submitted by the Applicant and/or the Consortium in response to the [RFQ and the] RFP.

“Bid Security” means the bank guarantee [●] dated [●] furnished by the Applicant/Consortium along

with its Bid.

“Board” means the Board of Major Port Authority of V.O.Chidambarnar Port.

“Change in Law” shall have the meaning set out under Article 13.1 of this Agreement.

“Change of Scope” shall have the meaning assigned to it under Article 6.8(a).

“Change of Scope Notice” shall have the meaning assigned to it under Article 6.8(b).

“Completion Certificate” shall have the meaning assigned to it under Article 6.3.

“Committee” shall have the meaning assigned to it under Article 13.1.2

“Concession” means the Concession granted by the Concessing Authority to the Concessionaire in accordance with the provisions of Article 2.1 of this Agreement for implementing the Project and providing Project Facilities and Services.

“Concessing Authority Event of Default” shall have the meaning as set out under Article 15.1(b).

“Concessionaire Event of Default” shall have the meaning as set out under Article 15.1 (a).

“Concession Period” means the period of the Concession specified in Article 2.2 of this Agreement.

“Conciliation & Settlement Committee” shall have the meaning assigned to it under Article 19.3

“Conditions Precedent” shall mean the conditions prescribed in Article 3 of this Agreement.

“Consortium” means the consortium consisting of (i) XXXX, (ii) YYYY, and (iii) ZZZZ formed, to implement the Project.

“Construction Phase” means the period from the Date of Award of Concession to the Commercial Operations Date, more particularly described in Article 6.3.

“Construction Works” means all works, equipment and things necessary to complete the Project and provide the Project Facilities and Services in accordance with this Agreement.

“Construction Standards” means the construction standards set out in the annexure to Appendix 4.

“Consultation Notice” has the meaning ascribed to it in Article 15.3.

“Contractor” means a Person with whom the Concessionaire has entered into/may enter into a contract relating to the execution of any works and /or operation and maintenance of the ProjectFacilities and Services.

“CPI (IW)” means the Consumer Price Index for Industrial Workers as published by the Labour Bureau, Government of India and shall include any index which substitutes the CPI (IW), and any reference to CPI (IW) shall, unless the context otherwise requires, be construed as a reference to the CPI (IW) published for the period ending with the preceding quarter;

“Date of Award of Concession” means the date when the Conditions Precedent have either been satisfied or waived by the Party other than the Party responsible for satisfying the same.

“Commercial Operations Date or COD” means the date on which the Concessionaire receives the Completion Certificate in accordance with the provisions of this Agreement/ Major Ports Authorities Act 2021 for development of Stage I & Stage II separately. The Concessionaire shall obtain the Completion Certificate separately for both the stages. Further, **“Project COD”** refers to the COD of Stage II and the COD of Stage II can be achieved only after COD of Stage I.

“Day” means the 24 (twenty-four) hour period beginning 06:00 am of the day and ending at 06:00 am of the following day Indian Standard Time

“Debt Due” means the aggregate of the following sums representing the amounts advanced by the Senior Lenders towards Total Project Cost, expressed in Indian rupees as may be outstanding and payable to the Senior Lenders under the Financing Documents on the Transfer Date:

(a) the principal amount of the debt including any subordinated debt provided by the Senior Lenders under the Financing Documents for financing the Total Project Cost (“the Principal”) but excluding (i) working capital loans; (ii) any part of the Principal that had fallen due for

repayment two years prior to the Transfer Date; and (iii) any debt that has been rescheduled or refinanced, unless such repayment had been rescheduled or refinancing made with the prior consent of Concessioneing Authority; and
all accrued interest, financing fees and charges payable on or in respect of the debt referred to in sub-clause (a) above upto the Transfer Date but excluding (i) any interest, fees or charges that had fallen due 1 year prior to the Transfer Date, and (ii) penal interest or charges, payable under the Financing Documents to any Senior Lender, and (iii) any pre-payment charges in relation to accelerated repayment of debt except where such charges have arisen due to Concessioneing Authority Default;
provided further that the Debt Due, on or after COD, shall in no case exceed 85% of the Total Project Cost.

“Deemed Performance Security” shall have the meaning as set forth in Clause 4.2

“Designs and Drawings” means the designs and drawings, and other technical information submitted by the Concessionaire from time to time and reviewed by the Independent Engineer in accordance with the provisions of this Agreement.

“Emergency” means a condition or situation that is likely to endanger the security of the individuals on or about the Project or which poses an immediate threat of material damage to any of the Project Assets, and includes a threat to public order or national security;

“Encumbrance” means any encumbrance such as mortgage, charge, pledge, lien, hypothecation, security interest, assignment, privilege or priority of any kind having the effect of security or other such obligations and shall include without limitation any designation of loss payees or beneficiaries or any similar arrangement under any insurance policy pertaining to the Project, physical encumbrances and encroachments on the Project Site/Port’s Assets/Project Facilities and Services.

“EPC Contract” means the contract entered into by the Concessionaire with one or more Contractors inter-alia for the purpose of design, engineering, procurement of equipment and materials (including by import thereof) and construction of the Project in accordance with the provisions of this Agreement.

“Equity” means the sum expressed in Indian Rupees representing the paid-up equity share capital of the Concessionaire for meeting the equity component of the Total Project Cost, and such other form of equity shares including, but not limited to bonus shares and right shares subscribed by the Shareholders for meeting such equity component.

“Equity Documents” means collectively the documents evidencing subscription to Equity to the extent of equity component of cost of the Project.

“Escrow Account” shall have the meaning assigned to it under Article 9.5.

“Escrow Agreement” means the agreement to be executed inter alia between the Concessionaire, the Concessions Authority and the Senior Lenders/Senior Lenders representative substantially in the format set out in Appendix 15 hereto.

“Escrow Bank” shall have the meaning assigned to it under Article 9.5.

“Event of Default” shall have the meaning assigned to it under Article 15.1.

“Exclusivity Period” shall have the meaning ascribed to it in Article 12.21.

“Financial Assistance” means all funded and non-funded credit assistance including but not limited to loans, advances, lease assistance and guarantees required for the Project.

“Financial Close” means the date on which the Financing Documents providing for Financial Assistance by the Senior Lenders, Equity Documents and the documents in respect of debt, if any, committed by the Applicant/Consortium have become effective and the Concessionaire has access to such Financial Assistance.

“Financial Year” means any twelve-month period commencing from 1st April and ending on 31st March.

“Financial Model” means the financial model adopted by Senior Lenders, setting forth the capital and operating costs of the Project and revenues therefrom on the basis of which financial viability of the Project has been determined by the Senior Lenders, and includes a description of the assumptions and parameters used for making calculations and projections therein, as set out in Appendix 16

“Financing Documents” means, collectively, the documents executed in favour of or entered into with the Senior Lenders, by the Concessionaire in respect of the Financial Assistance relating to the financing (including any re-financing) of the Total Project Cost and includes any document providing security for the Financial Assistance“

"Financial Package" means the financing package indicating the total capital cost of Project Completion and the means of financing thereof, as set forth in the Financial Model and approved by the Senior Lenders, and includes Equity and all Financial Assistance specified in the Financing Documents.

“Force Majeure Event” shall have the meaning ascribed to it in Article 14.1 of this Agreement.

“Gol” means the Government of India.

“Good Industry Practice” means the exercise of that degree of skill, diligence and prudence and those practices, methods, specifications and standards of equipment, safety and performance, as may change from time to time and which would reasonably and ordinarily be expected to be used by an skilled and experienced operator engaged in construction, operation and maintenance of facilities, equipment or systems of the type and size similar to the Project Facilities and Services.

“Government Authority” means Gol, any state government or any governmental department, commission, board, body, bureau, agency, authority, instrumentality, administrative body, at central, state, or local level, having jurisdiction over the Concessionaire, the Port’s Assets, the Project Facilities and Services or any portion thereof, but shall not include the Concessions Authority.

“Independent Engineer” means a technical consultancy firm appointed in accordance with Article 5.1 for supervision and monitoring of compliance by the Concessionaire with the Scope of Work, more particularly to undertake, perform, carry out the duties, responsibilities, services and activities set forth in Appendix 7.

“Indian Accounting Standards” means the Indian accounting standards issued by the Institute of Chartered Accountants of India.

“Indian Ports Association” means the Apex body of Major Ports of India registered under Societies Registration Act.

“Insurance Cover” shall have the meaning ascribed to it in Article 12.1(c)(ii).

“License Fee” shall have the meaning assigned to it under Article 9.1(a).

“Major Port” or **“Major Port Authority”** means the Major Port as defined in clause (8) of section 3 of the Indian Ports Act, as amended from time to time.

“Management Control” means the possession, directly or indirectly of the power to direct or cause the direction of the management and policies of the Concessionaire, whether through the ownership of voting securities, by contract or otherwise or the power to elect or appoint more than 50% of the directors, managers, partners or other individuals exercising similar authority with respect to the Concessionaire.

“Material Adverse Effect” means material adverse effect of any act or event on the ability of either Party to perform any of its rights or perform/discharge any of their duties/obligations under and in accordance with the provisions of this Agreement and which act or event causes a material financial burden or loss to either Party.

“Milestone Dates” means the dates for completion of specified Project activities as contained in the Project Schedule.

“Minimum Annual Guaranteed Cargo” or **“MAGC”** shall have the meaning ascribed to it in Article 7.1(a)(xii).

“Month” means the calendar month as per the Gregorian calendar. **“MTEUs”** means Million Twenty Equivalent Units.

“Non-Political Event” means the Force Majeure Events set out in Article 14.2.

“O&M Contract” means the contract, if any, entered into by the Concessionaire for the operation and maintenance of the Project in accordance with the provisions of this Agreement

“O&M Expenses” means expenses incurred by or on behalf of the Concessionaire or by the Concessioneing Authority, as the case may be, for all O&M including (a) cost of salaries and other compensation to employees, (b) cost of materials, supplies, utilities and other services, (c) premia for insurance, (d) all taxes, duties, cess and fees due and payable for O&M, (e) all repair, replacement, reconstruction, reinstatement, improvement and maintenance costs, (f) payments required to be made under the O&M Contract or any other contract in connection with or incidental to O&M, and (g) all other expenditure required to be incurred under Applicable Laws, Applicable Permits or this Agreement;

“Operations Phase” means the period from the operation of Stage I to the expiry/termination of the Concession Period.

“Operations and Maintenance Standards” means the minimum standards of operations and maintenance set out in the annexure to Appendix 4 with regards the Project Facilities and Services.

“Other Events” means the Force Majeure Events set out in Article 14.4.

“Party” means either the Concessioneing Authority or the Concessionaire as the context may require or admit and **“Parties”** means both Concessioneing Authority and Concessionaire.

“Performance Standards” means the minimum standards of performance set out in Appendix 14 and Appendix 18, set out respectively for the Concessionaire and the Concessioneing Authority, with regards to the Project Facilities and Services.

“Performance Guarantee” shall mean the bank guarantee(s)/letter(s) of credit procured by the Concessionaire for the benefit of the Concessioneing Authority guaranteeing the performance of the obligations of the Concessionaire hereunder in the manner specified in Article 4.1.

“Person” means any individual, company, corporation, partnership, joint venture, trust,

unincorporated organization, or agency or any other legal entity.

“Political Event” means the Force Majeure Events set out in Article 14.3.

“Port’s Assets” means the assets set out in Appendix 2, belonging to the Concessioneing Authority.

“Port Limits” means limits of the port of V.O Chidambaranar as defined under Section 5 of the Indian Ports Act 1908, as amended from time to time“

“Preservation Costs” shall have the meaning as set forth in Clause 6.6 (c).

“Price Index” shall comprise:

- a) 70% of WPI; and
- b) 30% of CPI (IW),

which constituents may be substituted by such alternative index or indices as the Parties may by mutual consent determine;

“Project” means the design, finance, construction, operation, maintenance, and marketing and providing of the Project Facilities and Services in accordance with the provisions of this Agreement.

“Project Assets” means all physical and other assets relating to and forming part of the Site including:

- a) rights over the Site in the form of licence, Right of Way or otherwise;
- b) tangible assets such as civil works and equipment including foundations, electrical systems, communication systems and administrative offices;
- c) Project Facilities and Services situated on the Site;
- d) all rights of the Concessionaire under the Project Contracts;
- e) financial assets, such as receivables, security deposits etc.;

f) insurance proceeds; and

g) Applicable Permits and authorisations relating to or in respect of the Project;

“Project Capacity” means the capacity of the Project Facilities and Services to handle 4 Million TEU’s per annum – [Stage I: 2 Million TEU’s per annum and Stage II: 2 Million TEU’s per annum]

“Project Contracts” means collectively this Agreement, the EPC Contract, the Financing documents, O&M Contract and any other material contract (other than the Escrow Agreement, the Substitution Agreement or any commercial agreement with the users) entered into or may hereafter be entered into by the Concessionaire in connection with the Project and Project Facilities and Services

“Project Facilities and Services” means the facilities and services as set out under the Scope of Work, to be provided by the Concessionaire during the Concession Period, in accordance with this Agreement.

“Project Schedule” means the Appendix 5 hereto.

“Project Site” means the waterfront area demarcated in Appendix 1, and easement rights thereto that may be given to the Concessionaire and all other assets comprised therein as at Appendix 2, on which the Concessionaire is authorized to develop and operate the Project Facilities and Services as set forth in this Agreement. This shall also include additional land, utilities and services allowed by Port in terms of Article 7.1 (c) (iii), wherever applicable.

“Provisional Certificate” shall have the meaning assigned to it under Article 6.7(d). It shall be separate for both the stages.

“Punch List” shall have the meaning assigned to it under Article 6.7 (d). It shall be separate for both the stages.

“Quarter” means a period of 3 (three) Months.

“Remedial Period” has the meaning ascribed to it in Article 15.4.

“Request for Proposal” or **“RFP”** means the Request for Proposal dated [●] issued by the Concessing Authority to the applicants shortlisted pursuant to the Request for Qualification and includes any addendum / clarifications issued in respect thereof by the Concessing Authority.

“Request for Qualification” or **“RFQ”** means the Request for Qualification dated [●] issued by the Concessing Authority inviting applications in accordance therewith for shortlisting the competent applicants that can subsequently bid for the Project, and includes any addendum / clarifications issued in respect thereof by the Concessing Authority.

“Requisition” has the meaning ascribed to it in Article 16.3.

“Premium” means the revenue share payable by the Concessionaire to the Concessing Authority, pursuant to Article 9.2 hereof.

“Safety Standards” means the minimum standards of safety set out in the annexure to Appendix 4 with regards the Project/Project Facilities and Services.

“Scale of Rates” means the scale of rates along with the statement of conditions with respect thereto framed and notified by competent authority under the provisions of MPA Act, as applicable.

“Scheduled Project Completion Date Stage I” means the day following completion of 36 calendar months from the Date of Award of Concession. (stage I construction period is 36 months)

“Scheduled Project Completion Date Stage II” means the day following completion of 24 calendar months from the date when the average annual volume of cargo handled at the Project Facilities and Services reaches a level of 70% of Project Capacity of stage I for 2 (two) consecutive years or the day following completion of 120 calendar months from the Date of Award of Concession, whichever is earlier. (stage II construction period is 24 months). However, the Concessionaire has the liberty to complete the construction of Stage II prior to completion of 120 calendar months from the Date of award of Concession.

“Scope of Work” means the minimum requirements as to the construction, operation and maintenance of the Project and provision of Project Facilities and Services set out in Appendix-4.

“Selectee” has the meaning ascribed to it in Article 15.4(b).

“Senior lenders” means the financial institutions, multilateral lending agencies, banks, including their trusts and funds, and agents or trustees of debenture holders, including their successors and assignees, who have agreed to guarantee or provide finance to the Concessionaire under any of the Financing Agreements for meeting all or any part of the Total Project Cost and who hold pari passu charge on the assets, rights, title and interests of the Concessionaire.

“Special Audit” shall have the meaning assigned to it under Article 9.4.

“Specified Assets” means such of the Project Assets which are constructed, acquired or installed after the 5th (fifth) anniversary of Project COD, but no later than the 35th (thirty fifth) anniversary of the Date of Award of Concession; provided that Specified Assets shall not include assets that are part of Scope of Work mentioned in Appendix 4 of Concession Agreement and any improvement on existing assets; provided further that any Specified Assets shall be constructed, acquired or installed by the Concessionaire only with the prior approval of Concessions Authority.

“Statutory Auditors” means a reputable firm of chartered accountants acting as the statutory auditors of the Concessionaire under the provisions of the Companies Act, 2013 including any re-enactment or amendment thereof, for the time being in force, and appointed in accordance with Clause 21.2.2 (a).

“Substitution Agreement” means the agreement substantially in the form set out at Appendix 3, to be entered into between the Concessions Authority, the Concessionaire and the Senior Lenders.

“Supporting Project Infrastructure” means the supporting project facilities and services mentioned in Appendix 19 to be provided by the Concessions Authority.

“Tariff” means the applicable rate(s) that may be charged by the Concessionaire for and in respect of providing the Project Facilities and Services.

“Taxes” means any Indian taxes including GST, excise duties, customs duties, local taxes, cess and any impost or surcharge of like nature (whether Central, State or local) on the goods, materials, equipment and services incorporated in and forming part of the Project charged, levied or imposed by any Government Instrumentality, but excluding any interest, penalties and other sums in relation thereto imposed on any account whatsoever. For the avoidance of doubt, Taxes shall not include taxes on corporate income.

“Termination Notice” means the termination notice issued pursuant to Article 16.1 hereof.

“Termination Payment” means the amount payable by the Concessing Authority to the Concessionaire, under and in accordance with the provisions of this Agreement, upon termination

“Termination Period” shall have the meaning as set out under Article 16.1 hereof.

“Tests” shall have the meaning assigned to it under Article 6.7 (a) hereof.

“The Port” means V.O.Chidambarnar Port“

“Total Project Cost” means the capital cost incurred on construction and financing of the Project and shall be limited to the lowest of:

- i. the capital cost of the Project, as set forth in the Financial Package at the date of Financial Close including VGF support given to the Concessionaire;
- ii. the actual capital cost of the project, upon completion approved by Independent Engineer and Statutory Auditor and submitted to Concessing Authority at the time of issuing Completion Certificate including VGF support given to the Concessionaire;
- iii. a sum of Rs. 7055.95 Crores (Rupees seven thousand fifty five crore and ninety five lakhs only) (The Project cost of Stage I is Rs 4494.46 Crs & Stage II is Rs 2561.49 Crs.) including VGF support of Rs. ***** crores.

“Provided further, in case of termination, VGF support given to the Concessionaire, will not form part of Total Project cost.”

“Transfer” means to transfer, sell, assign, pledge, hypothecate, create a security interest in or other encumbrance on, place in trust (voting or otherwise), transfer by operation of law or in any other way dispose of, whether or not voluntarily, the legal or beneficial interest in the equity shares of the Concessionaire.

“Transfer Date” means the date of expiry or termination as the case may be, of the Concession Period in accordance with the terms of this Agreement.

“Transaction Documents” means collectively the Project Contracts and the Financing Documents.

“User” means a person including any vessel or other person, who uses or intends to use the Project or any part thereof, including any or all Project Facilities & Services, on payment of Tariff or in accordance with the provisions of this Agreement and Applicable Laws.

“Vesting Certificate” shall have the meaning as set forth in Clause 18.5;

“Viability Gap Funding (VGF)” means Funds provided to the Concessionaire to the Project escrow account after the recommendations of Concessioning Authority in accordance with Article 22 & VGF Guidelines (Appendix 24) and as per the provisions available in the Concession Agreement.

“WPI” means the Wholesale Price Index for all commodities as published by the Ministry of Industry, GOI and shall include any index which substitutes the WPI, and any reference to WPI shall, unless the context otherwise requires, be construed as a reference to the WPI published for the period ending with the preceding month.

1.2 Other References

In this Agreement:

“BIS” means Bureau of Indian Standards.

“BS” means British Standard.

“CISF” means Central Industrial Security Force.

“DIN” means German Industrial Standard.

“FEM” means Federation of Equipment Manufacturers.

“GST” means Goods and Services Tax

“IS” means Indian Standard.

“ISO” means International Standards Organization. **“IEC”** means International Electro Technical Commission.

“IMDG” means International Maritime Dangerous Goods. **“IMO”** means International Maritime Organization.

“km” means Kilometre, the unit of length.

“kWh” means Kilowatt-hour, the unit of electrical energy.

“kVA” means Kilovolt-Ampere, the unit of power.

“m” means Metre, the unit of length.

“mm” means Millimetre, the unit of length.

“MT” means Metric Tonne, the unit of weight.

“MVA” means Mega Volt Ampere, the unit of power.

“MSIHC” means Manufacture Storage and Input of Hazardous Chemicals.

“OISD” means Oil Industry Safety Directorate.

“VOCPA” means V.O. Chidambaranar Port Authority

1.3 Interpretations

This Agreement constitutes the entire understanding between the Parties regarding the Project and supersedes all previous written and/or oral representations and/or arrangements

regarding the Project. If there is any aspect of the Project not covered by any of the provisions of this Agreement, then and only in that event, reference may be made by the Parties to the bid documents, *inter alia* including the RFP and RFQ documents, issued by the Concessioneing Authority and also including addendums, clarifications given in writing in the pre-bid meetings and the submissions of the Concessionaire, and the bid submitted by the Concessionaire but not otherwise. In case of any contradictions in the terms of this Agreement and any such other bid documents as referred to above, the terms of this Agreement shall prevail.

In this Agreement unless the context otherwise requires:

- a) any reference to a statutory provision shall include such provision as is from time to time modified or re-enacted or consolidated so far as such modification or re-enactment or consolidation applies or is capable of applying to any transactions entered into hereunder;
- b) the words importing singular shall include plural and vice versa, and words denoting natural persons shall include partnerships, firms, companies, corporations, joint ventures, trusts, associations, organisations or other entities (whether or not having a separate legal entity);
- c) the table of contents and any headings in this Agreement are for ease of reference only and shall not affect the construction or interpretation of this Agreement;
- d) the words "include" and "including" are to be construed without limitation;
- e) references to "construction" include investigation, design, engineering, procurement, delivery, transportation, installation, processing, fabrication, testing, commissioning and other activities incidental to the construction;
- f) any reference to any period of time shall mean a reference to that according to Indian Standard Time;
- g) any reference to day shall mean a reference to a calendar day;
- h) any reference to month shall mean a reference to a calendar month;
- i) "Recital", "Article" and "Appendix" shall refer, except where the context otherwise requires, to Articles of and any Appendix to this Agreement. The Appendices to this Agreement shall form an integral part and parcel of this Agreement and will be in full force

and effect as though they were expressly set out in the body of this Agreement;

j) any reference at any time to any agreement, deed, instrument, license or document of any description shall be construed as reference to that agreement, deed, instrument, license or other document as amended, varied, supplemented, modified or novated at the time of such reference;

k) any agreement, consent, approval, authorization, notice, communication, information or report required under or pursuant to this Agreement from or by any Party or the Independent Engineer and/or a Statutory Auditor shall be valid and effectual only if it is in writing under the hands of duly authorized representative of such Party or the Independent Engineer and/or Statutory Auditor, as the case may be, in this behalf and not otherwise;

l) unless otherwise stated, any reference to any period commencing “from” a specified day or date and “till” or “until” a specified day or date shall include both such days or dates;

m) unless otherwise specified, any interest to be calculated and payable under this Agreement shall accrue on a Monthly basis and from the respective due dates as provided for in this Agreement;

n) the damages payable by either Party to the other of them, as set forth in this Agreement, whether on per diem basis or otherwise, are mutually agreed genuine pre-estimated loss and damage likely to be suffered and incurred by the Party entitled to receive the same and are not by way of penalty;

o) time shall be of the essence in the performance of the Parties’ respective obligations. If any time period specified herein is extended, such extended time shall also be of the essence;

p) The rule of construction, if any, that a contract should be interpreted against the parties responsible for the drafting and preparation thereof, shall not apply; and

q) any word or expression used in this Agreement, unless defined or construed in this Agreement, shall be construed as per the definition given in General Clauses Act, 1897 failing which it shall bear the ordinary English meaning.

1.4 Measurements and Arithmetic Conventions

All measurements and calculations shall be in metric system and calculations done to 2 decimal places, with the third digit of 5 or above being rounded up and below 5 being rounded down.

1.5 Ambiguities and Discrepancies

In case of ambiguities or discrepancies within this Agreement, the following shall apply:

- a) between two Articles of this Agreement, the provisions of specific Articles relevant to the issue under consideration shall prevail over those in other Articles;
- b) between the dimension scaled from the Design and Drawings and its specific written dimension, the latter shall prevail;
- c) between any value written in numerals and that in words, the latter shall prevail; and
- d) between the provisions of this Agreement and any other documents forming part of this Agreement, the former shall prevail.

ARTICLE 2

CONCESSION AND PORT ASSETS

2.1 Concession

In consideration of the Concessionaire agreeing to pay to the Concessions Authority (a) the License Fee and (b) Premium, and performing its obligations as set out in this Agreement, the Concessions Authority hereby grants to the Concessionaire, subject to the provisions of this Agreement, an exclusive license for designing, engineering, financing, constructing, equipping, operating, maintaining, replacing the Project Facilities and Services as per Scope of Work.

2.2 Concession Period

The Concession hereby granted is for a period of 45 years commencing from Date of Award of Concession during which the Concessionaire is authorized and obliged to implement the Project and to provide Project Facilities and Services as per Scope of work in accordance with the provisions hereof.

Provided that: -

- a) in the event of the Concession being extended by the Concessions Authority beyond the said period of 45 years in accordance with the provisions of this Agreement, the Concession Period shall include the period by which the Concession is so extended, and
- b) in the event of an early termination/determination of the Concession/ this Agreement by either Party in accordance with the provisions hereof, the Concession Period shall mean and be limited to the period commencing from the Date of Award of Concession and ending with the date of termination/ determination of the Concession/this Agreement.

Provided further that, the Concessionaire shall, at any time not earlier than 40th (Fortieth) anniversary from the date of award of Concession and no later than 42nd (Forty Second) anniversary from the date of award of Concession, intimate the Concessions Authority about its interest and request for renewing/ extending the term of this Concession by another period up to 10 years. While making such

request, the Concessionaire shall submit a confirmation that it is agreeable to participate in the international competitive bidding process for the determination of the Premium for an additional period up to 10 years, in the form and manner, as may be prescribed by the Concessing Authority, at such time, and in any such case of international competitive bidding:

- a. the Concessionaire shall have a right to match the highest bid, if its bid is within [10.00%] of the highest bid that may be offered at that time in accordance with the terms and conditions of the bidding documents issued at such time; and
- b. the Affiliate(s) of the Concessionaire shall not be qualified, either directly or indirectly, to participate in any such bidding process; and
- c. it is clarified the Concessionaire shall be deemed to be qualified to submit the financial bid without being required to participate in the pre-qualification process and shall not be required to submit any documents for pre-qualification.

Provided further that, in the event the Concessionaire has been in material default of the provisions of this Agreement as a result of which the cumulative damages imposed upon him under the provisions of this Agreement [20%] of the Performance Security, then, the Concessing Authority shall not be under any obligation to extend the Concession Period or provide the right to match the highest bid to the Concessionaire in accordance with this Clause 2.2. In any event, at all times, any decision concerning the extension of the Concession Period shall vest with the Concessing Authority.

2.3 Acceptance of the Concession

The Concessionaire hereby accepts the Concession and agrees and undertakes to implement the Project and to provide Project Facilities and Services in accordance with the provisions of this Agreement. Subject to and in accordance with the provisions of this Agreement and Applicable Laws and Applicable Permits, the Concessionaire shall at its costs, charges, expenses and risk including but not limited to foreign exchange variation risk if any, conceptualize, design, engineer, finance, construct, equip, operate, maintain and replace the Project/ Project Facilities and Services.

2.4 Port's Assets

- a) In consideration of the Concessionaire agreeing to perform and discharge its obligations as set forth in this Agreement, the Concessions Authority hereby grants to the Concessionaire, the exclusive right to enter upon, occupy and use the Project Site and Port's Assets for the purpose of implementing the Project and provision of Project Facilities and Services pursuant thereto in accordance with this Agreement.
- b) The Concessionaire shall at its costs, charges and expenses make such development and improvements in the Project Site and Port's Assets as may be necessary or appropriate for implementing the Project and providing Project Facilities and Services in accordance with the Agreement, Applicable Laws and Applicable Permits.

2.5 Use of Port's Assets

The Concessionaire shall not without the prior written consent or approval of the Concessions Authority use the Project Site and the Port's Assets for any purpose other than for the purposes of the Project/the Project Facilities and Services and purposes incidental thereto as permitted under this Agreement or as may otherwise be approved by the Concessions Authority.

2.6 Information about Project Site and Port's Assets

The information about the Project Site and Port's Assets as set out in Appendix 1 and Appendix 2 respectively is provided by the Concessions Authority in good faith and with due regard to the matters for which such information is required by the Concessionaire. The Concessions Authority agrees to provide to the Concessionaire, upon a reasonable request, any further information relating to the Project Site and Port Assets, which the Concessions Authority may now possess or may hereafter come to possess, as may be relevant to the implementation of the Project. Subject to this, the Concessions Authority makes no representation and gives no warranty to the Concessionaire in respect of the condition of the Port Assets or the Project Site.

2.7 Acceptance of the Port Assets

The Concessionaire accepts possession of the Port's Assets and Project site on 'as is where is' basis and confirms having:

- a) inspected the Project Site/Port's Assets, including the berths and all structures thereat and its surroundings;
- b) satisfied itself as to the nature of the climatic, hydrological and general physical conditions of the Project Site/Port's Assets, the nature of the ground and subsoil, the form and nature of the Project Site/Port's Assets, and the nature of the design, work and materials necessary for the performance of its obligations under this Agreement; and
- c) obtained for itself all necessary information as to the risks, contingencies and all other circumstances which may influence or affect the Concessionaire and its rights and obligations under or pursuant to this Agreement.

2.8 Peaceful Occupation

The Concessions Authority warrants that the Concessionaire shall, subject to complying with the terms and conditions of this Agreement, remain in occupation of the Project Site and Port's Assets during the Concession Period.

ARTICLE 3

CONDITIONS PRECEDENT

3.1 Conditions Precedent

The award of the Concession shall be subject to the satisfaction or waiver of the following conditions precedent (the “**Conditions Precedent**”):

- a) The following Conditions Precedent shall be satisfied by the Concessionaire:
 - i. Furnishing of the Performance Guarantee as stipulated in Article 4.1 hereof;
 - ii. Furnishing of copies (certified as true copies by a director of the Concessionaire) of the constituent documents of the Concessionaire;
 - iii. Furnishing of all resolutions adopted by the Board of Directors of the Concessionaire (certified as true copies by a director of the Concessionaire) authorizing the execution, delivery and performance by the Concessionaire of each of the Transaction Documents;
 - iv. Opening the Escrow Account and executing the Escrow Agreement;
 - v. Deleted
 - vi. Furnishing a certificate from its principal officer/director on the shareholding pattern of the Concessionaire;
 - vii. Submission to Concessing Authority of its Financing Package, Financial Model and Financing Documents for the Project and demonstrating Financial Close for verification that there is no inconsistency/contradiction with the terms & condition of the agreement. Authority, within 15 days shall notify Concessionaire of inconsistency/contradictions, if any, which shall be promptly addressed by the Concessionaire.
 - viii. Procuring and furnishing the following confirmations, in original, from the Applicant/members of Consortium:

- a) it/they shall at all times comply with the provisions of Article 11.2 in respect of their shareholding in the Concessionaire;
 - b) it/they has/have the financial standing and resources to fund /raise finances for undertaking and implementing the Project in accordance with this Agreement;
 - c) the Applicant is/each of the member of the Consortium is duly organized and validly existing under the laws of the jurisdiction of its incorporation, and has requested the Concessioning Authority to enter into this Agreement with the Concessionaire and has agreed to and unconditionally accepted the terms and conditions set forth in this Agreement;
- ix. Furnishing to the Concessioning Authority a legal opinion from the legal counsel of the Concessionaire with respect to the authority of the Concessionaire to enter into this Agreement and the enforceability hereof; and
 - x. [Obtaining Applicable Permits as may be required for commencement of Construction Works as set out in Appendix 8].
 - xi. Executed and procured execution of the Substitution Agreement
- b) The following Conditions Precedent shall be satisfied by the Concessioning Authority:
 - i. procurement of the clearances required for the Project as set out in Appendix- 8; provided that in case a modification/alteration/deviation to the existing environmental clearance is necessitated owing to Concessionaire's requirements, and the same entails a delay in procuring the revised environmental clearance by the Concessioning Authority beyond the stipulated period of [180] days, such delay shall not be attributable to the Concessioning Authority in any manner or circumstances whatsoever.
 - ii. handing over physical possession of the Project Site and/or the Port's Assets for the purposes of the Project after procurement of the required clearances as per Cl 3.1 b (i) above and receipt of performance guarantee / security from the Concessionaire with the provision that license fee, Goods & service tax etc. shall be paid by Concessionaire as per Clause 9.1.

3.2 The aforesaid Conditions Precedent shall be complied with within [180] Days of the date of the Agreement. For the purpose of compliance of Financial Close obligation, Concessionaire, shall not be considered at default if the conditions pending for achieving financial close are only those which are required to be fulfilled by the Concessioneing Authority under Article 3.1(b).

3.3 Any of the Conditions Precedent set forth in Articles 3.1(a) may be waived fully or partially by the Concessioneing Authority at any time in its sole discretion or the Concessioneing Authority may grant additional time for compliance with these conditions and the Concessionaire shall be bound to ensure compliance within such additional time as may be specified by the Concessioneing Authority. Any of the Conditions Precedent set forth in Articles 3.1 (b) may be waived fully or partially by the Concessionaire at any time in its sole discretion or the Concessionaire may grant additional time for compliance with these conditions on the basis of a request from the Concessioneing Authority and the Concessioneing Authority shall be bound to ensure compliance within such additional time as may be specified by the Concessionaire.

3.4 If the Concessionaire has fulfilled all the Conditions Precedent under Article 3.1(a) including the furnishing of the Performance Guarantee and has not waived or extended the time under Clause 3.3 above, and if the Concessioneing Authority has failed to fulfill the Conditions Precedent to be fulfilled by it under Article 3.1(b) (and which are within the power of the Concessioneing Authority), the Concessioneing Authority shall be liable to pay liquidated damages in a sum calculated at the rate of 0.1% (zero point one per cent) of the Performance Guarantee for each day's delay until fulfilment of the Conditions Precedent subject to a maximum of 5% of the figure mentioned in the Performance Guarantee furnished by the Concessionaire. In such event, having regard to the quantum of damages, the time for the performance shall be deemed to have been extended by the number of days for which the liquidated damages is paid and if, after the extended period the Concessioneing Authority is still not in a position to comply with the Conditions Precedent, then the agreement shall be liable to be terminated as provided for in Clause 3.6 below;

3.5 If the Concessioneing Authority has fulfilled all the Conditions Precedent under Article 3.1(b) and has not waived or extended the time under Clause 3.3 above, and if the Concessionaire has failed to fulfil the Conditions Precedent to be fulfilled by it under Article 3.1(a) (and which are within the

power of the Concessionaire), the Concessionaire shall be liable to pay liquidated damages in a sum calculated at the rate of 0.1% (zero point one per cent) of the Performance Guarantee for each day's delay until fulfillment of the Conditions Precedent subject to a maximum of 5% of the figure mentioned in the Performance Guarantee furnished by the Concessionaire. In such event, having regard to the quantum of damages, the time for the performance shall be deemed to have been extended by the number of days for which the liquidated damages is paid and if, after the extended period the Concessionaire is still not in a position to comply with the Conditions Precedent, then the agreement shall be liable to be terminated as provided for in Clause 3.6 below;

3.6 In the event that the Conditions Precedents are not complied with within the time (including the extended time, if any) in terms of the aforesaid Articles 3.2 to 3.5, this Agreement shall be liable to be terminated. If such termination is on account of failure of the Concessionaire to comply with the Conditions Precedent, the Bid Security shall stand forfeited. If such termination is on account of failure of the Concessing Authority, the Concessing Authority shall be obliged to return the Bid Security/Performance Guarantee. It is clarified that except for the payment as stipulated in the foregoing Article 3.4 and 3.5 and forfeiture in this Article 3.6, each party hereto shall have no claims against the other for costs, damages, compensation or otherwise.

ARTICLE 4

PERFORMANCE GUARANTEE

4.1 Performance Guarantee

The Concessionaire shall for due performance of its obligations during the Construction Phase of Stage I & II provide to Concessions Authority an unconditional and irrevocable bank guarantees, in favor of the Concessions Authority encashable and enforceable at Thoothukudi substantially in the form set forth in Appendix 9 or an irrevocable revolving letter of credit in the form acceptable to the Concessions Authority (the “**Performance Guarantee**”). The Performance Guarantee shall be for a sum of Rs. 352.80 Crores (Rupees Three Hundred and Fifty Two Crores and Eighty Lakhs only). Till such time the Concessionaire provides to Concessions Authority the Performance Guarantee pursuant hereto, the Bid Security shall remain in full force and effect. The Performance Guarantee, if in the form of a bank guarantee shall be valid for an initial period of 1 (one) year and shall be renewed 30 (thirty) Days prior to expiry of each year, for an additional term of 1(one) year. It is clarified that the Concessionaire shall be liable to restore the Performance Guarantee to the full amount in case of part encashment of the same by the Concessions Authority. This shall be done within 30 (thirty) Days of any such part encashment. The Performance Guarantee, if in the form of a letter of credit shall be irrevocable and replenished from time to time such that an amount of Rs. 352.80 Crores (Rupees Three Hundred and Fifty Two Crores and Eighty Lakhs only) is available in each bank guarantee for immediate encashment to the Concessions Authority for the entire period of the Construction Phase of Stage I & II. The Performance Guarantee furnished under this provision shall be valid until expiry of 6 (six) months from the Project COD. Failure of the Concessionaire to provide a valid Performance Guarantee and/or restore and maintain the Performance Guarantee in accordance with this Article shall entitle the Concessions Authority to forthwith terminate this Agreement and also if relevant, to forfeit the Bid Security.

4.2 Deemed Performance Security

The Parties expressly agree that upon release of the Performance Security 6 (six) months from the Project COD, a substitute Performance Security for an amount of Rs. 352.80 Crores (Rupees Three

Hundred and Fifty Two Crores and Eighty Lakhs only) shall be deemed to be created as if it is a Performance Security for and in respect of the entire Concession Period (the “**Deemed Performance Security**”). The Deemed Performance Security shall be unconditional and irrevocable, and shall, notwithstanding anything to the contrary contained in Clause 9.5, constitute the first and exclusive charge on an equivalent balance in the Escrow Account and on all amounts due and payable by the Concessionaire to the Concessions Authority, and the Concessions Authority shall be entitled to enforce the Deemed Performance Security through a withdrawal from the Escrow Account or by making a deduction from the amounts due and payable to it by the Concessionaire in accordance with the provisions of Clause 4.3. For the avoidance of doubt, the Parties agree that no amounts shall be earmarked, frozen or withheld in the Escrow Account for securing payment of any potential damages that may fall due at a subsequent date, and only the amounts which shall have become due and payable by the Concessionaire upon occurrence of a Concessionaire Default shall be liable to appropriation hereunder.

4.3 Appropriation of Deemed Performance Security

Upon occurrence of a Concessionaire Default, the Concessions Authority shall, without prejudice to its other rights and remedies hereunder or in law, be entitled to appropriate the relevant amounts from the Deemed Performance Security as damages for Concessionaire Default. For the avoidance of doubt, the Parties expressly agree that upon the Deemed Performance Security being appropriated, in whole or in part, it shall be deemed to be replenished to the extent of such appropriation.

4.4 References to Performance Security

References to Performance Security occurring in this Agreement for and in respect of any period prior to the delivery of the Performance Security by the Concessionaire to the Concessions Authority, or in respect of any period subsequent to the expiry or release thereof, as the case may be, shall be construed solely for the purposes of calculating the amount of damages payable by the Concessionaire, and the amount so determined shall be appropriated from the Bid Security or Deemed Performance Security, as the case may be.

ARTICLE 5

INDEPENDENT ENGINEER

5.1 Independent Engineer

- a) Independent Engineer shall be a technical consultancy firm selected in accordance with provisions of the Model Request for Proposals for Selection of Technical Consultants, issued by the Ministry of Finance, GOI vide OM 24(23)/PF-II/2008 dated May 21, 2009, or any substitute thereof. If any panel of such firms is prepared by Indian Ports Association for the purpose, then Independent Engineer shall be selected out of that panel. The Concessing Authority shall complete the selection process within a period of 3 months of the date of this Agreement. The Concessing Authority shall in the procurement documents published by it, set out in reasonable detail the scope of work as indicated in Appendix 7.
- b) The Independent Engineer selected pursuant to the aforesaid process shall be appointed for a period commencing from the Date of Award of Concession to the date of expiry of 6 (six) months from the COD for Stage- I. For Stage- II, Independent Engineer shall be appointed for a period commencing from the Date of 6 (six) months prior to start of construction for Stage- II to the date of expiry of 6 (six) months from the COD for Stage- II. The scope of work of the Independent Engineer shall be substantially as set out in Appendix 7. On expiry or termination of the aforesaid appointment, the Concessing Authority shall appoint an Independent Engineer for a further term of 3 (three) years in accordance with the provisions of Appendix 7, and such procedure shall be repeated after expiry of each appointment.
- c) The costs and expenses of the Independent Engineer for their services shall be borne by the Concessing Authority and Concessionaire, equally.
- d) If the Concessing Authority either on its own or on a report of the Concessionaire has reason to believe that the Independent Engineer is not discharging its duties in a fair, appropriate and diligent manner, the Concessing Authority may after giving the Independent Engineer due opportunity of being heard, terminate the appointment of the Independent Engineer and appoint another firm in its place in accordance with the preceding clause (a) above.

- e) If either Party disputes any advice, instruction or decision of the Independent Engineer, the dispute shall be resolved in accordance with the dispute resolution procedure set out in Article 19.

- f) In the event that the Concessioneing Authority has not appointed an Independent Engineer, or the Independent Engineer so appointed has relinquished its functions or defaulted in discharge thereof, the Concessioneing Authority may, in the interim, designate and authorise any person for a maximum duration of 90 days to discharge the functions of the Independent Engineer in accordance with the provisions of this Agreement, save and except that such person shall not exercise any functions relating to review, comment, approval or inspection as specified in this Agreement for and in respect of the Independent Engineer, and such functions shall be discharged as and when an Independent Engineer is appointed in accordance with the provisions of this Agreement. Provided, however, that nothing contained in this Clause 5.1 (f) shall in any manner restrict the rights of the Concessioneing Authority to enforce compliance of the provisions of this Agreement.

ARTICLE 6

PROJECT IMPLEMENTATION

6.1 Preparation of Designs and Drawings

The Concessionaire shall at its cost, charges and expenses, prepare the Designs and Drawings in conformity with the Scope of Work.

6.2 Review of the Designs and Drawings

- a) The Concessionaire shall submit the Designs and Drawings as set out in Appendix 6 for the review of the Independent Engineer. Simultaneously, the Concessionaire shall also provide the Concessions Authority with a set of the Designs and Drawings.
- b) The Independent Engineer shall review the Designs and Drawings submitted by the Concessionaire and provide its comments/observations and suggestions on the same including the comments/observations of the Concessions Authority in respect thereof within 21 (twenty one) Days from the date of the receipt of such Designs and Drawings.
- c) In the event that the Independent Engineer/ Concessions Authority has observed that the Designs and Drawings are not in conformity with the Scope of Work, the Concessionaire shall promptly and without any undue delay revise and resubmit the Designs and Drawings or satisfy the Independent Engineer and Concessions Authority with regards its compliance.
- d) If the Independent Engineer /Concessions Authority does not make any observation/comments with respect to the Designs and Drawings submitted to it by the Concessionaire within 21 (twenty one) Days of the submission, it shall be deemed that the Independent Engineer/ Concessions Authority has no suggestions to make with respect to the Designs and Drawings and the Concessionaire shall be entitled to proceed with the Project accordingly.
- e) The Concessionaire shall not be entitled to any extension of time for completing construction or any other relief on account of delay caused due to providing any clarification or in resubmitting the Designs and Drawings. Provided however the Concessions Authority at its

sole discretion may suitably extend the Construction Phase or provide other relief (excluding any liquidated damages or financial compensation paid by the Concessing Authority to the Concessionaire) to compensate for any such delay not attributable to the Concessionaire.

- f) The Concessionaire shall not change any Designs and Drawings reviewed by the Independent Engineer /Concessing Authority under this Agreement, without submitting such revised Designs and Drawings for the review of the Independent Engineer /and Concessing Authority.
- g) Notwithstanding the review by the Independent Engineer, the Concessionaire shall be responsible for any defect and/or deficiency in the Designs and Drawings relating to the Project or any part thereof and accordingly the Concessionaire shall at all times remain responsible for its obligations under this Agreement.
- h) Within 90 (ninety) days of COD, the Concessionaire shall furnish to the Concessing Authority and the Independent Engineer a complete set of as-built Drawings, in 2 (two) hard copies and in its editable digital format or in such other medium and manner as may be acceptable to the Concessing Authority, reflecting the Project as actually designed, engineered and constructed, including an as-built survey illustrating the layout of the Project and setback lines, if any, of the buildings and structures forming part of Project Facilities.

6.3 Construction Phase

- (a) The Concessionaire shall promptly commence and complete the works, including installation of equipment in accordance with the Project Schedule and shall also obtain from the Independent Engineer a certificate as to completion of construction of Project Facilities and Services in accordance with the provisions of this Agreement (“Completion Certificate”) not later than 36 Months from the date of commencement of the Concession Period for Stage I development and for Stage II, the day following completion of 24 calendar months from the date when the average annual volume of cargo handled at the Project Facilities and Services reaches a level of 70% of Project Capacity of stage I for 2 (two) consecutive years or the day following completion of 120 calendar months from the Date of Award of Concession, whichever is earlier.

(b) During the construction period, the Independent Engineer shall inspect the construction works and shall require the Concessionaire to carry out or cause to be carried out Tests as set out in Appendix 7. The remedial measures required to be taken by the Concessionaire, in case of any defects or deficiencies in the Construction works, shall be as set out in Appendix 7.

(c) Concessionaire shall be entitled to approach Concessioneing Authority for permission to use the assets handed over to it by Concessioneing Authority and/or the Project Facilities and Services developed by the Concessionaire for handling cargo during the period between handing over of assets and achievement of COD which shall be allowed as per terms and conditions given in Concession Agreement subject to no extension of construction period on this account.

(d) The Concessionaire shall develop the Stage II, the day following completion of 24 calendar months from the date when the average annual volume of cargo handled at the Project Facilities and Services reaches a level of 70% of Project Capacity of stage I for 2 (two) consecutive years or the day following completion of 120 calendar months from the Date of Award of Concession, whichever is earlier or within such extended time as approved by the Concessioneing Authority subject to payment of Liquidated Damages as per Article 6.9 of this agreement. However, the Concessionaire has the liberty to complete the construction of Stage II prior to completion of 120 calendar months from the Date of award of Concession.

6.4 Obligations of the Concessionaire

Without prejudice to the generality of Article 6.3 and in addition to any of its other obligations under this Agreement, during the Construction Phase, the Concessionaire shall:

- a) arrange for, in a timely manner all necessary financial and other resources required for construction and installation of the Project Facilities and Services.
- b) engage professionally competent Persons for project management and construction and ensure that all works are carried out in compliance with the Construction Standards;
- c) give written notice to the Concessioneing Authority within 7 (seven) Days of any material modification or change to any of the Financing Documents and/or any Equity Documents and

shall simultaneously therewith also furnish copies of such modified/ amended documents to the Concessing Authority. Provided no such modification/amendment will be made if it in any manner whatsoever has the effect of imposing an additional financial obligation or increasing the financial obligation of the Concessing Authority in addition to that contemplated under the Financing Documents provided on Financial Close, without the prior written consent of the Concessing Authority. For avoidance of doubt any such modifications/amendments made without the prior written consent of the Concessing Authority will not be enforceable against the Concessing Authority;

- d) obtain Applicable Permits, comply with Applicable Laws and Applicable Permits and give priority to safety in its construction and planning activities in order to protect life, health, property and environment;
- e) provide to the representative(s) of the Concessing Authority, at reasonable times and upon prior intimation, access to the Project Site to review progress in construction and to ascertain compliance with any of the requirements of this Agreement. Provided that non-inspection by the Concessing Authority of any works shall not, in relation to such works,
- f) amount to any consent or approval by the Concessing Authority nor shall the same be deemed to be waiver of any of the rights of the Concessing Authority under this Agreement; and (ii) release or discharge the Concessionaire from its obligations or liabilities under this Agreement in respect of such work;
- g) provide monthly reports on the progress of Construction Works or such other relevant information as may be required by the Independent Engineer;
- h) promptly carry out at its cost such further works as may be necessary to remove any defects or deficiencies observed by the Independent Engineer and ensure timely completion of construction of the Project / the Project Facilities and Services in all respects in accordance with the provisions of this Agreement; and
- i) to ensure safe and timely construction and completion of the Project/Project Facilities and Services, the Concessionaire may, at its cost, interrupt and divert/create barriers on the flow

of water or on the road or port traffic, adjacent to the Project Site if such interruption and diversion is imperative for the efficient progress of Construction Works and conforms to Good Industry Practice; provided that such interruption and diversion shall be undertaken by the Concessionaire only with the prior written approval of the Independent Engineer which approval shall not be unreasonably withheld. For the avoidance of doubt, it is agreed that the Concessionaire shall at all times be responsible for ensuring safe operation of Construction Works and shall remove the interruption or diversion within the period specified by the Independent Engineer.

