

CONCESSION AGREEMENT

BETWEEN

TAMIL NADU MARITIME BOARD
(THE CONCESSIONING AUTHORITY)

AND

(THE CONCESSIONAIRE)

FOR

DEVELOPMENT, MARKETING, OPERATION & MAINTENANCE
OF
CUDDALORE PORT FOR A PERIOD OF 50 YEARS

DATED _____

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CONCESSION AGREEMENT

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

BETWEEN:

1. **Tamil Nadu Maritime Board**, Government of Tamil Nadu, a Statutory Board constituted under Tamil Nadu Maritime Board Act 1995 (4 of 1996) and having its Administrative Office at No. 171, South Kesavaperumal Puram, Off Greenways Road, Raja Annamalaipuram, Chennai - 600 028, represented by its Vice Chairman & Chief Executive Officer hereinafter referred to as **“the Concessing Authority”** (which expression shall, unless repugnant to the context or meaning thereof, include its successors and permitted assigns) of One Part;

AND

2. _____, a special purpose company incorporated under the Companies Act, 2013, with Corporate Identity Number (CIN) _____ and having its registered office at _____, represented by its _____ authorized vide Board Resolution dated _____ hereinafter referred to as the **“Concessionaire”** (which expression shall, unless repugnant to the context or meaning thereof, include its successors and permitted assigns and substitutes) of the Second Part;

AND

3. _____ <name of Selected Bidder> having its registered office at _____ represented by its _____ authorized vide <Board Resolution/ Power of Attorney dated _____> hereinafter referred to as the **“Selected Bidder”** (which expression shall, unless repugnant to the context or meaning thereof, include its successors and permitted assigns and substitutes) of the Third Part;

or

{The consortium of (i) M/s _____ [...] having its registered office at _____, and (ii) M/s _____ [...] having its registered office at _____, in their capacity as the confirming party to this Agreement duly represented through M/s _____, the Lead Member of the consortium, through its Authorized signatory Mr./Ms. _____, authorized vide <Board Resolution/ Power of Attorney dated _____> hereinafter referred to as the **“Selected Bidder”** (which

expression shall, unless the context otherwise requires, include its successors) of the Third Part}

The Authority, Concessionaire and Successful Bidder individually referred to as “Party” and jointly as “Parties”

WHEREAS:

- A. The Concessing Authority is desirous of selecting a port developer for development, marketing, operation & maintenance of the Cuddalore Port in Cuddalore District, Tamil Nadu for a period of 50 years which can be extended by TNMB at its sole discretion up to maximum cumulative period of 99 years based on mutually agreed terms;
- B. The Concessing Authority vide RFP No._____ dated _____ invited bid from the interested parties for development, marketing, operation & maintenance of the Cuddalore Port;
- C. In response to the invitation referred to in recital ‘B’ above, the Concessing Authority received the bid dated _____ submitted by the Bidder in accordance with the tender.
- D. The Concessing Authority, after evaluating the Proposal received by it from the Bidder, accepted the Proposal referred to in recital “C” above submitted by the Bidder and communicated its acceptance to the Bidder vide Letter of Award of Concession dated _____;
- E. The Bidder has incorporated the Concessionaire as a special purpose company in India, under the Companies Act, 2013 to implement the Project;

Following the issue of the Letter of Award of Concession, the Concessing Authority has agreed to grant the Concession to the Concessionaire to take over the assets created and carry out the development, marketing, operation & maintenance of the Cuddalore Port 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: -

“Access Channel (or Entrance Channel)” means the Entrance navigable channel duly dredged, maintained and marked for the purpose of the project.

“Action” has the meaning ascribed to it in Article 8.17

“Additional Auditor” has the meaning ascribed to it in Article 9.5.

“Additional Termination Payment” means the amount payable upon termination in respect of Specified Assets, if any, as limited by the provision of Clause 18.7

“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 Date of Commercial Operation of Brownfield Port Facility, 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 Date of Commercial Operation of Brownfield Port Facility and until the 4th (fourth) anniversary thereof, an amount equal to the Adjusted Equity as on Date of Commercial Operation of Brownfield Port Facility 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 Date of Commercial Operation of Brownfield Port Facility to the extent of variation in Price Index occurring between Date of Commercial Operation of Brownfield Port Facility and the Reference Date; and
- c. after the 4th (fourth) anniversary of Date of Commercial Operation of Brownfield Port Facility, 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 Date of Commercial Operation of Brownfield Port Facility and the amount so arrived at shall be revised to the extent of variation in Price Index occurring between Date of Commercial Operation of Brownfield Port Facility 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;

“Additional Cost” means the additional capital expenditure which the Concessionaire has or would be required to incur.