6.5 Obligations of the Concessions Authority

In addition to any of its other obligations under this Agreement, during the Construction Phase, the Concessions Authority shall:

- a) in matters falling within its authority, grant, the Applicable Permits, approvals and consents as may be required by the Concessionaire and on a best effort basis assist the Concessionaire in obtaining all other Applicable Permits as may be required by the Concessionaire;
- b) make available all records of sub-soil investigations carried out on its behalf in the Port's Assets, if requested by the Concessionaire. It is clarified that the Concessionaire shall be solely responsible for determining the adequacy or otherwise of such investigations and will not, in reliance of such records, be entitled to claim any relief under this Agreement;
- c) upon satisfaction as to completion and receipt of Provisional Certificate issued by the Independent Engineer promptly obtain approval of the Collector of Customs, publish requisite notifications in the Official Gazette and declare the Project Facilities and Services as ready for operation in accordance with the provisions of Section 26 of the MPA Act.
- d) upon written request from the Concessionaire, assist the Concessionaire, on a best effort basis, in obtaining immigration clearances, employment permits and residential premises for any foreign personnel engaged or employed by the Concessionaire in connection with the implementation of the Project; and
- e) subject to the Concessionaire / Contractor complying with the requirements under the Applicable Laws including but not limited to payment of customs and any other duty,

assist the Concessionaire or Contractor, on a best effort basis, to import into India all items of equipment and materials required for the Project.

- f) All necessary co-operation with respect to disbursement of VGF Grant will be provided as per VGF Guidelines (Appendix 24) and as per the provisions of the Concession Agreement.

6.6 Suspension of Works

- a) Upon recommendation of the Independent Engineer to this effect, the Concessions Authority may by notice require the Concessionaire to suspend forthwith the whole or any part of the Construction Works if, in the reasonable opinion of the Concessions Authority, such work threatens the safety of the Users or any other person on or about the Project. Provided, however, that in case of an Emergency, the Concessions Authority may suo moto issue the notice referred to herein above.
- b) The Concessionaire shall, pursuant to the notice under the foregoing provision suspend the Construction Works or any part thereof for such time and in such manner as may be specified by the Concessions Authority and thereupon represent to the Concessions Authority / Independent Engineer, the remedial measures to remedy the defects notified. The Concessionaire may by notice require the Independent Engineer to inspect such remedial measures forthwith and make a report to the Concessions Authority recommending whether or not the suspension hereunder may be revoked. Any dispute as regards the suspension of works or the remedial measures proposed, if cannot resolved within 30 (thirty) Days of the suspension or proposal of the remedial measures, shall be submitted for dispute resolution in accordance with Article 19 hereof.
- c) Subject to the provisions of Clause 14.9, all reasonable costs incurred for maintaining and protecting the Construction Works or part thereof during the period of suspension (the "**Preservation Costs**") shall be borne by the Concessionaire; provided that if the suspension has occurred as a result of any breach of this Agreement by the Concessions Authority, the Preservation Costs shall be borne by the Concessions Authority.

If suspension of Construction Works is for reasons not attributable to the Concessionaire, the Independent Engineer shall determine any extension of the dates set forth in the project completion schedule to which the Concessionaire is reasonably entitled, and shall notify the Concessions Authority accordingly whereupon the Concessions Authority shall extend such project completion schedule dates in accordance with the recommendations of the Independent Engineer. In the event that the Scheduled Completion Date is extended pursuant hereto, the Concession Period shall be deemed to be extended by a period equal in length to the period of extension of the Scheduled Completion Date.

6.7 Issue of Completion Certificate

- a) At least 60 (sixty) Days prior to the likely completion of the Project, the Concessionaire shall notify the Independent Engineer of the date when it intends to commence commercial operations. The Independent Engineer shall then proceed to inspect the Construction Works with the intention of issuing the Completion Certificate and determine and notify to the Concessionaire the schedule and manner of the tests as are specified in Appendix 7 that it shall carry out to ensure that the Project meets with the Construction Standards (“**the Tests**”). The date and time of each of the Tests shall be determined by the Independent Engineer in consultation with the Concessionaire and notified to the Concessions Authority who may designate its representative to witness the Tests. The Concessionaire shall provide such assistance as the Independent Engineer may reasonably require for conducting the Tests. In the event of the Concessionaire and the Independent Engineer failing to mutually agree on the dates for conducting the Tests, the Concessionaire shall fix the dates by not less than 10 (ten) Days’ notice to the Independent Engineer;
- b) All Tests shall be conducted in accordance with Appendix 7 at the cost and expense of the Concessionaire. The Independent Engineer shall observe, monitor and review the results of the Tests to determine compliance of the Project with specifications and standards and if it is reasonably anticipated or determined by the Independent Engineer during the course of any Test that the performance of the Project or any part thereof does not meet the specifications and standards, it shall have the right to suspend or delay such Test and require the Concessionaire to

remedy and rectify the defects or deficiencies. Upon completion of each Test, the Independent Engineer shall provide to the Concessionaire and the Concessions Authority copies of all Test data including detailed Test results. For the avoidance of doubt, it is expressly agreed that the Independent Engineer may require the Concessionaire to carry out or caused to be carried out additional Tests, in accordance with Good Industry Practice, for determining the compliance of the Project with specifications and standards.

- c) Upon completion of Construction Works and the Independent Engineer determining all the Tests to be successful, it shall forthwith issue to the Concessionaire and the Concessions Authority a Completion Certificate substantially in the form set forth in Appendix 10;
- d) The Independent Engineer may, at the request of the Concessionaire, issue a provisional certificate of completion substantially in the form set forth in Appendix 10 (the **“Provisional Certificate”**) if the Tests are successful and the Project can be safely and reliably placed in commercial operation though certain works or things forming part thereof are outstanding and not yet complete. The Provisional Certificate shall have appended thereto a list of outstanding items signed jointly by the Independent Engineer and the Concessionaire (the **“Punch List”**) to be completed by the Concessionaire within a stipulated time. Upon completion of all Punch List items, the Independent Engineer shall conduct tests, if required and issue the Completion Certificate. All items in the Punch List shall be completed by the Concessionaire within 90 (ninety) Days of the date of issue of the Provisional Certificate or such other extended period that the Concessions Authority may in its sole discretion determine, failing which the Provisional Certificate shall lose its validity and the Concessions Authority shall be entitled to terminate this Agreement;
- e) Without prejudice to the foregoing, if the Concessionaire shall have failed to complete any Construction Works on account of Force Majeure or for reasons solely attributable to the Concessions Authority, the Concessions Authority may, in its discretion, reduce the scope of Project and the Total Project Cost will be reduced to the same extent. Upon such reduction of Total Project Cost, the obligations of the Concessionaire in respect of such works shall be deemed to have been fulfilled.
- f) The Concessionaire shall obtain Completion certificate separately for both the Stages.

6.8 Change of Scope

- a) The Concessioneing Authority may, notwithstanding anything to the contrary contained in this Agreement, require the provision of additional works and services which are not included in the scope of the Project as contemplated by this Agreement (“Change of Scope”). Provided no such Change of Scope shall be made in the Construction Phase if it is in the reasonable judgment of the parties hereto likely to delay the completion of the Project such that the Project cannot be completed on the Scheduled Project Completion Date. Provided further, the cost of implementing a single Change of Scope shall not exceed a sum corresponding to [5%] of the Total Project Cost and during the Concession Period the cumulative cost of implementing orders pertaining to Change of Scope shall not exceed a sum corresponding to [20%] of the Total Project Cost ;
- b) If the Concessioneing Authority determines that a Change of Scope is necessary, it shall issue to the Concessionaire a notice specifying in reasonable detail the works and services contemplated there under (the “**Change of Scope Notice**”);
- c) Upon receipt of a Change of Scope Notice, the Concessionaire shall, provide to the Concessioneing Authority, the following:
 - i. the adverse impact, if any, which the Change of Scope is likely to have on the Project; and
 - ii. the cost to be incurred by the Concessionaire for and in ref such Change of Scope;
- d) Upon receipt of the foregoing information, the Concessioneing Authority shall, if it decides to proceed with the Change of Scope, convey its agreement or otherwise of the assessment of the Concessionaire. If the Concessionaire does not notify any adverse impact of a Change of Scopenotified under the Change of Scope Notice within 30 (thirty) Days of the date thereof and/or the Concessioneing Authority does not disagree with the cost assessment of the Concessionaire, the Concessioneing Authority shall issue an order requiring the Concessionaire to proceed with the implementation of such Change of Scope. If an adverse impact is notified by the Concessionaireand/or the Concessioneing Authority disagrees with the cost assessment, the Parties shall in good faith modify the Change of Scope envisaged so as to remove the

adverse impact/agree to the cost implication for carrying out the Change of Scope within a period of 30 (thirty) Days of notification of the adverse impact/cost. In the event that the Parties are unable to mutually agree to a Change of Scope and/or the cost of implementing the same, they may seek intervention of the Independent Engineer to resolve the differences and upon the final determination of the desired Change of Scope and its cost implication, the Concessioneering Authority may issue an order to implement the Change of Scope;

- e) The provisions of this Agreement, insofar as they relate to Construction Works and Tests, shall apply mutatis mutandis to the works undertaken by the Concessionaire in respect of a Change of Scope;
- f) Within 7 (seven) Days of an order for Change of Scope being issued, the Concessioneering Authority shall make an advance payment to the Concessionaire of a sum equal to 20% of the cost of Change of Scope as agreed hereunder. The Concessionaire shall, after commencement of work, present to the Concessioneering Authority bills for payment in respect of the works in progress or completed works, as the case may be, supported by such documentation as is reasonably sufficient for the Concessioneering Authority to determine the accuracy thereof. Within 30 (thirty) Days of receipt of such bills, the Concessioneering Authority shall disburse to the Concessionaire after deducting Pro-rata advance payment, such amounts as are certified by the Statutory Auditors as being expended by the Concessionaire for and in respect of implementing Construction Works or procuring equipment following an order for a Change of Scope;
- g) Notwithstanding anything to the contrary contained in this Article 6.8, the Concessioneering Authority may, after giving the Change of Scope Notice to the Concessionaire and considering its reply thereto, decide to seek competitive bids for carrying out the works envisaged in a Change of Scope; provided that the Concessionaire shall have the option of matching the first ranked bid in terms of the selection criteria, subject to payment of 2% of the bid amount to the Concessioneering Authority, and thereupon securing the award of such works or services. For the avoidance of doubt, it is agreed that the Concessionaire shall be entitled to exercise such option only if it has participated in the bidding process and its bid does not exceed the first

ranked bid by more than 10% thereof; It is also agreed that the Concessionaire shall provide access, assistance and cooperation to the person who undertakes the works or services hereunder. For the avoidance of doubt, the Concessions Authority acknowledges and agrees that it shall not undertake any works or services under this Clause 6.8 (g) if such works or services cause a Material Adverse Effect on the Concessionaire.

- h) If during the pendency of the Agreement, the Concessionaire determines at any time that a Change of Scope is necessary for providing safer and/or improved Project Facilities and Services, it shall by notice in writing request the Concessions Authority to consider such Change of Scope. The Concessions Authority shall respond within 45 (forty-five) days of receipt of such notice, either accepting such Change of Scope with modifications, if any, or inform the Concessionaire in writing of its reasons for not accepting such Change of Scope. The Concessionaire may implement the Project and provide Project Facilities and Services in accordance with the Change of Scope as may be approved in writing by the Concessions Authority and all the provisions of this Article 6 for the Project Implementation shall mutatis mutandis apply. Provided, it is clarified that the provisions contained in Article 6.8. (f) and (g) shall not apply to a Change of Scope required by the Concessionaire.

6.9 Liquidated Damages

Subject to any of the provisions of this Agreement providing for extension of time for performance or excuse from performance, as the case may be, of any of the obligations of the Concessionaire under this Agreement and delays for reasons not attributable to the Concessions Authority, the Concessionaire shall pay to the Concessions Authority liquidated damages at the rate of **[0.1% (zero point one per cent)]** of the Performance Guarantee for every Day of delay in fulfilling the specified obligations on or before a Milestone Date including a delay in obtaining the Completion Certificate or the Provisional Certificate on or before the Scheduled Project Completion Date. Provided such liquidated damages shall not in aggregate exceed 5% of the Total Project Cost and unless the delay is in obtaining of the Completion Certificate or the Provisional Certificate, shall not be payable for less than 15 (fifteen) Days of delay from a Milestone Date, in fulfilling a specified obligation. Provided further that in the event of the

respective COD is achieved on or before the Scheduled Completion Date, the damages paid under this Clause 6.9 shall be refunded by the Concessions Authority to the Concessionaire, but without any interest thereon. The Parties agree that the liquidated damages as provided are a genuine pre-estimate of the damages the Concessions Authority is likely to suffer and are not by way of a penalty. In case the aggregate delay exceeds 180 (one hundred and eighty) Days or the aggregate liquidated damages paid and/or payable under this provision exceeds the specified limit of 5% of the Total Project Cost, the Concessions Authority shall be entitled to terminate this Agreement and the consequences of termination as laid down in Article 16.5 shall follow. The Concessions Authority may, at its discretion recover any amounts with respect to liquidated damages from the Performance Guarantee.

ARTICLE 7
OPERATIONS & MAINTENANCE

7.1 (a) Obligations of the Concessionaire

In addition to any of its other obligations under this Agreement, the Concessionaire shall manage, operate, maintain and repair the Project Facilities and Services, entirely at its cost, charges, expenses and risk in accordance with the provisions of this Agreement. The Concessionaire's obligations under this Article 7.1 shall include but shall not be limited to the following:

i. Berth and Terminal Operations:

The Concessionaire shall:

- a) promptly commence operations upon the Project Facilities and Services being declared by the Concessions Authority as ready for operations;
- b) make efforts to maximise cargo handled so as to achieve optimal utilization of the Project Facilities and Services;
- c) ensure compliance of the Project Facilities and Services at least as per the Scope of Work.;
- d) be free to deploy higher capacity equipment/facilities/ technology, etc. and induct new technology and carry out value engineering for improved productivity and/or improved utilization and/or cost saving of Project assets during the concession period;
- e) ensure that the Project Facilities and Services shall adhere to the Operations and Maintenance Standards and Safety Standards and there is safe, smooth and uninterrupted flow of traffic normal operating conditions;
- f) Minimize disruption to traffic in the event of accidents or other incidents affecting the safety and use of the Project Facilities and Services by providing a rapid and effective response and maintaining liaison with emergency services of the Concessions Authority or other agencies;

- g) make available all necessary financial, technical, technological, managerial and other resources for operation, maintenance, repair and replacement of the Project Facilities and Services in a timely manner;
- h) ensure maintenance of proper and accurate record/data/accounts relating to operations of the Project Facilities and Services and the revenue earned there from;
- i) obtain, maintain and comply with Applicable Permits and comply with the Applicable Laws including those relating but not limited to dock side safety, health, environment and labour;
- j) subject to the provisions of this Agreement, perform, undertake or provide, in connection with the Project, all services which the Concessioneing Authority is authorized to perform, undertake or provide under the provisions of the MPA Act; and
- k) prevent, with the assistance of concerned law enforcement agencies, any encroachment or unauthorized use of the Project Facilities and Services.
- l) The Concessionaire(s) is responsible for maintaining a minimum depth of 16.90m in the dock basin and Turning circle basin and 17.40m in the approach channel throughout the concession period. Subject to minimum inconvenience to or dislocation of the Project Facilities and services of the Port.
- m) However, the draft of the berth may be increased from 16m draught, turning circle and approach channel in future at the cost and risk of the concessionaire subject to the approval of the Concessioneing Authority.

ii. Repairs and Maintenance

The Concessionaire shall at its own cost:

- a) repair as necessary and maintain the Project Facilities and Services or any part thereof in accordance with the Scope of Work and for this purpose carry out routine preventive measures and maintenance of the Project Facilities and Services including resurveying of pavement, repair structures and repair and refurbish equipment; and

b) maintain the Project Facilities and Services in accordance with the provisions of this Agreement and Good Industry Practice with the objective of providing adequate service standards and ensuring that the Project Facilities and Services to be transferred to the Concessions Authority upon expiry of the Concession Period are in good condition, normal wear and tear excepted.

iii. Replacement of Equipment

The Concessionaire shall at its cost, plan for replacement of the equipment well ahead of the time when the utility thereof is reasonably expected to expire and replace the equipment in accordance with Good Industry Practice so as to ensure that the Project facilities and Services commensurate with the Scope of Work, at all times during the Concession Period.

iv. Repairs, Replacement or Restoration

The Concessionaire shall at its own costs, promptly and diligently repair, replace or restore any of the Project Facilities and Services or part thereof which may be lost, damaged, or destroyed for any reason whatsoever.

v. Removal / Replacement of Assets

Except as provided/authorized under this Agreement the Concessionaire shall not, without the prior written intimation to the Concessions Authority, remove or replace any assets comprised in the Project Facilities and Services. Such notice shall contain the exact details of the assets that the Concessionaire intends to remove and/or replace, its reasons for doing so and the likely period for replacement.

vi. Payments to the Concessions Authority

The Concessionaire shall make/ensure payments to the Concessions Authority as per Article 9.

vii. Access for Inspection

The Concessionaire shall be obliged to extend all co-operation to Independent Engineer for purposes of verifying that the Project/the Project Facilities and Services are operated and maintained in compliance with the Performance Standards and adhere to the Operations and

Maintenance Standards and Safety Standards. Such verification shall be made annually. Additionally, the Concessionaire shall upon prior intimation by the Concessions Authority provide the authorized representatives of the Concessions Authority access to the Port's Assets/the Project Facilities and Services for inspection and review of operations and also to ascertain compliance with any of the requirements under this Agreement. Without prejudice to the generality of this provision, it is agreed that the Concessionaire shall in particular extend all co-operation and information required by the Experts appointed by the Concessions Authority for conducting a safety audit and verifying that the Project/Project Facilities and Services are in strict compliance with the Safety Standards.

viii. Reports

The Concessionaire shall provide to the Concessions Authority, monthly reports on Gross Revenue earned during the previous month, cargo traffic, unit gross output/ discharge rates at berth, daily output rated per vessel, Tariff earned and collected in respect of Project Facilities and Services including traffic, physical and financial performance and effective working time to waiting within 3 (three) Days following the end of each Month, and any other information relating to operations which the Concessions Authority may require from time to time. If so desired by the Concessions Authority, the Concessionaire shall provide the reports for any interval in prescribed formats and in electronic form so as to provide online access to the Concessions Authority and its representatives.

ix. Computer System and Network

The Concessionaire shall install, operate and maintain such computer system and network (such as Electronic Data Interchange and Port Community System) and follow such protocol as the Concessions Authority may specify from time to time.

x. Security Arrangements

The Concessionaire may make his own arrangements for security in the Project Site/Port Assets and with respect to the Project provided the Concessionaire shall abide by the security regulations/ procedures prescribed by the Concessions Authority or a Government Authority from time to

time. It shall also conform to and assist the Concessing Authority or any authority responsible therefor in conforming to the International Ship and Port Facility Security Code (“**ISPS Code**”) and such other codes/requirements of International Maritime Organization as may be applicable to India from time to time.

xi. Employment of Personnel

The Concessionaire shall employ qualified and skilled personnel required to operate the Project Facilities and Services. The terms of employment may be as deemed fit by the Concessionaire and the Concessionaire shall comply with all Applicable Laws and bear all costs in this regard. Without prejudice to the generality of this provision, all requisite approvals for employment of personnel of foreign origin or nationality shall be obtained by the Concessionaire prior to engaging such personnel. Failure to obtain approval will not amount to a Force Majeure Event. All employees shall always remain the Concessionaire’s responsibility. All labour law compliances shall be that of the Concessionaire alone.

xii. Minimum Guaranteed Cargo

The Concessionaire hereby unconditionally guarantees the Concessing Authority annual cargo of the levels set out in Appendix 13 (“**Minimum Guaranteed Cargo**”) and agrees that except as provided in this Agreement, it shall not be entitled to any relaxation of its guarantee in this respect.

xiii. Indemnity Against Claims for Loss of Goods

Notwithstanding anything contained in the MPA Act or any other law for the time being in force, the Concessionaire shall be responsible for meeting any claim, action, suit or proceeding (the “**Action**”) by any third party alleging the loss, destruction or deterioration of goods of which charge has been taken by the Concessionaire and indemnify, save and hold harmless the Concessing Authority, its officers, employees, agents and representatives (the “**Indemnitees**”) against all claims which may be asserted against or suffered and legal fees and costs incurred and which relate to any such goods, provided that notice of the Action received by the Indemnitee(s) shall be forwarded to the Concessionaire expeditiously and in any case within 30 Days of the receipt thereof by any of the Indemnitees. Provided further that the Indemnitees shall have the right

but not the obligation, to contest, defend and litigate any Action by any third party alleged or asserted against any of such Indemnitees in respect of, resulting from, related to or arising out of any matter for which it is to be indemnified hereunder, and reasonable costs and expenses thereof shall be indemnified by the Concessionaire. If the Concessionaire acknowledges in writing its obligation to indemnify the Indemnitees in respect of loss to the full extent, the Concessionaire shall be entitled, at its option, to assume and control the defence of such Action at its expense and through the counsel of its choice; provided it gives prompt notice of its intention to do so to the Indemnitees and reimburses to them for the reasonable cost and expenses incurred by them prior to the assumption of such defence by the Concessionaire. In such case the Indemnitees shall not be entitled to settle or compromise any Action without the prior written consent of the Concessionaire, which consent shall not be unreasonably withheld or delayed. This indemnity shall survive termination of this Agreement.

xiv. Maintenance of Complaint Portal

- a) The Concessionaire shall maintain a "Complaint Portal" on its website which shall be available to all users of the Project Facilities and Services who shall be duly informed about availability of the provision for lodging of complaints. The Complaint Portal will also be linked to the Concessions Authority website with an alert system for real time access to the complaints.
- b) Concessionaire shall take action for just and fair redressal of the grievance and submit a reply to the complainant within thirty days from the date of receipt with a copy to Authority and maintain a proof of reply.
- c) If Concessionaire fails to address the grievance and the complaint makes a reference to Concessions Authority, it will issue directions which shall be complied by the Concessionaire.

7.1 (b) Rights of Concessionaire

i. Refinancing

Upon request made by the Concessionaire to this effect, the Concessions Authority shall, in conformity with any regulations or guidelines that may be notified by the Government of India or the

Reserve Bank of India and other competent authority as applicable, as the case may be, permit and enable the Concessionaire to secure refinancing, in whole or in part, of the Debt Due on such terms as may be agreed upon between the Concessionaire and the entity providing such refinancing; provided, however, that the refinancing hereunder shall always be subject to the prior written consent of the Concessions Authority, which consent shall not be unreasonably withheld. For the avoidance of doubt, the tenure of debt refinanced hereunder may be determined mutually between the Senior Lenders and the Concessionaire, but the repayment thereof shall be completed no later than 1 (one) year prior to expiry of the Concession Period.

ii. Preferential and Priority Berthing

Normally, except for the priority and preferential berthing that may be authorized in terms of guidelines issued by the Government from time to time, the Concessionaire shall manage and operate the Project Facilities and Services on a first come - first serve, common-user basis, open to any and all shipping lines, importers, exporters, shippers, consignees and receivers, and refrain from indulging in any unfair or discriminatory practice against any user or potential user thereof. However, if there is a requirement to offer preferential or priority berthing to any one or more shipping lines or vessel owners/operators to optimize the use of the Project Facilities and Services, it shall be done in accordance with the priority berthing norms agreed in writing between Concessionaire and Concessions Authority

iii. Unclaimed cargo

The Concessionaire may at its cost:

(a) after obtaining prior written approval of the Commissioner of Customs or other competent Government Authority and in accordance with the provisions of Applicable Law, destroy or dispose off by way of public auction and/or tender, any unclaimed cargo, the charge of which has been taken by Concessionaire under or pursuant to this Agreement, and always subject to provisions of MPA Act and other laws in this regard.

(b) institute proceedings for recovery of unrealized charges, if any, in its name and/or defend any claim made in respect of such cargo by consignee/owners. The Concessions Authority agrees to provide all reasonable assistance necessary in this regard to the Concessionaire.

7.1 (c) Obligations of the Concessions Authority

In addition to any of its other obligations in this Agreement, the Concessions Authority shall arrange for and provide the following:

i. Marine and Port Services

The Concessions Authority shall provide/ cause to be provided, to the Concessionaire, the following services:

- a) scheduling the entry, berthing and sailing of the vessels, pilotage and towage on a non-discriminatory basis subject to priority berthing norms and the sailing schedule as determined by the Deputy Conservator of the Port depending on individual ship characteristics and tidal conditions;
- b) Deleted.
- c) waterside safety and safety of navigation;
- d) Deleted
- e) Deleted.
- f) provision and maintenance of all general port infrastructure other than those covered under the Concession, necessary for management, operation and maintenance of the Project Facilities and Services;
- g) [provide for/put in place arrangements for provision of Supporting Project Infrastructure as provided in Appendix 19]
- h) assist the Concessionaire in securing the assistance of CISF or the relevant Government

Authority as may be necessary to prosecute any persons for any offence committed by them within the Project Site; and

i) Deleted.

ii. Approvals

The Concessions Authority shall promptly grant approvals/ consents sought by the Concessionaire as required under this Agreement subject to the Concessionaire having complied with all Applicable Laws/requirements in this regard.

iii. Additional Land, Utilities and facilities.

In the event of land, utilities and facilities are found to be insufficient by the Concessionaire for providing services as per the Scope of Work at any time during the concession period, the Concessionaire may approach the Concessions Authority for providing additional land, utilities and facilities. Concessions Authority on being approached by Concessionaire with due justification of the additional land, utilities, facilities requirement as applicable shall consider, subject to availability and provide additional land, utilities and facilities if considered necessary for providing project facilities as per Scope of Work. Even if authority is not in a position to provide additional land, utilities and services, the Concessionaire would not be entitled to any relaxation on the grounds that land, utilities and services are found to be insufficient by Concessionaire for providing services as per Scope of Work.

iv. Reference to Adjudicatory Board

In the event of Project becoming a Stressed project, Concessions Authority may make a reference to Adjudicatory Board, after its constitution as per Article 19.4 of this Agreement, for appraisal and review of the Project to suggest measures to revive the Project.

7.1(d) Rights of Concessions Authority

i. If in the reasonable opinion of the Concessions Authority, the Concessionaire is in material breach of its obligations under this Agreement for handling of cargo at the Project, the Concessions Authority may, without prejudice to any of its rights under this Agreement

including termination thereof, by notice require the Concessionaire to take reasonable measures for the handling of cargo.

- ii. In the event that the Concessionaire, upon notice as per 7.1(d)(i) above fails to handle cargo at the Project as per Agreement within a reasonable period, the Concessioneing Authority may take over the performance of any or all the obligations of the Concessionaire to the extent deemed necessary by it for handling of cargo at the Project, at the risk and cost of the Concessionaire and to recover any costs and expenses incurred by the Concessioneing Authority in discharge of its obligations hereunder from the Concessionaire; provided that such taking over by the Concessioneing Authority shall be of no greater scope and of no longer duration than is reasonably required.
- iii. the Concessioneing Authority has the right, to recover the costs specified in Clause 7.1 (d) directly from the Escrow Account as if such costs were O&M Expenses, and for that purpose, the Concessionaire hereby agrees to give irrevocable instructions to the Escrow Bank to make payment from the Escrow Account in accordance with the instructions of the Concessioneing Authority under this Clause 7.1 d (iii) and debit the same to O&M Expenses.

7.2 Utilities and Services

The Concessioneing Authority shall during the Concession Period provide access to the Concessionaire to all infrastructure facilities and utilities including water, electricity and telecommunication facilities necessary for the implementation, operations and maintenance of the Project/ Project Facilities and Services in accordance with this Agreement, at rates and on terms no less favourable to the Concessionaire than those generally available to commercial customers availing substantially equivalent facilities and utilities. Provided unless otherwise agreed to by the Concessioneing Authority:

- a) the power made available shall be as received by the Concessioneing Authority from *TANGEDCO* or any other relevant Authority. The take off point for electricity shall be from the Port's nearest substation.

- b) the water made available shall be as received by the Concessioneing Authority from TWAD Board or any other relevant Authority. The take off point for water shall be the nearest available water line;
- c) the Concessionaire shall, at its cost, and to the satisfaction of the Concessioneing Authority, install meters to measure the consumption of power and water. The Concessioneing Authority does not warranty the reliability, quality and quantity of water and power and shall not be liable in anymanner for the shortage in or non-supply of these utilities;
- d) The Concessionaire may, at its cost, make alternate arrangements for power including but not limited to installation of generators, subject to obtaining Applicable Permits, if any, therefor.

7.3 Liability for shortfall in performance

- a) In the event the Concessioneing Authority, whether from the review of reports submitted by theConcessionaire in accordance with the provisions of this Agreement or otherwise, observes thatthe Project/Project Facilities and Services do not comply with the Performance Standards or fallshort of the Performance Standards, the Concessioneing Authority shall calculate the amount ofliquidated damages payable by the Concessionaire in accordance with Appendix 14 of thisAgreement and demand the Concessionaire by a notice in writing to pay the same within 30(thirty) Days and on failure of the Concessionaire to pay the same recover the amount from theConcessionaire. Provided that on receipt of the demand the Concessionaire may make a writtenrepresentation to the Concessioneing Authority which shall be considered by the ConcessioneingAuthority on merits and the Concessioneing Authority may waive the liquidated damages in part orfull, if it is satisfied that the Concessionaire has been carrying out its obligations diligently andefficiently and the shortfall to be waived was on account of reasons beyond the control of theConcessionaire. It is clarified that this provision does not prejudice the rights of the Concessioneing Authority upona Concessionaire Event of Default as set out in Article 15 including the Concessioneing Authority'sright to terminate this Agreement which shall remain unaffected.

b) In the event the Concessionaire, with adequate supporting documentation, represents that the provision of services by Concessions Authority do not comply with the Performance Standards or fall short of the Performance Standards mentioned in Appendix 18, the Concessionaire shall calculate the amount of liquidated damages payable by the Concessions Authority in accordance with Appendix 18 of this Agreement and demand the Concessions Authority by a notice in writing to pay the same within 30 (thirty) Days and on failure of the Concessions Authority to pay the same, recover the amount from the Concessions Authority. Provided that on receipt of the demand, the Concessions Authority may make a written representation to the Concessionaire which shall be considered by the Concessionaire on merits and the Concessionaire may waive the liquidated damages in part or full, if it is satisfied that the Concessions Authority has been carrying out its obligations diligently and efficiently and the shortfall to be waived was on account of reasons beyond the control of the Concessions Authority.

ARTICLE 8

TARIFF

8.1 Applicable Tariff

- a) Concessionaire shall fix the Tariff based on market conditions and on such other conditions, as notified and made applicable by a competent authority, under the provisions of the Major Ports Authorities Act 2021. Provided, that the Tariff fixed by the Concessionaire shall not be more than the highest tariff at any container terminal in any Major Port.”
- b) To ensure the above, the Concessionaire shall submit the proposed revision of tariff along with the comparison w.r.to other major Ports to ensure the clause mentioned vide 8.1 (a) above before implementation of the same revision.

8.2 Levy and Recovery of the Tariff

The Concessionaire shall be entitled to recover Tariff from the users of the Project Facilities and Services as per the Tariff set by the Concessionaire as per Clause 8.1. The Concessionaire shall, subject to Clause 8.3 hereunder, deposit all the Tariff and other receipts in relation to the Project Facilities and Services in the Escrow Account and shall not make any such deposits to any other account either of the Concessionaire or of any other person.

8.3 Collection of Cesses and Charges

The Concessionaire shall collect all cesses and charges including infrastructure cess, if any levied on the users as notified by a competent authority, and as may be requested by the Concessions Authority on behalf of the Concessions Authority and remit the same to the Concessions Authority. Provided, the Concessionaire shall be duly authorized by the Concessions Authority or such other authority as may be competent in this regard, for the purpose of such collection.

ARTICLE 9

PAYMENTS TO THE CONCESSIONING AUTHORITY

9.1 License Fee

- (a) The Concessionaire shall, as consideration for the use, in its capacity as a bare licensee of the Project Site and the equipment comprised in the Port's Assets, made available in accordance with Article 2.4 as detailed in Appendix-2, pay to the Concessioning Authority Re 1 (the "License Fee").
- (b) The applicable License Fee shall be due and payable in advance every year starting from Date of Award of Concession.

9.2 Payments of Premium

- a) The Concessionaire shall have to pay to the Authority for the year commencing from 11th year of award of concession, a premium in the form of Revenue Share equal to 1% of the total Gross Revenue earned and for each subsequent year thereafter, the Premium shall be determined by increasing the proportion of Premium in the respective year by an additional 1% as compared to the immediately preceding year. For the avoidance of doubt, and by way of illustration, the Premium for the 11th year, 12th year and 13th year will be 1%, 2% and 3%, respectively, provided if actual annual cargo is lesser than Minimum Guaranteed Cargo after 15 years from the date of award of concession, as per Clause 7.1 a (xii), the Minimum Guaranteed Cargo shall be considered for calculation of applicable premium payable and any shortfall in Premium thus calculated, shall be payable along with the Premium payment of the last month of the Financial Year as set out in Appendix 13. Notwithstanding anything to the contrary contained herein above, the Premium payable by the Concessionaire under this Article 9 shall at all times be subject to a ceiling of 35% (Thirty five per cent) of the total Gross Revenue earned in the respective year.
- b) In case any discount or incentives are mandated by Government Authorities to be applicable on certain cargo types or nature of cargoes, the Premium Payments for such cargo types handled by the Concessionaire shall be subjected to same level of discounts.
- c) Gross Revenue shall be computed on the basis of the maximum Tariffs leviable for and in respect

of the Project Facilities and Services provided during the relevant period of computation. It is clarified that discounts and deferments, if any offered by the Concessionaire to the users or amounts if any not collected by the Concessionaire for any reason whatsoever in respect of the Project Facilities and Services, shall be ignored for the purpose of Gross Revenue.

- d) The Premium for each Month shall be paid on or before the seventh Day of the immediately succeeding Month.
- e) Deleted.
- f) The Premium amounts remaining unpaid on respective due dates would carry interest at rate equal to 3% above the Bank Rate per annum from the due date till the date of payment or realization thereof.
- g) The Concessionaire acknowledges that the Concessions Authority shall be the nodal agency to monitor the performance of the Project of development of common user facility.

9.3 Additional Utilities or Services

The Concessionaire shall also pay rent or other charges for any additional and (other than the Project Site/Project Assets) or additional utilities or services, made available by the Concessions Authority to the Concessionaire in accordance with Article 7.1 (c) (iii) as per the terms, conditions and covenants including on payment of rates specified by the Concessions Authority. Such rates shall be equal to 1.20 times the commercial category Scale of Rates. The charges in case of additional land will be 1.20 times of scale of rates as applicable at the time of giving additional land, where the fees is paid on half year/ yearly basis, it may also contain an escalation clause as in Bidding Documents but periodic review of SOR, if any will not be applicable. The present rates applicable in respect of land, utilities and services are set out in Appendix 12.

9.4 Certified Accounts

During the subsistence of this Agreement, the Concessionaire shall maintain all documents and supporting evidences for its financial statements including agreements and documents with respect to all capital and debt raised by the Concessionaire, capital and revenue expenses

towards the Project, ship/vessel/user wise information, and, as relevant, the details of cargo handled by category, tariffs charged and the amount of rates received. The Concessionaire shall submit to the Concessions Authority a financial statement including total TEUs handled for every 6 (six) monthly period ending 30th September and 31st March every year, duly certified by its Statutory Auditors. The certificate must be furnished within 30 (Thirty) Days of the end of each such period.

The Concessions Authority shall, at its own cost, have the option to appoint another firm of chartered accountants duly licensed to practice in India (the “**Additional Auditor**”) and empaneled by CAG to conduct a special audit of the quantity of TEUs handled and the financial statements, documents and supporting evidences thereto and compliances as may be mandated by or arising out of the Concession Agreement and report to the Concessions Authority such information as may be desired by the Concessions Authority for any period and the quantity of TEUs handled (“**Special Audit**”).

In the event that the Gross Revenue reported by the Additional Auditor is higher than that reported by the Statutory Auditor, the auditors shall meet to resolve such differences and if they are unable to resolve the same the Concessionaire shall pay Premium on the Gross Revenue reported by the Additional Auditor. The Concessionaire shall also pay interest @ 3% above the Bank Rate on the difference between the Premium paid by the Concessionaire based on the Gross Revenue by the Statutory Auditor and that payable by the Concessionaire based on the Gross Revenue reported by the Additional Auditor for the intervening period between the payment of the Premium as above. Further, the Concessionaire shall reimburse all costs, charges and expenses related to the Special Audit. Without prejudice to the aforesaid, if the difference between the Gross Revenue reported by the Additional Auditor and that reported by the Statutory Auditor is higher than [5]% the Concessions Authority shall at its sole discretion have the right to require a Special Audit for the entire outstanding tenure of the Concession.

9.5 Escrow Account

9.5.1 The Concessionaire shall, prior to the Date of Award of Concession, open and establish an Escrow Account with a Bank (the “**Escrow Bank**”) in accordance with this Agreement read with the

Escrow Agreement.

9.5.2 The nature and scope of the Escrow Account are fully described in the agreement (“Escrow Agreement”) to be entered into amongst the Concessionaire, the Concessions Authority, the Escrow Bank and the Senior Lenders through the Lenders’ Representative, which shall be substantially in the form set forth in Appendix 15.

9.5.3 Deposits into Escrow Account

The Concessionaire shall deposit or cause to be deposited the following inflows and receipts into the Escrow Account:

- (a) all monies received in relation to the Project from Banks, other lenders, shareholders and insurance companies;
- (b) all Tariff and any other revenues from or in respect of the Project, including the proceeds of any rentals, deposits, capital receipts or insurance claims;
- (c) all Tariff collected by the Concessions Authority in exercise of its rights under the Concession Agreement;
- (d) all payments by the Concessions Authority, after deduction of any outstanding License Fee and Premium; and
- (e) Termination Payment

Provided that the Senior Lenders may make direct disbursements to the EPC Contractor in accordance with the express provisions contained in this behalf in the Financing Documents

9.5.4 Withdrawals during Concession Period

At the beginning of every month post COD, or at such shorter intervals as the Lenders' Representative and the Concessionaire may by written instructions determine, the Escrow Bank shall withdraw amounts from the Escrow Account and appropriate them in the following order by depositing such amounts in the relevant Sub-Accounts for making due payments, and if such payments are not due in any month, then retain such monies in such Sub-Accounts and pay out therefrom on the Payment Date(s):

- a) all taxes due and payable by the Concessionaire for and in respect of the Project;

- b) all construction/implementation expenses relating to the Project/Project Facilities and Services, subject to limits if any set out under the Financing Documents;
- c) all expenses related to operations and maintenance of the Project including License Fee, subject to the ceiling, if any, set forth in the Financing Documents;
- d) towards payment of Premium to the Authority;
- e) towards its debt service obligations under the Financing Documents;
- f) towards payment of other sums payable to the Concessioneing Authority and liquidated damages, if any ;
- g) towards any reserve requirements in accordance with the Financing Documents;
- h) balance, if any, in accordance with the instructions of the Concessionaire

9.5.5 Withdrawals upon Termination

Notwithstanding anything to the contrary contained in this Agreement, all amounts standing to the credit of the Escrow Account shall, upon termination, be appropriated in the following order:

- a) all taxes due and payable by the Concessionaire for and in respect of the Project;
- b) 90% of Debt Due excluding subordinated debt;
- c) all payments of outstanding Licence Fee, Royalties and damages certified by the Concessioneing Authority as due and payable to it by the Concessionaire;
- d) outstanding debt service including the balance of Debt Due excluding subordinated debt;
- e) outstanding subordinated debt;
- f) incurred or accrued operation & maintenance expenses;
- g) any other payments required to be made under this Agreement; and

h) balance, if any, in accordance with the instructions of the Concessionaire; Provided that no appropriations shall be made under Sub-clause (h) of this Clause 9.5.5 until a Vesting Certificate has been issued by the Concessions Authority under the provisions of Clause 18.5. The provisions of this Article 9.5 and the instructions contained in the Escrow Agreement shall remain in full force and effect until the obligations set forth in Clause 9.5.5 have been discharged.

9.5.6 Withdrawals upon end of Concession Period

All amounts standing to the credit of the Escrow Account at the end of the Concession Period shall be appropriated in the following order of priority:

- a) towards taxes and statutory dues payable by the Concessionaire;
- b) compensation to Senior Lenders in terms of the Financing Documents towards discharge of the Concessionaire's liability under such Financing Documents;
- c) all amounts due to the Concessions Authority and amounts payable towards transfer of the Project Facilities and Services by the Concessionaire in accordance with this Agreement; and the Concessionaire shall be at liberty to withdraw any sums outstanding in the Escrow Account after:
 - i) all the aforesaid payments due have been made and/or adequate reserves have been created in respect thereof to the satisfaction of the Senior Lenders and the Concessions Authority;
 - ii) the Escrow Agent has received a confirmation of final settlement by the Senior Lenders and/or Concessions Authority; and
 - iii) Vesting Certificate has been issued by the Concessions Authority under the provisions of Clause 18.5.

ARTICLE 10
ASSETS: PERMITTED CHARGE

10.1 Except as otherwise provided in this Agreement, the Concessionaire shall not assign its rights, title or interest in this Agreement in favour of any Persons without prior written consent of the Concessioneing Authority.

10.2 Permitted assignment and charges

The restraints set forth in Clause 10.1 shall not apply to:

- (a) liens arising by operation of law (or by an agreement evidencing the same) in the ordinary course of business of the Project;
- (b) mortgages/pledges/hypothecation of goods/assets other than Project Assets and their related documents of title, arising or created in the ordinary course of business of the Project, and as security only for indebtedness to the Senior Lenders under the Financing Agreements and/or for working capital arrangements for the Project. For the avoidance of doubt, the Senior Lenders would be entitled to create a lien on the Escrow Account, subject to and without prejudice to the rights of the Concessioneing Authority under this Agreement;
- (c) assignment of rights, interest and obligations of the Concessionaire to or in favour of the Lenders' Representative as nominee and for the benefit of the Senior Lenders, to the extent covered by and in accordance with the Substitution Agreement as security for financing provided by Senior Lenders under the Financing Agreements; and
- (d) liens or encumbrances required by any Applicable Law

ARTICLE 11
SHAREHOLDING

11.1 Ownership Structure

The Applicant/Consortium has caused the Concessionaire to be incorporated as a special purpose company to implement, operate and maintain the Project/Project Facilities and Services in accordance with this Agreement. The shareholding pattern of Concessionaire/each member of the Consortium in the Concessionaire is [●].

11.2 Shareholding

The Concessionaire shall ensure that the Applicant/ members of the Consortium maintain Management Control at least until expiry of the one (1) year after Project COD as also maintain their equityholding in the Concessionaire such that:

- a) Selected Bidder/Consortium Members together with its/their Associates hold not less than 51% of its issued and paid up equity and that no member of Consortium whose technical and financial capacity was evaluated for the purposes of Pre-qualifications in response to Request for Qualification shall hold less than (i) 26% of the subscribed and paid up equity share capital of the SPV; and (ii) 5% (five per cent) of the Total Project Cost specified in this Concession Agreement until expiry of one (1) year after Project COD . At anytime, after expiry of the aforesaid share holding period, lead member can approach Concession Authority for approval proposing a new entity/ consortium. Concession Authority may at its sole discretion consider and approve it subject to the entity/consortium meeting the eligibility criteria as prescribed in Bid Document for the Project; and
- b) M/s [●] (“**Lead Member**”) of the Consortium (original or new as the case may be) legally and beneficially holds at any time not less than 50% of the Consortium’s holding in the paid-up equity capital of the Concessionaire.

Any Transfer of shareholding in the Concessionaire and/or direct or indirect change in the Management Control of the Concessionaire, including by way of a restructuring or

amalgamation, shall only be with the prior written approval of the Concessing Authority which consent shall not be withheld except (i) for reasons of national security; or (ii) [if the Person proposed for assuming such Management Control would by virtue of the restrictions imposed under the Applicable Law or the conditions of bidding (including restrictions to avoid anti-competitive and monopolistic practice) and/or public policy be disqualified from undertaking the Project.] Provided, nothing contained in this Article shall preclude or prevent pledge of shares in the Concessionaire in favor of Senior Lenders as security for the Financial Assistance subject to the enforcement and consequent Transfer thereof only with the prior written consent of the Concessing Authority as stated hereinbefore and in accordance with the Financing Documents.

11.3 Constituent Documents

The Concessionaire shall ensure that its articles of association adequately reflect the aforesaid and the relevant commitments, obligations and responsibilities of the Applicant/Consortium.

In particular, the articles of association and the memorandum of association of the Concessionaire shall be amended within 3 (three) months of the Date of Award of Concession to include the terms and conditions regarding the composition of share-holding and management stipulated in this Agreement; and terms and conditions related to changes in the share-holding pattern stipulated in this Agreement. The Concessionaire shall submit the amended articles of association and the memorandum of association to the Concessing Authority as soon as may be reasonably possible. Any subsequent change in the articles of association or the memorandum of association which alter the provisions required by this Article shall require the prior approval of the Concessing Authority and the articles of association and memorandum of association of the Concessionaire shall include a specific provision to this effect.

ARTICLE 12

GENERAL RIGHTS, DUTIES AND OBLIGATIONS

12.1 Of the Concessionaire

(a) Applicable Permits

The Concessionaire shall at all times during the Concession Period maintain and comply with the Applicable Permits.

(b) Taxes & duties

The Concessionaire shall during the Concession Period pay in a timely manner all taxes, duties, levies, cess and charges including but not limited to income tax, GST, excise duty and customs duty that may be levied, claimed or demanded from time to time by any Government Authority including any increase therein effected from time to time from any Government Authority, in respect of the Project/ the Project Facilities and Services.

(c) Insurance

i. Insurance Requirement

The Concessionaire shall effect and maintain at its own cost, during the Concession Period, such insurances for such maximum sums as may be required under the Financing Agreements and Applicable Laws, and such insurances as may be necessary or prudent in accordance with Good Industry Practice. The Concessionaire shall also effect and maintain such insurances as may be necessary for mitigating the risks that may devolve on the Concessions Authority as a consequence of any act or omission of the Concessionaire. The Concessionaire shall procure that in each insurance policy, the Concessions Authority shall be a co-insured and that the insurer shall pay the proceeds of insurance into the Escrow Account. For the avoidance of doubt, the Parties agree that the level of insurance to be maintained by the Concessionaire after repayment of Senior Lenders' dues in full shall be determined on the same principles as applicable for determining the level of insurance prior to such repayment of Senior Lenders' dues. The Concessionaire shall purchase and maintain insurances as are prudent, including but not limited to the following:

- a) builder's all risk insurance;
- b) loss, damage or destruction of the Project Facilities and Services, at replacement value;
- c) comprehensive third-party liability insurance including injury or death to personnel of the Concessioneing Authority and others who may enter the Project Site or the Port's Assets;
- d) workmen's compensation insurance;
- e) marine cum storage cum erection insurance; and
- f) any other insurance that may be necessary to protect the Concessionaire, its employees and its assets and the Concessioneing Authority, its employees and agents engaged in or connected to the Project and the Project Site and Port Assets (against loss, damage or destruction at replacement value) including all Force Majeure Events that are insurable and not otherwise covered in items (a) to (e).

ii. Insurance Cover & Insurance Companies

The Concessionaire shall insure all insurable assets comprised in the Port's Assets and/or the Project Facilities and Services and all insurable risks associated with the Project to the extent advisable in accordance with Good Industry Practice ("**Insurance Cover**").

iii. Evidence of Insurance Cover

The Concessionaire shall, from time to time, provide to the Concessioneing Authority copies of all insurance policies (or appropriate endorsements, certifications or other satisfactory evidence of insurance) obtained by the Concessionaire in accordance with this Agreement.

iv. Application of Insurance Proceeds

Subject to the provisions of the Financing Documents, all moneys received under insurance policies shall be promptly applied by the Concessionaire towards repair or renovation or restoration or substitution of the Port Assets and the Project Facilities and Services or any part thereof which may have been damaged or destroyed and in respect of which the claim is lodged. The

Concessionaire may designate the Senior Lenders as the loss payees under the insurance policies/assign the insurance policies in their favour as security for the Financial Assistance. The Concessionaire shall carry out such repair or renovation or restoration or substitution to the extent possible in such manner that the Project Facilities and Services or any part thereof, shall, after such repair or renovation or restoration or substitution be as far as possible in the same condition as they were before such damage or destruction, normal wear and tear excepted.

v. Validity of the Insurance Cover

The Concessionaire shall pay the premium payable on such insurance policy(ies) so as to keep the policy(ies) in force and valid throughout the Concession Period and furnish copies of the same to the Concessions Authority. Each insurance policy shall provide that the same shall not be cancelled or terminated unless 10 (ten) Days' clear notice of cancellation is provided to Concessions Authority in writing. If at any time the Concessionaire fails to purchase and maintain in full force and effect any and all of the insurances required under this Agreement, the Concessions Authority may at its option purchase and maintain such insurance and all sums incurred by the Concessions Authority therefor shall be reimbursed with interest @ 3% above Bank Rate per annum by the Concessionaire forthwith on demand, failing which the same shall be recovered by the Concessions Authority by exercising right of set off or otherwise.

vi. Waiver of Subrogation

All insurance policies procured in terms of the provisions hereof shall include a waiver of any right of subrogation of the insurers there under against, inter alia, the Concessions Authority and its assigns and successors and their respective subsidiaries, affiliates, employees and of any right of the insurers of any set-off or counterclaim or any other deduction, whether by attachment or otherwise, in respect of any liability of any such person insured under any such policy or in any way connected with any loss, liability or obligation covered by such policies of insurance.

vii. Concessionaire's waiver

The Concessionaire hereby further releases, assigns and waives any and all rights of subrogation or recovery against, inter alia, the Concessions Authority and its assigns, undertakings and their

subsidiaries, affiliates, employees, successors, insurers and underwriters, which the Concessionaire may otherwise have or acquire in or from or in any way connected with any loss, liability or obligation covered by policies of insurance maintained or required to be maintained by the Concessionaire pursuant to this Agreement (other than third party liability insurance policies) or because of deductible clauses in or inadequacy of limits of any such policies of insurance.