“Affected Party” shall have the meaning as set forth in Clause 15.1.

“Affiliate/ Associate” means, with respect to any Party and/or with respect to the Bidder 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, Bidder 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 Bidder 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 Bidder or a member of Consortium whether through ownership of 50 (fifty) % or more of the voting securities, by contract, or otherwise.

“Agreement” means this agreement as of date hereof, including Appendices 1 through 11 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 in force and effect as of the date hereof and which may be promulgated or brought into force and effect hereinafter in India, including statutes, rules, regulations, directions, bye-laws, notifications, ordinances and judgments having force of law, or any final interpretation by a Court of Law having jurisdiction over the matter in question 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.

“Applicant” means (The name and registered office address of the single applicant to be inserted)

“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.

“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 RFP.

“Bid Security” means the security provided by the Concessionaire to the Authority along with the Bid, in accordance with the Request for Proposals, and which is to remain in force until substituted by the Performance Security;

“Board” means Tamil Nadu Maritime Board.

“Book Value” means the aggregate written down value as on the date of issue of the Termination Notice / expiry of Concession Period in the books of the Concessionaire of (i) the tangible assets (including capital works in progress) forming part of, fixed or attached to the ground, created, installed or provided by the Concessionaire and comprised in Project Facilities and Services, which in the reasonable judgement of an Expert are capable of being put to use/utilized by the Concessions Authority, and (ii) the moveable assets including cargo handling equipment belonging to the Concessionaire.

“Change in Law” shall have the meaning set out under Article 14.1 of this Agreement.

“Completion Certificate” shall have the meaning assigned to it under Article 7.4.

“Charges / Fees” includes all charges and fees, revenue payable by the Concessionaire to the Concessions Authority, pursuant to Article 9 hereof.

“Concession” means the Concession granted by the Concessions Authority to the Concessionaire in accordance with the provisions of Article 3.1 of this Agreement for implementing the Project and providing Project Facilities and Services.

“Concessions Authority Event of Default” shall have the meaning as set out under Article 16.1 (b).

“Concessionaire Event of Default” shall have the meaning as set out under Article 16.1 (a).

“Concession Period” means the period of the Concession specified in Article 3.2 of this Agreement.

“Conditions Precedent” shall mean the conditions prescribed in Article 4 of this Agreement.

“Consortium” means the consortium consisting of (i) XXXX & (ii) YYYY formed, to implement the project.

“Construction Phase” means the period from the Date of Award of Concession to the Commercial Operations Date.

“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 Appendix 4.

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

“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 Project Facilities and Services.

“COI (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.

“Date of Commercial Operation of Brownfield Port” will be the date of arrival of first commercial vessel to the port or twelve (12) months from the date of signing of concession agreement, whichever is earlier.

“Date of Commercial Operation of Greenfield Port” will be the date of arrival of first commercial vessel to the port or ninety six (96) months from the date of signing of concession agreement, whichever is earlier.

“Day” means the 24 (twenty-four) hour period beginning and ending at 12:00 (midnight) Indian Standard Time.

“Debt Due” means the aggregate of the following sums expressed in Indian Rupees outstanding 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 Concessions Authority; and
- b. 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 10th Anniversary from the Date of Award of Concession, shall in no case exceed 85% of the Total Project Cost.

“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.

“Environmental Law” means any statute, rule, regulation, ordinance, code, guideline or policy having the force of law, in each case, applicable to the Project now or hereafter in effect and any applicable judicial or administrative interpretation, pronouncement, order, decree or judgment, relating to the environment, health and safety.

“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 9.6.

“Escrow Agreement” means the agreement to be executed inter alia between the Concessionaire, Escrow Bank and the Concessioneing Authority.

“Escrow Bank” shall have the meaning assigned to it under Article 9.6.

“Event of Default” shall have the meaning assigned to it under Article 16.1.

“Expert” means any person, body or organization of repute with recognized technical/professional expertise in respect of any field, matter or subject relevant for the purpose of this Agreement.

“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.

“Financial 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.

“Force Majeure Event” shall have the meaning ascribed to it in Article 15.1 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 a 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.