(d) Indemnification

- i. The Concessionaire shall indemnify, defend, save and hold harmless the Concessing Authority and its officers, servants, agents, Government Instrumentalities, Designated GOI Agencies and Concessing Authority owned and/or controlled entities/enterprises, (the "Government Indemnified Persons") against any and all suits, proceedings, actions, demands and claims from third parties for any loss, damage, cost and expense of whatever kind and nature, whether arising out of any breach by the Concessionaire of any of its obligations under this Agreement or any related agreement or on account of any defect or deficiency in the provision of services by the Concessionaire to the Concessing Authority or any User or from any negligence of the Concessionaire under contract or tort, or on any other ground whatsoever, except to the extent that any such suits, proceedings, actions, demands and claims have arisen due to any negligent act or omission, or breach or default of this Agreement on the part of the Government Indemnified Persons.
- ii. The Concessing Authority shall indemnify, defend, save and hold harmless the Concessionaire against any and all suits, proceedings, actions, demands and claims from third parties for any loss, damage, cost and expense of whatever kind and nature arising out of (a) defect in title and/or the rights of the Concessing Authority in the land comprised in the Site, and/or (b) breach by the Concessing Authority of any of its obligations under this Agreement or any related agreement, which materially and adversely affect the performance by the Concessionaire of its obligations under this Agreement, save and except that where any such claim, suit, proceeding, action, and/or demand has arisen due to a negligent act or omission, or breach of any of its obligations under any provision of this Agreement or any related agreement and/or breach of its statutory duty on the part of the Concessionaire, its

subsidiaries, assigns, affiliates, contractors, servants or agents, the same shall be the liability of the Concessionaire.

(e) Engagement of Contractors

The Concessionaire may engage any Person possessing the requisite skill, expertise and capability of designing, engineering, procurement and construction of civil/ mechanical/electrical engineering structures/equipment, and /or operation and maintenance of the Project Facilities and Services.

Provided:

- i. the Concessionaire shall at all times be solely responsible for all its obligations under this Agreement notwithstanding any such engagement and anything contained in any Project Contracts or any other agreement, and no default under any Project Contract or agreement shall excuse the Concessionaire from its obligations or liability hereunder and the Concessionaire shall at all times be solely responsible for nonperformance or for any defect, deficiency or delay in the construction and erection and/or installation of the structures/equipment or any part thereof and for the operation and maintenance of the Project/the Project Facilities and Services in accordance with the provisions of this Agreement;
- ii. The Concessions Authority shall on request by the Concessionaire, assist in obtaining, if required, security clearance for the Contractor the Concessionaire intends to engage
- iii. the Concessionaire shall ensure that the Project Contracts contain provisions that entitle the Concessions Authority to step into such contract in its sole discretion in substitution of the Concessionaire in the event of termination or suspension of this Agreement; and
- iv. any contract that it enters with an Affiliate in respect of the Project shall be on an arm's length basis.

(f) Condition Survey

- i. The Concessionaire agrees that at least 6 (six) Months prior to the expiry by efflux of time of the Concession Period, it shall, cause to be conducted at its cost by an Independent Engineer, a condition survey and an inventory of the entire Project Facilities and Services. If, as a result of such survey, the Expert shall observe/notice that the Port's Assets and/or the Project Facilities and Services or any part thereof have/has not been operated and maintained in accordance with the requirements therefor under this Agreement (normal wear and tear excepted) the Concessionaire shall, at its cost and expenses, take all necessary steps to put the same in good working condition well before the Transfer Date. In the event the Concessionaire fails to comply with this provision, the Concessioneing Authority may itself cause the condition survey and inventory of the Port's Assets and Project Facilities and Services to be conducted and remove any defect or deficiency. The Concessioneing Authority shall be promptly reimbursed by the Concessionaire for the costs incurred in conducting such survey and preparation of inventory as also in putting the Project Facilities and Services in a good working condition.
- ii. Deleted

g) Compliance to Green Ports policy

The Concessionaire shall comply with the measures set out in Appendix 20

12.2 Of the Concessioneing Authority

(a) Assistance in obtaining Approvals, Permits and Licenses

The Concessioneing Authority shall, at the written request of the Concessionaire, but without guarantees and/or without assuming any responsibility in that behalf, issue recommendatory letters and make best efforts to assist the Concessionaire in obtaining all the Applicable Permits including renewals thereof. Provided that, nothing contained in this Article shall relieve the Concessionaire of its obligations under this Agreement to obtain the Applicable Permits and to keep them in force and effect throughout the Concession Period.

(b) Taxes and Duties

Any levy or levies including increase therein of taxes, duties, cess and the hike, on account of/in respect of Port's Assets payable to the State Government or any statutory authority shall be met and paid by the Concessioneing Authority.

(c) Competing Facilities

The Concessioneing Authority shall not operationalize any additional facility within Port Limits for handling containers either on its own or through any other Person until the earlier of (i) 5 (five) years from the Scheduled Project Completion Date of Stage I; or (ii) the average annual volume of cargo handled at the Project Facilities and Services reaches a level of 70% of Project Capacity of Stage I for 2 (two) consecutive years ("Exclusivity Period"). Provided, this restriction shall not apply to the additional facility envisaged below;

- i. Upgradation of Berth VII into Container Terminal

(d) General rights of inspection and verification

The Concessioneing Authority may during the pendency of the Agreement itself or by Independent Engineer verify the performance of obligations of the Concessionaire as set out in this Agreement.

12.3 Of the Concessioneing Authority and the Concessionaire

(a) Monitoring Arrangement

The parties shall furnish to each other periodical status reports relating to key milestones and obligations as per Appendix 17 "Monitoring Arrangement"

(b) Compliance with Laws and Regulations

The Parties shall perform their respective obligations under this Agreement in accordance with the Applicable Laws and Applicable Permits.

(c) Rights to Documents

i. Concessioneing Authority's Documents

Documents and computer programs or copies thereof, if any, provided by the Concessioneing Authority to the Concessioneaire, shall always remain the property of the Concessioneing Authority. Such documents, computer programs and/or copies shall not be used by the Concessioneaire for the purposes other than for the Project. Such documents, computer programs and/or copies thereof shall, unless otherwise agreed upon by the Concessioneing Authority, be returned by the Concessioneaire to the Concessioneing Authority on the Transfer Date.

ii. Concessioneaire's Documents

Documents and computer programs provided by the Concessioneaire, or which are developed (and owned by the Concessioneaire) for operation and/or maintenance of the Project /the Project Facilities and Services shall be handed over by the Concessioneaire to the Concessioneing Authority free of cost on the Transfer Date.

iii. Confidentiality

All confidential information and documents (whether financial, technical or otherwise) provided by either Party to the other shall not, unless compelled by law or the process of a Government Authority, be disclosed to any Person without the consent of the other Party with the exception of providing such information to legal advisors/auditors of the concerned party on a need-to-know basis. This covenant shall survive the Concession Period.

iv. Obligation to Cooperate

The Parties shall mutually cooperate with each other in order to achieve the objectives of this Agreement.

v. Substitution Agreement

The Substitution Agreement envisaged by Appendix 3 hereunder, will/may be executed within 30(thirty) Days' of notice by the Concessioneaire to the Concessioneing Authority of the Senior Lenders' readiness to execute the same.

ARTICLE 13

CHANGE IN LAW AND CHANGE IN CARGO

13.1 Change in Law

13.1.1 “Change in Law” means the occurrence of any of the following after the Bid Date and having Adverse Impact as per the provisions of the Clause 13.1.2 (i):

- a) the enactment of any new Indian law;
- b) the repeal, modification or re-enactment of any existing Indian law or any international treaty to which Government of India is a signatory;
- c) the commencement of any Indian law which has not entered into effect until the Bid Date;
- d) a change in the interpretation or application of any Indian law by a judgement of a court of record which has become final, conclusive and binding, as compared to such interpretation or application by a court of record prior to the Bid Date; or
- e) any change in the rates of any of the Taxes that have a direct effect on the Project;

13.1.2 The Remedy

- i. If as a result of Change in Law, the Concessionaire suffers decrease in cargo traffic and reduction in revenue or an increase in costs or reduction in EBITDA or other financial burden, the aggregate financial effect of which results in either (a) reduction by more than 25% of EBITDA in the affected financial year as compared to the average EBITDA of the previous three financial years or from COD till occurrence of Change in Law in case the Project is operational for less than three years from COD and this is enduring in nature due to the effect of Change in Law or (b) an increase in the capital expenditure by more than 20% of the estimations before the occurrence of such Change in Law provided that such an increase in capital expenditure has been certified by the Senior Lender and the Independent Engineer, or (c) during construction period, the purpose for which the Project is being constructed becomes non permissible or unviable due to Change in Law (hereby (a), (b), (c) known as “**Adverse Impact**”), the Concessionaire may so notify the Concessioneering

Authority. Upon such notification, the Concessing Authority and the Concessionaire shall meet, as soon as reasonably practicable but no later than 30 (thirty) days from the date of notice and set up a Conciliation & Settlement Committee ("**Committee**");

- ii. The Committee referred above shall conduct its proceedings in accordance with the provisions of Article 19 as if it is an arbitration proceeding under that Article, save and except as provided in this Clause 13.1.2;
- iii. The Committee referred to in this Clause 13.1.2 shall conduct preliminary proceedings to satisfy itself that
 - (a) A Change in Law has occurred, and this has an Adverse Impact on an enduring basis; and
 - (b) the Change in Law or its effects have not been caused by any Party by any act or omission or negligence on its part, and if the Committee is satisfied that each of the conditions specified hereinabove is fulfilled, it shall issue an order to this effect and conduct further proceedings under this Clause 13.1.2.
- iv. Upon completion of the proceedings referred to in this Clause 13.1.2, the Committee may by a reasoned order make recommendations and setting out the terms of reference which shall be:
 - (a) based on a fair and transparent justification;
 - (b) no greater in scope than is necessary for mitigating the effects of the Change in Law so as to place the Concessionaire in the same financial position as it would have enjoyed had there been no such Change in Law resulting in reduction in EBIDTA or increase in capital expenditure as described in 13.1.2 (i);
 - (c) of no greater duration than is necessary for mitigating the effects of the Change in Law; and
 - (d) quantified and restricted in terms of relief or remedy and may include extension of Concession Period or change in cargo as per the provisions of Article 13.2 or both, as the case may be, subject to such extension in the Concession Period is limited to a maximum of [10(ten)] years, or any other remedy as it deem appropriate but shall not include any recommendation of

any financial compensation by the Concessing Authority to the Concessionaire.

(e) Within 15 (fifteen) days of receiving the order and terms of reference referred to in Clause 13.1.2

- v. the Parties shall meet and make efforts in good faith to accept, in whole or in part, the relief or remedy recommended by the Committee for mitigating the effects of the Change in Law and to procure implementation of the Project in accordance with the provisions of this Agreement. In pursuance hereof, the Parties may enter into a Memorandum of Understanding (the “MoU”) setting forth the agreement reached hereunder, and the terms of such MoU shall have force and effect as if they form part of this Agreement.
- vi. Provided that if no agreement is reached within 90 (ninety) days of the aforesaid notice, the Parties may resolve this matter as per the provisions of Article 19. For the avoidance of doubt, it is agreed that this Clause 13.1.2 shall be restricted to changes in law directly affecting the Concessionaire’s costs or EBITDA or capital expenditure of performing its obligations under this Agreement.

13.2 Change in Cargo

13.2.1 Change of Cargo and business plan due to Change in Law

(i) If as a result of Change in Law, the Concessionaire is unable to continue to handle the Cargo for which the Concession was originally awarded, the Concessionaire may so notify the Concessing Authority. Upon such notification, the Concessing Authority and the Concessionaire shall meet, as soon as reasonably practicable but no later than 30 (thirty) days from the date of notice and the Committee would assess the aggregate financial effect on the Concessionaire and propose remedies as per the business revival plan (as detailed under Article 13.2.2 (v)) including but not limited to an appropriate extension of the Concession Period and/or the new cargo that the Concessionaire may handle. For avoidance of doubt, it is hereby clarified that any such extension, if applicable, in the Concession Period shall be limited to a maximum of [10 (ten)] years.

(ii) Provided that if no agreement is reached within 90 (ninety) days of the aforesaid notice, the Parties may resolve this matter as per the provisions of Article 19.

13.2.2 Change in Cargo and business plan due to Unforeseen Events

- i. Upon occurrence of an unforeseen event, situation or similar circumstances not contemplated or referred to in this Agreement, and which could not have been foreseen by a prudent and diligent person (the “**Unforeseen Event**”), any Party may by notice inform the other Party of the occurrence of such Unforeseen Event with the particulars thereof and its effects on the costs or EBITDA or capital expenditure or revenues of the Project. Within 30 (thirty) days of such notice, the Parties shall meet and make efforts in good faith to determine if such Unforeseen Event has occurred, and upon reaching agreement on occurrence thereof deal with it in accordance with the provisions of this Clause 13.2.2
- ii. Upon determination of the occurrence of an Unforeseen Event, the Parties shall make a reference to the Committee. For avoidance of doubt, under this provision, it is hereby clarified that the Independent Engineer shall also be a mandatory member of the Committee.
- iii. Before setting up the Committee, the Concessing Authority shall conduct an impartial and fair ‘performance assessment study’ preferably through a third party to *inter alia* assess (a) whether the concessionaire has fulfilled its commitments to perform operations of the terminal in a professional manner, (b) whether there are reasons to show ‘poor performance’ on the part of the concessionaire as per Performance Standards set out in Appendix 14, and (c) whether the status of the project being handled by the concessionaire is already stressed due to reasons other than Unforeseen Event such as financial hardships faced by the concessionaire due to lack of funding, disputes amongst concessionaire consortium members, disputes of concessionaire with 3rd parties such as contractors and other such reasons.
- iv. The Committee referred to in this Clause 13.2.2(iii) shall conduct preliminary proceedings to satisfy itself that –
 - (a) an Unforeseen Event has occurred and has an Adverse Impact as defined in Article 13 and which is enduring in nature;
 - (b) the effects of such Unforeseen Event cannot be mitigated without a remedy or relief which is not contemplated in the Agreement; and

- (c) the Unforeseen Event or its effects have not been caused by any Party by any act or omission or negligence on its part, and if the Committee is satisfied that each of the conditions specified hereinabove is fulfilled, it shall issue an order to this effect and conduct further proceedings under this Clause 13.2.2.
- v. Upon completion of the negotiating proceedings referred to in this Clause 13.2.2, the Committee may undertake or cause to undertake a business revival plan to assess and recommend:
 - (a) The business revival plan with the recommendation of handling of new cargo;
 - (b) Provide recommendation on the viability of the business revival plan after a holistic consideration of all possible risks and rewards to all the stakeholders including but not limited to the Concessioneing Authority, Concessionaire, Senior Lenders and Users including but not limited to impact on/of competition at the Port. For avoidance if doubt, it is hereby clarified that in case the business revival plan involves infusion of additional debt, the lenders may have to endorse the business revival plan and provide the same in writing to the Committee;
 - (c) If applicable and accepted by the Concessioneing Authority, the new Premium or the Minimum Guaranteed Traffic from the Concessionaire to the Concessioneing Authority;
 - (d) Any other remedies what-so-ever, as mutually agreed by both Parties.

It is hereby clarified that while undertaking the exercise for business revival plan, Committee may make its recommendations:

- (a) based on a fair and transparent justification;
- (b) no greater in scope than is necessary for mitigating the effects of the Unforeseen Event
- (c) of no greater duration than is necessary for mitigating the effects of the Unforeseen Event;
and
- (d) based on appropriate due diligence such that there is Concessioneing Authority is not subject to undue risks

- vi. The provisions of this Clause 13.2.2 shall be applicable only after 7 (seven) years from COD (vi) Within 15 (fifteen) days of receiving the order and terms of reference referred to in Clause 13.2.2(v), the Parties shall meet and make efforts in good faith to accept, in whole or in part, the relief or remedy recommended by the Committee for mitigating the effects of the Unforeseen Event and to procure implementation of the Project in accordance with the provisions of this Agreement. In pursuance hereof, the Parties may enter into a Memorandum of Understanding (the “MoU”) setting forth the agreement reached hereunder, and the terms of such MoU shall have force and effect as if they form part of this Agreement.
- vii. Provided that if no agreement is reached within 90 (ninety) days of the aforesaid notice, the Parties may resolve this matter as per the provisions of Article 19

13.2.3 Impact of Change in Cargo on the Termination Payment

- i. Upon allowing changes in cargo as per the provisions of Clause 13.2.2, the Concessionaire shall be required to submit revised masterplan highlighting the financial impact of procurement of movable and non-movable assets due to change in cargo within 60 (sixty) days of Concessions Authority agreeing to Concessionaire’s request for change in cargo as per the provisions of this Clause 13.2
- ii. The Independent Engineer shall study the revised masterplan and provide its inputs on optimization of capital expenditure and its independent assessment of the type and quantity of existing movable assets which may become redundant due to the impact of change in cargo within 15 (fifteen) days of receipt of the revised masterplan and other relevant inputs from the Concessionaire
- iii. The Concessions Authority along with the Senior Lender, if the Senior Lender so wishes, shall appoint a certified asset valuer who shall estimate the residual market value of the redundant movable assets as identified by the Independent Engineer under the provisions of Clause 13.2.3 (ii)
- iv. The Concessions Authority shall determine the value of the redundant movable assets (“**Residual Asset Value**”) as the higher of:

- i. The book value of such assets as per the books of accounts and certified by the Statutory Auditors of the Concessionaire; and
- ii. The residual market value assessed by the certified asset value as per provisions of Clause 13.2.3 (iii).

- v. The Concessioneing Authority shall deduct 70% of the Residual Asset Value from the Debt Due and remaining 30% of the Residual Asset Value from the Adjusted Equity, if applicable, from the Termination Payment.

- vi. For avoidance of doubt, it is hereby clarified that the Concessionaire would be free to remove such redundant movable assets from the Project Site.

For avoidance of doubt and for the sake of clarity, the remedy under this Article 13 shall be available on a case- to- case basis only subject to approval by the Committee and the remedy allowed in one Project shall not be applicable to other Projects as a matter of right or precedent, unless such remedy is applicable to the Project in question based on facts, circumstances and the business revival plan of the Concessionaire and is approved by the Committee for that Project.

ARTICLE 14
FORCE MAJEURE

14.1 Force Majeure Event

As used in this Agreement, Force Majeure Event means the occurrence of any of the Non-Political Events, the Political Events or the Other Events in India, set out in Articles 14.2, 14.3 and 14.4 respectively, if it affects the performance by the Party claiming the benefit of Force Majeure (the “**Affected Party**”) of its obligations under this Agreement and which act or event:

- a) is beyond the reasonable control of the Affected Party
- b) the Affected Party could not have prevented or overcome by exercise of due diligence and following Good Industry Practice; and
- c) prevents the Affected Party from performing or discharging its obligations under this Agreement and thereby has Material Adverse Effect on the Affected Party

14.2 Non-Political Events

Any of the following events which prevent the Affected Party from performing any of its obligations for a continuous period of not less than 7 (seven) Days from the date of its occurrence, shall constitute a Non-Political Event:

- a) act of God, epidemic, extremely adverse weather conditions, lightning, earthquake, cyclone, flood, volcanic eruption, chemical or radioactive contamination or ionizing radiation, fire or explosion (to the extent of contamination or radiation or fire or explosion originating from a source external to the Project Site and by reasons not attributable to the Concessionaire or the Contractor or any of the employees or agents of the Concessionaire or the Contractor);
- b) strikes or boycotts (other than those involving the Concessionaire, Contractors or their respective employees/representatives, or attributable to any act or omission of any of them), and not being an Other Event set forth in Article 14.4, labour disruptions or any other industrial

disturbances not arising on account of the acts or omissions of the Concessionaire or the Contractor;

- c) any failure or delay of a Contractor caused by any of the Non-Political Events, for which no offsetting compensation is payable to the Concessionaire or on behalf of the Contractor;
- d) the discovery of geological conditions, toxic contamination or archeological remains on the ProjectSite that could not reasonably have been expected to be discovered through a site inspection; or
- e) any event or circumstance of a nature analogous to any of the foregoing.

14.3 Political Events

Any of the following events shall constitute Political Event:

- a) Change in Law for which no relief is provided under the provisions of Article 13, resulting in Adverse Impact;
- b) action of a Government Authority having Material Adverse Effect including but not limited to (i) acts of expropriation, compulsory acquisition or takeover by any Government Authority of the Project/Project Facilities and Services or any part thereof or of the Concessionaire's or the Contractor's rights under any of the Project Contracts, and (ii) any unlawful, unauthorized or without jurisdiction refusal to issue or to renew or the revocation of any Applicable Permits, in each case, for reasons other than the Concessionaire's or the Contractor's breach or failure in complying with the Scope of Work , Applicable Laws, Applicable Permits, any judgment or order of a Governmental Agency of any contract by which the Concessionaire or the Contractor as the case may be is bound;
- c) early determination of this Agreement by the Concessions Authority for reasons of national emergency, national security or the public interest;
- d) any failure or delay of a Contractor caused by any of the aforementioned Political Events, for which no offsetting compensation is payable to the Concessionaire by or on behalf of the

Contractor; or

- e) any event or circumstance of a nature analogous to any of the foregoing.

14.4 Other Events

Any of the following events which prevents the Affected Party from performing any of its obligations under this Agreement for a continuous period of not less than 7 (seven) Days from the date of its occurrence, shall constitute the Other Event:

- a) an act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo, riot, insurrection, terrorist or military action, civil commotion or politically motivated sabotage;
- b) industry wide or State-wide strikes or industrial action;
- c) any civil commotion, boycott or political agitation which prevents collection of Fee / Tariff by the Concessionaire;
- d) any judgment or order of a court of competent jurisdiction or statutory authority in India made against the Concessionaire or the Contractor in any proceedings which is non-collusive and duly prosecuted by the Concessionaire; and any judgment or order of a court of competent jurisdiction or statutory authority in India made against the Concessionaire or the Contractor in any proceedings which is non-collusive and duly prosecuted by the Concessionaire other than relating to proceedings (i) pursuant to failure of the Concessionaire to comply with any Applicable Law or Applicable Permit, or (ii) on account of breach of any Applicable Law or Applicable Permit or of any contract, or (iii) enforcement of this Agreement or (iv) with respect to exercise of any of its rights under this Agreement by the Concessions Authority; or
- e) any event or circumstance of a nature analogous to any of the foregoing.

14.5 Notice of Force Majeure Event

- a) The Affected Party shall give written notice to the other Party in writing of the occurrence of any of the Force Majeure Event (the "Notice") as soon as the same arises or as soon as reasonably practicable and in any event within 7 (seven) Days after the Affected Party knew, or ought reasonably to have known, of its occurrence and the adverse effect it has or is likely to have on the performance of its obligations under this Agreement.
- b) The Notice shall inter-alia include full particulars of:
- i. the nature, time of occurrence and extent of the Force Majeure Event with evidence in respect thereof;
 - ii. the duration or estimated duration and the effect or probable effect which such Force Majeure Event has or will have on the Affected Party's ability to perform its obligations or any of them under this Agreement;
 - iii. the measures which the Affected Party has taken or proposes to take, to alleviate the impact of the Force Majeure Event or to mitigate the damage; and
 - iv. any other relevant information.
- c) So long as the Affected Party continues to claim to be affected by a Force Majeure Event, it shall provide the other Party with periodic (fortnightly/monthly) written reports containing the information called for by Article 14.5(b) and such other information as the other Party may reasonably request.

14.6 Period of Force Majeure

Period of Force Majeure shall mean the period from the time of occurrence specified in the Notice given by the Affected Party in respect of the Force Majeure Event until the earlier of:

- a) expiry of the period during which the Affected Party is excused from performance of its obligations in accordance with Article 14.7; or

b) termination of this Agreement pursuant to Article 14.10 hereof.

14.7 Resumption of Performance

During the period of Force Majeure, the Affected Party shall in consultation with the other Party, make all reasonable efforts to limit or mitigate the effects of the Force Majeure Event on the performance of its obligations under this Agreement. The Affected Party shall also make efforts to resume performance of its obligations under this Agreement as soon as possible and upon resumption shall notify the other Party of the same in writing. The other Party shall afford all reasonable assistance to the Affected Party in this regard.

14.8 Performance Excused

The Affected Party, to the extent rendered unable to perform its obligations or part thereof under this Agreement as a consequence of the Force Majeure Event shall be excused from performance of the obligations. Provided that, the excuse from performance shall be of no greater scope and of no longer duration than is reasonably warranted by the Force Majeure Event. Provided further, nothing contained herein shall absolve the Affected Party from any payment obligations accrued prior to the occurrence of the underlying Force Majeure Event.

14.9 Costs, Revised Timetable

14.9.1 Costs

- (a) Upon occurrence of any Force Majeure Event prior to the Date of Award of Concession, the Parties shall bear their respective costs and no Party shall be required to pay to the other Party any costs thereof.
- (b) Upon occurrence of a Force Majeure Event after the Date of Award of Concession, the costs incurred and attributable to such event and directly relating to the Project (the "Force Majeure Costs") shall be allocated and paid as follows:
 - i. upon occurrence of a Non-Political Event, the Parties shall bear their respective Force Majeure Costs and neither Party shall be required to pay to the other Party any costs thereof;

- ii. upon occurrence of an Other Event, all Force Majeure Costs attributable to such Other Event, and not exceeding the Insurance Cover for such Other Event, shall be borne by the Concessionaire, and to the extent Force Majeure Costs exceed such Insurance Cover, one half of such excess amount shall be reimbursed by the Concessing Authority to the Concessionaire; and
- iii. upon occurrence of a Political Event, all Force Majeure Costs attributable to such Political Event shall be reimbursed by the Concessing Authority to the Concessionaire. For the avoidance of doubt, Force Majeure Costs may include interest payments on debt, O&M Expenses, any increase in the cost of Construction Works on account of inflation and all other costs directly attributable to the Force Majeure Event, but shall not include loss of revenues from Tariff or debt repayment obligations, and for determining such costs, information contained in the Financial Package may be relied upon to the extent that such information is relevant.

Save and except as expressly provided in this Article 14.9.1, neither Party shall be liable in any manner whatsoever to the other Party in respect of any loss, damage, cost, expense, claims, demands and proceedings relating to or arising out of occurrence or existence of any Force Majeure Event or exercise of any right pursuant hereto

14.9.2 Extension of time/period

- (a) Upon the occurrence of any Force Majeure Event prior to the Date of Award of Concession, the period set forth in Clause 3.2 for fulfilment of Conditions Precedent shall be extended by a period equal in length to the duration of the Force Majeure Event.
- (b) At any time after the Date of Award of Concession, if any Force Majeure Event occurs:
 - i. before COD, the Concession Period and the dates set forth in the Project Completion Schedule shall be extended by a period equal in length to the duration for which such Force Majeure Event subsists; or
 - ii. after COD, whereupon the Concessionaire is unable to collect Tariff despite making best efforts or it is directed by the Concessing Authority to suspend the collection thereof during the

subsistence of such Force Majeure Event, the Concession Period shall be extended by a period, equal in length to the period during which the Concessionaire was prevented from collection of Tariff on account thereof; provided that in the event of reduction in collection of Tariff on account of partial inability or suspension, as the case may be, which causes the daily collection to decline below 90% of the Average Daily Tariff, the Concessions Authority shall extend the Concession Period in proportion to the loss of Tariff on a daily basis. For the avoidance of doubt, loss of 25% in collection of Tariff as compared to the Average Daily Tariff for 4 (four) days shall entitle the Concessionaire to extension of 1 (one) day in the Concession Period

14.10 Termination Due to Force Majeure Event

If the period of Force Majeure continues or is in the reasonable judgment of the Parties likely to continue beyond a period of 120 (one hundred and twenty) Days, the Parties may mutually decide to terminate this Agreement or continue this Agreement on mutually agreed revised terms. If the Parties are unable to reach an agreement in this regard, the Affected Party shall after the expiry of the said period of 120 (one hundred and twenty) Days be entitled to terminate the Agreement in which event, the provisions of Articles 16 and 17 shall, to the extent expressly made applicable, apply.

ARTICLE 15

EVENTS OF DEFAULT

15.1 Events of Default

Event of Default means the Concessionaire Event of Default or the Concessing Authority Event of Default or both as the context may admit or require.

(a) The Concessionaire Event of Default

The Concessionaire Event of Default means any of the following events unless such an event has occurred as a consequence of the Concessing Authority Event of Default or a Force Majeure Event:

- i. the Concessionaire's failure to perform or discharge any of its obligations in accordance with the provisions of this Agreement;
- ii. construction at the Project Site is abandoned for a more than 90 (ninety) Days during the Construction Phase;
- iii. a delay of more than 180 (one hundred and eighty) Days from any Milestone Date in achieving any of the performance obligations set forth for the relevant Milestone Date or the COD is delayed for more than 180 (one hundred and eighty) Days from the Scheduled Project Completion Date;
- iv. Delay in payment of Premium for 2 (two) consecutive Months or more than (5) (five) times in the aggregate during the Concession Period;
- v. the Concessionaire's failure to perform or discharge any of its obligations under any other Project Contract, which has or is likely to affect the Project/the Project Facilities and Services, materially;
- vi. a default under the O&M Contract, which has or is likely to affect the Project/the Project Facilities and Services, materially;

- vii. the Concessionaire fails to achieve Minimum Guaranteed Cargo as stipulated in Appendix 13, for a consecutive period of 3(three) years.
- viii. any representation made, or warranties given by the Concessionaire under this Agreement is found to be false or misleading;
- ix. the Concessionaire passing a resolution for voluntary winding up;
- x. appointment of a provisional liquidator, administrator, trustee or receiver of the whole or substantially whole of the undertaking of the Concessionaire by a court of competent jurisdiction in proceedings for winding up or any other legal proceedings;
- xi. occurrence of default under the Financing Documents pursuant to which the Senior Lenders exercise their rights to substitute the Concessionaire in accordance with the provisions of the Substitution Agreement;
- xii. levy of an execution or restraint on the Concessionaire's assets which has or is likely to have Material Adverse Effect and/or affect the Project/Project Facilities and Services, materially and such execution or restraint remaining in force for a period exceeding 90 (ninety) Days
- xiii. the Performance Guarantee is not maintained in terms of the provisions hereof;
- xiv. the Concessionaire abandons or expresses its intention to revoke/terminate this Agreement without being entitled to do so as is expressly provided in the Agreement;
- xv. a change in shareholding such that the beneficial interest of the Applicant/Consortium in the Concessionaire reduces below the limits set in Article 11.2 and/or Management Control of the Concessionaire has occurred in contravention of the provisions of Article 11 hereof;
- xvi. amalgamation of the Concessionaire with any other company or reconstruction or transfer of the whole or part of the Concessionaire's undertaking [other than transfer of assets in the ordinary course of business] in contravention with the provisions of Article 11 hereof; and

xvii. the Concessionaire engaging or knowingly allowing any of its employees, agents, Contractor or representative to engage in any activity prohibited under this Agreement and/or by law or which constitutes a breach of the Agreement or breach of or an offence under any law, in the course of any activity undertaken pursuant to this Agreement.

(b) The Concessions Authority Event of Default

- i. the Concessions Authority's failure to perform or discharge its obligations in accordance with the provisions of this Agreement unless such failure has occurred as a consequence of any Concessionaire Event of Default or a Force Majeure Event.
- ii. any representation made, or warranties given by the Concessions Authority under this Agreement is found to be false or misleading.
- iii. appointment of a provisional liquidator, administrator or receiver of the whole or part of the Port's Assets in any legal proceedings initiated against the Concessions Authority (unless such proceedings are initiated as a consequence of any Concessionaire Event of Default).
- iv. levy of an execution or restraint on the Port's Assets in any proceedings against the Concessions Authority (unless such proceedings are initiated as a consequence of any Concessionaire Event of Default) which has or is likely to have Material Adverse Effect and such execution or restraint remaining in force for a period exceeding 90 (ninety) Days.

15.2 Parties Rights

- a) Upon the occurrence of the Concessionaire Event of Default, the Concessions Authority shall without prejudice to any other rights and remedies available to it under this Agreement be entitled to terminate this Agreement.
- b) Upon the occurrence of the Concessions Authority Event of Default, the Concessionaire shall without prejudice to any other rights and remedies available to it under this Agreement be entitled to terminate this Agreement.

Provided that before proceeding to terminate this Agreement, the Party entitled to do so shall give due consideration and shall have due regard to the nature of the underlying Event of Default, its implication on the performance of the respective obligations of Parties under this Agreement and the circumstances in which the same has occurred.

15.3 Consultation Notice

Either Party exercising its right under Article 15.2, shall issue to the other Party a notice in writing specifying in reasonable detail the underlying Event of Default(s) and proposing consultation amongst the Parties and the Senior Lenders to consider possible measures of curing or otherwise dealing with the underlying Event of Default ("**Consultation Notice**").

15.4 Remedial Process

Following the issue of Consultation Notice by either Party, within a period not exceeding 90 (ninety) Days or such extended period as the Parties may agree ("**Remedial Period**") the Parties shall, in consultation with the Senior Lenders, endeavour to arrive at an agreement as to the manner of rectifying or remedying the underlying Event of Default. Without prejudice to this, if the underlying event is a Concessionaire Event of Default, the Concessioneing Authority shall in consultation with the Senior Lenders endeavour to arrive at an agreement as to one or more of the following measures and/or such other measures as may be considered appropriate by them in the attendant circumstances:

- a) the change of management or control/ownership of the Concessionaire;
- b) the replacement of the Concessionaire by a new operator ("**Selectee**") proposed by the Senior Lenders (in terms of the Substitution Agreement), and the specific terms and conditions of such replacement which shall include:
 - i. the criteria for selection of the Selectee;
 - ii. the transfer of rights and obligations of the Concessionaire surviving under this Agreement to the Selectee;

- iii. handing over/ transfer of the Project Site, the Port's Assets and the Project Facilities and Services to the Selectee;
- iv. acceptance by the Selectee of the outstanding obligations of the Concessionaire under the Financing Documents and preserving Senior Lenders' charge on the Concessionaire's assets;
- v. acceptance by the Selectee of any amounts due to the Concessioneing Authority from the Concessionaire under this Agreement; and
- vi. payment of consideration for the Concessionaire's assets comprised in the Project Facilities and Services and the manner of appropriation thereof.

15.5 Obligations during Remedial Period

During the Remedial Period, the Parties shall continue to perform their respective obligations under this Agreement which can be performed, failing which the Party in breach shall compensate the other Party for any loss or damage occasioned or suffered on account of the underlying failure/breach.

15.6 Revocation of Consultation Notice

If during the Remedial Period the underlying Event of Default is cured or waived or the Parties and the Senior Lenders agree upon any of the measures set out in Article 15.4, the Consultation Notice shall be withdrawn in writing by the Party who has issued the same.

15.7 Termination due to Events of Default

If before the expiry of the Remedial Period, the underlying Event of Default is neither cured nor waived nor the Parties and the Senior Lenders have agreed upon any of the measures in accordance with Article 15.4, the Party who has issued the Consultation Notice shall have the right to terminate this Agreement, in which event, the provisions of Article 16 and 17 shall, to the extent expressly made applicable, apply.

15.8 Concessioneing Authority's Rights of Step-in

Upon a Termination Notice being issued due to a Concessionaire Event of Default, the Concessioneing Authority may, at its discretion:

- a) re-enter upon and take possession and control of Project Site/Project Facilities and Services forthwith;
- b) prohibit the Concessionaire and any Person claiming through or under the Concessionaire from entering upon/dealing with the Project Facilities and Services;
- c) step in and succeed upon election by Concessioneing Authority without the necessity of any further action by the Concessionaire, to the interests of the Concessionaire under such of the Project Contracts as the Concessioneing Authority may in its discretion deem appropriate with effect from the date of communication of such election to the counter party to the relative Project Contracts. Provided, that in such circumstances, the Concessioneing Authority shall assume the obligations of the Concessionaire, either by itself or through an operation and maintenance contractor appointed in consultation with the Senior Lenders, with respect to the Senior Lenders during such Remedial Period out of the cashflows of the project. Provided further, the Concessionaire acknowledges that any payments made by the Concessioneing Authority during the Remedial Period shall be adjusted against compensation payable by the Concessioneing Authority to the Concessionaire in terms of the provisions of this Agreement.

ARTICLE 16

TERMINATION OF THE CONCESSION/AGREEMENT

16.1 Termination Procedure

The Party entitled to terminate this Agreement either on account of a Force Majeure Event or on account of an Event of Default having Material Adverse Effect shall do so by issue of a notice in writing ("**Termination Notice**") to the other Party and simultaneously deliver a copy thereof to the Senior Lenders. The Termination Notice shall be of not less than 90 (ninety) Days and not ordinarily be more than 180 (one hundred and eighty) Days, ("**Termination Period**") and at the expiry of the Termination Period, this Agreement shall stand terminated without any further notice.

16.2 Obligations during Termination Period

During Termination Period, the Parties shall, subject where applicable to the provisions of this Article 16, continue to perform such of their respective obligations under this Agreement which are capable of being performed with the object, as far as possible, of ensuring continued availability of the Project Facilities and Services to the users, failing which the Party in breach shall compensate the other Party for any loss or damage occasioned or suffered on account of the underlying failure/breach.

16.3 Requisition

Except where the Termination Notice is issued prior to Financial Close being achieved by the Concessionaire, when the Concession has not come into effect the Concessionaire has no right hereunder and no Termination Payment is payable by the Concessing Authority, upon issue or receipt as the case may be of Termination Notice, either as a consequence of a Force Majeure Event or as a consequence of an Event of Default, or otherwise 6 (six) months prior to the expiry of the Concession Period, the Concessing Authority shall by a notice in writing ("**Requisition**") call upon the Concessionaire to furnish the following information to enable the Concessing Authority to estimate the likely Termination Payment payable by the Concessing Authority to the Concessionaire and/or to finalise the items of Concessionaire's assets comprised in the Project

Facilities and Services to be handed over to/taken over by the Concessions Authority.

- (a) except in cases where no Financial Close has been achieved, the particulars of Debt Due supported by Senior Lenders' certificate;
- (b) data or records [to be specified by Concessions Authority] regarding the operation and maintenance of the Project Facilities and Services;
- (c) specifications regarding the Concessionaire's assets comprised in the Project Facilities and Services; and
- (d) any other information or records [to be specified by Concessions Authority at its discretion] regarding Concessionaire, its business, the Project/Project Facilities and Services, assets and liabilities.

The Concessionaire shall within a period of 30 (thirty) Days of receipt of Requisition furnish the particulars called for by the Concessions Authority.

16.4 Condition Survey

- a) The Concessionaire agrees that on the service of a Termination Notice or at least 6 (six) months prior to the expiry of the Concession Period, as the case may be, it shall conduct or cause to be conducted under the Concessions Authority's supervision, a condition survey of the Project Facilities and Services including the Project Site and/or the Port's Assets to ascertain the condition thereof, verifying compliance with the Concessionaire's obligations under this Agreement and to prepare an inventory of the assets comprised in the Project Facilities and Services. During this period, the designated key personnel of the Concessions Authority shall be associated with the operations of the Project Facilities and Services (except when the same is impossible due to a Force Majeure Event) in order to facilitate smooth takeover of the same by the Concessions Authority on the Transfer Date.
- b) If, as a result of the condition survey, the Concessions Authority shall observe/notice that the Project Site and/or the Port's Assets and/or the Project Facilities and Services or any part thereof have/has not been operated and maintained in accordance with the requirements

therefor under this Agreement (normal wear and tear excepted) the Concessionaire shall, at its cost and expenses, take all necessary steps to put the same in good working conditions well before the Transfer Date.

- c) In the event the Concessionaire fails to comply with the provisions of this Agreement, the Concessions Authority may itself cause the condition survey and inventory of Port's Assets and the Project Facilities and Services to be conducted. The Concessions Authority shall be compensated by the Concessionaire for any costs incurred in conducting such survey and preparation of inventory as also in putting the Project Facilities and Services in good working condition.

16.5 Consequences of Termination

Without prejudice to any other consequences or requirements under this Agreement or under any law:

- a) the Concessionaire shall transfer all the assets and rights upon expiry of the Concession Period by efflux of time or termination of the Agreement due to a Force Majeure Event or on account of an Event of Default in accordance with Article 18;
- b) the Concessions Authority shall be entitled to encash any subsisting bank guarantee(s) provided by the Concessionaire against any amounts owing to the Concessions Authority by the Concessionaire.

Notwithstanding anything contained in this Agreement, except for ensuring the deposit of the Termination Payment payable to the Concessionaire in accordance with Article 17 in the Escrow Account, the Concessions Authority shall not, as a consequence of termination or otherwise, have any obligation whatsoever to any third party including but not limited to obligations as to compensation for loss of employment, continuance or regularization of employment, absorption or re-employment on any ground, in relation to any person in the employment of or engaged by the Concessionaire in connection with the Project, and the hand back of the Project Site/Port Assets/Project Facilities & Services by the Concessionaire to the Concessions Authority shall be free from any such obligation.

ARTICLE 17

COMPENSATION

17.1 Compensation

(a) Termination due to Force Majeure Event

- i. If the termination is due to a Non-Political Event, Termination Payment payable to the Concessionaire shall be 90% of the Debt Due LESS any amount due to the Concessioning Authority by the Concessionaire under this Agreement LESS all insurance claims received or admitted.
- ii. If the termination is due to an Other Event, Termination Payment payable to the Concessionaire shall be aggregate of:
 - (a) Debt Due less Insurance Cover; provided that if any insurance claims forming part of the Insurance Cover are not admitted and paid, then 80% of such unpaid claims shall be included in the computation of Debt Due;
 - (b) 110% of the Adjusted Equity; and
 - (c) an amount equivalent to the Additional Termination Payment less Insurance Cover; provided that if any insurance claims forming part of the Insurance Cover are not admitted and paid, then 80% of such unpaid claims shall be included in computation of the amount payable hereunder.
- iii. If termination is due to a Political Event, Termination Payment payable to the Concessionaire shall be the same as that stipulated for termination due to a Concessioning Authority Event of Default under Article 17.1 (c).

Provided, no Termination Payment shall be payable to the Concessionaire if the Concessionaire fails to maintain Insurance Cover as contemplated under Article 12 of this Agreement.

(b) Termination due to Concessionaire Event of Default

1. If the termination is after Stage I COD but before start of Stage II construction:

- i. If the termination is after the COD of Stage I but before start of Stage II construction, due to a Concessionaire Event of Default, the Termination Payment payable by the Concessioneing Authority to the Concessionaire shall be an amount equal to 90% of the Debt Due of the Stage I less Insurance Cover.

2. If the termination is after the Project COD:

- i. If the termination is after the Project COD, due to a Concessionaire Event of Default, the Termination Payment payable by the Concessioneing Authority to the Concessionaire shall be an amount equal to:
 - a. 90% of the Debt Due less Insurance Cover; and
 - b. 70% of the amount representing the Additional Termination Payment:

3. If the termination is Prior to Stage I COD

- i. Upon termination on account of Concessionaire Default during the Construction Period of Stage I, no Termination Payment shall be due and payable for and in respect of expenditure comprising the first 30% of the Total Project Cost of the Stage I and in the event of expenditure exceeding such 30% and forming part of Debt Due, the provisions of Clause 17.1 (b) 1 (i) shall, to the extent applicable to Debt Due, apply in respect of the expenditure exceeding such 30%. For the avoidance of doubt and by way of illustration, the Parties agree that if the total expenditure incurred prior to termination is 90% of the Total Project Cost of stage I, the expenditure eligible for computation of Termination Payment hereunder shall be 60% of the Total Project Cost of stage I and the Termination Payment due and payable in such event shall not exceed 54% of the Total Project Cost of stage I or 90% of the Debt Due, whichever is less.

4. If the termination is after Stage I COD and during Stage II Construction Period

- i. 90% of the Debt Due of the Stage I less Insurance Cover; and
- ii. No Termination Payment shall be due and payable for and in respect of expenditure comprising the first 30% of the Total Project Cost of the Stage II and in the event of expenditure exceeding such 30% and forming part of Debt Due, the provisions of Clause 17.1 (b) 1 (i) shall, to the extent applicable to Debt Due, apply in respect of the expenditure exceeding such 30%. For the avoidance of doubt and by way of illustration, the Parties agree that if the total expenditure incurred prior to termination is 90% of the Total Project Cost of stage II, the expenditure eligible for computation of Termination Payment hereunder shall be 60% of the Total Project Cost of stage II and the Termination Payment due and payable in such event shall not exceed 54% of the Total Project Cost of stage II or 90% of the Debt Due, whichever is less and

Provided, no Termination Payment shall be payable to the Concessionaire if the Concessionaire fails to maintain Insurance Cover as contemplated under Article 12 of this Agreement.

(c) Termination due to Concessioneing Authority Event of Default

If the termination is due to a Concessioneing Authority Event of Default, the Termination Payment payable by the Concessioneing Authority shall be equal to the aggregate of:

- (i) Debt Due less Insurance Cover;
- (ii) 150% of the Adjusted Equity; and
- (iii) 115% of the amount representing the Additional Termination Payment

17.2 No Compensation on Expiry of Concession Period

In the event of expiry of Concession by efflux of time (the Concession having run its full course), the Concessionaire shall hand over/ transfer peaceful possession of the Project Site, Port's Assets and the Project Facilities and Services free of cost and Encumbrance.

17.3 Transfer Fee and Charges

Transfer costs, stamp duties, notary fees and taxes, if applicable, for the transfer of the Project Facilities and Services consequent to the expiry or termination of this Agreement shall be borne by:

- a) the Concessionaire in the event of expiry of Concession Period or termination due to a Concessionaire Event of Default;
- b) the Concessions Authority in the event of termination due to a Concessions Authority Event of Default or Political Event; and
- c) by both parties equally in case of termination due to Change in Law or Non-Political Event or Other Event.

17.4 Payment of Compensation to Senior Lenders

The Concessionaire hereby irrevocably authorises the Concessions Authority to pay to the Senior Lenders or at their instruction to any designated bank account in India the Termination Payment payable to the Concessionaire. The Concessionaire confirms that upon such payment being made, the Concessions Authority shall stand duly discharged of its obligations regarding payment of Termination Payment under this Agreement and the charge created by the Concessionaire in favour of the Senior Lenders on any of its assets taken over by the Concessions Authority shall stand satisfied and all such assets shall on and from the Transfer Date be free from such charge. The Concessionaire further confirms that payment of Termination Payment by Concessions Authority in accordance with this Article 17.4 shall be a valid discharge to the Concessions Authority in respect of Concessions Authority's obligation regarding payment of Termination Payment to the Concessionaire under this Agreement.

Provided notwithstanding anything inconsistent contained in this Agreement, the Concessionaire/the Senior Lenders as the case may be shall be entitled to remove at its/ their cost all such moveables which are not taken over by the Concessions Authority and to deal with the same in accordance with their respective rights under law.

Provided further, if there are no amounts outstanding under the Financing Documents and

a certificate to that effect issued by the Senior Lenders is furnished by the Concessionaire to the Concessions Authority, the Termination Payment shall be paid by the Concessions Authority to the Concessionaire directly.

17.5 Delayed Payment of Compensation

Termination Payment shall become due and payable to the Concessionaire within 15 (fifteen) days of a demand being made by the Concessionaire to the Authority with the necessary particulars, and in the event of any delay for reasons other than those attributable to the Concessionaire, the Authority shall pay interest at a rate equal to 3% (three per cent) above the Bank Rate on the amount of Termination Payment remaining unpaid; provided that such delay shall not exceed 90 (ninety) days. For the avoidance of doubt, it is expressly agreed that Termination Payment shall constitute full discharge by the Authority of its payment obligations in respect thereof hereunder. Provided, nothing contained in this Article shall be deemed to authorise any delay in payment of Termination Payment in accordance with this Agreement.

17.6 Delayed Transfer of Assets

If for any reasons other than those attributable to the Concessions Authority the Concessionaire fails to transfer assets, rights and contracts on the Transfer Date in accordance with Article 16.5 read with Article 18, there shall be no suspension of the operation and maintenance of the Project Facilities and Services and the Concessionaire shall, as a trustee of the Concessions Authority, (a) continue to operate and maintain the Project Facilities and Services or such of them, as directed by Concessions Authority until completion of the relative transfer formalities and (b) account for and pay to the Concessions Authority the Tariff collected and other revenues derived from the Project minus operating costs and statutory dues, from such operations. In the event of failure to do so, the Concessionaire shall be liable to pay to the Concessions Authority, for every Day of delay, liquidated damages computed at the rate of the average daily profits earned during the 3 (three) years immediately preceding the Transfer Date, or from COD till Transfer date in case the Project is terminated less than three years from COD. Parties confirm that this is a true and correct estimate of damages and not in the nature of a penalty. Provided nothing contained in this Article 17.6 shall be deemed or construed to authorise delay in

completion of formalities of transfer of assets, rights and contracts by the Concessionaire to the Concessing Authority in accordance with the requirements thereof under this Agreement.

In case the transfer of assets by the Concessionaire to the Concessing Authority is delayed for reasons attributable to the Concessing Authority, the Concessionaire shall nonetheless continue to operate the Project Facilities and Services but as agent of the Concessing Authority. Provided however, the Concessionaire shall be liable to pay Premium in accordance with Article 9.2.

17.7 Remedies Cumulative

The exercise of right by either Party to terminate this Agreement, as provided herein, shall not preclude, such Party from availing any other rights or remedies that may be available to it under law. All remedies available to the Parties shall be cumulative and the exercise or failure thereof of one or more remedies by any Party shall not limit or preclude the exercise of or constitute a waiver of any other remedies by such Party.

17.8 Additional Termination Payment

Payment due and payable in respect of Specified Assets which are constructed, acquired or installed after the 5th (fifth) anniversary of Project COD but no later than the 35th (thirty fifth) anniversary of the Date of Award of Concession, shall be limited to the lowest of:

1. Adjusted Depreciated Value thereof;
2. the replacement value thereof, as assessed by an Approved Valuer, who shall be selected and appointed by the Concessing Authority, within 15 (fifteen) days of termination, for submitting his assessment within 30 (thirty) days of his appointment hereunder; and
3. 40% of Total Project Cost

ARTICLE 18

TRANSFER ON EXPIRY OF THE CONCESSION PERIOD

18.1 General Scope of Transfer/Payment

The Parties shall perform/discharge their respective obligations to be performed or discharged under the provisions of this Agreement on the Transfer Date in entirety. Without prejudice to the generality of this provision and the provisions of Article 16, the transactions to be consummated and the formalities to be completed by the Parties on the Transfer Date shall be as set out in Articles 18.2 and 18.3.

18.2 Concessionaire's Obligations

The Concessionaire shall;

- a) hand over peaceful possession of the Project Site, Port's Assets, the Project and the Project Facilities and Services free of Encumbrance;
- b) transfer all its rights, titles and interests in the assets comprised in the Project Facilities and Services which are required to be transferred to the Concessions Authority in accordance with this Agreement and execute such deeds and documents as may be necessary for the purpose and complete all legal or other formalities required in this regard;
- c) hand over to the Concessions Authority all documents including as built drawings, manuals and records relating to operation and maintenance of the Project Facilities and Services;
- d) transfer technology and up-to-date know-how relating to operation and maintenance of the Port's Assets and/or the Project Facilities and Services;
- e) transfer or cause to be transferred to the Concessions Authority any Project Contracts which are
 - (i) valid and subsisting; (ii) capable of being transferred to the Concessions Authority; and (iii) those the Concessions Authority has chosen to take over, and cancel or cause to be

cancelled such Project Contracts not transferred to the Concessing Authority. For this purpose, the Concessionaire shall ensure that all Project Contracts are assignable in favor of the Concessing Authority without any further action on part of the respective counterparties. The Concessionaire shall entirely at its cost, terminate all such Project Contracts which are not transferred/assigned and/or are not required to be transferred/assigned to the Concessing Authority;

- f) at its cost, transfer to the Concessing Authority all such Applicable Permits which the Concessing Authority may require, and which can be legally transferred. Provided if the termination is on account of Concessing Authority Event of Default the cost of such transfer shall be borne/ reimbursed by the Concessing Authority;
- g) at its cost, remove within 90 (ninety) days from expiry of the Concession Period, from the Project site/Port's Assets, any moveable assets that are not taken over by or not to be transferred to the Concessing Authority in terms of the provisions of this Agreement.

18.3 Concessing Authority's Obligations

Except in the event of expiry of the Concession by efflux of time, the Concessing Authority shall pay Termination Payment payable to the Concessionaire in accordance with Article 17.1 of this Agreement, to the Senior Lenders, or deposit the same in the Escrow Account or on the written instructions of the Senior Lenders to any designated bank account in India, or to the Concessionaire, as the case may be. The Concessionaire confirms that upon such payment being made, the Concessing Authority shall stand duly discharged of its obligations regarding payment of compensation under this Agreement and the charge created by the Concessionaire in favour of the Senior Lenders on any of the assets shall stand satisfied and all such assets shall on and from the Transfer Date be free from such charge.

The Concessionaire further confirms that payment of compensation by Concessing Authority in accordance with this Article 18.3 shall be a valid discharge to the Concessing Authority in respect of Concessing Authority's obligation regarding payment of compensation to the Concessionaire under this Agreement.

18.4 Risk

Until transfer in accordance with this Article 18, the Port's Assets and the Project Facilities and Services shall remain at the sole risk of the Concessionaire except for any loss or damage caused to or suffered by the Concessionaire due to any act or omission or negligence on the part of the Concessioneing Authority under this Agreement.

18.5 Vesting Certificate

The divestment of all rights, title and interest in the Project shall be deemed to be complete on the date when all of the obligations under Clause 18.2 and 18.3 hereinabove have been fulfilled, and the Concessioneing Authority shall, without unreasonable delay, thereupon issue a certificate substantially in the form set forth in Appendix 23 (the "Vesting Certificate"), which will have the effect of constituting evidence of divestment by the Concessionaire of all of its rights, title and interest in the Project, and their vesting in the Concessioneing Authority pursuant hereto. It is expressly agreed that any defect or deficiency in the obligations under Clause 18.2 and 18.3 shall not in any manner be construed or interpreted as restricting the exercise of any rights by the Concessioneing Authority or its nominee on, or in respect of, the Project on the footing that all obligations under Clause 18.2 have been complied with by the Concessionaire.

ARTICLE 19

DISPUTE RESOLUTION

19.1 Amicable Settlement

If any dispute or difference or claims of any kind arises between the Concessing Authority and the Concessionaire in connection with construction, interpretation or application of any terms and conditions or any matter or thing in any way connected with or in connection with or arising out of this Agreement, whether before or after the termination of this Agreement, then the Parties shall meet together promptly, at the request of any Party, in an effort to resolve such dispute, difference or claim by discussion between them.

19.2 Deleted

19.3 Conciliation

In case any dispute is not resolved amicably as provided in Clause 19.1, the Concessionaire may agree to refer the matter to conciliation & settlement Committee established by the Concessing Authority as per provisions contained in Part-III of the Arbitration & Conciliation (Amendment) Act, 2015 (the “**Conciliation & Settlement Committee**”). The standard operating procedures for conciliation and settlement of disputes through the conciliatory process and the constitution of the committee shall be contained in the policy guidelines issued by the Concessing Authority on the subject, which shall be in alignment with the provisions contained in Sections 63 and 64 of the Arbitration & Conciliation (Amendment) Act, 2015. In case the recommendations/decision of the committee is not acceptable to the Concessionaire, it shall be free to refer the dispute to arbitration in accordance with the provisions of Clause 19.4 or 19.5.

19.4 Arbitration

19.4.1 Any Dispute which is not resolved amicably as provided in Clause 19.1 and/or 19.3 shall be finally settled by arbitration as set forth below: -

- i. The Dispute shall be referred to the Society for Affordable Redressal of Disputes - Ports (hereinafter called as SAROD - Ports). The dispute shall be dealt with in terms of Rules of SAROD - Ports. The detailed procedure for conducting Arbitration shall be governed by the Rules of SAROD - Ports and provisions of Arbitration & Conciliation Act, 1996, as amended from time to time. The Dispute shall be governed by Substantive Law of India.
- ii. The constitution of Arbitral Tribunal, code of conduct for Arbitrators and fees and expenses of SAROD - Ports and Arbitral Tribunal shall also be governed by the Rules of SAROD - Ports as amended from time to time. The rules of SAROD – Ports are placed at Appendix-21
- iii. The seat of Arbitration shall be New Delhi, or a place selected by the Governing Body of SAROD - Ports and the language for all documents and communications between the parties shall be English.
- iv. The expenses incurred by each party in connection with the preparation, presentation, etc., of arbitral proceedings shall be borne by each party itself.

19.4.2 Any Award made in any arbitration held pursuant to the Article 19 shall be final and binding on the Parties as from the date it is made, and the Concessionaire and the Authority agree and undertake to carry out such Award without delay.

19.4.3 The Concessionaire and the Concessions Authority agree that an Award may be enforced against the Concessionaire or the Concessions Authority, as the case may be, and their respective assets wherever situated.

19.4.4 In the event that the Party against whom the Award has been granted, challenges the Award for any reason in a Court of law, the other Party, subject to the order of the Court, shall be entitled to seek an interim relief as per the provisions of the Arbitration and Conciliation Act or rules made thereunder. The Parties acknowledge and agree that the Arbitration proceedings shall be video recorded and one copy each of the video recording shall be provided to both the parties.

19.5. Adjudication by Adjudicatory Board

In the event of constitution of a statutory Adjudicatory Board or such other forum with powers to receive and adjudicate upon disputes between the Concessionaire and the Concessions Authority, all disputes not settled under Clause 19.3 through conciliation, can alternatively be referred to the Adjudicatory Board or such other forum with mutual consent of the parties in accordance with the applicable laws. For avoidance of doubt, parties hereto agree that notwithstanding anything contained herein above, after adjudication by the statutory Adjudicatory Board or such other forum, the parties cannot refer the dispute, difference or controversy of whatsoever nature again under Clause 19.4 and the adjudication hereunder shall be final and binding.

ARTICLE 20

REPRESENTATIONS AND WARRANTIES

20.1 Representations and Warranties of the Concessionaire

The Concessionaire represents and warrants to the Concessing Authority that:

- a) it is duly organised, validly existing and in good standing under the laws of India and hereby expressly and irrevocably waives any immunity in any jurisdiction in respect of this Agreement or matters arising thereunder including any obligation, liability or responsibility hereunder;
- b) it has full power and authority to execute, deliver and perform its obligations under this Agreement
- c) it has taken all necessary action to authorise the execution, delivery and performance of this Agreement;
- d) this Agreement constitutes the legal, valid and binding obligation of the Concessionaire, enforceable against it in accordance with the terms hereof;
- e) there are no actions, suits or proceedings pending or to its best knowledge, threatened against or affecting it before any court, administrative body or arbitral tribunal which might materially and adversely affect its ability to meet or perform any of its obligations under this Agreement;
- f) it has the financial standing and capacity to undertake the Project in accordance with the terms of this Agreement;
- g) the execution, delivery and performance of this Agreement will not conflict with, result in the breach of, constitute a default under, or accelerate performance required by any of the terms of its memorandum of association and articles of association or any Applicable Laws or any covenant, contract, agreement, arrangement, understanding, decree or order to which it is a party or by which it or any of its properties or assets is bound or affected;

- h) it has no knowledge of any violation or default with respect to any order, writ, injunction or decree of any court or any legally binding order of any Government Authority which may result in any Material Adverse Effect on its ability to perform its obligations under this Agreement and no factor circumstance exists which may give rise to such proceedings that would adversely affect the performance of its obligations under this Agreement;
- i) it has complied with Applicable Laws in all material respects and has not been subject to any fines, penalties, injunctive relief or any other civil or criminal liabilities which in the aggregate have or may have a Material Adverse Effect on its ability to perform its obligations under this Agreement;
- j) all its rights and interests in the Project/Project Facilities and Services shall pass to and vest in the Concessing Authority on the Transfer Date free and clear of all liens, claims and Encumbrances, without any further act or deed on its part or that of the Concessing Authority, and that none of the Project Assets shall be acquired by it, subject to any agreement under which a security interest or other lien or Encumbrance is retained by any person, save and except as expressly provided in this Agreement;
- k) no representation or warranty by it contained herein or in any other document furnished by it to the Concessing Authority including the Bid or to any Government Authority in relation to Applicable Permits contains or will contain any untrue or misleading statement of material fact or omits or will omit to state a material fact necessary to make such representation or warranty not misleading;
- l) no sums, in cash or kind, have been paid or will be paid, by it or on its behalf, to any person by way of fees, commission or otherwise for securing the Concession or entering into this Agreement or for influencing or attempting to influence any officer or employee of the Concessing Authority in connection therewith;
- m) agrees that the execution, delivery and performance by it of this Agreement and all other agreements, contracts, documents and writings relating to this Agreement constitute private and commercial acts and not public or governmental acts; and

- n) consents generally in respect of the enforcement of any judgement against it in any proceedings in any jurisdiction to the giving of any relief or the issue of any process in connection with such proceedings.

20.2 Representations and Warranties of the Concessing Authority

The Concessing Authority represents and warrants to the Concessionaire that:

- a) it is duly organised, validly existing and in good standing under the laws of India;
- b) it has full power and authority to execute, deliver and perform its obligations under this Agreement;
- c) it has taken all necessary action to authorise the execution, delivery and performance of this Agreement;
- d) this Agreement constitutes the legal, valid and binding obligation of the Concessing Authority, enforceable against it in accordance with the terms hereof; and
- e) there are no actions, suits or proceedings pending or to its best knowledge, threatened against or affecting it before any court, administrative body or arbitral tribunal which might materially and adversely affect its ability to meet or perform any of its obligations under this Agreement.

20.3 Disclosure

In the event that any occurrence or circumstance comes to the attention of either Party that renders any of its aforesaid representations or warranties untrue or incorrect, such Party shall immediately notify the other Party of the same. Such notification shall not have the effect of remedying any breach of the representation or warranty that has been found to be untrue or incorrect nor shall it adversely affect or waive any obligation of either Party under this Agreement.

ARTICLE 21

MISCELLANEOUS PROVISIONS

21.1 Datum

The datum to which all levels shall be referred for the purpose of the Project is the Chart Datum (0.000) which is (+)0.64 m below mean sea level.

21.2 Accounts And Audits

21.2.1 Audited accounts

- a) The Concessionaire shall maintain books of accounts recording all its receipts (including all Tariff collected and other revenues derived/collected by it from or on account of the Project and/or its use), income, expenditure, payments (including payments from the Escrow Account), assets and liabilities, in accordance with this Agreement, Good Industry Practice, Applicable Laws and Applicable Permits. The Concessionaire shall provide 2 (two) copies of its balance sheet, cash flow Statement and profit and loss account, along with a report thereon by its Statutory Auditors, within 90 (ninety) days of the close of the Accounting Year to which they pertain and such audited accounts, save and except where expressly provided to the contrary, shall form the basis of payments by either Party under this Agreement. The Concessioneing Authority shall have the right either through itself or through any of its authorised representatives, to inspect the records of the Concessionaire during office hours and require copies of relevant extracts of books of accounts, duly certified by the Statutory Auditors, to be provided to the Concessioneing Authority for verification of basis of payments, and in the event of any discrepancy or error being found, the same shall be rectified and such rectified account shall form the basis of payments by either Party under this Agreement.
- b) The Concessionaire shall, within 30 (thirty) days of the close of each quarter of an Accounting Year, furnish to the Concessioneing Authority its unaudited financial results in respect of the preceding quarter, giving summarised information on the cargo types handled and liable for payment of Tariff therefore, and any other information, in the manner and form prescribed

by the Securities and Exchange Board of India for publication of quarterly result by the Companies listed on a stock exchange.

- c) On or before the 30th day of June each year, the Concessionaire shall provide to the Concessing Authority, for the preceding Accounting Year, a statement duly audited by its Statutory Auditors giving summarised information on (a) the cargo traffic and liable for payment of Tariff therefore, (b) Tariff charged and received, and other revenues derived from the Project and any other assets associated with the Project and earned directly by the Concessionaire (c) such other information as the Concessing Authority may reasonably require.

21.2.2 Appointment of auditors

- a) The Concessionaire shall appoint, and have during the subsistence of this Agreement as its Statutory Auditors, a firm chosen by it from the mutually agreed list of 5 (five) reputable firms of chartered accountants ("Panel of Chartered Accountants"), such list to be prepared substantially in accordance with the criteria set forth in Appendix 22. All fees and expenses of the Statutory Auditors shall be borne by the Concessionaire.
- b) The Concessionaire may terminate the appointment of its Statutory Auditors after a notice of

45 (forty-five) days to the Concessing Authority, subject to the replacement Statutory Auditors being appointed from the Panel of Chartered Accountants.
- c) Notwithstanding anything to the contrary contained in this Agreement, the Concessing Authority shall have the right, but not the obligation, to appoint at its cost from time to time and at any time, another firm (the "Additional Auditors") from the Panel of Chartered Accountants to audit and verify all those matters, expenses, costs, realisations and things which the Statutory Auditors are required to do, undertake or certify pursuant to this Agreement.

- d) The Concessioneing Authority shall have the right, but not the obligation, to appoint at its cost, for the duration of the Construction Period, another firm (the “Concurrent Auditors”) from the Panel of Chartered Accountants to undertake concurrent audit of the Concessionaire’s accounts.

21.2.3 Certification of claims by Statutory Auditors

- a) Any claim or document provided by the Concessionaire to the Concessioneing Authority in connection with or relating to receipts, income, payments, costs, expenses, accounts or audit, and any matter incidental thereto shall be valid and effective only if certified by its Statutory Auditors. For the avoidance of doubt, such certification shall not be required for exchange of information in the normal course of business including the submission of License Fee as per Clause 9.1.

21.2.4 Set-off

- a) In the event any amount is due and payable by the Concessioneing Authority to the Concessionaire, it may set-off any sums payable to it by the Concessionaire and pay the balance remaining. Any exercise by the Concessioneing Authority of its rights under this Clause 21.2.4 shall be without prejudice to any other rights or remedies available to it under this Agreement or otherwise.

21.2.5 Dispute resolution

- a) In the event of there being any difference between the findings of the Additional Auditors or the Concurrent Auditors, as the case may be, and the certification provided by the Statutory Auditors, such Auditors shall meet to resolve the differences and if they are unable to resolve the same, such dispute shall be resolved by the Concessioneing Authority by recourse to the dispute resolution procedure as described in Article 19.

21.3 Compensation for breach of agreement

21.3.1 Compensation for default by the Concessionaire

Subject to the provisions of Clause 21.3.5, in the event of the Concessionaire being in material breach or default of this Agreement, it shall pay to the Concessioneing Authority by way of compensation, all direct costs suffered or incurred by the Concessioneing Authority as a consequence of such material breach or default, within 30 (thirty) days of receipt of the demand supported by necessary documentation thereof; provided that no compensation shall be payable under this Clause 21.3.1 for any material breach or default in respect of which damages are expressly specified and payable under this Agreement or for any consequential losses incurred by the Concessioneing Authority.

21.3.2 Compensation for default by the Concessioneing Authority

Subject to the provisions of Clause 21.3.5, in the event of the Concessioneing Authority being in material breach or default of this Agreement at any time after the Date of Award of Concession, it shall pay to the Concessionaire by way of compensation, all direct costs suffered or incurred by the Concessionaire as a consequence of such material breach or default within 30 (thirty) days of receipt of the demand supported by necessary documentation thereof; provided that no such compensation shall be payable for any material breach or default in respect of which damages have been expressly specified in this Agreement. For the avoidance of doubt, compensation payable may include interest payments on debt, O&M Expenses, any increase in capital costs on account of inflation and all other costs directly attributable to such material breach or default but shall not include loss of revenues from Tariff or debt repayment obligations or other consequential losses, and for determining such compensation, information contained in the Financial Package and the Financial Model may be relied upon to the extent it is relevant.

21.3.3 Extension of Concession Period

Subject to the provisions of Clause 21.3.5, in the event that a material breach or default of this Agreement set forth in Clause 21.3.2 causes delay in achieving COD or leads to suspension of or reduction in realisation of Tariff, as the case may be, the Concessioneing Authority shall, in addition to payment of compensation under Clause 21.3.2, extend the Concession Period, such extension in the

Concession Period shall be considered and determined by the Concessioneing Authority at such time. The decision of the Concessioneing Authority in this matter shall be final and binding.

21.3.4 Compensation to be in addition

Compensation payable under this Clause 21.3 shall be in addition to, and without prejudice to, the other rights and remedies of the Parties under this Agreement including termination thereof.

21.3.5 Mitigation of costs and damage

The Affected Party shall make all reasonable efforts to mitigate or limit the costs and damage arising out of or as a result of breach of Agreement by the other Party.

21.4 Survival of Obligation

Any cause of action which may have occurred in favour of either Party or any right which is vested in either Party under any of the provisions of this Agreement during the Concession Period as the case may be as a result of any act, omission, deed, matter or thing done or omitted to be done by either Party before the expiry of the Concession Period by efflux of time or otherwise in accordance with the provisions of this Agreement shall survive the expiry of the Concession Period/ termination of this Agreement.

21.5 Articles to survive Termination

The provisions of Articles 16 to 21 shall, to the fullest extent necessary to give effect thereto, survive the Concession Period/the termination of this Agreement and the obligations of Parties to be performed/discharged following the termination/early determination of this Agreement shall accordingly be performed/discharged by the Parties.

21.6 Joint Responsibility

In the event that any damage is caused partly due to the negligence or default or omission on the part of the Concessioneing Authority and partly due to the negligence or default or omission on the part of the Concessionaire, each Party shall be liable to the other Party only in the proportion

to its respective degree of negligence or default or omission, as the case may be.

21.7 Several Obligations

Nothing contained in this Agreement shall be construed to create an association, trust, partnership, agency or joint venture among the Parties and Parties shall be liable to perform their respective duties and discharge their respective liabilities or obligations in accordance with the provisions of this Agreement.

21.8 Severability

If for any reason whatsoever any provision or any part(s) of this Agreement is held or shall be declared to be void or illegal or invalid under present or future laws or regulations effective and applicable during the Concession Period, by any competent arbitral tribunal or court, and if such provisions shall be fully separable and this Concession shall be constructed as if such provision or such part(s) of this Agreement never comprised part of this Agreement and the remaining provisions of this Agreement shall remain in full force and effect and shall not be affected by such void or illegal or invalid provision or by its severance from this Agreement.

21.9 Notices

Unless otherwise stated, notices to be given under this Agreement including but not limited to a notice of waiver of any term or related or breach of any term of this Agreement shall be in writing and shall be given by hand delivery, recognized international courier, mail, telex or facsimile transmission and delivered or transmitted to the Parties at their respective addresses set forth below:

The Concessions Authority: CHAIRMAN

V.O. Chidambarnar Port Authority

Fax No: _____ Email: ____

The Concessionaire:

The MANAGING DIRECTOR

-----Ltd

Fax No. _____ Email: _____

or such other address, telex number, or facsimile number as may be duly notified by the respective Parties from time to time, and shall be deemed to have been made or delivered (i) in the case of any communication made by letter, when delivered by hand, by recognized international courier or by mail (registered, return receipt requested) at that address and (ii) in the case of any communication made by telex or facsimile, when transmitted properly addressed to such telex number or facsimile number.

21.10 Waiver

No waiver of any term or condition or of the breach thereof by any Party shall be valid unless expressed in writing and signed by such Party and communicated by such Party to the other Party in accordance with the provisions of Article 21.9 of this Agreement. A waiver by any Party of any term or condition or breach thereof in a given case shall not be deemed or construed as a general waiver of such term or condition or the breach in the future or waiver of any other terms or conditions or breach of this Agreement.

21.11 Amendments, Modifications or Alterations.

All additions, amendments, modifications and variations to this Agreement shall be effectual and binding only if in writing and signed by the duly authorized representatives of the Parties Governing Law

This Agreement shall be governed by and construed in accordance with the laws of the Republic of

India and courts having territorial jurisdiction over the Project shall have jurisdiction over all matters relating to or arising out of this Agreement.

21.12 Entire Agreement

This Agreement and the Appendices together constitute a complete and exclusive statement of the terms of the agreement between the Parties. All prior written or oral understandings or other communications of every kind pertaining to this Agreement unless specifically retained in this Agreement and the Appendices, by reference or otherwise, are abrogated and withdrawn. IN WITNESS WHEREOF, the Parties, intending to be legally bound, have caused this Agreement on the dates indicated next to their signatures below:

Common Seal of the Concessing Authority is affixed pursuant to its resolution dated _____ of the Board in the presence of Mr. _____ who has signed this Agreement in token thereof.

Signed and Delivered by the Concessionaire by the hand of its authorized representative Mr. _____

Pursuant to Resolution dated _____ of its Board of Directors.

ARTICLE 22

VIABILITY GAP FUNDING

- 22.1 Viability Gap Funding shall be provided to the concessionaire equal to the sum set forth in the bid namely Rs ----- (Rupees-----) in accordance with the provisions of this Article 22 (“the VGF”).
- 22.2 Prior to disbursement, the Empowered Committee, the Lead Financial Institution and the Concessionaire (sponsoring authority would be the confirming party) shall enter into a Tripartite Agreement in such format as may be prescribed by the Empowered Committee from time to time (refer Appendix 24).
- 22.3 For the purposes of this Scheme, a Lead Financial Institution shall be the Financial Institution (FI) that is funding the project, and in case of a consortium of FIs, the FI designated as such by the consortium shall be the Lead Financial Institution (refer Appendix 24 – VGF Guidelines).
- 22.4 The VGF shall be released to the escrow account only after the recommendations of the Concessions Authority and shall be applied only for meeting the Total Project Cost . The Total Project Cost to be reckoned for the purpose of this Article shall include the VGF.
- 22.5 The VGF shall be due and payable to the Concessionaire only after it has subscribed and expended the equity contribution required for the project and will be released in proportion to debt disbursements by Lead Financial Institution.
- 22.6 In the event of occurrence of a Concessionaire default, disbursement of VGF shall be suspended till the Concessionaire default has been cured by the Concessionaire.
- 22.7 The other terms and conditions regarding VGF scheme are as per the VGF guidelines at Appendix 24.

APPENDIX 1

PROJECT SITE

V O Chidambaranar Port (formerly known as Tuticorin Port) is one of the major ports of India, located at South-Eastern coast of India at latitude of 8o45'N and longitude 78o13'E. The VOC Port, one of the 12 major ports in India, is an artificial, deep water port on the East coast of India in Tuticorin. It is also a fast growing and efficient major port in calm waters that makes it operational throughout the year.

Tuticorin, now known as Thoothukudi, is a port city and a Municipal Corporation and an industrial city in Thoothukudi district of the Indian state of Tamil Nadu. The city lies in the Coromandel Coast off Bay of Bengal. It is located alongside of Palk Strait and inside Gulf of Mannar at the southern tip of India just 20 hours from the East-West trade route. Its location is approximately 160 km North from Kanyakumari and 129 Nautical miles from Western region connecting to international sea route. Large tracts of dry non-agricultural lands are available around the town's periphery that would enable development of industries and the geographical spread of the city. There is already a presence of large, medium and small industries in and around the town as well as in the district.

The artificial port is impounding sheltered waters between two breakwaters which run almost parallel apart at 1275m with an entrance width of 153m, and in the process of widening of the entrance to 230 mtrs. The maximum draught of the vessels that can be handled at VOCT is (-)14.20m CD. Presently, it has sixteen cargo berths including ten alongside berths, one oil jetty, shallow draught berth, coastal berth and three coal jetties including NCB-II.

V.O. Chidambaranar Port is connected with major National Highways. The two important National Highways NH 7A and NH 45 B which pass near the port cater to the major port bound traffic movement from the Hinterland. All-important destinations in India from North or East could be accessed through NH7 to travel south. With a well-connected network of road, the port is connecting through three major cities/ urban centers in Tamil Nadu like Tirunelveli, Madurai and Kanyakumari. NH-45 beyond Tirunelveli road intersection meeting Tuticorin – Madurai (NH-45B) Tuticorin – Tiruchendur (NH7A) road cutover NH7 connecting to Kanyakumari. These roads are connected to the port with VOC road inside port. This road is

the major arterial road for present port bound traffic movement. Presently the road is having the 4 lane divided carriageway with paved shoulder on the side.

The VOC port is also well connected by railway line. Presently a broad gauge single line connects the Port area originating from Milavattan railway station. The total length of this railway line is 17.60km. The distance from Milavattan Railway station to VOC wharf is 14.0 km and VOC wharf to Marshalling yard is around 3.5 km. In the Marshalling yard, 5 nos track lines are available. Near the coal yard a loop line is provided. For the evacuations of the bulk cargoes from the North Cargo Berths II, III and IV, stack yards are identified on Hare Island. Connectivity from Hare Island to Port Marshalling Yard is under pipeline. All the 5 tracks within the marshaling yard and near the berths I, II, III and IV up is being up graded. This up gradation also includes the siding into the stack yard near the green gate.

Tuticorin Airport is situated in Vagaikulam which is 10km from Tuticorin Town. This domestic airport is being expanded and runway is being extended from 1350m to 1800m to enable operating the bigger aircraft. The State government is taking measures to acquire land for this expansion of the airport. The nearest international airports viz. Madurai and Chennai are located at 138km and 582km from VOC Port respectively.

The layout of VOC Port is presented below showing the location of Outer Harbour which includes Breakwater construction (Pink colour), dredging layout (Sea blue colour), location of two container terminals (Yellow & blue colour) and the backup yard behind the terminals to be developed.

APPENDIX 2

PORT'S ASSETS

Port assets/ Area to be handed over

| Sl. No | Description of waterfront area handed over | Area in Sqm (approx.) |
|--------|---|-----------------------|
| 1 | Water front area for development of Backup yard, Berth, and Bund areas in the Southern & Eastern side | 10,75,000 |
| 2. | Water front area for development of South Breakwater | 122000 |
| 3. | Water front area for development of North Breakwater | 75000 |
| 4. | Water front area for development of Dock basin area required to be dredged and maintained in the Outer Harbour basin | 400000 |
| | Total | 16,72,000 |
| | Totally Sixteen Lakhs and Seventy Two Thousand square meter. | |
| | Note: the above said dimensions are tentative, an actual area of 31,00,000 Sq.m shall be finalized and allotted to the concessionaire after award of work | |

Note:

- i. When the number or measurement in the above statement are compared with drawings and if any difference is found, the written matter in words or figures shall prevail. In case the difference is observed between the measurement in words and figures the measurement as given in words shall prevail. In case any dispute arises between Concessions Authority and Concessionaire on any measurement, the actual measurement shall be carried out jointly by the Concessionaire and Concessions Authority and the findings shall prevail.
- ii. The licensed premises to be handed over to the Concessionaire will be jointly surveyed by the representatives of the Concessions Authority.

APPENDIX 3

SUBSTITUTION AGREEMENT

THIS SUBSTITUTION AGREEMENT is entered into on this the ----- day of -----

____(Month)__(Year) at_____.

AMONGST,

THE V.O.Chidambaranar Port Authority, an autonomous body functioning under the provisions of the Major Port Authorities Act, 2021 and having its Administrative Office at Tuticorin Tamilnadu (hereinafter referred to as **“the Concessioneing Authority”**) which expression shall, unless repugnant to the context or meaning thereof include its administrators, successors or assigns.

AND

M/s. XXXX Limited, a company incorporated under the provisions of the Companies Act, 2013 and having its Registered Office at ----- hereinafter referred to as **“the Concessionaire”** (which expression shall unless repugnant to the context or meaning thereof include its successors and assigns),

AND

YYYY (Financial Institution/ Bank) having its Registered Office/Head Office at -----
----- hereinafter referred to as **“the Senior Lender”**. OR

ZZZZ (Financial Institution/Bank) having its Registered Office/Head Office at-----
----- acting for and on behalf of the Senior Lenders listed in Schedule A hereto (hereinafter referred as **“the Senior Lender’s Representative”**).

WHEREAS,

- a) The Concessioneing Authority for implementing a Project envisaging ____ by private sector participation (hereinafter referred to as **“the Project”**), has by the Concession Agreement dated --- ----- entered into between the Concessioneing Authority and the Concessionaire (hereinafter referred to as **“the Concession Agreement”**) has granted to the Concessionaire the Concession to implement the Project in terms of the provisions set out thereunder;
- b) With a view to facilitate financing of the Project by the Concessionaire, the Concessioneing Authority and the Concessionaire have agreed to enter into Substitution Agreement being these presents with the Senior Lender/s/Senior Lenders’ Representative.

NOW, THEREFORE, THIS AGREEMENT WITNESSETH AS FOLLOWS:

ARTICLE 1

DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Agreement the following words and expressions shall, unless repugnant to the context or meaning thereof, have the meaning hereafter respectively assigned to them.

“Agreement” means this agreement and includes any amendment or modification made to this agreement in accordance with the provisions hereof.

“Financial Assistance” means the financial assistance set forth in **Schedule A** hereto, agreed to be provided by the Senior Lender(s) to the Concessionaire for financing the Project. **“Financial Default”** means occurrence of a material breach of the terms and conditions of the Financing Documents or a continuous default in servicing debt there under by the Concessionaire for a minimum period of 3 (three) months.

“Senior Lender(s)” means the financial institutions/banks whose name(s) and addresses are set out in Schedule A hereto and shall include the financial institutions/banks who may replace the same by way of a refinance/subrogation, as may be notified by the Senior Lenders’ Representative to the Concessionaire, from time to time.

“Residual Concession Period” means the period which shall be the remainder of the Concession Period computed from the date of issuance of Termination Notice in terms of Article 16.1 of the Concession Agreement.

“Selectee” means a Person proposed by the Senior Lender/Senior Lender’s Representative pursuant to this Agreement and approved by the Concessioneing Authority for substituting the Concessionaire for the residual Concession Period, in accordance with the provisions of this Agreement.

“Suspension Period” means the Termination Period as defined in Article 16 of the Concession Agreement at the end of which all formalities connected with substitution of the Concessionaire by the Selectee including handing over of Project Site/Project Facilities and Services, in

accordance with this Agreement are completed and the substitution has become effective.

1.2 Capitalized terms used in this Agreement but not defined shall have the meaning assigned to them respectively in the Concession Agreement.

ARTICLE 2

ASSIGNMENT

2.1 Assignment of rights and title

The Concessionaire hereby agrees to assign its rights, title and interest in the Concession to, and in favour of, the Senior Lenders pursuant to and in accordance with the provisions of this Agreement and the Concession Agreement by way of security in respect of financing by the Senior Lenders under the Financing Documents.

ARTICLE 3

SUBSTITUTION OF THE CONCESSIONAIRE

3.1 Rights of substitution

3.1.1 Pursuant to the rights, title and interest assigned under Clause 2.1, the Senior Lenders shall be entitled to substitute the Concessionaire by a Selectee under and in accordance with the provisions of this Agreement and the Concession Agreement.

3.1.2 The Concessions Authority hereby agrees to substitute the Concessionaire by endorsement on the Concession Agreement in favour of the Selectee selected by the Senior Lenders in accordance with this Agreement (For the avoidance of doubt, the Senior Lenders shall not be entitled to operate and maintain the Project/Project Facilities and Services).

3.2 Substitution upon occurrence of Financial Default

3.2.1 Upon occurrence of a Financial Default, the Senior Lenders/Senior Lenders' Representative may issue a notice to the Concessionaire (the "**Notice of Financial Default**") along with particulars thereof and send a copy to the Concessions Authority for its information and record. A Notice of Financial Default under this Clause 3 shall be conclusive evidence of such Financial Default and it shall be final and binding upon the Concessionaire for the purposes of this Agreement.

3.2.2 Upon issue of a Notice of Financial Default hereunder, the Senior Lenders/Senior Lenders' Representative may, without prejudice to any of its rights or remedies under this Agreement or the Financing Documents, substitute the Concessionaire by a Selectee in accordance with the provisions of this Agreement.

3.2.3 At any time after the Senior Lenders/Senior Lenders' Representative has issued a Notice of Financial Default, it may by notice require the Concessions Authority to suspend all the rights of the Concessionaire and undertake the operation and maintenance of the Project/Project Facilities and Services, and upon receipt of such notice, the Concessions

Authority shall suspend the rights of the Concessionaire. Provided, such suspension shall be revoked upon substitution of the Concessionaire by a Selectee, and in the event such substitution is not completed within 180 (one hundred and eighty) Days from the date of such suspension, the Concessions Authority may terminate the Concession Agreement forthwith by issuing a Termination Notice in accordance with the provisions of the Concession Agreement; provided that upon written request from the Senior Lenders/Senior Lenders' Representative and the Concessionaire, the Concessions Authority may extend the aforesaid period of 180 (one hundred and eighty) Days by a period not exceeding 90 (ninety) Days.

3.3 Substitution upon occurrence of Concessionaire Default

3.3.1 Upon occurrence of a Concessionaire Default, the Concessions Authority shall by a notice inform the Senior Lenders/Senior Lenders' Representative of its intention to issue a Termination Notice and grant 15 (fifteen) Days' time to the Senior Lenders/Senior Lenders' Representative to make a representation, stating the intention to substitute the Concessionaire by a Selectee.

3.3.2 In the event that the Senior Lenders/ Senior Lenders' Representative makes a representation to the Concessions Authority within the period of 15 (fifteen) Days specified in Clause 3.3.1, stating that it intends to substitute the Concessionaire by a Selectee, the Senior Lenders/ Senior Lenders' Representative shall be entitled to undertake and complete the substitution of the Concessionaire by a Selectee in accordance with the provisions of this Agreement within a period of 180 (one hundred and eighty) Days from the date of such representation, and the Concessions Authority shall either withhold termination and/or suspend the rights of the Concessionaire for the aforesaid period of 180 (one hundred and eighty) Days; provided that upon written request from the Senior Lenders/ Senior Lenders' Representative and the Concessionaire, the Concessions Authority shall extend the aforesaid period of 180 (one hundred and eighty) Days by a period not exceeding 90 (ninety) Days.

3.4 Procedure for substitution

3.4.1 The Concessions Authority and the Concessionaire hereby agree that on or after the

date of Notice of Financial Default or the date of representation to the Concessing Authority under Clause 3.3.2, as the case may be, the Senior Lenders/Senior Lenders' Representative may, without prejudice to any of the other rights or remedies of the Senior Lenders, invite, negotiate and procure offers, either by private negotiations or public auction or tenders from potential Selectees for substituting the Concessionaire and taking on the rights and obligations under the Concession Agreement.

3.4.2 To be eligible for substitution in place of the Concessionaire, the Selectee shall be required to fulfil the eligibility criteria that were laid down by the Concessing Authority for shortlisting the bidders for award of the Concession; provided that the Senior Lenders/ Senior Lenders' Representative may represent to the Concessing Authority that all or any of such criteria may be waived in the interest of the Project, and if the Concessing Authority determines that such waiver shall not have any material adverse effect on the Project, it may waive all or any of such eligibility criteria.

3.4.3 Upon selection of a Selectee, the Senior Lenders/Senior Lenders' Representative shall request the Concessing Authority to:

(a) accede to transfer to the Selectee the rights and obligations of the Concessionaire under the Concession Agreement; and

(b) novate the Concession Agreement to the Selectee such that the Selectee replaces the Concessionaire and becomes entitled/obligated to all the rights and obligations of the Concessionaire, for the residual Concession Period.

3.4.4 If the Concessing Authority has any objection to the transfer of Concession in favour of the Selectee in accordance with this Agreement, it shall within 7 (seven) Days from the date of proposal made by the Senior Lenders/Senior Lenders' Representative, give a reasoned order after hearing the Senior Lenders/Senior Lenders' Representative. If no such objection is raised by the Concessing Authority, the Selectee shall be deemed to have been accepted. The Concessing Authority thereupon shall novate the Concession Agreement within 7 (seven) Days of its acceptance/deemed acceptance of the Selectee; provided that in the event of such

objection by the Concessing Authority, the Senior Lenders' Representative may propose another Selectee whereupon the procedure set forth in this Clause 3.4 shall be followed for substitution of such Selectee in place of the Concessionaire.

3.5 Selection to be binding

The decision of the Senior Lenders/Senior Lenders' Representative and the Concessing Authority in selection of the Nominated Company shall be final and binding on the Concessionaire. The Concessionaire irrevocably agrees and waives any right to challenge the actions of the Senior Lenders' Representative or the Senior Lenders or the Concessing Authority taken pursuant to this Agreement including the transfer/novation of the Concession Agreement in favour of the Selectee. The Concessionaire agrees and confirms that it shall not have any right to seek revaluation of assets comprised in the Project or the Concessionaire's shares. It is hereby acknowledged by the Parties that the rights of the Senior Lenders/Senior Lenders' Representative are irrevocable and shall not be contested in any proceedings before any court or Concessing Authority and the Concessionaire shall have no right or remedy to prevent, obstruct or restrain the Concessing Authority or the Senior Lenders/Senior Lenders' Representative from effecting or causing the transfer by substitution and endorsement of the Concession as requested by the Senior Lenders/Senior Lenders' Representative.

ARTICLE 4

TRANSACTION DOCUMENTS

4.1 Substitution of Selectee in Transaction Documents

The Concessionaire shall ensure and procure that each Transaction Documents contains provisions that entitle the Selectee to step into such Transaction Documents, in its discretion, in place and substitution of the Concessionaire in the event of such Selectee assumption of the liabilities and obligations of the Concessionaire under the Concession Agreement.

ARTICLE 5

TERMINATION OF CONCESSION AGREEMENT

5.1 Termination upon occurrence of Financial Default

At any time after issue of a Notice of Financial Default, the Senior Lenders/Senior Lenders' Representative may by a notice in writing require the Concessions Authority to terminate the Concession Agreement forthwith, and upon receipt of such notice, the Concessions Authority shall terminate the Concession in accordance with the Concession Agreement.

5.2 Termination when no Selectee is selected

In the event that no Selectee acceptable to the Concessions Authority is selected and recommended by the Senior Lenders/Senior Lenders' Representative within the period of 180 (one hundred and eighty) Days or any extension thereof as set forth in Clause 3.3.2, the Concessions Authority may terminate the Concession Agreement forthwith in accordance with the provisions thereof.

5.3 Realisation of Debt Due

The Concessions Authority and the Concessionaire hereby acknowledge and agree that, without prejudice to their any other right or remedy, the Senior Lenders are entitled to receive from the Concessionaire, without any further reference to or consent of the Concessionaire, the Debt Due upon termination of the Concession Agreement.

ARTICLE 6

DURATION OF THE AGREEMENT

6.1 Duration of the Agreement

6.1.1 This Agreement shall come into force from the date hereof and shall expire at the earliest to occur of the following events:

- a) termination of the Agreement; or
- b) no sum remains to be advanced, or is outstanding to the Senior Lenders, under the Financing Documents.

ARTICLE 7

INDEMNITY

7.1 General indemnity

7.1.1 The Concessionaire will indemnify, defend and hold the Concessioneing Authority and the Senior Lenders/Senior Lenders' Representative harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense of whatever kind and nature arising out of any breach by the Concessionaire of any of its obligations under this Agreement or on account of failure of the Concessionaire to comply with Applicable Laws and Applicable Permits.

7.1.2 The Concessioneing Authority will indemnify, defend and hold the Concessionaire harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of failure of the Concessioneing Authority to fulfil any of its obligations under this Agreement, materially and adversely affecting the performance of the Concessionaire's obligations under the Concession Agreement or this Agreement, other than any loss, damage, cost and expense, arising out of acts done in discharge of its lawful functions by the Concessioneing Authority.

7.1.3 The Senior Lenders/Senior Lenders' Representative will indemnify, defend and hold the Concessionaire harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of failure of the Senior Lenders/Senior Lenders' Representative to fulfil its obligations under this Agreement, materially and adversely affecting the performance of the Concessionaire's obligations under the Concession Agreement, other than any loss, damage, cost and expense, arising out of acts done in discharge of their lawful functions by the Senior Lenders/Senior Lenders' Representative.

7.2 Notice and contest of claims

In the event that any Party hereto receives a claim from a third party in respect of which it is entitled to the benefit of an indemnity under Clause 7.1 or in respect of which it is entitled to reimbursement (the "**Indemnified Party**"), it shall notify the other Party responsible for indemnifying such claim hereunder (the "**Indemnifying Party**") within 15 (fifteen) Days of receipt of the claim and shall not settle or pay the claim without the prior approval of the Indemnifying Party, such approval not to be unreasonably withheld or delayed. In the event that the Indemnifying Party wishes to contest or dispute the claim, it may conduct the proceedings in the name of the Indemnified Party and shall bear all costs involved in contesting the same. The Indemnified Party shall provide all cooperation and assistance in contesting any claim and shall sign all such writings and documents as the Indemnifying Party may reasonably require.

ARTICLE 8

GENERAL

8.1 General

- i. The Parties hereto expressly represent and warrant that they are duly empowered to sign and execute this Agreement.
- ii. Notices under this Agreement shall be sent to the Addresses first hereinabove mentioned. Any change in the address of any Party shall be duly notified by registered post

acknowledgement due and delivered to the other parties.

- iii. The expressions “Concessioneing Authority”, the “Concessionaire”, the “Senior Lender” and the “Senior Lenders’ Representative”, “Selectee” herein used shall unless there be anything repugnant to the subject or context include the respective successors and assigns.
- iv. This Agreement shall not be affected by reorganisation of any Senior Lender, the Concessionaire or Concessioneing Authority, “Selectee” and the successor in interest of the Senior Lender or Concessioneing Authority shall have the benefit of this Agreement.
- v. Failing amicable settlement and/or settlement with the assistance of Expert, the dispute or differences or claims as the case may be, shall be finally settled by binding arbitration under the Arbitration and Conciliation Act, 1996. The arbitration shall be by a panel of three Arbitrators, one each to be appointed by the Concessioneing Authority and the Senior Lenders/Senior Lender’s Representative and the third to be appointed by the two arbitrators. If any Party entitled to do so, fails to appoint a second Arbitrator within 30 (thirty) Days of from the receipt of the request for such appointment, then the single Arbitrator appointed in accordance with this provision shall adjudicate the disputes as Sole Arbitrator.
- vi. This Agreement and rights and obligations of the Parties hereunder shall remain in full force and effect pending the Award in any arbitration proceeding hereunder. The courts having territorial jurisdiction over the Project alone shall have jurisdiction over all matters arising out of or relating to the arbitration agreement contained herein or proceedings arising out of or relating to the arbitration proceedings thereunder.
- vii. The consultation, recommendation or approval of the Senior Lenders’ Representative under this Agreement shall always be deemed as consultation, recommendation or approval of every concerned Senior Lender and each such Senior Lender shall be bound by the same.
- viii. This Agreement shall be in addition to and shall not be in derogation of the terms of the Financing Documents.
- ix. The Concessionaire agrees and acknowledges that it shall not be necessary for the Senior

Lender(s) or the Senior Lenders' Representative to enforce or exhaust any other remedy available to them before invoking the provisions of this Agreement.

- x. No amendment, variation or modification to this Agreement shall be valid and effectual unless made in writing and executed by the duly authorized representatives of all the Parties hereto.
- xi. All stamp duties or other imposts and charges as are applicable on this Agreement or on amendment of the Concession Agreement or execution of fresh Concession Agreement for the purpose of substitution as aforesaid, irrespective of the Senior Lenders making such payment for the time being, shall be borne by and be to the account of the Concessionaire.
- xii. The Parties hereby expressly agree that for the purpose of giving full and proper effect to this Agreement, the Concession Agreement and this Agreement shall be read together and construed harmoniously. The terms of this Agreement shall prevail in the event of any inconsistency with the Concession Agreement.

**SCHEDULE A
PARTICULARS OF FINANCIAL ASSISTANCE.**

| Name and Address of the Lender | Nature and Amount of Financing Assistance |
|--------------------------------|---|
| | |
| | |

IN WITNESS WHEREOF THE PARTIES HERETO HAVE SET THEIR HANDS HEREUNTOON THE DAY, MONTH AND YEAR HEREINABOVE MENTIONED.

SIGNED AND DELIVERED ON BEHALF OF

_____ LIMITED BY: _____

Name: Title:

SIGNED AND DELIVERED ON BEHALF OF GOVERNMENT OF INDIA

BY: _____

Name:

Title:

SIGNED AND DELIVERED ON BEHALF OF

----- ON BEHALF OF THE SENIOR LENDERS SETFORTH IN SCHEDULE BY : _____

Name:

APPENDIX 4

SCOPE OF WORK

Project Facilities and Services:

The Concessionaire shall prepare the development scheme for the project and get it approved by the port. All care shall be taken by the Concessionaire during the construction phase to the safety of men & material. The electrical cables, water pipelines shall not be damaged while developing the facilities. The damage so caused shall be rectified and made good by the Concessionaire at his cost. Concessionaire has to construct his own car park area, amenity buildings, like time office, changing/locker rooms, canteen, etc. within the licensed premises after approval of the port. A security fence may be installed along the perimeter of the terminal after discussion with the port taking into consideration the safety and smooth flow of traffic.

1. The Concessionaire has to develop two no's of container terminals of 1000m quay length each in the Outer Harbour. The Outer Harbour development majorly involves construction of breakwater, capital dredging in the Outer Harbour basin and approach channel, construction of Rubble bund for reclamation of dredged materials for creation of backup yard, berth / jetty construction, mechanization in the berth & stack yard, railway line laying, navigational aids etc.,
2. The Project work will be carried out in two stages i.e. Stage I related to development of Container Terminal -1 (Berths I and II) including construction of Breakwaters , dredging and other common facilities and Stage II related to development of Container Terminal -2 (Berths III and IV) , hereinafter referred to as Stage I and Stage II project.
3. The construction period for Container Terminal -1 (Berths I and II) is 36 months and for Container Terminal -2 (Berths III and IV) is 24 months.
4. The Concessionaire shall commence the construction activity of Container Terminal -1 (Berths I and II) immediately from the date of award of Concession and the Commercial operation of Container Terminal -1 (Berths I and II) begins from the date of expiry of 36 months from the date of Award of Concession (Estimate construction Phase of Container Terminal -1 (Berths I and II) : 36 months).
5. The Concessionaire shall commence the construction activity of Container Terminal -2 (Berths III and IV), the day following completion of 24 calendar months from the date when the average annual volume of cargo handled at the Project Facilities and Services reaches to a level of 70% of Project Capacity for 2 (two) consecutive years of stage I or the day following completion of 96 calendar months from the Date of Award of Concession, whichever is earlier. However, the Concessionaire has the liberty to commence the construction of Stage II prior to completion of 96 calendar months from the Date of award of Concession.
6. Concessions Authority shall handover the required waterfront area for development of the subject proposal on DBFOT basis for a period of 45 years.