“Gross Revenue” shall have the meaning assigned to it under Article 9.3.3.

“Indemnities” shall have the meaning assigned to it under Article 8.17.

“Independent Engineer” means a technical consultancy firm appointed in accordance with Article 6.1 by the concessions authority 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 Article 6.

“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.

“Inspection Report” shall have the meaning assigned to it under Article 6.4.

“Insurance Cover” shall have the meaning ascribed to it in Article 13.1 (c) (ii).

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

“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% (fifty percent) of the directors, managers, partners or other individuals exercising similar authority with respect to the Concessionaire.

“Material Adverse Effect” means material adverse effect on (a) the ability of either Party to exercise any of their rights or perform/discharge any of their duties/obligations under and in accordance with the provisions of this Agreement and/or (b) the legality, validity, binding nature or enforceability of this Agreement.

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

“Minimum Guaranteed Throughput (MGT)” shall have the meaning ascribed to it in Article 8.16

“Mobilization Period” means the time period permitted to undertake the preparatory works for the commencement of commercial operation of port.

“Month” means the calendar month as per the Gregorian calendar.

“Non-Political Event” means the Force Majeure Events set out in Article 15.2.

“O&M Expenses” means expenses incurred by or on behalf of the Concessionaire or by the Concessioning 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;

“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 and shall include the Management Contract.

“Operation Phase” means the period from the Date of Commercial Operation of Greenfield Port Facility to the expiry/termination of the Concession Period.

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

“Other Events” means the Force Majeure Events set out in Article 15.4.

“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 4, 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) 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 5.1.

“Person” means any individual, company, corporation, partnership, joint venture, trust, unincorporated organization, government or governmental authority or agency or any other legal entity.

“Political Event” means the Force Majeure Events set out in Article 15.3.

“Port’s Assets” means the assets set out in Appendix 3, belonging to the Concessioneing Authority

“Preservation Costs” shall have the meaning as set forth in Clause 7.7.

“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 Marketing, Operation, Management & Maintenance of Brownfield port facility and allied facilities and Development, Marketing, Operation, Management &

Maintenance of Greenfield port facility and allied facilities as per the approved master plan, 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 5.68 million tonnes of cargo per annum or enhanced capacity due to additional developments.

“Project Contracts” means collectively this Agreement, 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 provided by the Concessioning Authority during the Concession Period, in accordance with this Agreement.

“Project Site” means the Brownfield port facility and Greenfield port facility.

Brownfield port facility consist of berth, land of 111.72 acres together with buildings, structures if any and easement rights thereto that may be given to the Concessionaire and all other assets comprised therein on which the Concessionaire is authorized to operate the Project Facilities and Services as set forth in this Agreement.

Greenfield port facility is the waterfront which includes 3.60 km stretch from the Southern side of the existing port as per the following co-ordinates:

- North side – LAT: 11°40’ 39”N, LONG: 79°46’ 19”E
- South side – LAT: 11°38’ 51”N, LONG: 79°45’ 55”E

The Government Poromboke Lands adjoining the waterfront that would be allotted to the Concessionaire as per the approved master plan shall also form part of the Project Site.

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

“Remedial Period” has the meaning ascribed to it in Article 16.4.

“Request for Proposal” or **“RFP”** means the Request for Proposal dated [●] issued by the Concessioneing Authority along with this document including any addendum / clarifications issued in respect thereof by the Concessioneing Authority.

“Requisition” has the meaning ascribed to it in Article 17.3.

“Safety Standards” means the minimum standards of safety set out in the 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 from time to time and notified by Tamil Nadu Maritime Board or such other competent authority under the provisions of Indian Ports Act, as applicable.

“Scope of Project” as per Clause 2.1

“Selectee” has the meaning ascribed to it in Article 16.4(ii).

“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 9.5.

“Statutory Auditors” means a firm of chartered accountants appointed in terms of Section 138 of the Companies Act, 2013 and acting as the statutory auditors of the Concessionaire.

“Substitution Agreement” means the agreement substantially in the form set out at Appendix 7, to be entered into between the Concessioneing Authority, the Concessionaire and the Senior Lenders.

“Supporting Project Infrastructure” means:

- (a) maritime access channels;

(b) port entrance;

and shall include such other facilities as may be specified by the Concessioneing Authority as supporting infrastructure provided/to be provided for the Project.

“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 17.1 hereof.

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

“Tender” means the RFP dated _____ vide ref no._____, issued by the Concessioneing Authority inviting Proposals in accordance therewith for selection of Bidder, and includes any addendum / clarifications issued in respect thereof by the Concessioneing Authority.

“Termination Notice” means the termination notice issued pursuant to Article 17.1 hereof.

“Termination Payment” means the amount payable by the Concessioneing 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 17.1 hereof.

“The Port” means both Greenfield port facility and Brownfield port facilities of the Cuddalore Port “.

“Total Project Cost” means the capital cost incurred on construction and financing of the Project:

- a. The Capital Cost incurred at the Brownfield Port Facility
- b. The additional capital cost of the Brownfield Port Facility at the approval of the Master Plan.

c. The Capital Cost of the Greenfield Port Facility at the approval of the Master Plan. Provided further that in the event of termination, the Total Project Cost shall be deemed to be modified to the extent of variation in Price Index occurring in respect of Adjusted Equity, as the case may be, in accordance with the provisions of this Agreement

“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

“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 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 Tender, issued by the Concessions Authority and also including addendums, clarifications given in writing 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. any reference to any period of time shall mean a reference to that according to Indian Standard Time;
- f. any reference to day shall mean a reference to a calendar day;
- g. any reference to month shall mean a reference to a calendar month;
- h. “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;
- i. 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;
- j. any agreement, consent, approval, authorization, notice, communication, information or report required under or pursuant to this Agreement from or by any Party 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 and/or Statutory Auditor, as the case may be, in this behalf and not otherwise;
- k. 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;

- l. 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; and
- m. 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.

1.3 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.

1.4 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 SCOPE OF THE PROJECT

2.1. Scope of the Project

The scope of the Project (the “Scope of the Project”) shall mean and include the following to be undertaken, during the Concession Period:

- a. Undertake marketing, operation and maintenance of the Brownfield Port Facilities in accordance with the provisions of this Agreement and in conformity with the Standards set forth in Appendix 4;
- b. Performance and fulfilment of all other obligations of the Concessionaire in accordance with the provisions of this Agreement and matters incidental thereto or necessary for the performance of any or all of the obligations of the Concessionaire under this Agreement; and
- c. Creation of the following support infrastructures in the Brownfield Port facilities:

Mandatory Facilities

- Desalination Plant (100 KLD)
- Effluent Treatment Plant

Optional Facilities

- Stocking yard
- Warehouse
- Administrative Building
- Toilets and Bathroom
- Internal Road
- High mast Lights
- Boundary wall with barbed wire
- ISPS equipments
- Tug
- Patrol / Pilot / Mooring Launch

- d. Approval of Master Plan for Brownfield Port Facility
 - i. The Concessionaire shall at its cost, charges and expenses prepare and submit the master plan for all the port related infrastructure facilities proposed to be developed during the concession period within 120 days from the date of signing

of concession agreement to the Independent Engineer and Concessions Authority. The Concessionaire will be permitted to develop port related infrastructure / facilities within the project site. The infrastructure / facilities proposed to be developed should be included in the master plan along with timeline for implementation and operationalization of each facility. The Concessionaire may seek modifications in the master plan for undertaking the development works not covered in the approved master plan.

- ii. The Independent Engineer will review the master plan and based on the feedback, the concessions authority shall give its approval within 45 days from the date of submission.
 - iii. For taking up the projects which are not covered in the approved master plan, separate approval shall be taken from the Concessions Authority.
- e. Undertake development, marketing, operation and maintenance of new berths (Greenfield Port Facilities) to handle higher capacity vessels by acquiring required backup lands.
- f. Approval of Master Plan for Greenfield Port facility
- i. The Concessionaire shall at its cost, charges and expenses, prepare the Master Plan, Designs and Drawings for the Greenfield port facilities in conformity with the Scope of Work.
 - ii. The Concessionaire shall submit the Master Plan, Designs and Drawings for all the port-related infrastructure facilities proposed to be developed within 1 year from the date of signing of the Concession Agreement to the Independent Engineer and Concessions Authority. However, the Concessions Authority in its discretion may extend the time period beyond 1 year on valid grounds. The Concessionaire will be permitted to develop all port-related infrastructure / facilities within the project site. All the infrastructure / facilities proposed to be developed should be included in the master plan along with the timeline for implementation and operationalization of each facility.
 - iv. The Independent Engineer will review the master plan and based on the feedback, the concessions authority shall give its approval within 90 days from the date of submission.
 - v. For taking up the projects which are not covered in the approved master plan, separate approval shall be taken from the Concessions Authority.