7. As per proposal, the Concessionaire shall have to carry out the following in a stage wise manner:

A. Stage I (Construction Phase: 36 months):

- a) Construction of breakwater in the Northern and Southern side (5635m length approx.).
- b) Capital dredging alongside the Berths I & II and Outer Harbour basin to (-)16.9m and approach channel to (-)17.4m to handle 16m draught vessels (approx. dredging quantity = 9.73 M.Cu.m).
- c) Construction of Berths I & II (Container Terminal 1) of 1000m quay length. The design of berth civil structure needs to be done to handle vessels up to 21m draught of 22,000 TEU vessels.
- d) Mechanization of the Container Terminal (CT1) providing container handling equipment like quay gantry cranes, RTGCs, reach stacker, tractor trailers, IT systems etc,.
- e) Development of backup yard around 51 Ha behind the Container Terminal 1 (CT 1) out of which 35 Ha will be allotted to the Concessionaire for CT 1. The backup yard development includes construction of rubble bund (3200m length approx) and reclaiming with dredged materials. Construction of buildings for administrative and operational area by the terminal operator. Pavement of back-up area for container yard by the terminal operator and the Operation & Maintenance thereof.
- f) Installation of Navigational Buoys in the channel.
- g) The Concessionaire shall carry out necessary studies and investigations such as wave tranquillity, Desk and wave flume, Navigation simulation, Geo technical investigations etc, if required.
- h) Any other works for successful completion and operation of the terminal to create capacity to handle container cargo of a minimum volume of 2 MTEU's.

B. Stage II (Construction Phase: 24 months):

- a) Capital dredging alongside the Berths III & IV to (-)16.9m to handle 16m draught vessels (approx. dredging quantity = 1.23 M.Cu.m).

- b) Construction of Berths III & IV (Container Terminal 2) of 1000m quay length. The design of berth civil structure needs to be done to handle vessels up to 21m draught of 22,000 TEU vessels.
- c) Mechanization of the Container Terminal (CT2) providing container handling equipment like quay gantry cranes, RTGCs, reach stacker, tractor trailers, IT systems etc.,.
- d) Development of backup yard of around 35 Ha behind the Container Terminal 2 (CT 2).
- e) Construction of buildings for administrative and operational area by the terminal operator. Pavement of back-up area for container yard by the terminal operator and the Operation & Maintenance thereof.
- f) Any other works for successful completion and operation of the terminal to create capacity to handle container cargo of a minimum volume of 2 MTEU's.

8. Project Facilities and Services

The Concessionaire shall develop the above stage wise development with the following project facilities and services:

A. Berth

- a. The Concessionaire shall prepare the development scheme for the Container Terminal and get it approved by the port. All care shall be taken by the Concessionaire during the construction phase to the safety of men & material. The electrical cables, water pipe lines shall not be damaged while developing the facilities. The damage so caused shall be rectified and made good by the Concessionaire at his cost. Concessionaire has to construct his own car park area, amenity buildings, like time office, changing/locker rooms, canteen, etc. within the licensed premises after approval of the port. A security fence may be installed along the perimeter of the terminal after discussion with the port taking into consideration the safety and smooth flow of traffic.
- b. The Concessionaire shall provide Fenders, bollards, mooring rings, firefighting system, water supply system, electrification etc. at suitable locations.

- c. The handing over of the assets will take place after the signing of the Concession Agreement and fulfilment of conditions precedent by the Concessionaire.
- d. The Concessionaire shall make proper arrangements for drainage of the Container yards to be developed taking into consideration the existing drainage facilities available and present requirements for container stacking facilities. The drainage facility shall be so finalized/designed and constructed by the Concessionaire at its cost such that there is no stagnation of water within Licensed Premises and catchments area of the drainage facilities.

B. Container Yard

The Concessionaire may plan and develop the container stacking yard as per standard norms and procedure.

C. Container Handling Equipment

Concessionaire shall provide following minimum numbers suitable container handling equipment's in each of the Container Terminal:

| | |
|---|---------|
| a. Rail Mounted Quay Gantry Cranes (RMQC) | 10 Nos. |
| b. Rubber Tyred Gantry Cranes (RTGC) | 30 Nos. |
| c. Reach Stackers | 4 No. |
| d. Tractor/Trailer | 60 Nos. |

It is the responsibility of the concessionaire to obtain Security clearance for foreign equipment's if required as per the Guidelines of Security Agencies or any competent authority.

All the equipment to be provided shall be electrically driven in order to comply with MIV -2030 i.e., all equipment to be deployed in electrical mode only. Since the electrical reach stackers, tractors and trailers have to be charged on daily basis, sufficient numbers of standby reach stackers, tractors, trailers shall also be provided, to transport the containers from quay to yard vice-versa without any interruption.

I. Rail mounted Quayside Crane (RMQC):-

The standard terminal now proposed is to meet the future needs. Hence it is prudent to go in for the latest type of cranes available so that it will not become obsolete soon.

22.1.1.1 Capacity under spreader - 65 MT

22.1.1.2 Spreader - Telescopic -Twin lift

22.1.1.3 Vessel size to be handled - MGX container vessel

II. Rubber Tyred Gantry Crane:-

Capacity - 41MT (Under Spreader)

Minimum number of Equipment & its specification given above is mandatory. However, Concessionaire may design the above equipments with higher specifications and latest technologies to meet the Project requirement.

D. Container Freight Station (CFS):

The Concessionaire shall make arrangements to provide warehousing facilities of international standard for import cargo, export cargo, hazardous cargo, long standing cargo and reefer cargo. Storage has to be as per IMO and GoI regulations. However, Hazardous goods covered under IMO class-1 & 7 are not allowed.

In case, the Concessionaire decides to construct CFS, the Concessionaire shall build and operate the CFS subject to obtaining the necessary permissions(s) from the concerned authorities. Guarantees, if any, shall be furnished by the Concessionaire to the Customs Authorities.

For setting up and operation of the CFS, the Concessionaire shall ascertain from the appropriate authorities, the relevant custom rules, formalities and procedures and abide by them.

E. Reefer Yards:-

The Concessionaire shall have its own reefer yard within the Licensed Premises according to the capacity of the Container Terminal.

F. Other Buildings and Services:-

The Concessionaire shall, at its own cost and expense, construct structures/buildings like Time Office, Operation Centre, Canteen, etc., in their premises subject to the prior written approval of the Concessioneing Authority.

G. Support Facilities:-

The traffic management plan within and to the terminal shall be fine-tuned in consultation with VOCPA after taking into consideration minimum disturbance to traffic to and from other terminal/ Berths.

H. Computer Communication:-

The Concessionaire shall automate the operations of the Container Terminal and provide the information through online to the Concessioneing Authority. The Concessionaire shall install a computer system with adequate number of terminals for planning, including but not limited to, import, export, export intake, delivery, transfer to CFS, generation of reports, provision of information to Concessioneing Authority etc. Information about the movement of containers should be fed to the computer immediately through walkie talkie or other suitable medium. The Concessionaire has to provide the direct access to their online system / servers for the Concessioneing Authority to verify the details of operations and Gross revenue collected.

I. Electrification :

- a. The Concessionaire shall have to erect necessary Sub-Station and associated distribution-installations and works for meeting the power requirement of proposed Quay Cranes and other equipments. The Concessionaire shall install lighting system and provide power supply to the lighting System from their own distribution system on award of the license. The

Illumination level should be maintained as per the requirements of Dock safety Regulations.

- b. Concessionaire shall make his own arrangements for tapping power Supply from the port's nearby Sub Station and also arrangements for incoming outgoing panels Breakers with protective systems, Transformers with auto online Tap- Changers for voltage regulations, Suitable Capacitor Banks with auto switching Units for Power Factor improvement and etc., to match the existing System. The Concessionaire shall also provide a suitable standby Power Generator with adequate capacity to ensure that failure of TANGEDCO power supply does not impede the handling of containers at the Container terminals. Since it is coming under the Indian Electricity rules, all the Electrical installations shall be certified by the Central Electricity Authority before energizing.
- c. The Concessionaire shall indicate in his offer the Maximum power to be availed from VOCPA sub-Station in Phased manner for operating the Terminal to obtain appropriate approval from TANGEDCO/TNEB for Maximum Demand increase in Contract Demand. All charges from application filing till the state of TANGEDCO approval for increase in Contract Demand shall be borne by the Concessionaire. All the related charges and deposits paid by VOCPA to TANGEDCO for availing power supply from TANGEDCO as per current contract demand shall be paid to VOCPA.

J. Water :-

Port is receiving water supply from near by Tamaraparany river through Tamilnadu water and Drainage Board 3 MGD and 1MGD schemes at an average of 5000 KL per day. Though adequate supply is received, in view of shortage of supply during summer period the supply of water to ships is not resorted to. Water supply for project facilities and services shall be made available subject to availability at the prevailing rate. Water for firefighting purposes of the terminal shall be drawn from sea. Further, a provision for supply of water to the vessels calling at the Terminal shall be provided.

K. Fire fighting requirements:-

- a. The Concessionaire shall plan and provide for adequate firefighting equipment, fire hydrants etc. at the berths and in the back up area, keeping in view the need for maximizing dock safety and compliance with the prescribed regulations subject to the scale as stipulated by OISD guidelines or in compliance with applicable latest international codes/practices.
- b. The Concessionaire may, at its own cost, expenses and charges, install any communication link with the Concessions Authority's fire station. Mobile fire tenders of the Concessions Authority may also assist based on the availability, the Concessionaire in the event of a fire in the Licensed Premises at the Concessionaire's cost, charges and expenses. However, the Concessionaire agrees and undertakes to make suitable and adequate arrangements for firefighting in the Licensed Premises including mobile fire tenders which should be available for dealing with any emergency in the Concessions Authority's area as well. The Concessionaire agrees and undertakes to make provision of firefighting equipment's in the Licensed Premises in addition to the equipment's and the facilities of the Concessions Authority required if any. Further, facilities for taking waterline by the vessels calling at the terminal in case of emergency situations shall be provided.

L. Bunkering and Fuel Supply:

The Concessionaire shall make their own arrangements for bunkering & fuel supply and shall obtain necessary approval from the concerned authority. Further, facilities for bunkering the vessels calling at the Terminal shall be provided.

M. Security Arrangements:

The security of the port is vested with Central Industrial Security Force (CISF). The Concessionaire shall abide by the security regulations/procedures as stipulated by the Concessions Authority from time to time. However, the Concessionaire shall make his own arrangements for security in their terminal at his own cost.

N. Security (Under ISPS Code):

The International Ship and Port Facility Security Code (ISPS) has been under implementation from July,2004 and, India being a signatory to the IMO Resolution on this adoption of the Code, it is imperative that all Terminal Operator in VOCPA conforms to the requirements of the Code. The Terminal will be termed as one of the port facility of VOCPA wherein Deputy Conservator is the Port facility security officer. The operator is required to identify one of their officers as Deputy Port Facility Security Officer of that Terminal, who will be reporting to the Deputy Conservator directly for adoption and compliance of the Code.

The additional security cost involved in providing any infrastructure in the area allotted to the Concessionaire (as required under the ISPS Code) shall be borne by the Concessionaire. Whenever additional Code on Port security is approved by the Indian Government, the Concessionaire will be required to comply with such code at his cost, such as installation of equipments, etc.

- O. Concessionaire shall comply with environmental laws including obtaining and keeping in force throughout the concession period all required statutory clearances during the construction, operation and maintenance phases of the project.
- P. Planning, design, construction, operation and maintenance of all developmental works shall comply to the relevant Indian Standards and in the absence of Indian Standards, relevant International Standards shall be complied with. Safety precautions as per statutory requirements and IMO guidelines shall also be complied with.
- Q. The Concessionaire shall ensure compliance to Quality (ISO), Environmental (EMS), Occupational Health Safety and ISPS Codes.
- R. The Detailed Project Report for the proposal prepared by the Consultants is available with the Chief Engineer, VOCPA, which can be perused by the Applicants for ascertaining any further information.
- S. Operation and maintenance of the facilities proposed throughout the concession period

including attending to repairs and replacements of the infrastructure/facilities as may be needed during the concession period and handingover of the entire Project facilities and equipment at the end of the concession period or earlier, if so occasioned to the Concessioning authority in satisfactory working condition in order to operate the project facilities and services without any discontinuation of operation and to meet out the Performance standard will be defined in DCA.

- T. The personnel and other related facilities should be capable of handling at least **4 MTEUs** of Container cargo in accordance with the Performance Standards set out in Appendix 14 of Draft Concession Agreement.

- U. **Dredging:** The existing depth available in the proposed dredge boundary of Outer harbour basin vary from 10m to 14.50m and around 15m depth in the channel. Hence, in order to handle the design size vessel, Concessionaire shall carry out capital dredging in front of berths and other areas of Outer Harbour to (-) 16.90m and channel to (-) 17.40m enable to handle vessels up to 16.00m draught. The dredging layout is available in the DPR. The dredged material shall be reclaimed by the concessionaire at the designated location as detailed in the DPR. The above shall ensure with minimum inconvenience to or dislocation of the Project Facilities and Services of the Port. The area so created will be an asset of the Concessioning Authority and the Concessionaire will not have any right over the property created through reclamation. However, the Authority shall hand over the reclaimed land to the concessionaire for development of Container Yard behind the berth area. VOCPA will levy all applicable charges for the crafts deployed by the concessionaire for the purpose of the dredging. If any services are provided by VOCPA like pilotage, towage etc. the Concessionaire shall pay the levy as per the SoR of the port. Berths can be provided for these vessels on chargeable basis subject to availability. Berth Hire charges for the vessels / dredger relating to dredging, will not be applicable, if berthed at Outer harbour berths I to IV.

- V. The Concessionaire(s) is responsible for maintaining a minimum depth of 16.90m in the dock basin and Turning circle basin and 17.40m in the approach channel throughout the concession period. Subject to minimum inconvenience to or dislocation of the Project

Facilities and services of the Port.

W. However, the draft of the berth may be increased from 16m draught, turning circle and approach channel in future at the cost and risk of the concessionaire subject to the approval of the Concessions Authority.

9. The Concessions Authority is having full rights to accept or reject the request of the concessionaire.

10. The Concessions Authority is having full rights to deepen the Approach Channel for the development of Port. Also, Port is having full rights in maneuvering the vessels, Geotechnical investigation, bathymetry survey etc., in the Outer harbour basin and approach channel.

Annexure

CONSTRUCTION STANDARDS, OPERATIONS AND MAINTENANCE STANDARDS AND SAFETY STANDARDS

A. General

The Concessionaire shall execute the project by completing civil works as per the Scope of Work and provide appropriate equipment for cargo handling and other support facilities for proper and efficient functioning.

The Concessionaire shall carry out Construction Works, etc. duly complying with the provisions of all relevant latest Indian Standards and in case certain item of works not covered by the Indian Standards, provisions of ISO/IEC/OISD standards, etc. shall be complied.

The construction of civil works, facilities, erection & commissioning of lifting appliances, equipment and machinery and their layout shall ensure that during cargo operations these facilities meet the required provisions of the Dock Workers Safety Health & Welfare Act, 1986 and the relevant Regulations 1990.

The Concessionaire shall meet the requirements of Management Quality System (IS/ISO – 9001: 2000) and shall also obtain accreditation for operations at the terminal. In addition, the Concessionaire shall comply with all relevant statutory regulations, codes, practices and guidelines.

It is not intended to specify herein all the relevant standards required to complete the Project. Such of those standards considered more pertinent are listed in this Annexure.

B. Civil Construction Work

B. 1. Dry Bulk, Break Bulk & Container Terminals

The civil construction work may comprise variety of works such as dredging, reclamation, construction of breakwaters, berths, development of back-up area for storage of cargo/containers,

approach roads, railways sidings, operational buildings/offices, maintenance workshop, drainage, water supply, environmental protection works and other amenities. The Concessionaire is required to undertake all tests required as per IS/ ISO/IEC standards to ensure that the construction work carried out by him meets not only the functional requirements of the project but also conforms to the required quality as per the standards. In addition, the Concessionaire shall also comply with the provisions of specifications published by the Indian Road Congress, RDSO of Ministry of Railways and provisions of Shore Protection Manual (CERC) of US Army Corps of Engineers, as may be pertinent to the Project. In respect of implementing the Project, the Concessionaire shall refer to and as relevant comply with the design and construction standards specified in the following paragraphs.

Indian Standards for Construction of Ports and Harbours

IS 4651 – Part – 1 – 1974 Code of practice for planning and design of ports and harbours: Part 1 Site investigation

IS 4651–Part 2–1989 Code of practice for planning and design of ports and harbours Part 2 Earth pressure

IS 4651-Part III-1974 Code of practice for planning and design of ports and harbours: Part III: Loading

IS 4651- Part 4 -1989 Code of practice for planning and design of ports and harbours: Part 4: General Design consideration.

IS 4651-Part 5-1980:

IS 7314: 1974

IS 9527: Part 1: 1981

IS 9527: Part 3: 1983

IS 9527: Part 4: 1980

IS 9527: Part 6: 1989

IS 10020: Part 4: 1981

IS 9556: 1980

Code of practice for planning and design of ports and harbour Part:5 Layout and functional requirements

Glossary of terms relating to port and harbour engineering

Code of practice for design and construction of port and harbour structures: Part 1 Concrete monoliths Code of practice for design and construction of port and harbour structure: Part 3 Sheet pile walls

Code of practice for design and construction of port and harbour structure: Part 4 Cellular Sheet pile structures

Code of practice for design and construction of port and harbour structures: Part 6 Block work Recommendations for design and construction of port and harbour components Part 4 Slipways. Code of Practice for design and construction of diaphragm walls

Indian Standards for Foundation Work

IS 2911: Part 1: Sec 1:1979 Code of practice for design and construction of pile foundationsPart 1 Concrete piles, Section 1, Driven cast in-situ concrete piles

IS 2911: Part 1: Sec 2:1979 Code of practice for design and construction of pile foundations:Part 1 Concrete piles, Section 2 Bored cast in-situ piles

IS 2911: Part 1: Sec 3:1979 Code of practice for design and construction of pile foundations:Part 1 Concrete piles, Section 3 Driven pre-cast concrete piles

IS 2911: Part1: Sec 4:1984 Code of practice for design and construction of pile foundations.Part 1 Concrete piles, Section 4 Bored pre-cast concrete piles

IS 2911: Part 2: 1980 Code of practice for design and construction of pile foundations: Part 2
Timber piles

IS 2911: Part 3: 1980 Code of practice for design and construction of pile foundations: Part 3
Under reamed piles.

IS 2911: Part 4: 1985 Code of practice for design and construction of pile foundations: Part 4 Load
test on piles

IS 2950: Part 1: 1981 Code of practice for design and construction of raft foundations – Part 1:
Design

IS 2974: Part 1: 1982 Code of practice for design and construction of Machine Foundations- Part 1:
Foundation for Reciprocating Type Machines.

IS 2974: Part 2: 1980 Code of practice for design and construction of machine foundations. Para 2
Foundations for impact type machine (hammer foundations)

IS 2974: Para 3: 1992 Code of practice for design and construction of machine foundations for
rotary type machines (medium and high frequency)

IS 2974: 1979: Code of practice for design and construction of machine foundations: Part 4
Foundations for rotary type machines of low frequency.

IS 2974: Part 5: 1987 Code of practice for design and construction of machine foundations Part 5
Foundations for impact machines other than hammers (forging and stamping press, pig breaker
drops crusher and jolter)

IS 1080: 1985 Code of Practice for design and construction of shallow foundations on soils (other
than raft, ring
and shell).

IS 13094: 1992 Guidelines for Selection of ground improvement techniques for foundation in
weak soils.

Indian Standards for Structural Design

IS 875(Part I to V): 1987 Code of Practice for design loads (other than earth quake) for buildings – dead loads, imposed loads, wind loads, snow loads, special loads and load combinations.

IS 456: 2000 Code of Practice for plain and reinforced concrete. IS: 800: 1984 Code of practice for general construction in steel

IS: 801: 1975 Code of practice for use of cold formed light gauge steel structural members in general building construction.

IS: 803: 1976 Code of practice for Design fabrication and Erection of vertical mild steel cylindrical welded oil storage tanks.

IS 1893: Part 1: 2002 Criteria for Earthquake Resistant Design of Structures

Part I – General Provision and Buildings

IS 1893: Part 4: 2005 Criteria for earthquake resistant design of structures –Part 4- Industrial Structures including Stack-like Structures.

IS 4326: 1993 Code of Practice for Earthquake Resistant design and construction of buildings.

B-2 Bulk Liquid Terminals and Tank Farms

In addition to complying to the requirement of relevant specifications mentioned above, in respect of port terminals meant for handling bulk liquids such as crude, POL, hazardous chemicals, LPG, LNG, etc., the Concessionaire shall also comply with the requirements of IMO Standards, MSIHC Rules 1989, IMDG Codes, OISD Standards & Guidelines, Petroleum Rules and Act, Explosives Act and statutory requirements.

C. Cargo Handling Equipment C-1 General

The Concessionaire in accordance with relevant standards shall provide the type and capacity of equipment required for handling the specified cargo/containers. The equipment shall

generally conform to the following standards and code of practices.

Electric Cranes - Wharf and Gantry Cranes

The crane and its mechanisms shall be designed and constructed in compliance with the latest editions and amendments of the following standards and codes of practice. Standards equivalent or higher in BS, JIS, FEM, DIN, ISO, IEC are also acceptable.

Structures and Mechanism

IS 807: 2006 - Code of practice for fatigue IS 4137 – 1985: Design, erection and testing (Structural Portion)of Cranes and Hoists – Code of Practice.

BS 5400 – Part 10 Steel concrete and composite bridges

Specification for heavy duty electric overhead traveling and special cranes for use in steel works

Material

IS 800: 1984: Code of Practice for general construction in steel

IS 2062: 2006: Hot rolled low medium and high tensile Structural Steel
IS 2644: 1994: High tensile steel castings

IS 2266: 2002: Steel Wire Ropes for General Engineering Purposes-specification

IS 3177: 1999: Code of Practice for Electric Overhead Traveling Cranes and Gantry Cranes other than Steel Work Cranes

Electricals

IEC standards

IEE – regulations for the electrical equipment of buildings
BS 4999 / FEM 3rd edition Booklet 4 - Motors

BS 171, BS 3941, BS 3938 - Transformers
BS 99 – Fuses

Welding

IS 7307: Part 1: 1974 Approval test for welding procedures Part 1 Fusionwelding of steel.

IS 7310: Part 1: 1974 Approval test for Welders working to approved welding procedures – Part1: Fusion welding of Steel.

Painting

BS 5493 Code of practice for protective coating of iron and steel structures against corrosion
Swedish Standard Sa 2,5 or SIS ST3, SIS 055900 surface preparation

General

| | |
|---|-------------------------------|
| IS 13367: Part 1: 1992 Safe use of Cranes - Code of Practice Part 1 General Classification of Crane | |
| Structures | |
| Class of utilization: | U8 (4 Million loading cycles) |
| State of loading: | Q3 |
| Group classification: | A8 |
| Impact factor: | 1.4 |
| Duty factor: | 0.9 |
| Nominal load spectrum: | 0.8 of rated capacity factor |

| | | | |
|--|----|----|----|
| Mechanism | | | |
| Class of Utilization State of Loading Group Classification | | | |
| Hoist | T8 | L3 | M8 |
| Traverse | T8 | L3 | M8 |
| Travel | T5 | L2 | M5 |
| Boom hoist | T3 | L3 | M4 |

Mobile Equipment

IS 4357: 2004 Methods for Stability Testing of Forklift Trucks
IS 4573: 1982 Specification for Power

Driven Mobile Cranes

IS 13473: Part 2:1992/ Cranes - Vocabulary Part 2 Mobile cranes ISO4306-1985

IS 13558: Part 2:1995/ Cranes - Controls - Layout and Characteristics –Part ISO 7752 –2- 1986
Mobile Cranes

IS 13834: Part 2: 1993/ Cranes - Classification: Part 2 Mobile cranes ISO4301 – 2 :1985

IS 13870: Part 2: 1993/ Cranes and Lifting Appliances - Selection of WireISO 4308: 1988 Ropes -
Part 2: Mobile Cranes -Coefficient of utilization

IS 14469: 1997/ Mobile Cranes - Determination of Stability ISO 4305 - 1991

IS 14474: Part 1: 1997/ Mobile Cranes - Experimental Determination of Crane ISO 11662-
1:1995 Performance – Part 1:

Tipping Loads and Radii

IS 3173: 1965 Specification for High pressure connections for fuel injection equipment for diesel
engines

Conveyors for Bulk Handling Conveyors

IS 4776: Part I: 1977 Specification for Troughed Belt Conveyors- Part I

Troughed Belt Conveyors for Surface Installation

IS 8597 – 1977

IS 11592 – 2000

IS 7465 – 1974

IS 7155: Part 1: 1986

IS 7155: Part 2: 1986

IS 7155: Part 3: 1986

IS 7155: Part 4: 1990

IS 7155: Part 5: 1990

IS 7155: Part 6: 1990

IS 7155: Part 7: 1990

IS 7155: Part 8: 1994

Idlers and Pulleys

IS 8598 – 1987

IS 8531 – 1986

IS 11507 – 1985

Flat Belt Conveyors

Code of practice for selection and design of Belt Conveyors Portable and Mobile troughed Belt Conveyor

Code of recommended practice for conveyor safety: Part 1 General Information

Code of recommended practice for conveyor safety: Part 2 General Safety requirement

Code of recommended practice for conveyor safety: Part 3 Belt Conveyors and feeders

Code of recommended practice for conveyor safety: Part 4 Vibrating Conveyor/feeder

Code of recommended practice for conveyor safety: Part 5 Apron Conveyor/Apron Feeder

Code of recommended practice for conveyor safety: Part 6 Selection, Training and Supervision of Operators

Code of recommended practice for conveyor safety: Part 7 Inspection and Maintenance

Code of recommended practice for conveyor safety: Part 8 Flight Conveyors (scraper conveyors)

Idlers and Idlers Sets Pulleys for Conveyors Synchronous Drive Pulleys

Conveyor Belts

IS 1891(Part I & II)-1978: Rubber Conveyor Belting

IS 1891 – 1988: Amendment to above conveyor IS 22131 Part I 1980: Steel Cord Conveyor Belting

Electrical

IS 325: 1996: Three-phase induction motors

IS 900: 1992: Code of practice for installation and maintenance of induction motors IS 1231: 1974: Dimensions of Three-phase Foot-mounted Induction Motors:

IS 2223: 1983: Dimensions of flange mounted ac induction motors

IS 3682: 1966: Flame-proof ac motors for use in mines

IS 3842: Part 2: 1966: Application guide for electrical relays for ac systems: -Part 2 Over current relays for generators and motors

IS 4029: 1967: Guide for testing three-phase induction motors

IS 8151: 1976: Single-speed three-phase induction motors for driving lifts

IS 8789: 1996: Values of performance characteristics for three-phase induction motors IS 9628: 1980: Three-phase induction motors with type of protection 'n'

IS 10242: Part 3: Sec 1:1983 Electrical installations in ships: Part 3 Equipment, Sec 1 Generators and motors

IS 12615: 2004: Energy Efficient Induction Motors - Three Phase Squirrel Cage:

IS 13529: 1992: Guide on Effects of Unbalanced Voltages on the Performance of Three-Phase Cage Induction Motors

IS 13555: 1993: Guide for Selection and Application of 3-Phase A.C. Induction Motors for Different Types of Driven Equipment

IS 14122: 1994: Built in thermal protection for electric motors rated up to 660 V ac

IS 14377: 1996: Specification for Three-phase Induction Motors for Fans Used in Air-conditioning and Ventilation

IS 15429: 2004: Storage, Installation and Maintenance of DC Motors - Code of Practice
IS 3043: 1987: Code of practice for earthing

IS 3151: 1982: Earthing transformers

IS 5553(Part 6) 1991: Reactor Parts – Earthing of Transformers

IS 9921: Part 1: 1981: Specification for Alternating Current Disconnection (Isolators) and Earthing Switches for Voltages above 1 000 V - Part I: General and Definitions

IS 9921: Part 2: 1982: Alternating current disconnections (isolators) and earthing switches for voltages above 1000 V: Part 2 Rating

IS 9921: Part III: 1982: Specification for Alternating Current Disconnections (Isolators) and Earthing Switches for Voltages above 1000 V - Part III: Design and Construction

IS 9921: Part 4: 1985: Specification for Alternating Current Disconnections (isolators) and Earthing Switches for Voltages Above 1000 V - Part 4: Type Tests and Routine Tests

IS 9921: Part 5: 1985: Specification for Alternating Current Disconnection (Isolators) and Earthing Switches for Voltages Above 1000 v - Part 5: Information to be given with Tenders, Enquiries and Orders

IS 12776: 2002: Galvanized Strand for Earthing – Specification

IS 14981: 2001 Live Working - Earthing or Earthing and Short- Circuiting Equipment Using Lances as a Short- Circuiting Device-Lance Earthing

IS 13947: Part 2: 1993 Specification for Low-voltage Switchgear and Control gear - Part 2: Circuit Breakers

IS 14658: 1999 High Voltage Alternating Current Circuit Breakers - Guide for Short-circuit and Switching Test Procedures for Metal-enclosed and Dead Tank Circuit Breakers

IS 8828: 1996 Electrical Accessories - Circuit Breakers for Over Current Protection for Household and Similar Installations

IS 2309: 1989 Code of Practice for Protection of allied structure against lightningIS 732 IS 732: 1989 Code of Practice for Electric wiring installation

IS 694: 1990 PVC insulated Cables for working voltages up to and including 1100V

IS 1554 (Part 1):1988 PVC insulated (Heavy Duty) electric cables: Part 1 for working voltages up to and including 1100 V

IS 1554 (Part 2): 1988 PVC insulated (Heavy Duty) electric cables: Part 2 for working voltages from 3.3 kV up to and including 11 kV

IS 7098 (Part 1): 1988 Cross linked Polyethelene insulated PVC sheathed cables Part 1 for working voltages up to and including 1100 V

IS 7098 (Part 2): 1985 Cross linked Polyethelene insulated PVC sheathed cables Part 2 for working voltages from 3.3 kV up to and including 33 kV

IS 7098 (Part 3): 1988 Cross linked Polyethelene insulated PVC sheathed cables Part 3 for working voltages from 66 kV up to and including 220 kV

IS 10118 (Part 1): 1982 Code of Practice for selection, installation & maintenance of switchgears and

Control gears: Part 1 General

IS 10118 (Part 2): 1982 Code of Practice for selection, installation & maintenance of switchgears and

Control gears: Part 2 Selection IS 10118 (Part 3): 1982 Code of Practice for selection, installation & maintenance of switchgears and Control gears: Part 3 Installation

IS 10118 (Part 4): 1982 Code of Practice for selection, installation & maintenance of switchgears and Control gears: Part 4 Maintenance

For all other equipment not covered in the above standards, equivalent or higher standards in BS, JIS, FEM, DIN, ISO, IEC, are acceptable.

E. Operations & Maintenance Standards: Repairs, Maintenance and Replacement

The Concessionaire at its own cost promptly and diligently maintain, replace or restore any of the project facilities or part thereof which may be lost, damaged, destroyed or worn out.

The Concessionaire shall abide by the operations and maintenance plan as outlined in the approved DPR.

While carrying out the repairing, maintaining and replacing the project facilities, the Concessionaire acknowledges and accepts that it is holding and maintaining the concession or assets, project facilities in trust for eventual transfer to the Concessions Authority on termination of the agreement and therefore, will not do any act as a result of which the value of Port Assets and Project Facilities and Services is diminished.

The Concessionaire shall, at all times during the Concession Period, at its own risk, cost, charges and expenses, performance and pay for maintenance repairs, renewals and replacement of various type of assets and equipment in the Concessionaire premises and /or the project or any parts thereof, whether due to use and operations or due to deterioration of materials and /or parts, so that on the expiry or termination of Concession, the same shall except normal wear and tear be in good working condition as it were at the time of commencement of the Concession.

While carrying out the repair, maintenance and replacement of the project facilities, the Concessionaire shall carry out the work in accordance with the manufacturer's recommendations and the relevant latest Indian Standards or in its absence ISO/OISD Standards. In the event that the Concessionaire, by necessity or otherwise need to follow any other country standard and it shall be equal or superior to the standard specified above.

The repairs and maintenance shall generally conform to the following specifications.

Maintenance Standards

| | |
|------------------------------|---|
| ISO 4308-1-2003 | Maintenance of lifting appliances |
| ISO 4309-2004 | Cranes wire rope care, maintenance and discard |
| IS 13367: Part 1: 1992 | Safe use of cranes – Code of Practice Part 1 General |
| BS 7121-2-2003 | Code of Practice for safe use of cranes, inspection, testing & examination |
| BS 7121-4-1997 | Code of Practice for safe use of cranes (Lorry Loaders) |
| BS 7121-5-2006 | Code of Practice for safe use of cranes (Tower Cranes) |
| Painting IS 144: 1950 | Ready mixed paint, brushing, petrol resisting, air-drying, for interior painting of tanks and container, red oxide (colour unspecified) |
| IS 145: 1950 | Ready mixed paint, slushing, petrol resisting, air-drying for interior painting of tanks and containers, red oxide (colour unspecified) |
| IS 146: 1950 | Specification for ready mixed paint, brushing, petrol resisting, stoving, for interior painting of tanks and containers, red oxide (colour unspecified) |
| IS 147: 1950 | Specification for ready mixed paint, slushing, petrol resisting, stoving, for interior painting of tanks and containers, red oxide (colour unspecified) |
| IS 164: 1981 | Specification for Ready mixed paint for road marking (first revision) |
| IS 1419: 1989 | Antifouling paint, brushing for ship's bottom and hulls- Specification (second revision) |
| IS 6714: 1989 | Ready mixed paint, finishing, non-slip, deck – Specification (first revision) |

| | |
|-----------------------|---|
| IS 6948: 1973 | Specification for Ready mixed paint, undercoat, synthetic forships |
| IS 6951: 1973 | Specification for Ready mixed paint, finishing, exterior for ships |
| IS 1477: Part I: 1971 | Code of Practice for Painting of Ferrous Metals in Buildings - Part I: Pretreatment |
| IS 1477: Part 2: 1971 | Code of practice for painting offerrous metals in buildings: Part2 Painting |
| IS 9954: 1981 | Pictorial Surface Preparation Standards for Painting of Steel Surfaces |

F. Safety Standards

The Concessionaire shall ensure compliance with the safety standards set out under Applicable Law/international conventions, as relevant, from time to time including those required under the following:

1. Dock Workers (Safety, Health and Welfare) Act, 1986 & Regulations framed thereunder of 1990.
2. The Manufacture, Storage and Import of Hazardous Chemicals Rules, 1989.
3. The Petroleum Act, 1934 along with the Petroleum Rules, 2002.
4. OISD – Guidelines – 156 (Oil Industry Safety Directorate): Fire Protection Facilities for Port Oil Terminals.
5. The Explosives Act, 1884 along with The Explosive Substance Act, 1983 & The Explosive Rules, 1983
6. Guidelines by Fire Advisor, CCE & DG FASLI, Government of India
7. National Fire Codes (National Fire Protection Association – USA)
8. Drill Manual for the Fire Services of India.
9. International Safety Guide for Oil Tankers & Terminals.
10. ISPS (International Ship & Port Facility Security) Code (2003 Edition)
11. MARPOL CONVENTION
12. International Maritime Dangerous Goods Code

[Besides the above, the Concessioning Authority may prescribe standards specific to the port/project]

APPENDIX 5

PROJECT SCHEDULE

Stage I – Development of Container Terminal I

| Milestone date | Construction of Container Terminal I | Construction of Breakwater & Rubble Bund | Dredging in front of outer harbour Container Terminal I, Turning circle basin and channel | Civil Works- Development of yard, construction of office buildings, operation centre and etc., | Electrical works- Substation, Illumination and Electrification of the Terminal | Fabrication and installation of RMQC, RTGC etc |
|---|---|---|--|---|---|---|
| 7 months from the date of award of concession | 15% | 15% | --- | --- | --- | 10% |
| 14months from Date of Award of Concession | 60% | 40% | 10% | --- | --- | 30% |
| 21 months from Date of Award of Concession | 100% | 75% | 40% | 25% | 25% | 55% |
| 33 months from Date of Award of Concession | -- | 100% | 100% | 70% | 70% | Deployment of semi assembled RMQCs and RTGCs (in case concessionaire proposed to assemble the cranes at project site without any hindrance to the construction works at the Project site) |

| | | | | | | |
|--|----|----|--|------|------|--|
| 36 months from Date of Award of Concession | -- | -- | | 100% | 100% | Installation, Testing and commissioning of RMQC, RTGCs, reach stacker and tractor trailers |
|--|----|----|--|------|------|--|

Stage II - Development of Container Terminal II

| Milestone date | Construction of Container Terminal II | Fabrication and installation of RMQC, RTGC etc | Dredging in front of outer harbour Container Terminal II, | Electrical works- Substation, Illumination and Electrification of the Terminal | Civil Works- Development of yard, construction of office buildings, operation centre and etc. |
|---|---------------------------------------|--|---|--|---|
| 100 months from the date of award of concession or 4 months from the from the date when the average annual volume of cargo handled at the Project Facilities and Services reaches a level of 70% of Project Capacity for 2 (two) consecutive years for stage I whichever is earlier | 15% | 10% | ---- | | |
| 105 months from Date of Award of Concession 9 months from the from the date when the average annual volume of cargo handled at the Project Facilities and Services reaches a level of 70% of Project Capacity for 2 (two) consecutive years for stage I whichever is earlier | 45% | 30% | 10% | | |
| 110 months from Date of Award of Concession 14 months from the from the date when the average annual volume of cargo handled at the Project Facilities and Services reaches a level of 70% of Project Capacity for 2 (two) consecutive years for stage I whichever is earlier | 75% | 55% | 40% | 25% | 25% |

| | | | | | |
|---|------|---|------|------|------|
| 117months from Date of Award of Concession 19 months from the from the date when the average annual volume of cargo handled at the Project Facilities and Services reaches a level of 70% of Project Capacity for 2 (two) consecutive years for stage I whichever is earlier | 100% | Deployment of semi assembled RMQCs and RTGCs (in case concessionaire proposed to assemble the cranes at project site without any hindrance to the construction works at the Project site) | 100% | 70% | 70% |
| 120 months from Date of Award of Concession 24 months from the from the date when the average annual volume of cargo handled at the Project Facilities and Services reaches a level of 70% of Project Capacity for 2 (two) consecutive years for stage I whichever is earlier | -- | Installation, Testing and commissioning of RMQC, RTGCs, reach stacker and tractor trailers | | 100% | 100% |

Note: Design and drawings can be submitted in stages so that initial works such as foundation can be commenced.

APPENDIX 6

DESIGNS AND DRAWINGS

Concessionaire has to submit the following designs, drawings, estimates, Schedule & plan for review by the Independent Engineer as per the Scope of Work

1. Detailed Project Report (if required for the Concessionaire)
2. Preliminary Design Report
3. Detailed Design Report
4. Monthly progress report to be submitted 7th day of every subsequent month as per Article 6.4(f).
5. Concept layout for the terminal
6. Outline designs for key components of the terminal
7. Outline specifications for principal items of container handling equipment
8. Project Schedule, phasing and Implementation Plan
9. Capital cost estimates
10. Operating and Maintenance cost estimates
11. Outline Operations and Maintenance Plan
12. Environmental Management Plan including green space allocation drawing

In addition to the above, the Concessionaire has to submit designs & drawings if required by the Independent Engineer during construction & operation phase.

APPENDIX 7

TERMS OF REFERENCE FOR INDEPENDENT ENGINEER

[This Appendix shall stipulate the terms of reference for the Independent Engineer which shall include the scope of work (review of design and drawings, notification of objection thereto, inspection of Construction Works and Tests to be carried out, notification of shortfalls if any, issue of completion certificate, seeking of approval from collector of customs for the purpose of operationalising the facilities and services) which shall include the manner and timeliness of the reports of the Independent Engineer to be submitted while performing the services within the scope of work. Following is an indicative scope of work of the Independent Engineer. The scope would be revised to include such other functions as are required to be undertaken pursuant to specific provisions of the Agreement.]

1. Scope

1.1. These Terms of Reference for the Independent Engineer (the “**TOR**”) are being specified pursuant to the Concession Agreement dated ____ (the “**Agreement**”), which has been entered into between the Authority and ____ (the “**Concessionaire**”) for the Project at..... on design, build, finance, operate and transfer (the “**DBFOT**”) basis, and a copy of which is annexed hereto and marked as Annex-A to form part of this TOR.

1.2 This TOR shall apply to construction, operation and maintenance of the Project.

2. Definitions and interpretation

2.1 The words and expressions beginning with or in capital letters used in this TOR and not defined herein but defined in the Agreement shall have, unless repugnant to the context, the meaning respectively assigned to them in the Agreement

2.2 References to Articles, Clauses and Appendix in this TOR shall, except where the context otherwise requires, be deemed to be references to the Articles, Clauses and Appendix of the Agreement, and references to Paragraphs shall be deemed to be references to Paragraphs of this TOR.

2.3 The rules of interpretation stated in Clauses 1.3, 1.4 and 1.5 of the Agreement shall apply, *mutatis mutandis*, to this TOR.

3. Role and functions of the Independent Engineer

3.1 The role and functions of the Independent Engineer shall include the following:

- a. review of the Drawings and Documents as set forth in Paragraph 4;
- b. review, inspection and monitoring of Construction Works as set forth in Paragraph 5;
- c. conducting Tests on completion of construction and issuing Completion/ Provisional Certificate as set forth in Paragraph 5;
- d. review, inspection and monitoring of operation and maintenance as set forth in Paragraph 6;
- e. review, inspection and monitoring of Concessionaire's obligations in Clause 18.2 and asset forth in Paragraph 7;
- f. determining, as required under the Agreement, the costs of any works or services and/or their reasonableness;
- g. determining, as required under the Agreement, the period or any extension thereof, for performing any duty or obligation;
- h. assisting the Parties in resolution of Disputes as set forth in Paragraph 9; and
- i. Undertaking all other duties and functions in accordance with the Agreement.

3.2 The Independent Engineer shall discharge its duties in a fair, impartial and efficient manner, consistent with the highest standards of professional integrity and Good Industry Practice.

4. Development Period

4.1 During the Development Period, the Independent Engineer shall undertake a detailed review of

the Drawings to be furnished by the Concessionaire along with supporting data, including the geo-technical and hydrological investigations, characteristics of materials from borrow areas and quarry sites, topographical surveys and traffic surveys. The Independent Engineer shall complete such review and send its comments/observations to the Concessions Authority and the Concessionaire within 15 (fifteen) days of receipt of such Drawings. In particular, such comments shall specify the conformity or otherwise of such Drawings with the Scope of the Project and specifications and standards.

4.2 The Independent Engineer shall review any modified Drawings or supporting documents sent to it by the Concessionaire and furnish its comments within 7 (seven) days of receiving such Drawings or Documents.

4.3 The Independent Engineer shall review the Drawings in accordance with Appendix-6 and furnish its comments thereon to the Concessions Authority and the Concessionaire within 7 (seven) days of receiving such Drawings.

4.4 The Independent Engineer shall review the detailed design, construction methodology, quality assurance procedures and the procurement, engineering and construction time schedule sent to it by the Concessionaire and furnish its comments within 15 (fifteen) days of receipt thereof.

4.5 Upon reference by the Concessions Authority, the Independent Engineer shall review and comment on the EPC Contract or any other contract for construction, operation and maintenance of the Project, and furnish its comments within 7 (seven) days from receipt of such reference from the Concessions Authority.

5. Construction Period

5.1 In respect of the Drawings, Documents received by the Independent Engineer for its review and comments during the Construction Period, the provisions of Paragraph 4 shall apply, *mutatis mutandis*.

5.2 The Independent Engineer shall review the monthly progress report furnished by the Concessionaire and send its comments thereon to the Concessions Authority and the Concessionaire within 7 (seven) days of receipt of such report.

5.3 The Independent Engineer shall inspect the Construction Works once every month, preferably after receipt of the monthly progress report from the Concessionaire, but before the 20th (twentieth) day of each month in any case, and make out a report of such inspection (the "Inspection Report") setting forth an overview of the status, progress, quality and safety of construction, including the work methodology adopted, the materials used and their sources, and conformity of Construction Works with the Scope of the Project and the specifications and standards. In a separate section of the Inspection Report, the Independent Engineer shall describe in reasonable detail the lapses, defects or deficiencies observed by it in the construction of the Project. The Independent Engineer shall send a copy of its Inspection Report to the Concessions Authority and the Concessionaire within 7 (seven) days of the inspection.

5.4 The Independent Engineer may inspect the project more than once in a month if any lapses, defects or deficiencies require such inspections.

5.5 For determining that the Construction Works conform to specifications and standards, the Independent Engineer shall require the Concessionaire to carry out, or cause to be carried out, tests on a sample basis, to be specified by the Independent Engineer in accordance with Good Industry Practice for quality assurance. For purposes of this Paragraph 5.5, the tests specified in the relevant Manuals specified by the Concessions Authority in relation to structures, buildings and equipment (the "Quality Control Manuals") or any modification/substitution thereof shall be deemed to be tests conforming to Good Industry Practice for quality assurance. The Independent Engineer shall issue necessary directions to the Concessionaire for ensuring that the tests are conducted in a fair and efficient manner, and shall monitor and review the results thereof.

5.6 The sample size of the tests, to be specified by the Independent Engineer under paragraph 5.5, shall comprise 10% of the quantity or number of tests prescribed for each category or type of tests in the Quality Control Manuals; provided that the Independent Engineer may, for reasons to be

recorded in writing, increase the aforesaid sample size by up to 10% for certain categories or types of tests.

5.7 The timing of tests referred to in Paragraph 5.5, and the criteria for acceptance/ rejection of their results shall be determined by the Independent Engineer in accordance with the Quality Control Manuals. The tests shall be undertaken on a random sample basis and shall be in addition to, and independent of, the tests that may be carried out by the Concessionaire for its own quality assurance in accordance with Good Industry Practice.

5.8 In the event that the Concessionaire carries out any remedial works for removal or rectification of any defects or deficiencies, the Independent Engineer shall require the Concessionaire to carry out, or cause to be carried out, tests to determine that such remedial works have brought the Construction Works into conformity with the specifications and standards, and the provisions of this Paragraph 5 shall apply to such tests.

5.9 In the event that the Concessionaire fails to achieve any of the Project Milestones, the Independent Engineer shall undertake a review of the progress of construction and identify potential delays, if any. If the Independent Engineer shall determine that completion of the Project is not feasible within the time specified in the Agreement, it shall require the Concessionaire to indicate within 15 (fifteen) days the steps proposed to be taken to expedite progress, and the period within which COD shall be achieved. Upon receipt of a report from the Concessionaire, the Independent Engineer shall review the same and send its comments to the Concessions Authority and the Concessionaire forthwith.

5.10 If at any time during the Construction Period, the Independent Engineer determines that the Concessionaire has not made adequate arrangements for the safety of workers and Users in the zone of construction or that any work is being carried out in a manner that threatens the safety of the workers and the Users, it shall make a recommendation to the Concessions Authority forthwith, identifying the whole or part of the Construction Works that should be suspended for ensuring safety in respect thereof.

5.11 In the event that the Concessionaire carries out any remedial measures to secure the safety of suspended works and Users, it may, by notice in writing, require the Independent Engineer to inspect such works, and within 3 (three) days of receiving such notice, the Independent Engineer shall inspect the suspended works and make a report to the Concessions Authority forthwith, recommending whether or not such suspension may be revoked by the Concessions Authority.

5.12 If suspension of Construction Works is for reasons not attributable to the Concessionaire, the Independent Engineer shall determine the extension of dates set forth in the Project Completion Schedule, to which the Concessionaire is reasonably entitled, and shall notify the Concessions Authority and the Concessionaire of the same.

5.13 The Independent Engineer shall carry out, or cause to be carried out, all the Tests specified in this Appendix-7 and issue a Completion Certificate or Provisional Certificate, as the case may be. For carrying out its functions under this Paragraph 5.13 and all matters incidental thereto, the Independent Engineer shall act under and in accordance with the provisions of Clause 6.7 and this Appendix-7.

5.14 Upon reference from the Concessions Authority, the Independent Engineer shall make a fair and reasonable assessment of the costs of providing information, works and services as set forth in Clause 6.8 and certify the reasonableness of such costs for payment by the Concessions Authority to the Concessionaire.

5.15 The Independent Engineer shall aid and advise the Concessionaire in preparing the maintenance manual.

6. Operation Period

6.1 In respect of the Drawings, Documents and Safety Standards received by the Independent Engineer for its review and comments during the Operation Period, the provisions of Paragraph 4 shall apply, *mutatis mutandis*.

6.2 The Independent Engineer shall review the monthly report on cargo traffic, unit gross output/discharge rates at berth, daily output rated per vessel, Tariff earned and collected in respect of Project Facilities and Services furnished by the Concessionaire and send its comments thereon to the Concessions Authority and the Concessionaire within 7 (seven) days of receipt of such report.

6.3 The Independent Engineer shall inspect the Project, once every year, before the 20th (twentieth) day of any month, and make out an operation and maintenance inspection report setting forth an overview of the status, quality and safety of operation and maintenance including its conformity with the key performance indicators, maintenance requirements and Safety Standards. In a separate section of the operation and maintenance inspection report, the Independent Engineer shall describe in reasonable detail the lapses, defects or deficiencies observed by it in operation and maintenance of the Project. The Independent Engineer shall send a copy of its operation and maintenance inspection report to the Concessions Authority and the Concessionaire within 7 (seven) days of the inspection.