ARTICLE 3

CONCESSION AND PORT ASSETS

3.1. Concession

In consideration of the Concessionaire agreeing to pay to the Concessions Authority the Charges, 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 development, marketing, operating, maintaining, replacing the Project/ Project Facilities and Services, installation of new equipment, construction of additional wharf / facilities, Construction of Godown / Office Space or any other facility as per the approved master plan.

3.2. Concession Period

The Concession hereby granted is for a period of 50 years commencing from the Date of commencement of commercial operation of the Brownfield port facilities during which the Concessionaire is authorized and obliged to undertake development activities and provide the Services in accordance with the provisions hereof. The Concessions Authority at its sole discretion may extend the Concession for a further period of maximum up to a maximum cumulative period of 99 years on mutually agreed terms.

Provided that: -

- a. in the event of the Concession being extended by the Concessions Authority beyond the said period of 50 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 commencement of commercial operation of the Brownfield port facilities and ending with the date of termination/determination of the Concession/this Agreement.

3.3. Acceptance of the Concession

The Concessionaire hereby accepts the Concession and agrees and undertakes to provide 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, equip, operate, maintain and replace the Project/ Project Facilities and Services.

3.4. 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 under license, 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. The list of assets is given in Appendix 3.
- 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.

3.5. 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.

3.6. Information about Project Site and Port's Assets

The information about the Project Site and Port's Assets as set out in Appendix 1, Appendix 2, and Appendix 3 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.

3.7. 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/ Ports Assets, including the berths and all structures there at and its surroundings;
- b. satisfied itself as to the nature of the climatic, hydrological and general physical conditions of the Project Site/ Ports Assets, the nature of the ground and subsoil, the form and nature of the Project Site/Ports 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.

3.8. 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. In the event the Concessionaire is obstructed by any Person claiming any right, title or interest in or over the Project Site and Port's Assets or any part thereof or in the event of any enforcement action including any attachment, distraint, appointment of receiver or liquidator being initiated by any Person claiming to have charge on the Project Site and Port's Assets or any part thereof, the Concessions Authority shall, if called upon by the Concessionaire, defend such claims and proceedings.

ARTICLE 4

CONDITIONS PRECEDENT

4.1. 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 5.1 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. Furnishing a certificate from its principal officer/director on the shareholding pattern of the Concessionaire;
 - a. Procuring and furnishing the following confirmations, in original, it/they shall at all times comply with the provisions of Article 11.2 in respect of their shareholding in the Concessionaire;
 - b. Submission to Concessions Authority of its Financing Package, Financial Model and Financing Documents for the Brownfield Port Facility 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;
 - c. the Bidder is duly organized and validly existing under the laws of the jurisdiction of its incorporation, and has requested the Concessions 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;

vi. Furnishing to the Concessioneing 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;

vii. Execution of the Substitution Agreement.

b. The following Conditions Precedent shall be satisfied by the Concessioneing Authority:

i. handing over physical possession of the Project Site and/or the Port's Assets for the purposes of the Project;

4.2 The aforesaid Conditions Precedent shall be complied with within 180 (One Hundred and Eighty) Days of the date of the Agreement. Each Party shall promptly inform the other Party in writing when the Conditions Precedent for which it is responsible have been satisfied.

4.3 Any of the Conditions Precedent set forth in Articles 4.1(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 4.1 (b) may be waived fully or partially by the Concessionaire at any time in its sole discretion.

4.4 Deleted

4.5 If the Concessioneing Authority has fulfilled all the Conditions Precedent under Article 4.1(b) and has not waived or extended the time under Article 4.3 above, and if the Concessionaire has failed to fulfil the Conditions Precedent to be fulfilled by it under Article 4.1(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 percent) of the Performance Guarantee for each day's delay until fulfilment of the Conditions Precedent subject to a maximum of 5% (five percent) 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 Article 4.6 below;

4.6 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 4.2 to 4.4, 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 Performance Guarantee / Bid Security shall stand forfeited. If such termination is on account of failure of the Concessioneing Authority, the Concessioneing Authority shall be obliged to return the Performance Guarantee. It is clarified that except for the payment as stipulated in the foregoing Article 4.4 and forfeiture in this Article 4.6, each party hereto shall have no claims against the other for costs, damages, compensation or otherwise.