6.4 The Independent Engineer may inspect the Project more than once in a year, if any lapses, defects or deficiencies require such inspections.

6.5 The Independent Engineer shall in its operation and maintenance inspection report specify the tests, if any, that the Concessionaire shall carry out, or cause to be carried out, for the purpose of determining that the Project is in conformity with the maintenance requirements. It shall monitor and review the results of such tests and the remedial measures, if any, taken by the Concessionaire in this behalf.

6.6 The Independent Engineer shall determine if any delay has occurred in completion of repair or remedial works in accordance with the Agreement, and shall also determine the damages, if any, payable by the Concessionaire to the Concessions Authority for such delay.

7. Termination

7.1 At any time, not earlier than 90 (ninety) days prior to termination but not later than 15 (fifteen) days prior to such termination, the Independent Engineer shall, in the presence of a representative of

the Concessionaire, inspect the Project for determining compliance by the Concessionaire with the requirements set forth in Clause 18.2 and, if required, cause tests to be carried out at the Concessionaire's cost for determining such compliance.

8. Determination of costs and time

8.1 The Independent Engineer shall determine the costs, and/or their reasonableness, that are required to be determined by it under the Agreement.

8.2 The Independent Engineer shall determine the period, or any extension thereof, that is required to be determined by it under the Agreement.

9. Assistance in Dispute resolution

9.1. When called upon by either Party in the event of any Dispute, the Independent Engineer shall mediate and assist the Parties in arriving at an amicable settlement.

9.2 In the event of any disagreement between the Parties regarding the meaning, scope and nature of Good Industry Practice, as set forth in any provision of the Agreement, the Independent Engineer shall specify such meaning, scope and nature by issuing a reasoned written statement relying on good industry practice and authentic literature.

10. Other duties and functions

The Independent Engineer shall perform all other duties and functions specified in the Agreement.

11. Miscellaneous

The Independent Engineer shall notify its programme of inspection to the Concessions Authority and to the Concessionaire, who may, in their discretion, depute their respective representatives to be present during the inspection.

11.2 A copy of all communications, comments, instructions, Drawings or Documents sent by the Independent Engineer to the Concessionaire pursuant to this TOR, and a copy of all the test results with comments of the Independent Engineer thereon shall be furnished by the Independent Engineer

to the Concessions Authority forthwith.

11.3 The Independent Engineer shall obtain, and the Concessionaire shall furnish in 2 (two) copies thereof, all communications and reports required to be submitted, under this Agreement, by the Concessionaire to the Independent Engineer, whereupon the Independent Engineer shall send 1 (one) of the copies to the Concessions Authority along with its comments thereon.

11.4 The Independent Engineer shall retain at least one copy each of all Drawings and Documents received by it, including 'as-built' Drawings, and keep them in its safe custody.

11.5 Upon completion of its assignment hereunder, the Independent Engineer shall duly classify and list all Drawings, Documents, results of tests and other relevant records, and hand them over to the Concessions Authority or such other person as the Concessions Authority may specify, and obtain written receipt thereof. Two copies of the said documents shall also be furnished in their editable digital format or in such other medium or manner as may be acceptable to the Concessions Authority.

11.6 Wherever no period has been specified for delivery of services by the Independent Engineer, the Independent Engineer shall act with the efficiency and urgency necessary for discharging its functions in accordance with Good Industry Practice.

Annexure

Tests

[Depending on the parameters of the Project/Construction Requirements, the Tests shall be as per Good Industry Practice shall be stipulated on a project specific basis and listed in this Annexure.]

APPENDIX 8

PERMITS AND CLEARANCES PROCURED BY THE CONCESSIONAIRE/CONCESSIONING AUTHORITY

A. List of Applicable Permits to be obtained by the Concessionaire before commencement of Construction Works.

| ACTIVITY | AUTHORITY |
|--|---|
| Environmental Laws | Consent to Establish from TNPCB & Ministry of Environment & Forest, Gol |
| Plot Plan approval | Dock Safety Inspector/OISD guidelines |
| Electrical Installations | Central Electricity Authority. |
| Fire Safety Concerns | OISD guidelines or Applicable international codes / practices |
| Public Liability Insurance during construction / commissioning | Appropriate Insurance Agency |
| Security Clearances | for bidders, dredging equipments/vessels/multicast, foreign personnel/crews to be deployed for the dredging work etc. |
| Customs notification | Commissioner of Customs |

List of Applicable Permits to be obtained by the Concessionaire before commencement of commercial operation.

i) Customs Notification from Commissioner of Customs

ii) Consent to Operate from TNPCB

B. Permit/ Clearance under Environment Law already obtained by the Concessioning Authority.

Environmental Clearance for this Outer Harbour Project shall be obtained by the Concessioning Authority

APPENDIX 9

PERFORMANCE GUARANTEE

(PROFORMA OF BANK GUARANTEE)*

THIS DEED OF GUARANTEE executed on this the ---- day of ----- at ----- by -----

----- (Name of the Bank) having its Head/Registered office at -----

----- hereinafter referred to as **“the Guarantor”** which expression shall unless it be repugnant to the subject or context thereof include its successors and assigns;

In favor of

THE V.O.CHIDAMBARANAR PORT AUTHORITY, an Autonomous body functioning under the provisions of the Major Port Authorities Act, 2021 and having its Administrative Office at

Tuticorin, Tamilnadu (hereinafter referred to as **“the Board”** or **“the Concessing Authority”**) which expression shall, unless repugnant to the context or meaning thereof include its administrators, successors or assigns.

WHEREAS

- a) The Board, vide its Request for Proposal dated [●] (**“the RFP”**) invited duly short-listed bidders to implement a project envisaging _____ (more particularly described in Appendix 1 and hereinafter referred to as

“the Project”);

- b) After evaluation of the bids received in response to the RFP, the Board accepted the bid of the consortium comprising of _____ and _____ (**“the Consortium”**) OR the Board accepted the bid of _____ Ltd. (**“the Applicant”**) and issued the Letter of Intent No

_____ dated _____
("LOI") to the Consortium/Applicant requiring, inter alia, the execution of the Concession Agreement, ("the Concession Agreement") the draft whereof was provided in the RFP;

- c) Pursuant to the LOI the Applicant/Consortium has promoted and incorporated a special purpose company____("the Concessionaire"), to enter into the Concession Agreement for undertaking, inter alia, the work with respect to the Project referred to in Recital (a) above and to perform and discharge all its obligations thereunder
- d) In terms of the LOI and the Concession Agreement, the Concessionaire is required to furnish to the Board, a Performance Guarantee being an unconditional and irrevocable Bank Guarantee from a Scheduled Bank for a sum of Rs. [●] (Rupees [●] only) as security for due and punctual performance/discharge of its obligations under the Concession Agreement during the Construction Phase,

* _____
To be issued by a Scheduled Bank in India.

- e) At the request of the Concessionaire, and for valid consideration the Guarantor has agreed to provide guarantee, being these presents guaranteeing the due and punctual performance/discharge by the Concessionaire of its obligations under the Concession Agreement during the Construction Phase.

NOW THEREFORE THIS DEED WITNESSETH AS FOLLOWS:

1. Capitalized terms used herein but not defined shall have the meaning assigned to them respectively in the Concession Agreement.
2. The Guarantor hereby irrevocably and unconditionally guarantees the due execution and punctual performance by M/s. _____("the Concessionaire") of all its obligations under the Concession Agreement during the Construction Phase.

3. The Guarantor shall, without demur or protest, pay to the Board sums not exceeding in aggregate Rs. [●] (Rupees [●] only) within five (5) calendar Days of receipt of a written demand therefor from the Board stating that the Concessionaire has failed to meet its performance obligations under the Concession Agreement during the Construction Phase. The Guarantor shall not go into the veracity of any breach or failure on the part of the Concessionaire or validity of demand so made by the Board and shall pay the amount specified in the demand notwithstanding any direction to the contrary given or any dispute whatsoever raised by the Concessionaire or any other Person before any court, tribunal, expert, arbitrator or similar proceedings. The Guarantor's obligations hereunder shall subsist until all such demands of the Board are duly met and discharged in accordance with the provisions hereof. Any such demand made on the Guarantor by the Board shall be conclusive, absolute and unequivocal

as regards the amount due and payable by the Guarantor under this Agreement. The Concessioneing Authority shall at all times at its sole discretion have the absolute and unconditional right to call upon the Guarantor to pay the amount under the Guarantee.
4. In order to give effect to this Guarantee, the Board shall be entitled to treat the Guarantor as the principal debtor. The obligations of the Guarantor shall not be affected by any variations in the terms and conditions of the Concession Agreement or other documents or by the extension of time for performance granted by the Board or postponement/non exercise/ delayed exercise of any of its rights by the Board or any indulgence shown by the Board to the Concessionaire and the Guarantor shall not be relieved from its obligations under this Guarantee on account of any such variation, extension, postponement, non-exercise or delayed exercise by the Board of any of the Board's rights or any indulgence shown by the Board; provided nothing contained herein shall enlarge the Guarantor's obligation hereunder.
5. This Guarantee shall be unconditional and irrevocable and shall remain in full force and effect until Scheduled Project Completion Date and for a period of six months thereafter unless discharged/released earlier by the Board in accordance with the provisions of the Concession Agreement. The Guarantor's liability in aggregate shall be limited to a sum of Rs. [●] (Rupees[●] only).

6. This Guarantee shall not be affected by any change in the constitution or winding up, insolvency, bankruptcy, dissolution or liquidation of the Concessionaire/ the Guarantor or any absorption, merger or amalgamation of the Concessionaire/the Guarantor with any other Person.
7. Any payment made hereunder shall be made free and clear of, and without deduction for or on account of taxes, levies, imposts, duties, charges, fees, deductions, or withholding of any nature whatsoever.
8. The Guarantor hereby irrevocably and unconditionally undertakes, agrees and acknowledges that its obligations as a Guarantor hereunder:
 - a) shall not be affected by the existence of or release or variation of any other guarantee or security for any of the obligations of the Concessionaire under the Concession Agreement;
 - b) shall not be affected by any failure by the Concessions Authority to perform any of its obligations under the Agreement;
 - c) shall not be affected by any failure or delay in payment of any fee or other amount payable to the Guarantor in respect hereof;
 - d) shall not be affected by any exercise or non-exercise of any right, remedy, power or privilege of any person under or in respect of any payment obligations of the Concessionaire under the Concession Agreement;
 - e) shall not be affected by any failure, omission or delay on the Concessions Authority's part to enforce, assert or to exercise any right, power or remedy conferred on the Concessions Authority in this Guarantee;
 - f) shall not be affected by any act, omission, matter or thing which, but for this clause would reduce, release or prejudice the Guarantor from any of the obligations under this Guarantee or prejudice or diminish the obligations in whole or in part.
9. The obligations, covenants, agreements and duties herein shall not be subject to any counterclaims, cross claims, set offs, deductions, withholdings, diminutions, abatements,

recoupments, suspensions, deferments, reductions or defense for any reason whatsoever and the Guarantor, shall have no right to terminate this Guarantee or to be released, relieved or discharged from any of its obligations, covenants, agreements and duties hereunder for any reason whatsoever.

10. The Guarantor has power to issue this guarantee and discharge the obligations contemplated herein, and the undersigned is duly authorized to execute this Guarantee pursuant to the power granted under_____.

11. This Guarantee shall be governed by and construed in accordance with the laws of India. The Guarantor hereby irrevocably submits to the exclusive jurisdiction of the Court of_____for the purposes of any suit, action, or other proceeding arising out of this Guarantee, or the subject matter hereof, brought by the Concessing Authority or its successors or assigns. To the extent permitted by Applicable Law, the Guarantor or its successors or assigns hereby waive, and shall not assert, by way of motion, as defense, or otherwise, in any such suit, action, or proceeding any claim that such suit, action, or proceedings is brought in an inconvenient forum, or that the value of such suit, action, or proceeding is improper, or that the subject matter hereof may not be enforced in or by such court.

IN WITNESS WHEREOF THE GUARANTOR HAS SET ITS HANDS HEREUNTO ON THE DAY, MONTH AND YEAR FIRST HEREINABOVE WRITTEN.

SIGNED AND DELIVERED by

_____Bank by the hand of Shri_____its

_____and authorized official.

APPENDIX 10

CERTIFICATES

COMPLETION CERTIFICATE

1. I, [●] (Name of the Independent Engineer), acting as Independent Engineer, under and in accordance with the Agreement dated [●], for the [●] Project on build, operate and transfer (BOT) basis, through [(Name of Concessionaire)], hereby certify that the Tests specified in Article [●] and Schedule-[●] of the Agreement have been successfully undertaken to determine compliance of the Project with the provisions of the Agreement, and I am satisfied that the Project can be safely and reliably placed in commercial service of the users thereof.
2. It is certified that, in terms of the aforesaid Agreement, all works forming part of the Project have been completed, and the Project is hereby declared fit for entry into commercial operation on this the [●] day of [●] 20[●].

SIGNED, SEALED AND DELIVERED For and on behalf of

the INDEPENDENT ENGINEER by:

(Signature)

(Name)

(Designation)

(Address)

PROVISIONAL CERTIFICATE

1. I, [[●] (Name of the Independent Engineer)], acting as Independent Engineer, under and in accordance with the Agreement dated [●], for the Project on build, operate and transfer (BOT) basis through [● (Name of Concessionaire)], hereby certify that the Tests specified in Article[●] and Schedule-[●] of the Agreement have been undertaken to determine compliance of the Project with the provisions of the Agreement.
2. Construction Works that were found to be incomplete and/or deficient have been specified in the Punch List appended to the Provisional Certificate, and the Concessionaire has agreed and accepted that it shall complete and/or rectify all such works in the time and manner set forth in the Agreement. [Some of the incomplete works have been delayed as a result of reasons attributable to the Concessioneing Authority or due to Force Majeure and the Provisional Certificate cannot be withheld on this account. Though the remaining incompleteworks have been delayed as a result of reasons attributable to the Concessionaire,] I am satisfied that having regard to the nature and extent of such incomplete works, it would not be prudent to withhold commercial operation of the Project, pending completion thereof.
3. In view of the foregoing, I am satisfied that the Project can be safely and reliably placed in commercial service of the users thereof, and in terms of the Agreement, the Project is hereby provisionally declared fit for entry into commercial operation on this the [●] day of [●] 20[●].

ACCEPTED, SIGNED, SEALED AND

SIGNED, SEALED AND DELIVERED

DELIVERED For and on behalf of

For and on behalf of INDEPENDENT

CONCESSIONAIRE by:

ENGINEER by:

(Signature)

(Signature)

(Name and Designation)

(Name and Designation)

(Address)

(Address)

APPENDIX 11

PERSONNEL AND LABOUR REQUIREMENTS

The Concessionaire is expected to employ his own personnel/ labour. Employment of existing personnel/ labour is not envisaged.

APPENDIX 12

RATES APPLICABLE IN RESPECT OF LAND, UTILITIES AND SERVICES

(Scale of Rates)

The Concessioneing Authority shall collect all applicable charges for the land and vessel related services rendered by it as per prevailing Port's Scale of Rates from time to time.

The prevailing Scale of Rates are as follows:

APPENDIX 13

MINIMUM GUARANTEED CARGO

1. The Concessionaire is required to guarantee to handle through the container terminal the traffic volumes as tabulated under:

The MGC will not be applicable up to 15th year from date of award of Concession. And the MGC shall be applicable as under:

| Period (from date of award of concession) | MGC |
|--|-----------|
| Upto 15 th Year | No MGC |
| 16 th to 20 th year | 2 MTEUs |
| 21 st year to 25 th year | 2.4 MTEUs |
| 26 th year to 45 th year | 2.8 MTEUs |

2. **General conditions:**

- a) In case the 16th year from the date of award of concession is less than 12 months, the Minimum Guaranteed Traffic will be arrived on proportionate basis up to the end of relevant Financial year.
- b) The Minimum Guaranteed Cargo shall be computed from 1st April of every year to 31st March of subsequent year.
- c) **Premium if the Minimum Guaranteed Cargo is not achieved.**

The guaranteed throughput of the Concessionaire shall be monitored on annual basis and if there is any shortfall in the throughput, the Concessionaire shall pay the Premium computed on the basis of Minimum Guaranteed Cargo following the actual traffic for the particular year and pay to Concessioneing Authority within such days such as may be prescribed from the date of notice from the Concessioneing Authority to this effect. The Premium payable for the MGC shortfall TEUs shall be computed in proportion to the actual TEUs handled during the respective year as illustrated below:

Premium payable for the MGC shortfall = $\frac{A}{B} \times C$

A – Total Premium paid by the Concessionaire to the Concessioneing Authority during the respective year.

B – Actuals TEUs handled during the respective year.

C – MGC shortfall in TEUs

In case the actual traffic handled exceeds the MGT for any year, the actual traffic handled will be considered for the Premium payment.

APPENDIX 14
PERFORMANCE STANDARDS

Performance Standards

1. Gross Berth Output

The parameter deals with the productivity of the terminal (Gross Berth Output) for different types of cargo. In case of dry and break-bulk cargo, the capability of the terminal (mechanization, method of handling) and parcel size will determine the Gross Berth Output. Higher terminal capability and greater parcel size will lead to high productivity.

The Gross Berth Output shall be calculated as the total cargo handled (either loaded/unloaded) from the ship during a month divided by the time spent by the ship at the terminal number of working days of ships in that month at that terminal. While determining the number of working days from the ship hours, the berth allowance of [●] hours shall be subtracted from the total hours.

In the case of containers, the crane rate shall be measured by dividing total number of TEUs lifted on/off from ships by the elapsed crane time. The elapsed crane time is the total allocated crane hours less operational and non-operational delays.

The indicative norms for Gross Berth Output for different categories of cargo are as follows:

| Cargo Category | Indicative Norms |
|--------------------|---------------------|
| Container | |
| (Main line vessel) | [25 moves per hour] |
| (Feeder vessel) | [25 moves per hour] |

Weightage in case of a shortfall in meeting the prescribed performance standard = 1

Performance Evaluation and calculation of liquidated damages:

Performance evaluation shall be made on a quarterly review of the reports furnished by the Concessionaire and/or the records of the Concessionaire and/or by an enquiry by the Concessions Authority. The Concessionaire shall be liable to pay liquidated damages determined at the rate of [1% of the Tariff collected and other revenues derived from the project in the respective quarter for every shortfall of 10%] in the average performance which shall be assessed in the following manner.

Performance Standard is calculated as an average in the manner indicated above. The actual average performance vis-à-vis a standard will be evaluated against the prescribed standard. The shortfall will be computed as a percentage of the prescribed standard. The shortfall will be computed as a percentage of the prescribed standard. The shortfall in respect of performance standard will have a weightage assigned to it. The overall shortfall in average performance shall be assessed as the aggregate of the weighted shortfalls in respect of the performance standards.

APPENDIX 15

ESCROW AGREEMENT

THIS ESCROW AGREEMENT is entered into on this the [●] day of [●] 20[●].AMONGST

1. [● LIMITED], a company incorporated under the provisions of the Companies Act, 2013 and having its registered office at [●] (hereinafter referred to as the “Concessionaire” which expression shall, unless repugnant to the context or meaning thereof, include its successors, permitted assigns and substitutes);
2. [● (name and particulars of Senior Lenders' Representative)] and having its registered office at [●] acting for and on behalf of the Senior Lenders as their duly authorised agent with regard to matters arising out of or in relation to this Agreement (hereinafter referred to as the “Senior Lenders' Representative” which expression shall, unless repugnant to the context or meaning thereof, include its successors and substitutes);
3. [● (name and particulars of the Escrow Bank)] and having its registered office at [●] (hereinafter referred to as the “Escrow Bank” which expression shall, unless repugnant to the context or meaning thereof, include its successors and substitutes); and
4. BOARD Members for V.O.CHIDAMBARANAR PORT, an Autonomous body functioning under the provisions of the Major Port Authorities Act, 2021 and having its Administrative Office at Tuticorin, Tamilnadu, hereinafter referred to as “**the Concessing Authority**” (which expression shall, unless repugnant to the context or meaning thereof, include its successors and permitted assigns);

WHEREAS:

- A. The Concessing Authority has entered into a Concession Agreement dated [●] with the Concessionaire (the “**Concession Agreement**”) for undertaking the Project (as defined in the Concession Agreement) on build, operate and transfer (BOT) basis. The Senior Lenders have agreed to finance the Project in accordance with the terms and conditions set forth in the Financing Documents.
- B. The Concession Agreement requires the Concessionaire to establish an Escrow Account, *inter alia*, on the terms and conditions stated therein.

NOW IT IS HEREBY AGREED as follows:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Agreement, the following words and expressions shall, unless repugnant to the context or meaning thereof, have the meaning hereinafter respectively assigned to them:

“Agreement” means this Escrow Agreement and any amendment thereto made in accordance with the provisions contained herein;

“Budget” means the budget for construction/implementation expenses relating to the Project/Project Facilities and Services and O&M Expenses submitted by the Concessionaire in accordance with the provisions contained herein;

“Concession Agreement” means the Concession Agreement referred to in Recital (A) above and shall include any amendments made thereto in accordance with the provisions contained in this behalf therein;

“Escrow Account” means an escrow account established in terms of and under this Agreement, and shall include any sub accounts thereof;

“Escrow Default” shall have the meaning ascribed thereto in Clause 6.1;

“Senior Lenders' Representative” means the person referred to as the Senior Lenders'

Representative in the foregoing Recitals;

“Parties” means the parties to this Agreement collectively and **“Party”** shall mean any of the Parties to this Agreement individually;

“Payment Date” means, in relation to any payment specified in Clause 4.1, the date(s) specified for such payment; and

“Quarter” means, any three-month period from 1st April to 30th June, 1st July to 30th September, 1st October to 31st December or 1st January to 31st March.

1.2 Interpretation

1.2.1 References to Senior Lenders' Representative shall, unless repugnant to the context or meaning thereof, mean references to the Senior Lenders' Representative, acting for and on behalf of Senior Lenders.

1.2.2 The words and expressions beginning with capital letters and defined in this Agreement shall have the meaning ascribed thereto herein, and the words and expressions used in this Agreement and not defined herein but defined in the Concession Agreement shall, unless repugnant to the context, have the meaning ascribed thereto in the Concession Agreement.

1.2.3 References to Articles are, unless stated otherwise, references to Articles of this Agreement.

1.2.4 The rules of interpretation stated in Articles 1.3, 1.4 and 1.5 of the Concession Agreement shall apply, *mutatis mutandis*, to this Agreement.

2. ESCROW ACCOUNT

2.1 Escrow Bank to act as trustee

2.1.1 The Concessionaire hereby settles in trust with the Escrow Bank a sum of Rs. 100 (Rupees Hundred Only) appoints the Escrow Bank to act as trustee for the Concessioneing Authority, the Senior Lenders, the Senior Lenders' Representative and the Concessionaire in connection herewith and authorises the Escrow Bank to exercise such rights, powers, authorities and discretion as are specifically delegated to the Escrow Bank by the terms hereof together with all such rights, powers, authorities and discretion as are reasonably incidental hereto, and the Escrow Bank accepts such appointment pursuant to the terms hereof.

2.1.2 The Concessionaire hereby declares that all rights, title and interest in and to the Escrow Account shall be vested in the Escrow Bank and held in trust for the Concessioneing Authority, the Senior Lenders, the Senior Lenders' Representative and the Concessionaire, and applied in accordance with the terms of this Agreement. No person other than the Concessioneing Authority, the Senior Lenders/Senior Lenders' Representative and the Concessionaire shall have any rights hereunder as the beneficiaries of, or as third-party beneficiaries under this Agreement.

2.2 Acceptance of Escrow Bank

The Escrow Bank hereby agrees to act as such and to accept all payments and other amounts to be delivered to and held by the Escrow Bank pursuant to the provisions of this Agreement. The Escrow Bank shall hold and safeguard the Escrow Account during the term of this Agreement and shall treat the amount in the Escrow Account as monies deposited by the Concessionaire, Senior Lenders or the Concessioneing Authority with the Escrow Bank. In performing its functions and duties under this Agreement, the Escrow Bank shall act in trust for the benefit of, and as agent for, the Concessioneing Authority, the Senior Lenders' Representative and the Concessionaire or their nominees, successors or assigns, in accordance with the provisions of this Agreement.

2.3 Establishment and operation of Escrow Account

2.3.1 Within 30 (thirty) Days from the date of this Agreement, and in any case prior to the Date of Award of Concession, the Concessionaire shall open and establish the Escrow Account with the [(name of Branch)] Branch of the Escrow Bank. The Escrow Account shall be denominated in Rupees.

2.3.2 The Escrow Bank shall maintain the Escrow Account in accordance with the terms of this Agreement and its usual practices and applicable regulations and pay the maximum rate of interest payable to similar customers on the balance in the said account from time to time.

2.3.3 The Concessionaire shall submit to the Escrow Bank a Budget within 7 (seven) Days of the commencement of each Financial Year. Till the pendency of the financing Documents, such Budget shall be approved by the Senior Lenders/Senior Lenders Representative and thereafter by the Concessioneing Authority.

2.3.4 The Escrow Bank and the Concessionaire shall, after consultation with the Senior Lenders' Representative, agree on the detailed mandates, terms and conditions, and operating procedures for the Escrow Account, but in the event of any conflict or inconsistency between this Agreement and such mandates, terms and conditions, or procedures, this Agreement shall prevail.

2.4 Escrow Bank's fee

The Escrow Bank shall be entitled to receive its fee and expenses in an amount, and at such times, as may be agreed between the Escrow Bank and the Concessionaire. For the avoidance of doubt, such fee and expenses shall form part of the operating and maintaining expenses and shall be appropriated from the Escrow Account in accordance with Article 4.1.1 (c).

2.5 Rights of the parties

The rights of the Concessions Authority, the Senior Lenders (through the Senior Lenders' Representative) and the Concessionaire in the monies held in the Escrow Account are set forth in their entirety in this Agreement and the Concessions Authority, the Senior Lenders' and the Concessionaire shall have no other rights against or to the monies in the Escrow Account.

2.6 Substitution of the Concessionaire

The Parties hereto acknowledge and agree that upon substitution of the Concessionaire with the Selectee, pursuant to the Substitution Agreement, it shall be deemed for the purposes of this Agreement that the Selectee is a Party hereto and the Selectee shall accordingly be deemed to have succeeded to the rights and obligations of the Concessionaire under this Agreement on and with effect from the date of substitution of the Concessionaire with the Selectee.

3. DEPOSITS INTO ESCROW ACCOUNT

3.1 Deposits by the Concessionaire

The Concessionaire agrees and undertakes that it shall deposit into and/or credit the Escrow Account with:

- a) all monies received in relation to the Project from Banks, other lenders, shareholders and insurance companies;
- b) all Tariff and any other revenues from or in respect of the Project, including the proceeds of any rentals, deposits, capital receipts or insurance claims;
- c) all Tariff collected by the Concessions Authority in exercise of its rights under the Concession Agreement; and
- d) all payments by the Concessions Authority, after deduction of any outstanding License Fee and Premium; and
- e) termination Payment

For avoidance of doubt, all amounts received by the Concessionaire in respect of the Project/Project Facilities and Services excepting any amounts in respect of cesses and duties collected by it from the users on behalf of the Concessioneing Authority or such other authority in accordance with the Concession Agreement or pursuant to any other instructions in respect thereof shall be deposited in the Escrow Account.

4. WITHDRAWALS FROM ESCROW ACCOUNT

4.1.1 Withdrawals during Concession Period

At the beginning of every month, or at such shorter intervals as the Lenders' Representative and the Concessionaire may by written instructions determine, the Escrow Bank shall withdraw amounts from the Escrow Account and appropriate them in the following order by depositing such amounts in the relevant Sub-Accounts for making due payments, and if such payments are not due in any month, then retain such monies in such Sub-Accounts and pay out therefrom on the Payment Date(s):

- i) all taxes due and payable by the Concessionaire for and in respect of the Project;
- j) all construction/implementation expenses relating to the Project/Project Facilities and Services, subject to limits if any set out under the Financing Documents;
- k) all expenses related to operations and maintenance of the Project including License Fee, subject to the ceiling, if any, set forth in the Financing Documents;
- l) towards payment of Premium and Cess if any, to the Authority;
- m) towards its debt service obligations under the Financing Documents;
- n) towards payment of other sums payable to the Concessioneing Authority and liquidated damages, if any;
- o) towards any reserve requirements in accordance with the Financing Documents;
- p) balance, if any, in accordance with the instructions of the Concessionaire

4.1.2 Withdrawals upon Termination

Notwithstanding anything to the contrary contained in this Agreement, all amounts standing to the credit of the Escrow Account shall, upon termination, be appropriated in the following order:

- a) all taxes due and payable by the Concessionaire for and in respect of the Project;
- b) 90% of Debt Due excluding subordinated debt;
- c) all payments of outstanding Licence Fee, Royalties and damages certified by the Concessioneing Authority as due and payable to it by the Concessionaire;

- d) outstanding debt service including the balance of Debt Due excluding subordinated debt;
- e) outstanding subordinated debt
- f) incurred or accrued operation & maintenance expenses;
- g) any other payments required to be made under this Agreement; and
- h) balance, if any, in accordance with the instructions of the Concessionaire; Provided that no appropriations shall be made under Sub-clause (h) of this Clause 4.1.3 until a Vesting Certificate has been issued by the Concessioneing Authority as per provision of Concession Agreement

The provisions of this Clause 4.1 and the instructions contained in the Escrow Agreement shall remain in full force and effect until the obligations set forth in Clause 4.1.2 have been discharged.

4.1.3 Withdrawals upon end of Concession Period

All amounts standing to the credit of the Escrow Account at the end of the Concession Period including amounts credited to the Escrow Account towards compensation payable in accordance with Article 17 of the Concession Agreement shall be appropriated in the following order of priority:

- a) towards taxes and statutory dues payable by the Concessionaire;
- b) compensation to Senior Lenders in terms of the Financing Documents towards discharge of the Concessionaire's liability under such Financing Documents;
- c) all amounts due to the Concessioneing Authority and amounts payable towards transfer of the Project Facilities and Services by the Concessionaire in accordance with this Agreement; and the Concessionaire shall be at liberty to withdraw any sums outstanding in the Escrow Account after:
 - i) all the aforesaid payments due have been made and/or adequate reserves have been created in respect thereof to the satisfaction of the Senior Lenders and the Concessioneing Authority;
 - ii) the Escrow Agent has received a confirmation of final settlement by the Senior Lenders and/or Concessioneing Authority; and
 - iii) Vesting Certificate has been issued by the Concessioneing Authority under the provisions of Clause 18.5.

4.2 Application of insurance proceeds

Notwithstanding anything in this Agreement, the proceeds from all insurance claims, except life and injury, shall be deposited into and/or credited to the Escrow Account and utilised for any necessary repair, reconstruction, reinstatement, replacement, improvement, delivery or installation of the Project/Project facilities and Services, and the balance remaining, if any, shall be applied in accordance with the provisions contained in this behalf in the Financing Documents.

4.3 Withdrawals during Suspension

Notwithstanding anything to the contrary contained in this Agreement, in case the Escrow

Bank receives a notice in writing from the Concession Authority that the rights of the Concessionaire are suspended in accordance with the Concession Agreement or a Termination Notice is issued, the Escrow Bank shall until such notice is withdrawn, act only on the instructions of the Concessioning Authority.

5. OBLIGATIONS OF THE ESCROW BANK

5.1 Segregation of funds

Monies and other property received by the Escrow Bank under this Agreement shall, until used or applied in accordance with this Agreement, be held by the Escrow Bank in trust for the purposes for which they were received, and shall be segregated from other funds and property of the Escrow Bank.

5.2 Notification of balances

7 (seven) business Days prior to each Payment Date (and for this purpose the Escrow Bank shall be entitled to rely on an affirmation by the Concessionaire and/or the Senior Lenders' Representative as to the relevant Payment Dates), the Escrow Bank shall notify the Senior Lenders' Representative of the balances in the Escrow Account as at the close of business on the immediately preceding business day.

5.3 Communications and notices

In discharge of its duties and obligations hereunder, the Escrow Bank:

- a) may, in the absence of bad faith or gross negligence on its part, rely as to any matters of fact which might reasonably be expected to be within the knowledge of the Concessionaire upon a certificate signed by or on behalf of the Concessionaire;
- b) may, in the absence of bad faith or gross negligence on its part, rely upon the authenticity of any communication or document believed by it to be authentic;
- c) shall, within 5 (five) business Days after receipt, deliver a copy to the Senior Lenders' Representative of any notice or document received by it in its capacity as the Escrow Bank from the Concessionaire or any other person hereunder or in connection herewith; and
- d) shall, within 5 (five) business Days after receipt, deliver a copy to the Concessionaire of any notice or document received by it from the Senior Lenders' Representative in connection herewith.

5.4 No set off

The Escrow Bank agrees not to claim or exercise any right of set off, banker's lien or other right or remedy with respect to amounts standing to the credit of the Escrow Account. For the avoidance of doubt, it is hereby acknowledged and agreed by the Escrow Bank that the monies and properties held by the Escrow Bank in the Escrow Account shall not be considered as part of the assets of the Escrow Bank and being trust property, shall in the case of bankruptcy or liquidation of the Escrow Bank, be wholly excluded from the assets of the Escrow Bank in such bankruptcy or liquidation.

5.5 Regulatory approvals

The Escrow Bank shall use its best efforts to procure, and thereafter maintain and comply with, all regulatory approvals required for it to establish and operate the Escrow Account. The Escrow Bank represents and warrants that it is not aware of any reason why such regulatory approvals will not ordinarily be granted to the Escrow Bank.

6. ESCROW DEFAULT

6.1 Escrow Default

6.1.1 Following events shall constitute an event of default by the Concessionaire (an **“Escrow Default”**) unless such event of default has occurred as a result of Force Majeure or any act or omission of the Concessions Authority or the Senior Lenders' Representative:

- a) the Concessionaire commits breach of this Agreement by failing to deposit /cause the deposit of any receipts into the Escrow Account;
- b) the Concessionaire causes the Escrow Bank to transfer funds to any account of the
- c) Concessionaire in breach of the terms of this Agreement; or the Concessionaire commits or causes any other breach of the provisions of this Agreement.

6.1.2 Upon occurrence of an Escrow Default, the consequences thereof shall be dealt with under and in accordance with the provisions of the Concession Agreement.

7. TERMINATION OF ESCROW AGREEMENT

7.1 Duration of the Escrow Agreement

This Agreement shall remain in full force and effect so long as any sum remains to be advanced or is outstanding from the Concessionaire in respect of the debt, guarantee or financial assistance received by it from the Senior Lenders, or any of its obligations to the Concessions Authority remain to be discharged, unless terminated earlier by consent of all the Parties or otherwise in accordance with the provisions of this Agreement.

7.2 Substitution of Escrow Bank

The Concessionaire may, by not less than 45 (forty five) Days prior notice to the Escrow Bank, the Concessioning Authority and the Senior Lenders' Representative, terminate this Agreement and appoint a new Escrow Bank, provided that the new Escrow Bank is acceptable to the Senior Lenders' Representative and arrangements are made satisfactory to the Senior Lenders' Representative for transfer of amounts deposited in the Escrow Account to a new Escrow Account established with the successor Escrow Bank. The termination of this Agreement shall take effect only upon coming into force of an Escrow Agreement with the substitute Escrow Bank.

7.3 Closure of Escrow Account

The Escrow Bank shall, at the request of the Concessionaire and the Senior Lenders' Representative made on or after the payment by the Concessionaire of all outstanding amounts under the Concession Agreement and the Financing Documents including the payments specified in Article 4.2, and upon confirmation of receipt of such payments, close the Escrow Account and pay any amount standing to the credit thereof to the Concessionaire. Upon closure of the Escrow Account hereunder, the Escrow Agreement shall be deemed to be terminated.

8. SUPPLEMENTARY ESCROW AGREEMENT

8.1 Supplementary escrow agreement

The Senior Lenders' Representative and the Concessionaire shall be entitled to enter into a supplementary escrow agreement with the Escrow Bank providing, inter alia, for detailed procedures and documentation for withdrawals from Escrow Account, creation of sub-accounts pursuant to Clause 4.1.1 and for matters not covered under this Agreement such as the rights and obligations of Senior Lenders, investment of surplus funds, restrictions on withdrawals by the Concessionaire in the event of breach of Financing Documents, procedures relating to operation of the Escrow Account and withdrawal therefrom, reporting requirements and any matters incidental thereto; provided that such supplementary escrow agreement shall not contain any provision which is inconsistent with this Agreement and in the event of any conflict or inconsistency between provisions of this Agreement and such supplementary escrow agreement, the provisions of this Agreement shall prevail.

9. INDEMNITY

9.1 General indemnity

9.1.1 The Concessionaire will indemnify, defend and hold the Concessioning Authority, Escrow Bank and the Senior Lenders, acting through the Senior Lenders' Representative, harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of any breach by the Concessionaire of any of its obligations under this Agreement or on account of failure of the Concessionaire to comply with Applicable Laws and Applicable Permits.

9.1.2 The Concessioneing Authority will indemnify, defend and hold the, Concessionaire harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of failure of the Concessioneing Authority to fulfill any of its obligations under this Agreement materially and adversely affecting the performance of the Concessionaire's obligations under the Concession Agreement or this Agreement other than any loss, damage, cost and expense arising out of acts done in discharge of their lawful functions by the Concessioneing Authority, its officers, servants and agents.

9.1.3 The Escrow Bank will indemnify, defend and hold the Concessionaire harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of failure of the Escrow Bank to fulfill its obligations under this Agreement materially and adversely affecting the performance of the Concessionaire's obligations under the Concession Agreement other than any loss, damage, cost and expense, arising out of acts done in discharge of their lawful functions by the Escrow Bank, its officers, servants and agents.

9.2 Notice and contest of claims

In the event that any Party hereto receives a claim from a third party in respect of which it is entitled to the benefit of an indemnity under Clause 9.1 or in respect of which it is entitled to reimbursement (the **"Indemnified Party"**), it shall notify the other Party responsible for indemnifying such claim hereunder (the **"Indemnifying Party"**) within 15 (fifteen) Days of receipt of the claim and shall not settle or pay the claim without the prior approval of the Indemnifying Party, which approval shall not be unreasonably withheld or delayed. In the event that the Indemnifying Party wishes to contest or dispute the claim, it may conduct the proceedings in the name of the Indemnified Party and shall bear all costs involved in contesting the same. The Indemnified Party shall provide all cooperation and assistance in contesting any claim and shall sign all such writings and documents as the Indemnifying Party may reasonably require.

10. MISCELLANEOUS PROVISIONS

10.1 Governing law and jurisdiction

This Agreement shall be construed and interpreted in accordance with and governed by the laws of India, and the Courts at [●] shall have jurisdiction over all matters arising out of or relating to this Agreement.

10.2 Waiver of sovereign immunity

The Concessioneing Authority unconditionally and irrevocably:

- a) agrees that the execution, delivery and performance by it of this Agreement constitute commercial acts done and performed for commercial purpose;
- b) agrees that, should any proceedings be brought against it or its assets, property or revenues in any jurisdiction in relation to this Agreement or any transaction contemplated by this Agreement, no immunity (whether by reason of sovereignty or otherwise) from such

proceedings shall be claimed by or on behalf of the Concessing Authority with respect to its assets;

- c) waives any right of immunity which it or its assets, property or revenues now has, may acquire in the future or which may be attributed to it in any jurisdiction; and
- d) consents generally in respect of the enforcement of any judgement or award against it in any such proceedings to the giving of any relief or the issue of any process in any jurisdiction in connection with such proceedings (including the making, enforcement or execution against it or in respect of any assets, property or revenues whatsoever irrespective of their use or intended use of any order or judgement that may be made or given in connection therewith).

10.3 Priority of agreements

In the event of any conflict between the Concession Agreement and this Agreement, the provisions contained in the Concession Agreement shall prevail over this Agreement.

10.4 Alteration of terms

All additions, amendments, modifications and variations to this Agreement shall be effectual and binding only if in writing and signed by the duly authorised representatives of the Parties.

10.5 Waiver

10.5.1 Waiver by any Party of a default by another Party in the observance and performance of any provision of or obligations under this Agreement:

- a) shall not operate or be construed as a waiver of any other or subsequent default hereof or of other provisions of or obligations under this Agreement shall not be effective unless it is in writing and executed by a duly authorised representative of the Party; and
- b) shall not affect the validity or enforceability of this Agreement in any manner.

10.5.2 Neither the failure by any Party to insist on any occasion upon the performance of the terms, conditions and provisions of this Agreement or any obligation thereunder nor time or other indulgence granted by any Party to another Party shall be treated or deemed as waiver of such breach or acceptance of any variation or the relinquishment of any such right hereunder.

10.6 No third-party beneficiaries

This Agreement is solely for the benefit of the Parties and no other person or entity shall have any rights hereunder.

10.7 Survival

10.7.1 Termination of this Agreement:

- a) shall not relieve the Parties of any obligations hereunder which expressly or by implication survive termination hereof; and
- b) except as otherwise provided in any provision of this Agreement expressly limiting the liability of either Party, shall not relieve either Party of any obligations or liabilities for loss or damage to the other Party arising out of, or caused by, acts or omissions of such Party prior to the effectiveness of such termination or arising out of such termination.

10.7.2 All obligations surviving the cancellation, expiration or termination of this Agreement shall only survive for a period of 3 (three) years following the date of such termination or expiry of this Agreement.

10.8 Severability

If for any reason whatever any provision of this Agreement is or becomes invalid, illegal or unenforceable or is declared by any court of competent jurisdiction or any other instrumentality to be invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions shall not be affected in any manner, and the Parties will negotiate in good faith with a view to agreeing to one or more provisions which may be substituted for such invalid, unenforceable or illegal provisions, as nearly as is practicable to such invalid, illegal or unenforceable provision. Failure to agree upon any such provisions shall not be subject to dispute resolution under Clause 10.1 of this Agreement or otherwise.

10.9 Successors and assigns

This Agreement shall be binding on and shall inure to the benefit of the Parties and their respective successors and permitted assigns.

10.10 Notices

Unless otherwise stated, notices to be given under this Agreement including but not limited to a notice of waiver of any term or related or breach of any term of this Agreement shall be in writing and shall be given by hand delivery, recognized international courier, mail, telex or facsimile transmission and delivered or transmitted to the Parties at their respective addresses set forth below:

The Concessing Authority:CHAIRMAN

----- PORT

Fax No:

Email:

The Concessionaire:

The MANAGING DIRECTOR

-----Ltd

Fax No. _____ Email: _____

The Senior Lenders/Senior Lenders representative:

-----Ltd

Fax No. _____ Email: _____

The Escrow Bank:

-----Ltd

Fax No. _____ Email: _____

or such other address, telex number, or facsimile number as may be duly notified by the respective Parties from time to time, and shall be deemed to have been made or delivered (i) in the case of any communication made by letter, when delivered by hand, by recognized international courier or by mail (registered, return receipt requested) at that address and (ii) in the case of any communication made by telex or facsimile, when transmitted properly addressed to such telex number or facsimile number.

10.11 Language

All notices, certificates, correspondence and proceedings under or in connection with this Agreement shall be in English.

10.12 Authorised representatives

Each of the Parties shall, by notice in writing, designate their respective authorised representatives through whom only all communications shall be made. A Party hereto shall be entitled to remove and/or substitute or make fresh appointment of such authorised representative by similar notice.

10.13 Original Document

This Agreement may be executed in four counterparts, each of which when executed and delivered shall constitute an original of this Agreement.

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

SIGNED, SEALED AND DELIVERED

For and on behalf of CONCESSIONAIRE by:(Signature)

(Name) (Designation) (Address) (Fax No.)

SIGNED, SEALED AND DELIVERED

For and on behalf of SENIOR LENDERS by the Senior Lenders' Representative: (Signature)(Name)

(Designation) (Address) (Fax No.)

SIGNED, SEALED AND DELIVERED For and on behalf of ESCROW BANK by: (Signature)(Name)

(Designation) (Address) (Fax No.)

SIGNED, SEALED AND DELIVERED

For and on behalf of Concessioneing Authority by: (Signature)(Name)

(Designation) (Address) (Fax No.)In the presence of: 1.

2.

APPENDIX 16

[BASE CASE FINANCIAL MODEL (BCFM)]

[Note: The model BCFM would be developed with the appropriate inputs from the financial and technical consultants. However, such Financial Model would need to be customized based on each project and its requirements. Such Financial Model would essentially include;

- i. estimated project cost,
- ii. License Fee and Premium payable to the Concessioneing Authority,
- iii. annual estimated Project revenue,
- iv. equity contribution,
- v. cargo handling projections estimated by Concessionaire,
- vi. discounted net present value of the cash flows,
- vii. equity IRR,
- viii. debt equity ratio, and
- ix. debt service ratio.

Such Financing Model would be submitted by the Concessionaire and got approved by the Concessioneing Authority at the time of Financial Close.]

Note: Such format of the Financial Model shall also identify the respective threshold limit of the above parameters and the basis of further projections and the detailed requirements that would need to be stratified with respect to each line item.

APPENDIX 17

MONITORING ARRANGEMENT

(Name of the Port)

Construction Stage Monitoring Report of (Name of the Project) for the month ended.....

Compliance of Obligations of the Concessing Authority

| Sr. No | Obligations of the Port (Related MCA Clause) | Whether any action required (Yes/ No) | If yes, give details of action taken |
|--------|---|---------------------------------------|--------------------------------------|
| 1 (a) | Meeting the Conditions Precedent (Clause 3.1) Procurement of clearance including from Ministry of Environment & Forests Handing over physical possession of Project Site/ Port Assets for the project (Stage wise, if so envisaged) | | |
| 1 (b) | Putting in place arrangement for provision of Supporting Project Infrastructure Informing the Concessionaire about the fulfillment of Conditions Precedent (Clause 3.1) | | |
| 2 | In case conditions precedent are not complied within the specified time, details of extension of time availed (Clause 3.4) | | |
| 3 | Recovery of liquidated damages for failure to fulfill Conditions Precedent (Clause 3.5) | | |
| 4 | Appointment of Independent Engineer – 5.1 | | |
| 5 | Furnishing of comments/ observations on the Designs & Drawings to Independent Engineer – 6.2 (b) | | |

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| 6 | Grant applicable permits, approval and consents or render assistance as may be required by Concessionaire under concession agreement – 6.5 (a) | | |
| 7 | Make available records of sub soil investigation, if requested – 6.5 (b) | | |
| 8 | Assist the Concessionaire in obtaining immigration clearance, employment permits and residential premises for any foreign personnel engaged or employed by Concessionaire. – 6.5 (d) | | |
| 9 | Assist Concessionaire or contractor to import into India all items of equipment and material required for the project. – 6.5 e | | |
| 10 | If required on advice of Independent Engineer, suspend the construction works (Clause 6.6(a)) | | |
| 11 | On advice of IE, revoke the suspension after the rectifications (Appendix 7) | | |
| 12 | If required as advised by Independent Engineer, concession authority may extend the construction phase, if the delay is not attributable by concessionaire – 6.2€ | | |
| 13 | To witness the tests along with Independent Engineer to ensure project meets with construction standards. – 6.7 (a) | | |
| 14 | To verify the performance security is maintained as per clause 4.1, or otherwise termination of agreement for non-maintenance of performance security as per clause 15.1 (a)(xii) | | |

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| 15 | Recovery of liquidated damages if any from performance guarantee for failure to achieve milestones (Clause 6.9) | | |
| 16 | In case of Change of Scope, whether procedures laid down in Article 6.8 is followed | | |
| 17 | Ensuring issue of Completion Certificate by Independent Engineer (Clause 6.7) | | |
| 18 | In case aggregate delay exceeds 180 days or LD exceeds 5% of project cost, terminate the agreement (Clause 6.9) | | |
| 19 | Is any action required on monthly Inspection report from IE (Appendix 7) | | |
| 20 | In case Concessionaire fails to complete the works on account of Force Majeure or due to reasons attributable to authority, reduce the scope of work (Clause 6.7(e)) | | |
| 21 | In event of non-compliance of conditions precedent within the time including the extended time if any termination of the agreement (Clause 3.6) | | |
| 22 | Ensuring Operation of Escrow account in an orderly manner (Clause 9.5) | | |
| 23 | Issue of Notice for a Force Majeure Event (Clause 14.5) | | |
| 24 | In case of Force Majeure Event, whether extension of time has been granted (Clause 14.9 (b)) | | |
| 25 | In the event of termination due to Force Majeure Event, whether Termination Payment has been paid as per clause 17.1(a) | | |

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| 26 | Issue of Notice on occurrence of an event of default (Clause 16.1) | | |
| 27 | Informing Senior Lenders of Intent to Terminate (Clause 16.1) | | |
| 28 | Termination Payment for termination due to Port Event of Default as per clause 17.1(c)) | | |
| 29 | Exercising Rights and meeting obligations upon termination (Clause 16 and 17) | | |
| 30 | Assessment of change in law and treatment of costs out of change in law (Clause 13.2(b)) | | |
| 31 | Amicably resolving disputes (Clause 19.1 & 19.2) | | |
| 32 | Declaration of Project Facilities & Services as ready for operation in accordance with Section 37 of MPA Act (Clause 6.5 (c)) | | |
| 33 | Execution of Substitution Agreement within 30 days of notice from the Concessionaire as per clause 12.3 (b) v | | |
| 34 | Any other project specific provision, observation, complaint or suggestion | | |

(Name of the Port)

Construction Stage Monitoring Report of (Name of the Project) for the month ended.....

Compliance of Obligations of the Concessionaire

| Sr. No. | Obligations of the Concessionaire (Related MCA Clause) | Whether any action required (Yes/No) | If yes, give details of action taken |
|----------------|---|---|---|
| 1 | Providing and maintaining the Performance Guarantee (Clause 4.1) | | |
| 2 (a) | Compliance of Conditions Precedent (Clause 3.1(a)) Execution of Escrow Agreement and opening of Escrow Account Procuring all Applicable Permits as per Appendix 8 Submission of Financial Package, Financing Documents Financial Model and other Financial Close documents to Port Submission of Confirmation of Representation & Warranties by Consortium Members Submission of legal opinion with respect to the authority of Concessionaire Informing Concessions Authority about fulfillment of Conditions Precedent (Clause 3.2) | | |
| 3 | In case Conditions Precedents are not complied within the specified time, details of extension of time availed (Clause 3.5) | | |

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|----|--|--|--|
| 4 | Submission of Designs and Drawings to the Independent Engineer & Concessioning Authority (Clause 6.2 and Appendix 6) | | |
| 5 | Arrangement of financial and other resources as per Financing Plan as evidenced by Escrow Account (Clause 6.4(a)) | | |
| 6 | Carry out works in compliance with the Construction Standards (clause - 6.4 (b)) | | |
| 7 | Obtain Applicable Permits and comply with Applicable Laws. - 6.4 (d) | | |
| 8 | Providing access to Port representatives for inspections for ascertaining compliance of requirements (Clause 6.4(e)) | | |
| 9 | Submission of Monthly Progress Reports to Independent Engineer (Clause 6.4(f)) | | |
| 10 | Removal of Defects/ deficiencies as observed by Independent Engineer (Clause 6.4(f)) | | |
| 11 | Ensure safe and timely construction and completion of the Project/ - 6.4 (h) | | |
| 12 | At least 60 days prior to the likely completion of the Project, notify the Independent Engineer of the date when it intends to commence commercial operations - 6.7 (a) | | |
| 13 | Providing assistance to Independent Engineer for conducting all requisite Tests on structures/ equipment etc., - 6.7 (a) | | |
| 14 | To obtain Provisional Certificate of Completion as per clause 6.7(d) | | |
| 15 | To complete all outstanding items listed in Punch List within 90 days or extended period by Concessioning Authority. – 6.7 (d) | | |
| 16 | Deleted | | |

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|----|---|--|--|
| 17 | Pay License fee annually and Premium monthly – 9.1 (a) and 9.2 | | |
| 18 | Pay liquidated damages to Concessioning Authority, if applicable. – 6.9 | | |
| 19 | Maintenance of Insurance as per clause 12.1(c) | | |
| 20 | In case of Execution of substitution agreement, whether notice has been issued by the Concessionaire to the port as per clause 12.3 (b) v | | |
| 21 | Whether equity Holding requirements are met by lead member/ members of the applicant consortium as per clause 11.2 | | |

(Name of the Port)

Operation Stage Monitoring Report of (Name of the Project) for the month ended.....

Compliance of Obligations of the Concessionaire

| Sr.No | Obligations of the Concessionaire (Related MCA Clause) | Whether any action required (Yes/No) | If yes, give details of action taken |
|-------|---|--------------------------------------|--------------------------------------|
| 1 | Prompt commencement of operations after “Ready for Operation” declaration (Clause 7.1(a)(i)(a)) | | |
| 2 | Operation of Project Facilities as per “Project Requirement” (Clause 7.1(a) (i)(c)) | | |
| 3 | Achieving Performance Standards (Clause 7.1(a) (i)(d)) | | |
| 4 | Compliance of O&M and Safety Standards (Clause 7.1(a) (i)(e)) | | |
| 5 | Rapid & Effective response in the event of accident/ Emergency (Clause 7.1(a) (i)(f)) | | |
| 6 | Replacement and repair of project facilities in a timely manner (Clause 7.1(a) (i)(g)) | | |
| 7 | Manage & Operate Project Facilities on “First Come First Served “basis except for Priority & Preferential berthing as per GOI guidelines (Clause 7.1(a) (i)(h)) | | |
| 8 | Maintenance of Proper Records relating to Revenue and operation of Project Facilities (Clause 7.1(a) (i) and 9.4) | | |
| 9 | Obtaining, Maintenance of Applicable Permits and Compliance of Applicable laws (Clause 7.1(a) (i) (j)) | | |
| 10 | Prevention of encroachment / unauthorized use of Project Facilities (Clause 7.1(a) (i)(l)) | | |
| 11 | Repair & Maintain all Project Facilities as per Agreement provisions & Good Industry Practice at all times during the Concession Agreement.7.1(a)(ii) | | |

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|----|--|--|--|
| 12 | Repair, Replace or Restore the damaged Project Facilities at its own costs.7.1(a)(iv) | | |
| 13 | Obtaining prior written permission of Concessioneing authority for removal of assets clause 7.1(a)(v) | | |
| 14 | Replacement of equipment/ assets as per Good Industry Practice (Clause 7.1(a) (iii)) | | |
| 15 | Compliance with Monthly Reporting Requirements (Clause 7.1(a) (viii)) | | |
| 16 | Cooperation to Independent Engineer-in access for inspection for safety audit once in a year (Clause 7.1(a) (vii)) | | |
| 17 | Cooperation to port representatives for inspection and review of operations also to compliance with requirements of Agreement (Clause 7.1(a)(vii)) | | |
| 18 | Installation & Operation of specified computer system and Network as specified by Concession Authority (Clause 7.1(a) (ix)) | | |
| 19 | Ensuring the prescribed Security Arrangements conforming to ISPS code (Clause 7.1(a) (x)) | | |
| 20 | Employment of personnel of foreign origin only after requisite approvals from Government of India (Clause7.1(a) (xi)) | | |
| 21 | Employ qualified and skilled personnel.7.1(a)(xi) | | |
| 22 | Meeting Minimum Guaranteed Cargo requirements (Clause 7.1(a) (xii)) | | |
| 23 | To recover tariff from users of the project facilities as per Tariff Order Notification and deposit all Tariff in Escrow Account (Clause 8.1) | | |
| 24 | If requested by CA, collect the cess and charges from the users on behalf of Concessioneing Authority 8.2 | | |
| 25 | Make timely payments to Concessioneing Authority viz. Premium & License fees (Clause 9.1(a) & 9.2 (b)) | | |

| | | | |
|----|--|--|--|
| 26 | To operate Escrow Account as per priority of payments as per clause 9.5(a) | | |
| 27 | Meeting any claim/ action/ suit etc. alleging loss/ destruction of goods (Clause 7.1(a)(xiii)) | | |
| 28 | Inform Concessioning Authority if any Direct or indirect change of management of concessionaire as per clause 11.2 | | |
| 29 | Payment of all taxes/ duties/ levies etc., to the Government Authorities (Clause 12.1(b)) | | |
| 30 | Purchasing and Maintaining of Insurance requirements in accordance with the Agreement and Good Industry Practice (Clause 12.1(c)) | | |
| 31 | Providing copies of insurance policies to the Port (Clause 12.1(c) (iii)) | | |
| 32 | Utilisation of money received under insurance policies as per terms of Agreement (Clause 12. 1(c) (iv)) | | |
| 33 | Deleted | | |
| 34 | Ensuring conduct of Conditional Survey by Independent Engineer and compliance of remedies thereof before expiry of concession period. (Clause 12.1(g)) | | |
| 35 | Submit bank guarantee two years prior to expiry of concession period for repairs if any for condition survey [Clause 12.1 (g) ii] | | |
| 36 | Issue of consultation notice and compliance of remedial process in case of Event of Default on the part of Port (Clause 15) | | |

(Name of the Port)

Operation Stage Monitoring Report of (Name of the Project) for the month ended.....

Compliance of Obligations of the Concessing Authority

| Sr. No. | Obligations of the Port (Related MCA Clause) | Whether any action required (Yes/ No) | If yes, give details of action taken * |
|----------------|--|--|---|
| 1 | To get from the Concessionaire copies of “as built” design and drawings maintenance schedule of equipment etc. as reviewed by Independent Engineer as per (Appendix 6) & clause 18.2 © | | |
| 2 | Release of Performance Security after 6 months from the COD (Clause 4.1) | | |
| 3 | Scheduling entry, berthing and sailing of the vessels, pilotage and towage on a non-discriminatory basis subject to priority berthing norms. - Clause 7.1 © (i) (a) | | |
| 4 | Maintenance of entrance channel draft Clause 7.1(c) (i)(b) Maintenance of required draft alongside berth (Clause 7.1(c) (i) (d)) | | |
| 5 | Provide waterside safety and safety of navigation; - Clause 7.1 (c) (i) (c) | | |
| 6 | Provision and maintenance of all general port infrastructure other than covered under the concession – Clause 7.1 (c) (i) (f) | | |
| 7 | Grant approvals/ consents sought by the Concessionaire as required under the agreement Clause 7.1 (c) (ii) | | |
| 8 | Evolve mutually acceptable mechanism for sharing the common costs by existing and future terminal operators Clause 7.1 (c) (i) i | | |

| | | | |
|----|---|--|--|
| 9 | Provide access to all applicable infrastructure facilities and utilities including water, electricity etc. Clause 7.2 | | |
| 10 | Review performance standards from the monthly report submitted by Concessionaire and take remedial action including recovery of liquidated damages as per Clause 7.3 | | |
| 11 | To operate escrow account as per priority of payments as per clause 9.5(a) | | |
| 12 | Whether equity Holding requirements are met by lead member/ members of the applicant consortium as per clause 11.2 | | |
| 13 | Assistance to Concessionaire by giving recommendation letter for getting applicable permits Clause 12.2 (a) | | |
| 14 | Pay levy (or) levies including increase in taxes, duties etc., on account of port assets payable to State Govt. Clause 12.2 (b) | | |
| 15 | Shall not operationalise competing facility as per Clause 12.2 (c) | | |
| 16 | Issue notice of Force Majeure In the event of occurrence of any Force Majeure event (Clause 14.5) | | |
| 17 | Extension of time for performing obligations due to occurrence of Force majeure (Clause 14.9 (b)) | | |

| | | | |
|----|---|--|--|
| 18 | Compliance of provisions of Clause 14.10 in the event of force majeure continuing beyond 120 days | | |
| 19 | Payment of Termination Payment in the event of termination due to force majeure event as per clause 17.1(a) Payment of Termination Payment in the event of termination due to Concessionaire event of default as per clause 17.1(b) | | |
| | Payment of Termination Payment in the event of termination due to Concessioning authority event of default as per clause 17.1(c) | | |
| 20 | Authorize the Concessionaire to collect cesses and charges including infrastructure cess if required and remit the same to Concessioning authority if required (Clause 8.2 and 8.5) | | |
| 21 | Initiate action for amicably resolution of disputes (Clause 19.1 and 19.2) | | |
| 22 | Any other observation, complaint or suggestion | | |
| 23 | Payment of Compensation to Senior Lenders (Clause 17.4) | | |
| 24 | Issue of Consultation Notice and Compliance of remedial process in case of Event of Default on the part of Concessionaire (Clause 15.3 & 15.4) | | |
| 25 | Informing Senior lenders of intent of termination by issuing a copy of Termination Notice to them on occurrence of force Majeure/ Event of Default (Clause 15.7 and 16) | | |

Key Performance Indicators (KPI)/Performance Standards (Based on MCA of Major Ports)

| Sr. No. | <i>Maintenance/ Performance Standards</i> | <i>Indicativ enorms</i> | <i>Actual during the month</i> | Shortfall, if any | Action taken to remedy shortfall |
|---------|---|-----------------------------|--|------------------------------|---|
| 1 | Gross Berth Output Appendix-14 | | | | |
| 2 | Transit Storage Dwell Time Appendix 14 | | | | |
| 3 | Turn-around time for receipt/ delivery operationAppendix 14 | | | | |
| 4 | Availability of Cranes | | | | |

(Name of the Port)

Construction/ Operation Stage Monitoring Report of (Name of the Project) for the month ended..... (Prepared by Port to the Ministry)

I. Basic Data of the project

| <i>Sl. No.</i> | <i>Project Parameters</i> | <i>Details</i> |
|-----------------------|--|-----------------------|
| 1. | Name of the Concessionaire | |
| 2. | Percentage of equity holding in case of consortium | |
| 3. | Payment of Premium | |
| 4. | Date of Issue of Letter of acceptance by the port to Concessionaire | |
| 5. | Date of signing of Concession Agreement | |
| 6. | Time duration for fulfilling the condition precedent as per concession agreement (a) By Concessionaire (b) By Concessioneing Authority | |
| 7. | Actual Date of award of concession after fulfilling condition precedent | |
| 8. | Date of starting of commercial operation | |
| 9. | Estimated cost | |
| 10. | Actual Cost | |
| 11. | Capacity | |
| 12. | Project details like length of berth, design vessel size can be handled, equipment installed, backup area etc., | |
| 13. | Present tariff rate | |
| 14. | MGT if any as per concession agreement | |
| 15. | Cargo handled during this month | |
| 16. | Cumulative cargo handled during the financial year | |
| 17. | Any other remarks | |

APPENDIX 18

Key Performance Indicators for Concessioneing Authority

[The project-specific minimum Performance Standards for Concessioneing authority are presented in the below table]

| S. No | Key Performance Indicator | Indicative norms | Description (Weightage) |
|-------|--------------------------------|----------------------|---|
| 1 | Time for Vessel Berthing | 2 hours | Subject to prevailing berthing policy and Subject to weather permitting, tidal conditions or any other operational constraints. |
| 2 | Time for Un Berthing of vessel | 1hour and 30 minutes | Subject to prevailing berthing policy and Subject to weather permitting, tidal conditions or any other operational constraints. |

Note: The above two Key performance Indicators are based on weather, tide and any other operational restrictions

Performance Evaluation and calculation of liquidated damages:

Any shortfall in performance as per above KPIs shall be documented by the Concessioneire with adequate supporting documentations and presented to the Concessioneing Authority along with the quarterly performance reports submitted as per provisions set out in Appendix-14. Subject to any waivers as per Clause 7.3 (b), the Concessioneing Authority shall be liable to pay liquidated damage determined at the rate of [0.5% of the Premium of the respective quarter for every shortfall of 10%] in the average performance which shall be assessed in the following manner.

Each Performance Standard is calculated as an average in the manner indicated above. The actual average performance vis-à-vis a standard will be evaluated against the prescribed standard. The shortfall will be computed as a percentage of the prescribed standard. The shortfall in respect of each performance standard will have a weightage assigned to it. The overall shortfall in average performance shall be assessed as the aggregate of the weighted shortfalls in respect of each of the performance standards. For example, if there is a shortfall in Pilotage services by x%, Vessel turnaround time by y% and vessel berthing time for inward/outward movement of vessel by z% and the weightage assigned to such shortfalls is 0.7, 0.2 and 0.1 respectively, then the overall shortfall in average performance will be $(0.7x + 0.2y + 0.1z) \%$.

APPENDIX 19

Supporting Project Infrastructure

| Below is the list of supporting infrastructure provided by Concessioneing Authority . | | |
|--|--|---|
| S N o | Supporting infrastructure | Timeline of completion |
| 1 | maintenance of the minimum depth of 16.90m in the outer harbour Turning circle basin (excluding the dock basin) and 17.40m in the approach channel where the concessionaire will carry out the capital dredging as mentioned at Appendix 4 of this agreement , | based on requirement throughout the entire concession period |
| 2 | 4 lane/6 lane connectivity to Highway outside port | Already available/ Completed |
| 3 | Handing over of project site | within 180 days/ Any other extended period from the Letter of Award |
| COD - Commercial Operations Date | | |

The mentioned infrastructure would need to be specified depending on the commitments made by the Concessioneing Authority at the time of bidding of the specific Project. The supporting Infrastructure to be part of obligations of Authority during construction and O&M phase.

APPENDIX 20

Compliance to Green Ports Policy

[The Concessioneing Authority shall specify green measures relevant/applicable for the Project in line with the Green Ports Policy]

| S No | Measures for compliance by Concessionaire |
|-------------|--|
| 1. | Providing plantations in and around the Project Site premises to the extent possible. |
| 2. | Providing illumination using energy efficient LED lights, in the berth area, yard area and inside of the proposed building premises, as per IS code of practice and dock safety norms. |
| 3. | Energy efficient inverter Air Conditioners of suitable capacity to be provided with 5 star rating. |
| 4. | Providing Solar roof top panels in the building areas proposed to be constructed inside the Project site premises. |
| 5. | Providing shore power facility to avail shore to ship supply at 60Hz frequency with suitable capacity |

APPENDIX 21

Arbitration Rules of the Society for Affordable Redressal of Disputes - Ports (SAROD-Ports)

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Rule

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4. Commencement of Arbitration
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8. Default in Filing and Serving Case Statements
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10. SAROD-PORTS- Ports to Provide Assistance
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PREAMBLE

In order to seek speedy, affordable, just and reasonable Redressal of Dispute/Differences between Major Port Trusts and Concessionaire/Contractor arising out of and during the course of execution of various contracts, a Society for Affordable Resolution of Disputes - Ports (SAROD- PORTS - Ports) has been formed as a Society under Societies Registration Act, 1860 with registration____. It has been formed by Indian Ports Association and Indian Private Ports and Terminals Association with founding members as mentioned in the Memorandum of Association of SAROD-PORTS

SAROD-PORTS ARBITRATION

RULES

Rule: 1- Scope of Application

1.1 Where any agreement, submission or reference provides for arbitration at the Society for Affordable Resolution of Disputes - Ports ("SAROD-PORTS"), or under the Arbitration Rules of the SAROD-PORTS and where the case is a domestic arbitration, the same shall be conducted in accordance with the following Rules, or such Rules as amended by the SAROD-PORTS where the amendments take effect before the commencement of the Arbitration.

1.2 These rules shall come into effect from the day of approval by Governing Body of SAROD-PORTS.

Rule 2 - Definitions

2.1 These Rules shall be referred to as "the SAROD-PORTS Arbitration Rules".

2.2 In these Rules:

"Act" means the 'Arbitration and Conciliation Act 1996' of India and any statutory modifications or re-enactments thereof

"DOMESTIC ARBITRATION" means arbitration to be conducted under these rules.

"SAROD-PORTS" means the Society for Affordable Redressal of Disputes- Ports.

"SAROD-PORTS Arbitrator Panel" means the list of persons admitted to serve as arbitrators under these Rules.

"IPA" means Indian Ports Association

"IPPTA" means Indian Private Ports and Terminals Association

"GOVERNING BODY" means Governing Body of SAROD-PORTS as defined in Article 9 of Memorandum of Association.

"PRESIDENT" means President of Governing Body of SAROD-PORTS as defined in Rules & Regulation of SAROD-PORTS.

"SECRETARY" means Secretary of SAROD-PORTS as defined in Rules & Regulation of SAROD-PORTS.

"TRIBUNAL" means either a Sole Arbitrator or all arbitrators when more than one is appointed.

"PARTY" means a party to an arbitration agreement,

"E-Arbitration" means submission of pleadings, defense statement etc. by E-mail and holding of proceedings via video conferencing.

Rule 3 - Notice, Calculation of periods of Time

3.1 For the purposes of these Rules, any notice, including a notification, communication or proposal, is deemed to have been received if it is physically delivered to the addressee or if it is delivered at his habitual residence, place of business or mailing address, or, if none of these can be found after making reasonable inquiry, then at the addressee's last-known residence or place of business. Notice shall be deemed to have been received on the day it is so delivered.

3.2 For the purposes of calculating a period of time under these Rules, such period shall begin to run on the day following the day when a notice, notification, communication or proposal is received. If the last day of such period is an official holiday or a non-business day at the residence or place of business of the addressee, the period is extended until the first business day which follows. Gazetted public holidays or non-business days occurring during the running of the period of time are included in calculating the period.

3.3 Without prejudice to the effectiveness of any other form of written communication, written communication may be made by fax, email or any other means of electronic transmission effected to a number, address or site of a party.

3.4 The transmission is deemed to have been received on the day of transmission.

Rule 4- Commencement of Arbitration

4.1 Any party wishing to commence an arbitration under these Rules ("**the Claimant**") shall file with the Secretary and serve on the other party ("**the Respondent**"), a written Notice of Arbitration ("**the Notice of Arbitration**") which shall include the following:

- a) a request that the dispute be referred to arbitration;
- b) the names, addresses, telephone numbers, fax numbers and email addresses of the parties to the dispute;
- c) a reference to the arbitration clause or any separate arbitration agreement that is invoked and provide a copy of the arbitration clause or arbitration agreement;

- d) a reference to the contract out of which the dispute arises and provide a copy of the contract where possible;
- e) a brief statement describing the nature, **facts** and circumstances **leading to** the dispute;
- f) the relief or remedy sought, including the amount of claim if quantifiable at the time the Notice or Arbitration is filed;
- g) a proposal as to the number of arbitrators (i.e. one or three), if the parties have not previously agreed on the number; and
- h) the name of the Claimant's nominated arbitrator.

4.2 A filing fee of Rs. 10,000/- (Ten thousand) or any amount decided by Governing Body from time to time is payable at the time of filing the Notice of arbitration.

4.3 The date of filing of the Notice of Arbitration with the Secretary is the date of commencement of the arbitration for the purpose of these Rules.

Rule 5 - Response by Respondent

5.1 Within **14 (fourteen)** days of receipt of the Notice of Arbitration, the Respondent shall file with the Secretary and serve upon on the Claimant, a Response including

- a) A confirmation or denial of all or part of the claims;
- b) Brief statement of the nature and circumstances of any envisaged counterclaims
- c) A comment in response to any proposals contained in the Notice of Arbitration; and
- d) The name of the respondent's nominated arbitrator.

5.2 A filing fee of Rs. 10,000/- or any amount decided by Governing Body from time to time is payable at the time of filing the Response.

5.3 In case parties have objection to the jurisdiction of Arbitral Tribunal, such objection shall be raised not later than 15 days of the commencement of Arbitration proceedings failing which it will be deemed that parties have waived their right to objection.

Rule 6- Filing of Case Statements

6.1 Within 30 days after the filing of the Notice of Arbitration, the claimant must file with the Secretary and serve on the Respondent, a Statement of Claimant's Case along with all documents to be relied upon by the Claimant.

6.2 Within 30 days after the service of the statement of Claimant's Case, the Respondent must file with the Secretary and serve on the Claimant, a statement of respondent's defense and counterclaim (if any) along with all documents to be relied upon by the Respondent.

6.3 Within 30 days after the service of the statement of Respondent's defense, if the Claimant intends to challenge anything in the statement of Respondent's defense and/or counterclaim, the Claimant must then file with the Secretary and serve on the Respondent, a statement of claimant's reply and if necessary, defense to counterclaim.

6.4 No further case statements may be filed without the leave of the Tribunal or if a Tribunal has not been appointed, the Secretary.

6.5 The Tribunal or if a Tribunal has not been appointed, the Secretary, may upon the written application of a party, extend the time limits provided under this Rule,

6.6 Thy party required to file a case statement must at the same time deposit with the Secretary for eventual transmission to the Tribunal an additional copy or additional copies of the case statement, according to the number of arbitrators constituting or who will constitute the Tribunal.

Rule 7 - Contents of Case Statements

7.1 The case statements must contain the detailed particulars of the party's claim, defense or counterclaim and must thus contain a comprehensive statement of the facts and contentions of law supporting the party's position.

7.2 It must:

- a) Set out all items of relief or other remedies sought together with the amount of all quantifiable claims and detailed calculations.
- b) State fully its reasons for denying any allegation or statement of the other party.
- c) State fully its own version of events if a party intends to put forward a version of events different from that given by the other party.

7.3 A case statement must be signed by or on behalf of the party making it.

Rule 8 - Default in Filing and Serving Case Statements

8.1 If the Claimant fails within the time specified under these Rules or as may be fixed by the Tribunal or by the Secretary, to submit its Statement of Case, the Tribunal or if a Tribunal has not been appointed, the Governing Body may issue an order for the termination of the arbitral proceedings or make such other directions as may be appropriate in the circumstances.

8.2 If the Respondent fails to submit a Statement of Respondent's Defense; the Tribunal may nevertheless proceed with the arbitration and make the award.

Rule 9 - Further Written Statements

9.1 The Tribunal will decide which further written statements, in addition to the case statement(s) already filed, are required from the parties and shall fix the periods of time for giving, filing and serving such statements.

9.2 All such further statements must be given to the Tribunal, filed with the Secretary and served on the Claimant or Respondent, whichever is applicable.

Rule 10 - SAROD-PORTS to Provide Assistance

10.1 At the request of the Tribunal or either party, the Secretary will render such assistance as is required for the conduct of the arbitration, including arranging for facilities, suitable accommodation for sittings of the Tribunal, secretarial assistance or interpretation of these rules.

10.2 Any additional expenses incurred or to be incurred for any such arrangements shall be borne by the parties.

Rule 11- Appointment of Tribunal

11.1 The disputes shall be decided by a Sole Arbitrator when the total claim of dispute is Rs. 3 Crores or less.

11.2 In all cases of disputes claimed for more than Rs. 3 Crores, the tribunal shall consist of odd number of Arbitrators to be nominated by the parties. The Presiding Arbitrator shall be appointed by the Arbitrators nominated by the parties from amongst the panel maintained by SAROD-PORTS. For deciding the Presiding Arbitrator, a draw of lots can be carried out from amongst the names suggested by the Arbitrators nominated by the Parties, the eligibility criteria for empanelment of Arbitrators will be decided by the Governing Body.

11.3 If a Sole Arbitrator is to be appointed, the Governing Body will appoint the Arbitrator within 21 days from the date the Respondent's Statement of Defense and Counterclaim (if any) is filed or falls due, whichever is earlier. The Governing Body will appoint the Arbitrator from the panel of Arbitrators by draw of lots,

11.4 An Arbitrator/Presiding Arbitrator to be appointed under these Rules shall be a person on the SAROD-PORTS Arbitration Panel as at the date of the appointment,

11.5 In the event of any party failing to appoint Arbitrator within 30 days of receipt of the notice of Arbitration, the Governing Body shall appoint the Arbitrator or Presiding Arbitrator as the case may be by a draw of lots.

Rule 12- Multiparty appointment of the Tribunal

12.1 If there are more than 2 parties in the arbitration, the parties shall agree on the procedure for appointing the Tribunal within 21 days of the receipt of the Notice of Arbitration.

12.2 If the parties are unable to do so, upon the lapse of the 21-day time period mentioned herein, the Tribunal shall be appointed by the Governing Body as soon as practicable.

Rule 13-Appointment of Substitute Arbitrator

In the event of the death or resignation of any of the arbitrators, a substitute arbitrator must be appointed by the same procedure as in Rule 11 by which the arbitrator concerned was appointed, failing which, the Governing Body will make the appointment.

Rule 14 - Independence and Impartiality of the Tribunal

14.1 The Tribunal conducting arbitration under these Rules shall be and remain at all times independent and impartial and shall not act as advocate for any party.

14.2 A prospective arbitrator shall disclose to those who approach him in connection with his possible appointment, any circumstances likely to give rise to justifiable doubts as to his impartiality or independence.

14.3 An arbitrator, once nominated or appointed, shall disclose any such circumstance referred to in Rule 14.2 to the Secretary and/ or to all parties.

Rule 15 - Code of Ethics for Arbitrators

An Arbitrator is a fountain of justice and emblem of equity, fairness and good conscience. Therefore he/she is expected to exhibit a noble conduct. The code of conduct prescribed by the Governing Body has to be adopted.

Appointment

15.1 A prospective arbitrator shall accept an appointment only if he is fully satisfied that he is able to discharge his duties without bias, he has an adequate knowledge of the language of the arbitration, and he is able to give to the arbitration the time and attention which the parties are reasonably entitled to expect,

15.2 In this code, the masculine includes the feminine.

Disclosure

15.3 A prospective arbitrator shall disclose all facts or circumstances that may give rise to justifiable doubts as to his impartiality or independence, such duty to continue throughout the arbitral proceedings with regard to new facts and circumstances, **in terms of the arbitration and conciliation Act 1996 as amended from time to time.**

15.4 A prospective arbitrator shall disclose to the Secretary and any party who approaches him for a possible appointment:

15.5 Any past or present close personal relationship or business relationship, whether direct or indirect,

with any party to the dispute, or any representative of a party, or any person known to be a potentially important witness in the arbitration;

a) The extent of any prior knowledge he may have of the dispute.

Bias

15.6 The criteria for assessing questions relating to bias are impartiality and independence. Partiality arises when an arbitrator favors one of the parties or where he is prejudiced in relation to the subject matter of the dispute. Dependence arises from relationships between an arbitrator and one of the parties, or with someone closely connected with one of the parties.

15.7 Any close personal relationship or current direct or indirect business relationship between an arbitrator and a party, or any representative of a party, or with a person who is known to be a potentially important witness, will normally give rise to justifiable doubts as to a prospective arbitrator's impartiality or independence. Past business relationships will only give rise to justifiable doubts if they are of such magnitude or nature as to be likely to affect a prospective arbitrator's judgment. He should decline to accept an appointment in such circumstances unless the parties agree in writing that he may proceed.

Communications

15.8 Before accepting an appointment, an arbitrator may only enquire as to the general nature of the dispute, the names of the parties and the expected time period required for the arbitration.

15.9 No arbitrator shall **Communicate** with any of the parties or their Counsel until after the Secretary gives notice of the formation of the Tribunal to the parties.

15.10 Throughout the arbitral proceedings, an arbitrator shall avoid any unilateral communications regarding the case with any party, or its representatives.

Fees

15.11 In accepting an appointment, an arbitrator agrees to the remuneration as prescribed in the rules of SAROD-PORTS, and he shall make no unilateral arrangements with any of the parties or their Counsel for any additional fees or expenses without the agreement of all the parties and the consent of the Secretary of SAROD-PORTS.

Conduct

15.12 Once the arbitration proceedings commence, the arbitrator shall acquaint **himself** with all the facts and arguments presented and all discussions relative to the proceedings so that he may properly understand the dispute.

Confidentiality

15.13 The arbitration proceedings shall remain confidential. An arbitrator is in a relationship of

trust to the parties and should not, at any time, use confidential information acquired during the course of the proceedings to gain personal advantage or advantage for others, or to affect adversely the interest of another.

15.14 This Code is not intended to provide grounds for the setting aside of any award.

Rule 16- Challenge of Arbitrators

16.1 An arbitrator may be challenged if there are circumstances that give rise to justifiable doubts as to his impartiality or independence and also if he or she has committed any misconduct

16.2 An arbitrator may also be challenged if he does not possess the qualifications required by the agreement of the parties,

16.3 A party may challenge an arbitrator appointed on its nomination or with its agreement only for reasons of which it becomes aware after the appointment has been made.

16.4 A party who intends to challenge an arbitrator shall file with the Secretary and serve on the other party or all other parties, whichever is applicable, a Notice of Challenge.

16.5 The Notice of challenge must be filed and served within 14 days from the appointment of the arbitrator or within 14 days after the circumstances mentioned in Rule 15.1 became known to that party.

16.6 The Notice of Challenge must state the reasons for the challenge.

16.7 The arbitration shall be suspended until the challenge is resolved or decided upon.

16.8 When an arbitrator has been challenged by one party, the other party may agree to the challenge. The arbitrator may also, after the challenge, withdraw from his office. However, it is not implied in either case that there has been an acceptance of the validity of the grounds for the challenge. In both cases, the procedure provided in Rule 11 read with Rule 13, shall be used for the appointment of a substitute arbitrator.

Rule 17 - Decision on Challenge

17.1 If the other party does not agree to the challenge and the arbitrator does not withdraw, the decision on the challenge will be made by the Governing Body.

17.2 If the Governing Body sustains the challenge, a substitute arbitrator shall be appointed or chosen pursuant to the procedure applicable to the appointment of an arbitrator as provided in Rule 11 read with Rule 13. If the Governing Body dismisses the challenge, the arbitrator shall continue with the arbitration.

Rule 18 - Removal of the Tribunal

18.1 The Governing Body may on the application of a party remove an arbitrator:

- a) Who is physically or mentally incapable of conducting the proceedings or where there are justifiable doubts as to his ability to do so; or
- b) Who has refused or failed to use all reasonable dispatch in conducting the arbitration or making an award.
- c) Who has continuously absented from attending the proceedings for more than 3 sitting without prior permission of Presiding Arbitrator/Governing Body of SAROD-PORTS.

18.2 The arbitrator(s) concerned is entitled to appear and be heard at the hearing of the application to remove him.

18.3 Upon the removal of the arbitrator, a substitute arbitrator shall be appointed in accordance with Rule 11 read with Rule 13.

18.4 The Governing Body's decision on the application is final and is not subject to appeal or review.

Rule 19 - Re-hearing in the Event of Replacement of the Tribunal

If the sole or presiding Arbitrator is replaced, there shall be a re-hearing. If any other arbitrator is replaced, such re-hearing may take place at the discretion of the Tribunal.

Rule 20 - Jurisdiction of the Tribunal

20.1 The Tribunal shall have the power to rule on its own jurisdiction, including any objection with respect to the existence, termination or validity of the arbitration agreement. For that purpose, an arbitration agreement which forms part of a contract shall be treated as an agreement independent of the other terms of the contract. A decision by the Tribunal that the contract is null and void shall not entail ipso jure the invalidity of the arbitration agreement.

20.2 The plea that the Tribunal does not have jurisdiction shall be raised not later than in the Statement of Defense. A plea that the Tribunal is exceeding the scope of its authority shall be raised promptly after the Tribunal has indicated its intention to decide on the matter alleged to be beyond the scope of its authority. [neither case the Tribunal may nevertheless admit a late plea under this Rule if it considers the delay justified. A party is not precluded from raising such a plea by the fact that he has nominated or participated in the appointment of an arbitrator.

20.3 The Tribunal must rule on an objection that it lacks jurisdiction as a preliminary question upon the objection being raised. It may rule on an objection that it exceeds the scope of its authority either as a preliminary question or in an award on the merits, as it deems just and convenient.

20.4 In addition to the jurisdiction to exercise the powers defined elsewhere in these Rules, the Tribunal shall have jurisdiction to determine any question of law arising in the arbitration; proceed with the arbitration notwithstanding the failure or refusal of any party to comply with these Rules or with the Tribunal's orders or directions, or to attend any meeting or hearing, but only after giving that party written notice that it intends to do so; and to receive and take into account such written

or oral evidence as it shall determine to be relevant, whether or not strictly admissible in law.

Rule 21 - Fees of SAROD-PORTS and Arbitral Tribunal

Fee Schedule

Registration Fee (Non - Refundable): Rs.10,000/- or any amount fixed by Governing Body from time to time. The Schedule of Fees and allied expenditure shall be decided by Governing Body.

Rule 22- Transmission of File to the Tribunal

22.1 The Secretary shall, as soon as practicable transmit to the Tribunal, a file containing the Notice of Arbitration, the Response and all case statements.

22.2 The Tribunal shall as soon as practicable, after consultation with the parties, issue such orders and/or directions as are necessary for the conduct of the arbitration to conclusion, including a timetable for steps to be taken in the arbitration and for the hearing of the arbitration.

Rule 23- Judicial Seat of Arbitration

23.1 Unless otherwise agreed by the parties, the judicial seat of arbitration shall be New Delhi.

23.2 Notwithstanding Rule 22.1 and 22.2, the Tribunal may, unless otherwise agreed by the parties, hold hearings and meetings anywhere convenient, subject to the provisions of Rule 28.2.

Rule 24 - Language of Arbitration

The language of arbitrators shall be English. In case of material existing are in any other language, other than English the same has to be translated to English language.

Rule 25 - Conduct of the Proceedings

The Tribunal shall have the widest discretion allowed by the Act to ensure the just, expeditious, economical and final determination of the dispute. The proceedings shall be conducted from 10 AM to 5 PM with a recess of one hour.

Rule 26 - Communication between Parties and the Tribunal

26.1 Where the Tribunal sends any written communication to one party, it shall send a copy to the other party or parties as the case may be.

26.2 Where a party sends any written communication (including Statements, expert reports or evidentiary documents) to the Tribunal, the same shall be copied to the other party or all other parties, whichever is applicable, and show to the Tribunal that the same has been so copied.

26.3 The address of the parties for the purpose of all communications during the proceedings shall be those set out in the Notice of Arbitration, or as either party may at any time notify the Tribunal and the other party or parties, whichever is applicable.

26.4 A copy of correspondence between the parties and the Tribunal shall be sent to the Secretary.

Rule 27 – Party Representatives

Any party may be represented by legal practitioners or any other representatives, subject to such proof of authority as the Tribunal may require. The names and addresses of such representatives must be notified to the other party or parties. In case one party is represented by non-legal person, another party will also be represented by non-legal person so as to maintain natural justice.

Rule 28 - Hearings

28.1 Unless the parties have agreed on documents- only arbitration the tribunal shall hold a hearing for the presentation of evidence by witnesses, including expert witnesses, or for oral submissions.

28.2 The Tribunal shall fix the date, time and place of any meetings and hearings in the arbitrations on the first hearing, and complete time table pertaining to all the activities of the Arbitration e.g. submission of statement of claim, reply, counter claim, reply therein, admission and denial of documents, visit/inspection of site if any. The tribunal shall stick to the timetable withor without any deviations unless there are unavoidable circumstances warranting such deviationwhich will be with the prior permission of the tribunal.

28.3 Prior to the hearing, the Tribunal may provide the Parties with matters or questions to whichit wishes them to give special consideration.

28.4 In the event that a party to the proceedings without sufficient cause, fails to appear at a hearing of which the notice has been given, the Tribunal may proceed with the arbitration and may make the Award after the party present has submitted evidence to prove its case.

28.5 All meetings and hearing shall be in private unless the parties agree otherwise.

Rule 29 - Documents Only Arbitration

29.1 The Disputes may be decided without an oral hearing if it is so agreed by the parties.

29.2.1 Where the parties agree to dispense with oral hearing, the Tribunal must be promptly informed by either of the parties, as soon as is practicable. The Tribunal must also be promptly informed it, at a later stage, the parties or either of them intends to apply for an oral hearing.

29.2.2 Parties may seek discovery of documents if they are not satisfied with existence of documents annexed with statement of claim, reply and counter claim by giving self-contained request to the Tribunal justifying the necessity for such documents. Decision of tribunal shall be final and binding upon the parties.

Rule 30 - Witnesses

30.1 The Tribunal may require each party to give notice of the names and designations of the witnesses it intends to call and reasons for legal necessity of such witness.

30.2 No party shall call any expert witness without the leave of the Tribunal.

30.3 Any witness who gives evidence may be questioned by each party or its representative subject to any rulings made by the Tribunal,

30.4 A Witness may be required by the Tribunal to testify under oath or affirmation

30.5 Subject to such order or direction which the Tribunal may make, the testimony of witness may be presented in written form, either as signed statements or by duly sworn or affirmed affidavits,

30.6 Any party may require a witness to attend an oral examination at a hearing. If the witness fails to attend, the Tribunal may place such weight on the written testimony as it thinks fit, or may exclude it altogether,

30.7 The Tribunal shall determine the admissibility, relevance, materiality and weight of the evidence given by any witness.

Rule 31- Experts Appointed by the Tribunal

31.1 Unless otherwise agreed by the parties, the Tribunal may:

- a) appoint one or more experts to report the Tribunal on specific issues;
- b) require a party to give any such expert any relevant information or to produce, or to provide access to, any relevant documents, goods or property for inspection by the expert.

31.2 Unless otherwise agreed by the parties, if a party so requests or if the Tribunal deem it fit, the expert shall, after delivery of his written or oral report, participate in an oral hearing, at which the parties may question him and present expert witnesses in order to testify on the points at issue.

31.3 Rule 30.2 shall not apply to an assessor appointed by agreement of the parties, or to an expert appointed by the Tribunal to advise solely in relation to procedural matters.

Rule 32 - Rules applicable to substance of dispute - (1) Where the place of arbitration is situated in India

32.1 In an arbitration, the arbitral tribunal shall decide the dispute submitted to arbitration in accordance with the substantive law for the time being in force in India;

Rule 33 - Closure of Hearing

33.1 The Tribunal may inquire of the parties if they have any further proof to offer or witnesses to

be heard or submission to make and, if there are none, declare the hearing closed.

33.2 The Tribunal may also, in view of exceptional circumstance, reopen the hearings at any time before the award is made.

Rule 34 - Additional Powers of the Tribunal

34.1 In addition to the powers conferred by the Act, the Tribunal shall also have the power to: -

- a) Allow any party, upon such terms of as to costs and otherwise) as it shall determine, to amend claims or counterclaims;
- b) Extend or abbreviate any time limits provided by these Rules;
- c) Conduct such enquires as may appear to the Tribunal to be necessary or expedient;
- d) Order the parties to make any property or thing available for inspection
- e) Order any parties to produce to the tribunal, and to other parties for inspection, and to supply copies of any documents, or classes of documents in their possession, custody, or power which the Tribunal determines to relevant.
- f) Make orders or give directions to any party for interrogatories;
- g) Make orders or give directions to any party for an interim injunction or any other interim measure;
- h) Make such orders or give such directions as it deems fit in so far as they are not inconsistent with the Act or any statutory re-enactment thereof or such law which is applicable or these Rules.

34.2 If the parties so agree, the Tribunal shall also have the power to add other parties (with their consent) to be joined in the arbitration and make a single Final Award determining all disputes between them.

Rule 35- Deposits to Costs and Expenses

35.1 The Tribunal's fees and SAROD-PORTS administration fees shall be ascertained in accordance with the Schedule of Fees in Force at the time of commencement of the arbitration.

35.2 The Claimant shall deposit with the SAROD-PORTS half of the fees payable at the time of filing of the Statement of Case. The Respondent shall deposit with the SAROD-PORTS one-half of the fees payable at the time of filing the Statement of Respondent's Defense and Counterclaim(if any). The balance of fees payable shall be paid 60 days before the date of the final hearing or on such other date that the Secretary may direct.

35.3 Where the amount of the claim or the counterclaim is not quantifiable at the time payment is due, the Secretary will make a provisional estimate. The fees will be adjusted in the light of such information as may subsequently become available. If the arbitration is settled or disposed of without a hearing, the amount of the Tribunal's fees and SAROD-PORTS administration fees shall be finally determined by the Secretary who will have regard to all the circumstances of the case, including the stage of proceedings at which the arbitration is settled or otherwise disposed of

35.4 The Secretary may from time to time direct parties to make one or more deposit(s) towards any further expenses incurred or to be incurred on behalf of or for the benefit of the parties.

35.5 All deposit(s) shall be made to and held by the SAROD-PORTS. Any interest which may accrue on such deposit(s) shall be retained by the SAROD-PORTS.

35.6 If a party fails to make the payments or deposits required or directed, the Tribunal may refuse to hear the claims or counterclaims, whichever is applicable, by the non-complying party, although it may proceed to determine claims or counterclaims by any party who has complied with orders

35.7 The parties shall remain jointly and severally liable to the SAROD-PORTS for payment of all such fees and expenses until they have been paid in full even if the arbitration is abandoned, suspended or concluded, by agreement or otherwise, before the final Award is made.

Rule 36 - Decision Making by the Tribunal

36.1 Where a Tribunal has been appointed, any direction, order, decision or award of the Tribunal must be made by the whole Tribunal or a majority. If an arbitrator refuses or fails to sign the Award, the signatures of the majority shall be sufficient, provided that the reason for the omitted signature is stated.

36.2 If there is no unanimity, the same shall be made by the majority arbitrators as well as by the dissenting arbitrator alone as if acting as a sole arbitrator.

36.3 However, in case of a three-member Tribunal the presiding arbitrators may after consulting the other arbitrators, make procedural rulings alone.

Rule 37 - The Award

37.1 It will be mandatory for the parties to submit written synopsis of their arguments respectively which will form part of the arbitral proceedings.

37.2 The Tribunal shall assemble at the assigned place in SAROD-PORTS and shall exercise utmost secrecy and confidentiality in writing the award,

37.3 Unless the Secretary extends the time or the parties agree otherwise, the Tribunal shall make its Award in writing within 30 days from the date on which the hearings are closed and shall state the reasons upon which its award is based. The award shall contain the date and shall be signed by the arbitrator or arbitrators.

37.4 The Tribunal may make interim awards or separate awards on different issues at different times.

37.5 All Awards must be submitted by the Tribunal to the Secretary and they shall be issued through the Secretary.

37.6 The Tribunal must deliver to the Secretary number of originals of the award sufficient for the parties and for filing with the Secretary.

37.7 The Secretary shall release the award to the parties only upon receipt of sufficient deposits to cover the fees and expenses due to the Tribunal and to the SAROD-PORTS.

37.8 By agreeing to have arbitration under these Rules, the parties undertake to carry out the award without delay.

37.9 Stamp duty on award shall be payable by the party in whose favor the award has been pronounced.

Rule 38- Additional Award

38.1 Within 30 days after the receipt of the award, either party, with notice to the Secretary and the other party may request the Tribunal to make an additional award as to claims presented in the arbitral proceedings but omitted from the award.

38.2 If the Tribunal considers the request for an additional award to be justified and considers that the omission can be rectified without any further hearings or evidence, it shall notify all the parties within 7 days of the receipt of the request, that it will make an additional award, and complete the additional award within 30 days after the receipt of the request.

Rule 39 - Correction of Awards

39.1 Within 30 days of receiving an Award, unless another period of time has been agreed upon by the parties, a party may by notice to the Secretary and the other party request the Tribunal to correct in the Award, any errors in computation, any clerical or typographical errors or any errors of similar nature.

39.2 If the Tribunal considers the request to be justified, it shall make the corrections) within 30 days of receiving the request. Any correction shall be notified in writing to the parties and shall become part of the Award.

39.3 The Tribunal may correct any error of the type referred to in Rule 37.1 on its own initiative within 30 days of the date of the Award.

Rule 40- Settlement

40. If, the parties arrived at amicable settlement of the dispute during the currency proceedings, the parties shall file memo of settlement before the tribunal who shall either issue an order for the

termination of the arbitral proceedings or, if requested by both parties and accepted by the Tribunal, record the settlement in the form of an arbitral award on agreed terms. The Tribunal is not obliged to give reasons for such an award,

40.2 The Parties shall:

- a) Notify the Tribunal and the Secretary immediately if the arbitration is settled or otherwise terminated:
- b) Make provision in any settlement for payment of all the costs of the arbitration and fees and expenses due to the SAROD-PORTS and the Tribunal.

40.3 If the continuation of the arbitral proceedings becomes unnecessary or impossible for any reason not mentioned in Rule 38.1, before the award is made, the Tribunal shall inform the parties of its intention to issue an order for the termination of the proceedings. The Tribunal shall have the power to issue such an order unless party raises justifiable grounds for objection.

40.4 Copies of the order for termination of the arbitral proceedings or of the arbitral award on agreed terms, signed by the Tribunal, shall be communicated by the Tribunal to the parties through the Secretary.

Rule 41- Interest

The Tribunal may award interest on any sum awarded at such rate as applicable in fixed deposits of Sate Bank of India in respect of such periods ending not later than the date of the award as the Tribunal considers just.

Rule 42- Costs

42.1 The Tribunal shall specify in the final award, the costs of the arbitrations and decide which party shall bear them and in what proportion they shall be borne.

42.2 In this Rule, "costs of the arbitration" shall include: '

- a) The fees and expenses of the Tribunal and the administration fees of the SAROD-PORTS as determined by the Secretary in accordance with the Schedule of Fees;
- b) The costs of tribunal appointed experts or of other assistance rendered: and
- c) All expenses which are reasonably incurred by the SAROD-PORTS in connection with the arbitration.

42.3 The Tribunal has power to order in its Award, that all or part of the legal or other costs (such as legal fees and expenses, costs incurred in respect of party appointed experts etc.) of one party shall be paid by the other party.

Rule 43 - Waiver

A party which is aware of non-compliance with these Rules and yet proceeds with the arbitration without promptly stating its objection in writing such non-compliance shall be deemed to have waived its right to object.

Rule 44 - Exclusion of Liability

44.1 The Tribunal, the President, the SAROD-PORTS and any of its officers, employees or agents shall not be liable to any party for any act or omission in connection with any arbitration conducted under these Rules,

44.2 After the Award as been made and the possibilities of corrections and additional Awards have lapsed or been exhausted, neither the Tribunal nor the President shall be under any obligation to make any statement to any person about any matter concerning the arbitration, and no party shall seek to make any arbitrator or the President or the SAROD-PORTS and any of its officers a witness in any legal proceedings arising out of the arbitration.

Rule 45- General Provisions

45.1 In all matters not expressly provided for in these Rules, the President, the Secretary and the Tribunal shall act in the spirit of these Rules and shall make every reasonable effort to ensure the just, expeditious and economical conclusion of the arbitration.

45.2 The Secretary may from time to time issue Practice Notes on the implementation of these Rules.

Rule 46- Amendment to Rules

These Rules may from time to time be amended by the Governing Body of **SAROD-PORTS**.

APPENDIX 22

(See Clause 21.2.2)

PANEL OF CHARTERED ACCOUNTANTS

1. Panel of Chartered Accountants

Pursuant to the provisions of Clause 21.2.2 of the Agreement, the Concessing Authority and the Concessionaire shall prepare a mutually agreed panel of 5 (five) reputable firms of Chartered Accountants having their registered offices in India (the "Panel of Chartered Accountants"). The criteria for preparing such Panel and the procedure to be adopted in this behalf shall be as set forth in this Appendix-22

2. Invitation for empanelment

2.1 The Concessing Authority shall invite offers from all reputed firms of Chartered Accountants who fulfil the following eligibility criteria, namely:

- a) the firm should have conducted statutory audit of the annual accounts of at least one hundred companies registered under the Companies Act, 2013, including any re-enactment or amendment thereof, of which at least ten should have been public sector undertakings;
- b) the firm should have at least 5 (five) practising Chartered Accountants on its rolls, each with a minimum experience of 10 (ten) years in the profession;
- c) the firm or any of its partners should not have been disqualified or black-listed by the Comptroller and Auditor General of India or the Concessing Authority; and
- d) the firm should have an office in the State or in an adjacent State with at least 2 (two) practising Chartered Accountants on its rolls in such State.