ARTICLE 5

PERFORMANCE GUARANTEE

5.1. Performance Guarantee

The Concessionaire shall for due performance of its obligations during the Construction, Operation and Maintenance Phase provide to Concessions Authority an unconditional and irrevocable bank guarantee, in favour of the Concessions Authority encashable and enforceable at Chennai (the "Performance Guarantee"). The Performance Guarantee shall be for a sum of ₹8,00,00,000/ (Rupees Eight Crore only) which needs to be issued to authority within 30 days of LOA and an additional 0.5% of the project cost for both Greenfield port facility and Brownfield port facilities which should be provided within 30 (Thirty) working days after the approval of the master plan. 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 3 (Three) years and shall be renewed 30 (thirty) Days prior to expiry of each year, for an additional term of 3 (Three) years until completion of the concession period. 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. Failure of the Concessionaire to 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 Performance Guarantee.

5.2 Upon completion of the concession period, Performance Guarantee will be released, after certifying by the concerned authority that there are no dues to be paid to the Concessions Authority after completion of concession period and smooth transfer of the work to the next incumbent.

ARTICLE 6

INDEPENDENT ENGINEER

6.1. Appointment of Independent Engineer

The Concessions Authority shall appoint a technical consulting firm, to be the Independent Engineer under this Agreement (the "Independent Engineer") to monitor both Brownfield Port Facility and Greenfield port Facility development. The appointment shall be made no later than 90 (ninety) days from the date of this Agreement and shall be for a period of 3 (three) years or such other term as it may deem it fit. On expiry or termination of the aforesaid period, the Concessions Authority shall appoint an Independent Engineer for a further term of 3 (three) years, and such procedure shall be repeated after expiry of each appointment.

6.2. Role and functions of the Independent Engineer

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

- a. review of the Drawings, Estimations, Master Plan and other Documents;
- b. review, inspection and monitoring of Construction Works;
- c. review, inspection and monitoring of operation and maintenance;
- d. Ensuring compliance of statutory norms applicable for development of the port and recommending for issuance of Completion Certificate;
- e. review, inspection and monitoring of Concessionaire's obligations in accordance with the Agreement;
- 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; and
- i. Undertaking all other duties and functions in accordance with the Agreement.
- j. 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.

6.3. Development Period

- a. 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.
- b. 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.
- c. The Independent Engineer shall review the Drawings in accordance with the master plan and furnish its comments thereon to the Concessions Authority and the Concessionaire within 7 (seven) days of receiving such Drawings.
- d. 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.
- e. 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.

6.4. Construction Period

- a. In respect of the Drawings, Documents received by the Independent Engineer for its review and comments during the Construction Period, the provisions of the clause 6.3 shall apply, mutatis mutandis.
- b. 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.
- c. 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.

- d. The Independent Engineer may inspect the project more than once in a month if any lapses, defects or deficiencies require such inspections.
- e. 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 clause 6.4 (e), 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.
- f. The sample size of the tests, to be specified by the Independent Engineer, 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.
- g. The timing of tests, 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.
- h. 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 clause 6.4 shall apply to such tests.

- i. 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 date of commercial operation of port will be achieved. Upon receipt of a report from the Concessionaire, the Independent Engineer shall review the same and send its comments to the Concessioneing Authority and the Concessionaire forthwith.
- j. 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 Concessioneing Authority forthwith, identifying the whole or part of the Construction Works that should be suspended for ensuring safety in respect thereof.
- k. 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 Concessioneing Authority forthwith, recommending whether or not such suspension may be revoked by the Concessioneing Authority.
- l. 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 Concessioneing Authority and the Concessionaire of the same.
- m. The Independent Engineer shall carry out, or cause to be carried out, all the Tests and issue a Completion Certificate, as the case may be. For carrying out its functions under this Clause 6.4 (m) and all matters incidental thereto, the Independent Engineer shall act under and in accordance with the provisions of Clause 7.8.
- n. Upon reference from the Concessioneing Authority, the Independent Engineer shall make a fair and reasonable assessment of the costs of providing information, works and services

and certify the reasonableness of such costs for payment by the Concessioneing Authority to the Concessionaire.