2.2 Interested firms meeting the eligibility criteria shall be required to submit a statement of their capability including the biodata of all the practising Chartered Accountants on its rolls. In particular, each firm shall be required to furnish year-wise information relating to the names of all the companies with an annual turnover exceeding Rs. 25,00,00,000 (Rupees Twenty-five crores) whose annual accounts were audited by such firm in any of the preceding 5 (five) Accounting Years.

3. Evaluation and selection

3.1 The information furnished by each firm shall be scrutinised and evaluated by the Concessing Authority and 1 (one) point shall be awarded for each annual audit of the companies specified in Paragraph 2.2 above. (For the avoidance of doubt and by way of illustration, a firm which has conducted audit of the annual accounts of any such company for 5 (five) years shall be awarded 5 (five) points).

3.2 The Concessioneing Authority shall prepare a list of all the eligible firms along with the points scored by each such firm and 5 (five) firms scoring the highest points shall be identified and included in the draft Panel of Chartered Accountants.

4. Consultation with the Concessionaire

The Concessioneing Authority shall convey the aforesaid panel of firms to the Concessionaire for scrutiny and comments, if any. The Concessionaire shall be entitled to scrutinise the relevant records of the Concessioneing Authority to ascertain whether the selection of firms has been undertaken in accordance with the prescribed procedure and it shall send its comments, if any, to the Concessioneing Authority within 15 (fifteen) days of receiving the aforesaid panel.

5. Mutually agreed panel

5.1 The Concessioneing Authority shall, after considering all relevant factors including the comments, if any, of the Concessionaire, finalise and constitute a panel of 5 (five) firms which shall be deemed to be the mutually agreed Panel of Chartered Accountants.

5.2 After completion of every 5 (five) years from the date of preparing the mutually agreed Panel of Chartered Accountants, or such earlier period as may be agreed between the Concessioneing Authority and the Concessionaire, a new panel shall be prepared in accordance with the provisions of this Appendix-22

APPENDIX 23

(See Clause 18.5)

VESTING CERTIFICATE

1. The Chairman of _____ represented by _____ (the “**Concessioneing Authority**”) refers to the Concession Agreement dated _____ (the “**Agreement**”) entered into between the Concessioneing Authority and (the “**Concessioneaire**”) for the Project on design, build, finance, operate and transfer (the “**DBFOT**”) basis.
2. The Concessioneing Authority hereby acknowledges compliance and fulfilment by the Concessioneaire of the obligations set forth in Clause 18.2 of the Agreement on the basis that upon issue of this Vesting Certificate, the Concessioneing Authority shall be deemed to have acquired, and all title and interest of the Concessioneaire in or about the Project shall be deemed to have vested unto the Concessioneing Authority, free from any encumbrances, charges and liens whatsoever.
3. Notwithstanding anything to the contrary contained hereinabove, it shall be a condition of this Vesting Certificate that nothing contained herein shall be construed or interpreted as waiving the obligation of the Concessioneaire to rectify and remedy any defect or deficiency in any of the obligations set forth in Clause 18.2 and/or relieving the Concessioneaire in any manner of the same.

AGREED, ACCEPTED AND For and on behalf of Concessioneaire by:

Signature
Name
Designation
Address

AGREED, ACCEPTED AND For and on behalf of Concessioneing Authority by:

Signature

Name
Designation
Address

In presence of

A)

B)

APPENDIX 24

VGF GUIDELINES

Guidelines for Financial Support to Public Private Partnerships in Infrastructure

Viability Gap Funding Scheme

1. Introduction

1.1 The Central Government has notified a Scheme for financial support to infrastructure projects that are to be undertaken through Public Private Partnerships (PPPs). A copy of the Scheme is at Annexure-I.

1.2 The procedure to be followed for submission, appraisal and approval of financial support under this Scheme is specified below. The VGF Scheme submission, appraisal and approval process flowchart is placed at Annexure-XI.

2. Institutional Structure

The institutional structure for appraisal and approval of financial support to PPPs is specified at Annexure-II.

3. Applicability

3.1 These guidelines will apply to PPP projects proposed by the Central Ministries, State Governments and Statutory Authorities, as the case may be, which own the underlying assets (see Rule 5.1).

3.2 Proposals to be made under this Scheme shall be considered for providing Viability Gap Funding (VGF), one time or deferred, with the objective of making a PPP project commercially viable (see definition).

3.3 The proposal shall relate to a Public Private Partnership project which is based on a contract or concession agreement between a Government/statutory entity on the one side and a private sector company on the other side, for delivering an infrastructure service on payment of user charges (see definition).

3.4 This Scheme will apply only if the contract/concession is awarded in favour of a private sector company (see definition).

3.5 A private sector company or Concessionaire shall be eligible for VGF only, if it is selected on the basis of open competitive bidding and is responsible for financing, construction, maintenance and operation of the project during the Concession Period (see Rule 3.1).

3.6 The project should provide a service against payment of a pre-determined tariff or usercharges (see Rule 3.1.iii)

4. Appraisal and ‘In Principle’ Approval by Empowered Committee

4.1 The proposal for seeking clearance of the Empowered Committee shall be sent (in six copies, both in hard and soft form) to the PPP Cell of the Department of Economic Affairs in the format specified at Annexure-IV. The proposal should include copies of all project agreements (such as concession agreement, state support agreement, substitution agreement, escrow agreement, O&M agreement and shareholders’ agreement, as applicable) and the Detailed project report/ Feasibility Report with financial model.

4.2 The proposal will be circulated by the PPP Cell to all members of the Empowered Committee for their comments. All comments received within three weeks shall be forwarded by the PPP Cell to the concerned Administrative Ministry, State Government or Statutory Authority, as the case may be, for submitting a written response to each of the comments. In case the project is based on a model concession agreement, the comments will be furnished within two weeks (see Rules 5.2 and 5.4).

4.3 The proposal, along with the detailed project report, concession agreement and supporting agreements/documents, together with the comments of the respective Ministries and the response thereto, will be submitted by the PPP Cell to the Empowered Committee for consideration and ‘in principle’ approval.

4.4 While submitting the proposal to the Empowered Committee, the PPP Cell will indicate whether the proposal conforms to the mandatory requirements of the Scheme. Deficiencies, if any, will be indicated in the note of PPP Cell. Member Departments/NITI Aayog will examine the proposal with a view to ensure that it conforms to the conditions specified in the Scheme.

4.5 The Empowered Committee will either approve the proposal in principle (with or without modifications) or advise the concerned Ministry, State Government or statutory authority, as the case may be, to provide additional documents/clarifications/information or to make necessary changes for further consideration of the Empowered Committee (see Rule 5.3). Empowered Committee will recommend the projects with VGF sought greater than Rs. 200 Crore to the Finance Minister for in principle approval.

4.6 Approval under this Scheme will be for the purposes of this Scheme only. All other statutory, financial or administrative approvals shall be obtained as applicable (see Rule 5.5) from competent authority. For projects owned by the Central Government or its statutory entities, approval of PPPAC shall also be obtained in accordance with the guidelines issued by the Ministry of Finance. However, these approvals may be obtained simultaneously in order to save on time.

4.7 In cases where financial support is available from any other Ministry of the Central Government under an on-going Scheme for assistance to PPPs, the proposal would be sent to such Ministry for consideration. In case the Ministry recommends that the proposal be

considered for additional assistance under this Scheme, the same shall be submitted to the Empowered Committee for consideration (see Rule 5.6).

4.8 Empowered Committee will recommend the projects with VGF sought greater than Rs. 200 Crore to the Finance Minister for final approval.

4.9 Once cleared by the Empowered Committee / Finance Minister (as the case may be), the project would be eligible for financial support under this Scheme.

4.10 It may be noted that prior to making a formal request to the Empowered Committee under the Viability Gap Funding (VGF) Scheme of GoI, the Sponsoring Authority of a Public Private Partnership (PPP) project may if it so desires submit the project concept to the Department of Economic Affairs to ascertain the admissibility of a project under the VGF Scheme based on the mandatory conditions of the Scheme. The proposal in this regard may be submitted to the Department of Economic Affairs in the attached proforma (Annexure-X). Within 7 (seven) working days of receipt of the duly filled proforma the Department of Economic Affairs would indicate to the Project Authority whether the project proposal could be proposed for the consideration of the Empowered Committee. Such a proposal could be made in case a doubt exists regarding the admissibility of the project under the VGF Scheme.

5. Viability Gap Funding (VGF)

5.1 The quantum of financial support (VGF) to be provided under this Scheme shall be in the form of capital grant and operational grant at the stage of project construction and first 5 years after the CoD, as the case may be as given in Rule 4.1 of the Scheme (Annexure-I)

6. Invitation to Bid

6.1 Financial bids shall be invited by the concerned Ministry, State Government or statutory entity, as the case may be, for award of the project within four months of the approval of the Empowered Committee. This period may be extended by the Department of Economic Affairs, as necessary (see Rule 7.1).

6.2 The private sector company shall be selected through a transparent and open competitive bidding process. The criterion for bidding shall be the amount of VGF required by a private sector company where all other parameters are comparable (see Rule 6).

7. Final Approval by Empowered Committee

7.1 Within three months from the date of award, or such extended period as may be permitted, the Lead Financial Institution shall present its appraisal of the project (in six copies, both in hard and soft form) for consideration and approval of the Empowered Committee. The appraisal shall be accompanied by an updated application in the format specified at Annexure-IV along with the

project report and project agreements. The Lead Financial Institution shall verify the contents of the application and convey its recommendation to the Empowered Committee (see Rule 7.2).

7.2 Prior to final approval by the Empowered Committee, the Ministry, State Government or statutory authority, as the case may be, proposing the project, shall certify that the bidding process conforms to the provisions of this Scheme and that all the conditions specified in the Scheme/in principle approval of the EC have been complied with(see Rule 6.2).

7.3 The procedure specified in para 4 above shall be followed mutatis mutandis for examination and approval of the appraisal report of the Lead Financial Institution.

7.4 In case, the Government or statutory entity proceeds with bidding process with substantial alterations to the bidding documents and provisions approved by the Empowered Committee without taking prior approval of the Empowered Committee, the Empowered Committee may decline the final approval to the project.

8. Disbursement of VGF

8.1 Prior to disbursement, the Empowered Committee, the Lead Financial Institution and the private sector company (sponsoring authority would be the confirming party) shall enter into a Tripartite Agreement in such format as may be prescribed by the Empowered Committee from time to time (see Rule 8.3).

8.2 For the purposes of this Scheme, a Lead Financial Institution shall be the Financial Institution (FI) that is funding the project, and in case of a consortium of FIs, the FI designated as such by the consortium shall be the Lead Financial Institution (see definition).

8.3 Capital Grant VGF shall be disbursed only after the private sector company has subscribed and expended the equity contribution required for the project and will be released in proportion to debt disbursements by Lead Financial Institution.

However, in case of sub-scheme 2, Operational grant shall be disbursed annually for the first five years post achieving COD based on audited annual accounts and shall be subject to the lower of the annual O&M cost quoted by the concessionaire at the time of the bid and actual O&M cost incurred. (see definition of O&M cost). (see Rule 8.1).

8.4 In case, a project under sub-scheme 1 & 2 is funded completely by equity, Capital Grant VGF shall be disbursed after the equity contribution is expended by the concessionaire in accordance with the project milestones achieved (lower of physical or financial progress).

8.5 VGF shall be released to the escrow account only after the recommendations of the Sponsoring Authority (see Rule 8.2).

9. Monitoring

The Lead Financial Institution shall be responsible for regular monitoring and periodic evaluation of project compliance with agreed milestones and performance levels, particularly for the purposes of disbursing the VGF. It shall also send a quarterly progress report to the Empowered Committee (see Rule 7.3).

10. Recovery of VGF in case of terminated projects

If the project is terminated at any point of time during the concession period, the VGF may not be recovered from the Authority if it is re-bid and continued as PPP. However, if the project is terminated at any point of time during the concession period and not continued as PPP project, then 90% of Capital Grant disbursed under this scheme may be payable by the Authority to the Ministry of Finance. The timeline for re-bidding and continuing such projects as PPP by the Project Authority would be 1 (one) year from date of termination of the project, after which the proceedings for recovery of VGF will be initiated. However, EC may extend this timeline further on a case to case basis.

11. Amendment to the Scheme

Any amendment to the Scheme which does not result in any material alteration to the Scheme may be done on the recommendations of EC with the approval of the Finance Minister.

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11. Amendment to the Scheme

Any amendment to the Scheme which does not result in any material alteration to the Scheme may be done on the recommendations of EC with the approval of the Finance Minister.

Annexure-I

Scheme for Financial Support to Public Private Partnerships in Infrastructure

- A. Whereas the Government of India recognises that there is significant deficit in the availability of physical infrastructure across different sectors and that this is hindering economic development;
- B. Whereas the development of infrastructure requires large investments that cannot be undertaken out of public financing alone, and that in order to attract private capital as well as the techno-managerial efficiencies associated with it, the Government is committed to promoting Public Private Partnerships (PPPs) in infrastructure development; and
- C. Whereas the Government of India recognises that infrastructure projects may not always be financially viable because of long gestation periods and limited financial returns, and that financial viability of such projects can be improved through Government support;
- D. Now, therefore, the Government of India has decided to put into effect the following Scheme for providing financial support to bridge the viability gap of infrastructure projects undertaken through Public Private Partnerships.
- E. It is also imperative to promote Public Private Partnerships in the social sector to bring in private sector investments and efficiencies. Typically, social sector projects need high capital investments with low financial returns. Therefore, Government of India (GoI) has decided to enhance the VGF support for social sectors as defined in Rule 4.1(i).

1. Short Title and Extent

- 1. This Scheme will be called the Scheme for Financial Support to Public Private Partnerships (PPPs) in Infrastructure. It will be a Central Sector Scheme to be administered by the Ministry of Finance. Suitable budgetary provisions will be made in the Annual Plans on a year to year basis.
- 2. The Scheme shall come into force with immediate effect.

2. Definitions

In this Scheme, unless the context otherwise requires:

Empowered Committee means a Committee under the Chairmanship of Secretary (Economic Affairs), with CEO (NITI Aayog), Secretary (Expenditure), Secretary of the line ministry dealing with the subject as members and Joint Secretary, DEA as the Member Secretary as given in Annexure II.

Lead Financial Institution means the financial institution (FI) that is funding the PPP project, and in case there is a consortium of FIs, the FI designated as such by the consortium.

Private Sector Company means a company which is not a Government Company” as defined under section 2(45) of the Companies Act, 2013.

Project Term or Concession Period means the duration of the contract or concession agreement for the PPP project.

Public Private Partnership (PPP) Project means a project based on a contract or concession agreement between a Government or statutory entity on the one side and a private sector company on the other side for delivering an infrastructure service on payment of user charges.

Operation and Maintenance Cost means the lower of the annual Operation and Maintenance cost of the PPP project: a) as quoted by the preferred bidder; and (b) as actually incurred during operations by the Concessionaire certified by the Statutory Auditor. Operation and Maintenance cost of the PPP project generally includes salary and consumables. However, EC may exclude/include any components of Operation and Maintenance cost as deemed fit depending on the project structuring.

Total Project Cost means the lower of the total capital cost of the PPP Project: (a) as estimated by the government/statutory entity that owns the project; (b) as sanctioned by the Lead Financial Institution; and (c) as actually expended; but does not in any case include the cost of land incurred by the government/statutory entity.

Viability Gap Funding or Grant means a grant one-time or deferred, provided under this Scheme with the objective of making a project commercially viable.

3. Eligibility

1. In order to be eligible for funding under this Scheme, a PPP project shall meet the following criteria:

- i. The project shall be implemented i.e. developed, financed, constructed, maintained and operated for the Project Term by a Private Sector Company to be selected by the Government or a statutory entity through a process of open competitive bidding; provided that in case of railway projects that are not amenable to operation by a Private Sector Company, the Empowered Committee may relax this eligibility criterion.
- ii. The PPP Project should be from one of the sectors as given in Annexure III.

Provided that the Empowered Committee may, with approval of the Finance Minister, add or delete sectors/sub-sectors from the aforesaid list.

- iii. Projects availing of VGF under this scheme shall provide a service against payment of a pre-determined tariff or user charge.
- iv. The concerned Government/statutory entity should certify, with reasons:
 - a. That the tariff/user charge cannot be increased to eliminate or reduce the viability gap of the PPP;
 - b. That the project term cannot be increased for reducing the viability gap; and
 - c. That the capital costs are reasonable and based on the standards and specifications normally applicable to such projects and that the capital costs cannot be further restricted for reducing the viability gap.

4. Government Support

1. The total Viability Gap Funding under this Scheme shall be as follows:

i For Social Sector Projects:

- a. **Sub-scheme 1:** This includes Water Supply, Solid Waste Management, Waste Water Treatment, Health and Education etc. The amount of VGF under this scheme shall be equivalent to the lowest bid for capital grant, subject to maximum of 30% (Thirty percent) of the Total Project Cost. In case the sponsoring Central Ministry/State Government/Statutory Entity

proposes to provide any assistance over and above the said VGF out of its budget, it shall be restricted to a further 30 percent of the total project cost. The projects eligible under this category should have at least 100% Operational Cost recovery.

- b. **Sub-scheme 2:** This includes only demonstration/pilot projects in Health and Education sectors. The amount of VGF under this scheme shall be equivalent to the lowest bid which will be considered as summation of capital grant and NPV of O&M cost for first five years after COD, but subject to a maximum of 40% of the Total Project Cost as capital grant and 25% of NPV of O&M Cost for the first 5 years after COD as operational grant. In case the Sponsoring Central Ministry/State Government/Statutory Entity proposes to provide any assistance over and above the said VGF out of its budget, it shall be restricted to a further up to 40% of the Total Project Cost as capital grant and up to 25% of NPV of O&M Cost for the first 5 years after COD as operational grant. The projects eligible under this category should have at least 50% Operational Cost recovery.

- ii **For all other eligible sector projects:** The amount of VGF shall be equivalent to the lowest bid for capital grant, subject to maximum of 20% of the Total Project Cost. In case the sponsoring Central Ministry/State Government/Statutory Entity proposes to provide any assistance over and above the said VGF out of its budget, it shall be restricted to a further 20% of the total project cost.

2. Viability Gap Funding under this Scheme except Sub-scheme 2 will normally be in the form of a capital grant at the stage of project construction. Proposals for any other form of assistance may be considered by the Empowered Committee and sanctioned with the approval of the Finance Minister on a case-by-case basis.

3. Viability Gap Funding up to Rs. 200 crores (Rupees two hundred crore) for each project may be sanctioned by the Empowered Committee, subject to the budgetary ceilings indicated by the Finance Ministry. Proposals of VGF exceeding Rs. 200 crores (Rupees two hundred crore) may be sanctioned by the Empowered Committee with the approval of the Finance Minister.
4. Unless otherwise directed by the Ministry of Finance, the Empowered Committee may approve project proposals with a cumulative capital outlay equivalent to ten times the budget provisions.
5. If need arises, the funding may be provided based on an appropriate formula, to be determined by the Empowered Committee, that balances need across sectors and locations in a manner that would make broad base the sectoral and locational coverage and avoid pre-empting of funds by a few large projects.

5. Approval of Project Proposals

1. Project proposals may be proposed by a Government or statutory entity which owns the underlying assets. The proposals shall include the requisite information necessary for satisfying the eligibility criteria specified in paragraph 3 above.
2. Projects based on standardised/model documents duly approved by the respective Government would be preferred. Standalone documents maybe subjected to detailed scrutiny by the Empowered Committee.
3. The Empowered Committee will consider the project proposals for Viability Gap Funding and may seek the required details for satisfying the eligibility criteria.
4. Within 30 days of receipt of a project proposal, duly completed as aforesaid, the Empowered Committee shall inform the sponsoring Government/statutory entity whether the project is eligible for financial assistance under this Scheme. In case the project is based on standalone documents (not being duly approved model/standard documents), the approval process may require an additional 60 (sixty) days.
5. Notwithstanding the approvals granted under this Scheme, projects promoted by the Central Government or its statutory entities shall be approved and implemented in accordance with the procedures specified from time to time.

6. In cases where Viability Gap Funding is budgeted under any on-going Scheme of the Central Government, the inter-se allocation between such on-going Scheme and this Scheme shall be determined by the Empowered Committee.

6. Procurement Process for PPP Projects

1. The Private Sector Company shall be selected through a transparent and open competitive bidding process. The criterion for bidding shall be the amount of Viability Gap Funding required by a Private Sector Company for implementing the project where all other parameters are comparable.
2. The Government or statutory entity proposing the project shall certify that the bidding process conforms to the provisions of this Scheme and convey the same to the Empowered Committee prior to disbursement of the Grant.
3. In case, the Government or statutory entity proceeds with bidding process with substantial alterations to the bidding documents and provisions approved by the Empowered Committee without taking prior approval of the Empowered Committee, the Empowered Committee may decline the final approval to the project.

7. Appraisal and Monitoring by Lead Financial Institution ¹

1. Within four months from the date on which eligibility of the project is conveyed by the Empowered Committee to the concerned Government/statutory entity, the PPP project shall be awarded in accordance with paragraph 6 above; provided that upon application made to it by the concerned Government/statutory entity, the Empowered Committee may extend this period by not more than two months at a time.
2. The Lead Financial Institution shall, within three months from the date of bid award, present its appraisal of the project for the consideration and approval of the Empowered Committee; provided that upon application made to it by the concerned

¹ In case of Sub Scheme 1 and 2 where projects are entirely funded by Equity, the role and responsibilities of LFI shall be undertaken by the Project Authority.

Government/statutory entity, the Empowered Committee may extend this period by not more than one month at a time.

3. The Lead Financial Institution shall be responsible for regular monitoring and periodic evaluation of project compliance with agreed milestones and performance levels, particularly for the purpose of disbursement of Viability Gap Funding. It shall send quarterly progress reports to the Empowered Committee.

8. Disbursement of Grant

1. A Capital Grant under this Scheme shall be disbursed only after the Private Sector Company has subscribed and expended all the equity contribution required for the project and will be released in proportion to debt disbursements by Lead Financial Institution. However, in case of sub-scheme 2, Operational grant shall be disbursed annually for the first five years post achieving COD based on audited annual accounts and shall be subject to the lower of the annual O&M cost quoted by the concessionaire at the time of the bid and actual O&M cost incurred.

In case, a project under Sub-scheme 1 & 2 is funded completely by equity, Capital Grant VGF shall be disbursed after the equity contribution is expended by the concessionaire and in accordance with the project milestones achieved (lower of physical or financial progress).

2. The Empowered Committee will release the Grant to the escrow account only after the recommendations of the Sponsoring Authority.
3. The Empowered Committee, the Lead Financial Institution and the Private Sector Company shall enter into a Tripartite Agreement (as prescribed by the Empowered Committee from time to time) for the purposes of this Scheme as given at Annexure-V².

9. Recovery of VGF in case of terminated projects

If the project is terminated at any point of time during the concession period, the VGF may not be recovered from the Authority if it is re-bid and continued as PPP. However, if

² In case of Sub Scheme 1 and 2, if the project is entirely funded through equity, then the Tripartite Agreement shall be entered into by the Empowered Committee, the Project Sponsoring Authority (Owner of the asset) and the Private Sector Company.

the project is terminated at any point of time during the concession period and not continued as PPP project, then 90% of Capital Grant disbursed under this scheme may be payable by the Authority to the Ministry of Finance.

10. Guidelines

The Department of Economic Affairs, Ministry of Finance will issue appropriate guidelines for implementation of the Scheme from time to time.

Annexure V

Tripartite Agreement¹²

This Tripartite Agreement is made at New Delhi on this [... ..] day of
[... ..], [20 ...]

BETWEEN

1. [... ..] acting through [Shri Department of Ministry of] Government of India, New Delhi (hereinafter referred to as “Empowered Committee”),
2. [... ..], acting for itself and for the Lenders listed in Schedule as Lender, (hereinafter referred to as the “Lead Institution”) and having its registered office at [... ..] and its principal administrative offices at [... ..]

AND

3. [... .. LIMITED], a company incorporated and existing under the Companies Act, 1956 /2013 and having its registered office at [... ..], acting through its Director [Shri] duly authorised by the resolution passed at the meeting of its Board of Directors held on [... ..] (hereinafter referred to as the “Concessionaire”).

(The expressions “Empowered Committee”, the “Lead Institution” and the Concessionaire shall include their respective successors, and are hereinafter collectively referred to as the “Parties” and individually as “Party”)

AND WITH

[... .. a statutory body constituted under the provisions of the Act, / a government company within the meaning of the Companies Act, 1956/2013/the State of through its]* (the “Owner”) as confirming Party.

* Delete whichever is inapplicable

WHEREAS

A. The Owner had pursuant to the Notice Inviting Prospectus No. Dated (the “Tender Notice”) laid down and prescribed the technical and commercial terms and conditions and invited bids for construction, operation and maintenance of [Name of the Project] (the “Project”) on BOT basis.

¹In case of Sub Scheme 1 and 2 where projects are entirely funded by Equity, the role and responsibilities of LFI shall be undertaken by the Project Authority.

² In case of Sub Scheme 1 and 2, if the project is entirely funded through equity, then the Tripartite Agreement shall be entered into by the Empowered Committee, the Project Sponsoring Authority (Owner of the asset) and the Private Sector Company.

B. After evaluation of the bids so received the Owner had accepted the bid of the Consortium comprising of [... ..], [... ..] and [... ..] and has consequent thereto entered into the Concession Agreement (as defined hereinafter), a true copy of which is annexed hereto and marked as Annexure 'A'; with the Concessionaire which has been promoted by the Consortium to undertake the Project.

C. The Central Government has notified a Scheme called the "Scheme for Financial Support to Public Private Partnerships in Infrastructure" (the "Scheme") for financial support to infrastructure projects that are to be undertaken through Public Private Partnerships.

D. On an Application made by the Owner ("the Proposal") for the Project to be considered for viability gap funding ("VGF") under the Scheme, the Empowered Committee has agreed to provide to the Concessionaire VGF by way of grant under and in accordance with the Scheme to the extent and in the manner set forth hereinafter.

E. The Scheme requires certain representations by the Owner and entering into of the tripartite agreement setting forth, inter alia, the terms and conditions of VGF grant.

Now therefore the parties hereto hereby agree and this agreement witnesseth as follows:

1. Definitions and Interpretations

1.1 For the purposes of this Agreement, the following terms shall have the meaning hereinafter respectively assigned to them:

1.1.1 "Agreement" means this Tripartite Agreement, and amendments if any thereto made in accordance with the provisions contained herein in this behalf.

1.1.2 "Balance Debt" shall mean the balance principal amount of the debt agreed to be provided by the Lenders to the Concessionaire under the Financing Agreements for financing the Project Cost and which remains to be disbursed by the Lenders to the Concessionaire after the Concessionaire has subscribed and expended the equity contribution required for the Project.

1.1.3 "Concession Agreement" means the Concession Agreement dated [... ..] entered into between the Owner and the Concessionaire, and shall include all Annexures and appendices thereto and any amendments thereto made in accordance with the provisions contained in this behalf therein provided any amendments thereto made hereafter which materially alter any of the terms and conditions thereof shall not be binding on the Empowered Committee and the Central Government unless previously approved by the Empowered Committee.

1.1.4 "Total Project Cost" means the lower of the following total capital cost of the Project:

- a. [Rs. (Rupees)] as estimated by the Owner;
- b. [Rs. (Rupees)] as contained in the Financial Package approved, inter alia, by the Lead Institution; and
- c. the amount as actually expended on the Project as certified by the statutory auditors,

but shall not include the cost of the land comprised in the Project.

1.1.5 "VGF Grant" means the grant payable by the Central Government under and in accordance with the Scheme as set forth in the Guidelines for Financial Support to Public Private Partnerships in Infrastructure

notified by the Finance Ministry on 07.12.2020 vide OM No. 10/3/2018-PPP and as referred to in clause 2.1 of this Agreement.

1.2 The words and expressions beginning with or in capital letters used in this Agreement and not defined herein but defined in the Concession Agreement shall have, unless repugnant to the context, the meaning respectively assigned to them in the Concession Agreement.

1.3 In this Agreement unless the context otherwise requires:

- a. Any reference to a statutory provision shall include such provision as is from time to time modified or re-enacted or consolidated so far as such modification or re-enactment or consolidation applies or is capable of applying to any transactions entered into hereunder;
- b. The words importing singular shall include plural and vice versa, and words denoting natural persons shall include all genders, partnerships, firms, companies, corporations, joint ventures, trusts, associations, organisations or other entities (whether or not having a separate legal entity);
- c. The headings are for convenience of reference only and shall not be used in and shall not affect the construction or interpretation of this Agreement;
- d. Terms beginning with capital letters and defined in this Agreement shall have the meaning ascribed thereto herein;
- e. The words “include” and “including” are to be construed without limitation;
- f. Any reference to a “day” shall mean reference to a calendar day;
- g. Any reference to “month” shall mean reference to a calendar month;
- h. Any reference to any agreement, deed, instrument, licence or document of any description shall be construed as reference to that agreement, deed, instrument, license or other document as amended, varied, supplemented, modified or suspended at the time of such reference provided that this clause shall not operate so as to increase liabilities or obligations of the Empowered Committee hereunder or pursuant hereto in any manner whatsoever;
- i. References to Recitals, clauses, sub-clauses, paragraphs, Annexures or appendices in this Agreement shall, except where the context otherwise requires, be deemed to be references to Recitals, Articles, clauses, sub-clauses, paragraphs, Annexures and appendices of this Agreement;
- j. Any agreement, consent, approval, authorisation, proposal, notice, communication, information or report required under or pursuant to this Agreement from or by any Party shall be valid and effectual only if it is in writing under the hands of duly authorised representative of such Party, in this behalf and not otherwise; and
- k. Any reference to any period commencing “from” a specified day or date and “till” or “until” a specified day or date shall include both such days or dates.

1.4 Priority of Agreements:

In the event of any conflict between this Agreement and

- i. the Concession Agreement; or
- ii. any of the Project Agreements,

the provisions of this Agreement shall prevail.

2. Grant

2.1 Relying on the representations made by the Concessionaire and the Owner as set forth hereinafter and believing them to be true, the Empowered Committee hereby grants to the Concessionaire and the Concessionaire hereby accepts from the Empowered Committee the VGF grant in a sum of [Rupees (Rs. crore)] (the "VGF Grant") for the Project under the Scheme subject to and on the terms and conditions set forth in this Agreement and the Scheme. The VGF Grant shall be disbursed to the Concessionaire by Lead Institution for and on behalf of the Empowered Committee in the manner as setout in Clause 2.2.

2.2 The Lead Institution shall disburse the VGF Grant in the manner set forth herein to the Concessionaire for and on behalf of the Empowered Committee in proportion to the disbursements of the Balance Debt, and shall after each such disbursement of VGF Grant to the Concessionaire, notify the Empowered Committee of the same.

2.3 The Lead Institution shall along with the disbursement of the Balance Debt disburse in proportion thereto the VGF Grant to the Concessionaire in the same manner as such Balance Debt and, upon such disbursement, shall be deemed to have been received by the Concessionaire.

2.4 Notwithstanding anything to the contrary contained in this Agreement in the event of

- i. Any suspension of the Concessionaire's rights under the Concession Agreement or termination of the Concession Agreement, or;
- ii. Any suspension of the rights of the Concessionaire under this Agreement or termination of this Agreement; or
- iii. Occurrence of any VGF Default,

The disbursement of the balance of the undisbursed amount of VGF Grant shall be suspended or terminated, as the case may be, in the sole discretion of the Empowered Committee without the Empowered Committee or the Lead Institution being liable to the Concessionaire or the Owner in any manner whatsoever for the same. Such suspension or termination as the case may be, of the undisbursed portion of the VGF Grant shall be deemed to be with mutual agreement of the Parties.

2.5 The Concessionaire and the Lead Institution agree and acknowledge that the VGF is for and shall solely be used to fund such part of the Total Project Cost as is on account of viability gap which necessitated the VGF Grant and for no other purpose whatsoever.

2.6 The Concessionaire and the Lead Institution acknowledge, and the Owner confirms that VGF Grant under this Scheme shall be disbursed only after the Concessionaire subscribes to and has expended the equity contribution required for the Project from the Concessionaire under the Financial Package.

3. Representations and Warranties

3.1 The Confirming Party represents, warrants and confirms to the Empowered Committee and the Lead Institution respectively the following:

- a. The Total Project Cost does not include the cost of the land comprised in the Project incurred by the Owner;

- b. The Concessionaire has been selected through a transparent and open competitive bidding process conforming to the provisions of the Scheme;
- c. The Project shall provide service against payment of predetermined tariff/user charge as set forth in the Concession Agreement;
- d. The pre-determined tariff/user charges payable pursuant to the Concession Agreement to the Concessionaire for provision of services pursuant thereto, cannot be increased to eliminate or reduce the viability gap, which necessitated the application for the VGF Grant for the Project under the Scheme by the Owner;
- e. The Concession Period under the Concession Agreement cannot be increased for reducing the viability gap, which necessitated the application for the VGF Grant under the Scheme;
- f. The Total Project Cost is reasonable and based on the standards and specifications normally applicable to such projects as the Project and the same cannot be restricted for reducing the viability gap, which necessitated application by the Owner for VGF Grant under the Scheme; and
- g. The grants made or which may hereafter be made by the Owner to the Concessionaire for meeting the Total Project Cost or any part thereof shall not exceed in aggregate the provisions as given in Rule 4.1 of the Scheme.

3.2 The Concessionaire represents and warrants to the Empowered Committee and the Lead Institution that:

- a. It is duly organised and validly existing under the laws in India and has full power and authority to execute and perform its obligations under this Agreement and to carry out the transaction hereby contemplated;
- b. It has taken all necessary corporate and other actions under applicable laws to authorise the execution and delivery of this Agreement and to perform its obligations under this Agreement;
- c. This Agreement constitutes its legal, valid and binding obligation, enforceable against it in accordance with the terms hereof, and its obligations under this Agreement will be legally valid, binding and obligations enforceable against it in accordance with its terms;
- d. The execution, delivery and performance of this Agreement will not conflict with or result in a breach or constitute default under or accelerate performance required by any of the terms of Memorandum and Articles of Association of the Concessionaire or any applicable law or any covenant, contract, arrangement or understanding, or any decree or order of any court to which it is a party or by which it or any of its properties or assets is bound or affected;
- e. All information furnished to the Empowered Committee, the Lead Institution and the Owner and as updated on or before the date of this Agreement is true and accurate in all material respect;
- f. There are no actions, suits, proceedings or investigations pending or to its knowledge threatened against it at law or in equity before any court or any other judicial, quasi-judicial or other authority or body, the outcome of which may result in the breach of this Agreement;
- g. It has complied with all Applicable Laws and Applicable Permits in all material respects;
- h. It is not in breach of the Concession Agreement or of any Project Agreements or Financing Agreements; and

i. No representation or warranty contained herein or in the Concession Agreement or any other document furnished by it to the Empowered Committee or the Owner or the Lead Financial Institution contains or will contain any untrue or misleading statement of material facts or omits or will omit to state a material fact necessary to make such representation or warranty not misleading.

3.3 In the event of any occurrence or circumstance coming to the knowledge of the Party making any representation hereunder which renders any of its aforesaid representations or warranties untrue or incorrect at any time during the subsistence of this Agreement, such party shall immediately notify the other parties hereto about the same. Such notification shall not have the effect of remedying any such representation or warranty that has been found to be incorrect or untrue.

4. Project Monitoring

4.1 Lead Institution agrees and undertakes that subject to the provisions of this Agreement, the Lead Institution shall undertake regular monitoring and periodic evaluation of Project compliance with the agreed milestones and performance levels as set forth in the Concession Agreement and it shall, through periodic reports, advise and keep informed the Empowered Committee about the slippages or otherwise in Project compliances with the agreed milestones and performance levels as set forth in the Concession Agreement together with brief description of the causes of slippages or non-compliances, if any, therein. Without prejudice to the generality of the foregoing, the Lead Institution shall as part of its monitoring obligation hereunder undertake the following:

4.1.1 From the date of this Agreement, the Lead Institution shall through its representative, inspect the Project Site on a monthly basis and shall keep a regular inspection log recording progress of the Project; and

4.1.2 The Lead Institution shall send on a quarterly basis progress reports of the Project to the Empowered Committee together with brief description of the causes of slippages or non-compliances, if any, therein.

5. Role of Lead Institution

5.1 The Concessionaire and the Lead Institution acknowledge that the Lead Institution is only acting as trustee for the Empowered Committee in respect of the VGF Grant and has no rights to the VGF Grant in any manner whatsoever.

5.2 The Empowered Committee hereby authorises the Lead Institution to exercise such rights, powers, authorities and discretion as are conferred by this Agreement on the Lead Institution together with all such rights, powers, authorities and discretion as are reasonably incidental hereto.

5.3 In performing its functions and duties under this Agreement, the Lead Institution shall act in trust for the benefit of, and as agent for the Empowered Committee or its nominees, successors or assigns, in accordance with the provisions of this Agreement.

5.4 The Lead Institution shall maintain accurate account of all VGF Grant disbursements made by it pursuant to this Agreement and shall by the 15th day of every month furnish a copy thereof as at the close of the immediately preceding month, duly certified under the hands of an officer of the Lead Institution duly authorised in this behalf, to the Empowered Committee together with statement showing the tentative disbursement schedule of the balance of the VGF Grant remaining to be disbursed.

5.5 In discharge of its duties and obligations hereunder, the Lead Institution:

- a. May, in the absence of bad faith or gross negligence on its part, rely as to any matters of fact which might reasonably be expected to be within the knowledge of the Concessionaire upon a certificate signed by and on behalf of the Concessionaire by an officer of the Concessionaire duly authorised in this behalf by the Board of Directors of the Concessionaire;
- b. May, in the absence of bad faith or gross negligence on its part, rely upon the authenticity of any communication or document believed by it to be authentic;
- c. Shall, within 5 (five) business days of its receipt, deliver to the Empowered Committee a copy of any notice or document received by the Lead Institution in its capacity as the trustee for the Empowered Committee from the Concessionaire or any other person hereunder or in connection herewith; and
- d. Shall, within 5 (five) business days of its receipt, deliver to the Concessionaire a copy of any notice or document received by the Lead Institution from the Empowered Committee in connection herewith.

5.6 The Lead Institution agrees not to claim or exercise any right of set off, banker's lien or other right or remedy with respect to any amount of the VGF Grant pending disbursement to the Concessionaire. For the avoidance of doubt, it is hereby acknowledged and agreed by the Lead Institution that the monies, if any, received from the Empowered Committee and held by the Lead Institution on account of the VGF Grant and awaiting disbursement to the Concessionaire shall not be considered as part of the assets of the Concessionaire and being trust property held in trust for the Empowered Committee, and shall, in the case of bankruptcy or liquidation of the Lead Institution, be wholly excluded from the assets of the Lead Institution in such bankruptcy or liquidation and shall be made over to the Empowered Committee or its nominee.

6. VGF Default

6.1 Following events shall constitute an event of default by the Concessionaire ("VGF Default") under this Agreement unless such event of default has occurred as a result of Force Majeure or any act or omission of the Empowered Committee:

- a. The Concessionaire causes the Lead Institution to transfer the VGF Grant to any account of the Concessionaire in breach of the terms of this Agreement and fails to cure such breach by depositing the relevant funds into the designated Account or any Sub-Account in which such transfer should have been made, within a Cure Period of 5 (five) business days; or
- b. The Concessionaire commits or causes any other breach of the provisions of this Agreement; or
- c. Any of the representation and warranties of the Concessionaire are found at any time to be false or incorrect and fails to cure the same, within a Cure Period of 5 (five) business days; or
- d. Any of the representation and warranties of the Owner are found at any time to be false or incorrect and the Owner fails to cure the same, within a Cure Period of 5 (five) business days; or
- e. The Concessionaire commits Concessionaire Default under the Concession Agreement unless such default has occurred solely as a result of any breach of the Concession Agreement by the Owner or due to Force Majeure; or
- f. The Concessionaire is adjudged bankrupt or insolvent or is ordered to be wound up or passes an effective resolution for its winding up or a receiver is appointed for the Concessionaire or for the whole or a material part of its assets.

6.2 Upon occurrence of a VGF Default, the consequences thereof shall be deemed to be a material breach of the Concession Agreement by the Concessionaire and treated as a Concessionaire Default under the Concession Agreement, and shall be accordingly dealt with under and in accordance with the provisions of the Concession Agreement for such breach under the Concession Agreement.

7. Term of the Agreement

7.1 This Agreement shall come into force and effect upon the execution hereof and shall remain in full force and effect so long as any of the Lead Institution or the Concessionaire obligations to the Empowered Committee remain to be discharged, or a period of seven years from the date hereof, whichever is later.

8. Indemnity

8.1 The Concessionaire will indemnify, defend and hold harmless the Empowered Committee and Lead Institution against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of any breach by the Concessionaire of this Agreement, or the Concession Agreement of any of Project Agreement or the Financing Agreements, or on account of failure of the Concessionaire to comply with Applicable Laws or Applicable Permits, or on account of disbursement or failure to disburse the VGF Grant or any part thereof.

8.2 The Lead Institution will indemnify, defend and hold the Empowered Committee harmless at all times against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of failure of the Lead Institution to fulfil its obligations under this Agreement other than any loss, damage, cost and expense, arising out of acts done in discharge of their lawful functions by the Lead Institution, its officers, servants and agents.

8.3 The Empowered Committee will indemnify, defend and hold harmless the Lead Institution at all times against any and all proceedings, action and third party claims for any loss, damage, cost and expense arising on account of disbursement of the VGF Grant pursuant hereto for and on behalf of the Empowered Committee or on account of failure of the Empowered Committee to fulfill its obligations under this Agreement or the Lead Institution complying with any direction of the Empowered Committee given pursuant to this Agreement other than any loss, damage, cost and expense arising out of acts done in discharge of their lawful function by the Empowered Committee, its officers, servants and agents.

8.4 In the event that any Party hereto receives a claim from a third party in respect of which it is entitled to the benefit of an indemnity hereunder or in respect of which it is entitled to reimbursement (the "Indemnified Party"), it shall notify the other Party responsible for indemnifying such claim hereunder (the "Indemnifying Party") within 15 (fifteen) days of receipt of the claim and shall not settle or pay the claim without the prior approval of the Indemnifying Party, which approval shall not be unreasonably withheld or delayed. In the event that the Indemnifying Party wishes to contest or dispute the claim, it may conduct the proceedings in the name of the Indemnified Party and shall bear all costs involved in contesting the same. The Indemnified Party shall provide all cooperation and assistance in contesting any claim and shall sign all such writings and documents as the Indemnifying Party may reasonably require.

9. Dispute Resolution

9.1 Any dispute, difference or claim arising out of or in connection with this Agreement which is not resolved amicably within [... ..] days of communication thereof shall be decided finally by reference to arbitration to a Board of three Arbitrators comprising of one nominee of the Party which is the

Claimant in such dispute, one nominee of the Empowered Committee and the third to be appointed in accordance with the Rules of Arbitration of the International Centre for Alternative Dispute Resolution, New Delhi (the "Rules"). Such arbitration shall be held in accordance with the said Rules and shall be subject to the provisions of the Arbitration and Conciliation (Amendment) Act, 2019.

9.2 The Arbitrators shall issue a reasoned award and such award shall be final and binding on the Parties. The venue of arbitration shall be Delhi and the language of arbitration shall be English.

10. Miscellaneous Provisions

10.1 Governing Law and Jurisdiction

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

10.2 Waiver of Sovereign Immunity

The Empowered Committee unconditionally and irrevocably:

- a. Agrees that the execution, delivery and performance by it of this Agreement constitute commercial acts done and performed for commercial purpose;
- b. Agrees that, should any proceedings be brought against it or its assets, property or revenues in any jurisdiction in relation to this Agreement or any transaction contemplated by this Agreement, no immunity (whether by reason of sovereignty or otherwise) from such proceedings shall be claimed by or on behalf of the Empowered Committee with respect to its assets;
- c. Waives any right of immunity which it or its assets, property or revenues now has, may acquire in the future or which may be attributed to it in any jurisdiction; and
- d. Consents generally in respect of the enforcement of any judgement or award against it in any such proceedings to the giving of any relief or the issue of any process in any jurisdiction in connection with such proceedings (including the making, enforcement or execution against it or in respect of any assets, property or revenues whatsoever irrespective of their use or intended use of any order or judgement that may be made or given in connection therewith).

10.3 Rights of the Concessionaire

The rights and remedies of the Concessionaire in the VGF Grant, including in any balance thereof awaiting disbursement to the Concessionaire, are set forth in their entirety in this Agreement and the Lead Institution and the Concessionaire shall have no other rights or remedy against or to such VGF Grant including in any balance thereof awaiting disbursement to the Concessionaire.

10.4 Amendments

All additions, amendments, modifications and variations to this Agreement shall be valid, effectual and binding on the Parties and the Owner only if in writing and signed by their respective duly authorised representatives.

10.5 Waiver

10.5.1 Waiver by any Party of a default by another Party in the observance and performance of any provision of or obligations under this Agreement: a. Shall not operate or be construed as a waiver of any

other or subsequent default hereof or of other provisions of or obligations under this Agreement; b. Shall not be effective unless it is in writing and executed by a duly authorised representative of the Party; and c. Shall not affect the validity or enforceability of this Agreement in any manner.

10.5.2 Neither the failure by any Party to insist on any occasion upon the performance of the terms, conditions and provisions of this Agreement or any obligation thereunder nor time or other indulgence granted by any Party to another Party shall be treated or deemed as waiver of such breach or acceptance of any variation or the relinquishment of any such right hereunder.

10.6 No Third Party Beneficiaries

This Agreement is solely for the benefit of the Parties and no other person or entity shall have any rights hereunder.

10.7 Survival

10.7.1 Termination of this Agreement: a. Shall not relieve the Parties of any obligations hereunder which expressly or by implication survive termination hereof; and b. Except as otherwise provided in any provision of this Agreement expressly limiting the liability of either Party, shall not relieve either Party of any obligations or liabilities for loss or damage to the other Party arising out of, or caused by, acts or omissions of such Party prior to the effectiveness of such termination or arising out of such termination.

10.7.2 All obligations surviving the cancellation, expiration or termination of this Agreement shall only survive for a period of 3 (three) years following the date of such termination or expiry of this Agreement.

10.8 Severability

If for any reason whatever, any provision of this Agreement is or becomes invalid, illegal or unenforceable or is declared by any court of competent jurisdiction or any other instrumentality to be invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions shall not be affected in any manner, and the Parties will negotiate in good faith with a view to agreeing to one or more provisions which may be substituted for such invalid, unenforceable or illegal provisions, as nearly as is practicable to such invalid, illegal or unenforceable provision. Failure to agree upon any such provisions shall not be subject to dispute resolution under Clause 10.1 of this Agreement or otherwise.

10.9 Successors and Assigns

This Agreement shall be binding on and shall inure to the benefit of the Parties and their respective successors and permitted assigns.

10.10 Notices

All notices or other communications to be given or made under this Agreement shall be in writing, shall either be delivered personally or sent by courier or registered post with an additional copy to be sent by facsimile. The address for service of each Party and its facsimile number are set out under its name on the signing pages hereto. A notice shall be effective upon actual receipt thereof save that where it is received after 5.30 (five thirty) p.m. on a business day or on a day that is not a business day, the notice shall be deemed to be received on the first business day following the date of actual receipt. Without prejudice to the foregoing, a Party giving or making a notice or communication by facsimile shall promptly deliver a copy thereof personally, or send it by courier or registered post to the addressee of such notice or communication. It is hereby agreed and acknowledged that any Party may by notice change the address to

which such notices and communications to it are to be delivered or mailed. Such change shall be effective when all the Parties have notice of it.

10.11 Language

All notices, certificates, correspondence and proceedings under or in connection with this Agreement shall be in English.

10.12 Authorised Representatives

Each of the Parties shall by notice in writing designate their respective authorised representatives through whom only all communications shall be made. A Party hereto shall be entitled to remove and/or substitute or make fresh appointment of such authorised representative by similar notice.

10.13 Original Document

This Agreement may be executed in four counterparts, each of which when executed and delivered shall constitute an original of this Agreement.

10.14 Recovery of VGF in case of terminated projects

If the project is terminated at any point of time during the concession period, the VGF may not be recovered from the Authority (Owner) if it is re-bid and continued as PPP. However, if the project is terminated at any point of time during the concession period and not continued as PPP project, then 90% of Capital Grant disbursed under this scheme may be payable by the Authority (Owner) to the Ministry of Finance.

10.15 Confirming Party

The Owner has signed this Agreement as confirming party in token confirmation of the representations and warranties of the Owner set forth herein and in ratification of the terms hereof.

In witness whereof the parties hereto have executed these presents on the day, month and year first above written.

For and on behalf of the Lead Institution

By:

Name:

Designation:

For and on behalf of the Concessionaire

By:

Name:

Designation:

For and on behalf of the Empowered Committee

By:

Name:

Designation:

In the presence of:

1. _____

2. _____

In token confirmation and ratification of the Owner's representations and warranties and of the terms hereof

For and on behalf of the Owner

By:

Name:

Designation:

In the presence of:

1. _____

2. _____