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

6.5. Operation Period

- a. In respect of the Drawings, Documents and Safety Standards received by the Independent Engineer for its review and comments during the Operation Period.
- b. 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 Concessioneing Authority and the Concessionaire within 7 (seven) days of receipt of such report.
- c. 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 Concessioneing Authority and the Concessionaire within 7 (seven) days of the inspection.
- d. The Independent Engineer may inspect the Project more than once in a year, if any lapses, defects or deficiencies require such inspections.
- e. 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.
- f. 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 Concessioneing Authority for such delay.

6.6. Miscellaneous

- a. 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.
- b. A copy of all communications, comments, instructions, Drawings or Documents sent by the Independent Engineer to the Concessionaire, 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.
- c. 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.
- d. 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.
- e. 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.
- f. 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.

6.7. Remuneration

The remuneration, cost and expenses of the Independent Engineer shall be borne by the Concessions Authority. One-Half of such remuneration, cost and expenses shall be reimbursed by the concessionaire to Concessions Authority within 15(fifteen) days of receiving a statement of expenditure from Concessions Authority.

6.8. Termination of appointment

The Concessing Authority may, in its discretion, terminate the appointment of the Independent Agency at any time.

6.9. Authorised signatories

The Concessing Authority shall require the Independent Engineer to designate and notify to the Concessing Authority and the Concessionaire up to 2 (two) persons employed in its firm to sign for and on behalf of the Independent Engineer, and any communication or document required to be signed by the Independent Engineer shall be valid and effective only if signed by any of the designated persons; provided that the Independent Engineer may, by notice in writing, substitute any of the designated persons by any of its employees.

6.10. Dispute resolution

If either Party disputes any advice, instruction, decision, direction or award of the Independent Engineer, or, as the case may be, the assertion or failure to assert jurisdiction, the Dispute shall be resolved in accordance with the Dispute Resolution Procedure.

6.11. Interim arrangement

In the event that the Concessing Authority does not appoint an Independent Engineer, or the Independent Engineer so appointed has relinquished its functions or defaulted in discharge thereof, the Concessing Authority may, in the interim, designate and authorise any person to discharge the functions of the Independent Engineer in accordance with the provisions of this Agreement. Provided, however, that nothing contained in this Article 6.8 shall in any manner restrict the rights of the Concessing Authority to enforce compliance of the provisions of this Agreement.

Article 7

GREENFIELD PROJECT IMPLEMENTATION

7.1. Acquisition of land

The Concessionaire shall acquire the backup lands adjoining the allotted waterfront for the Greenfield Port Facility development at his cost. The Concessioneing Authority would not be held responsible for the delay in acquisition of lands on any grounds.

7.2. Preparation and submission of Master Plan, Designs and Drawings

- a. The Concessionaire shall at its cost, charges and expenses, prepare the Master Plan, Designs and Drawings for the Greenfield port facilities in conformity with the Scope of Work.
- b. The Concessionaire shall submit the Master Plan, Designs and Drawings for all the port-related infrastructure facilities proposed to be developed within 1 year from the date of signing of the Concession Agreement to the Independent Engineer and Concessioneing Authority. However, the Concessioneing Authority in its discretion may extend the time period beyond 1 year on valid grounds. The Concessionaire will be permitted to develop all port-related infrastructure / facilities within the project site. All the infrastructure / facilities proposed to be developed should be included in the master plan along with the timeline for implementation and operationalization of each facility.
- c. **Submission to Concessioneing Authority of its Financing Package, Financial Model and Financing Documents for the Project and demonstrating Financial Close within 180 days from the date of approval of the master plan; 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.**

7.3. Review and Approval of the Master Plan, Designs and Drawings

- a. The Independent Engineer shall review the Master Plan, Designs and Drawings submitted by the Concessionaire and provide its comments/observations and suggestions on the same including the comments/observations of the Concessioneing Authority in respect thereof within 30 (Thirty) Days from the date of the receipt of such Master Plan, Designs and Drawings.

- b. The Concessionaire shall address and resubmit the Master Plan, Designs and Drawings incorporating the comments/observations or suggestions and satisfy the Independent Engineer and Concessioneing Authority with regards its compliance.
- c. Deleted.
- d. All the development works covered in the approved Master Plan, Designs, and Drawings are to be completed within 8 years from the date of signing the concession agreement. If the concessionaire is not able to complete the work as per the approved master plan, the steps would be taken up as set out in article 16.
- e. For taking up the projects approved in the master plan, the Concessionaire is only required to inform the Concessioneing Authority.
- f. For taking up the projects which are not covered in the approved Master Plan, Designs and Drawings, separate approval shall be taken from the Independent Engineer and Concessioneing Authority.
- g. The Concessionaire shall not change any Designs and Drawings reviewed by the Independent Engineer /Concessioneing Authority under this Agreement, without submitting such revised Designs and Drawings for the review of the Independent Engineer / and Concessioneing Authority.
- h. 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.

7.4. Construction Phase

- a. The Concessionaire shall promptly commence and complete the works, including installation of equipment in accordance with the Timeline approved along with Master Plan 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 96 Months from the date of signing of this Concession Agreement.
- b. During the construction period, the Independent Engineer shall inspect the construction works. The remedial measures required to be taken by the Concessionaire, in case of any defects or deficiencies in the Construction works highlighted by the Independent Engineer / Concessioneing Authority shall be carried out by the Concessionaire.

7.5. Obligations of the Concessionaire

Without prejudice to the generality of Article 7.4 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. obtain all Applicable Permits and Statutory Approvals, comply with Applicable Laws, Applicable Permits and Statutory Compliance and give priority to safety in its construction and planning activities in order to protect life, health, property and environment;
- d. provide to the representative(s) of the Concessioneing 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 Concessioneing Authority of any works shall not, in relation to such works,
 - i. amount to any consent or approval by the Concessioneing Authority nor shall the same be deemed to be waiver of any of the rights of the Concessioneing Authority under this Agreement; and
 - ii. release or discharge the Concessionaire from its obligations or liabilities under this Agreement in respect of such work;
- e. provide monthly reports on the progress of Construction Works or such other relevant information as may be required by the Independent Engineer;
- f. 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
- g. 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.

7.6. 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 may assist the Concessionaire in obtaining all other Applicable Permits as may be required by the Concessionaire;
- b. upon satisfaction as to completion and receipt of Completion 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 Indian Ports Act.
- c. upon written request from the Concessionaire, assist the Concessionaire, 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
- d. 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, to import into India all items of equipment and materials required for the Project.
- e. Road and Rail Connectivity
 - The concessionaire will be fully responsible for developing Road and Rail Connectivity and may seek assistance from Concessions Authority. The Concessions Authority may consider the request on merit basis, at its sole discretion.

7.7. Suspension of Works

- a. Upon recommendation of the Independent Engineer to this effect, the Concessioneing 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 Concessioneing 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 Concessioneing Authority may suo moto issue the notice referred to hereinabove.
- 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 Concessioneing Authority and thereupon represent to the Concessioneing 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 Concessioneing 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 21 hereof.
- c. Subject to the provisions of Article 15.9, all reasonable costs incurred for maintaining and protecting the Construction Works or part thereof during the period of suspension ("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 Concessioneing Authority, the Preservation Costs shall be borne by the Concessioneing Authority.
- d. 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 Concessioneing Authority accordingly whereupon the Concessioneing Authority shall extend such project completion schedule dates in accordance with the recommendations of the Independent Engineer.

7.8. 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. The Concessionaire shall provide such assistance as the Independent Engineer may reasonably require.

- b. Upon completion of Construction Works and the Independent Engineer determining all the works conforming to standards, it shall forthwith recommend to the Concessions Authority for issuing Completion Certificate to the Concessionaire;

7.9. 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 percent)] of the Performance Guarantee for every Day of delay in obtaining the Completion Certificate on or before the approved 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, 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 Date of Commercial Operation is achieved on or before the Approved Completion Date, the damages paid under this Article 7.9 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 17.5 shall follow. The Concessions Authority may, at its discretion recover any amounts with respect to liquidated damages from the Performance Guarantee.

ARTICLE 8

OPERATIONS & MAINTENANCE

8.1. Operation & Maintenance

In addition to any of its other obligations under this Agreement, the Concessionaire shall market, operate, maintain and repair both the Brownfield Port Facility and Greenfield 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 8 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 Concessioneing Authority as ready for operations.
- b. Make efforts to maximize cargo handled so as to achieve optimal utilization of the Project Facilities and Services.
- c. 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.
- d. 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.
- e. 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 Concessioneing Authority or other agencies.
- f. 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.

- g. Ensure maintenance of proper and accurate record/data/accounts relating to operations of the Project Facilities and Services and the revenue earned there from.
- h. 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.
- i. Prevent, with the assistance of concerned law enforcement agencies, any encroachment or unauthorized use of the Project Facilities and Services.
- j. Responsible for loading, discharging and storage of cargo & containers and other subsidiary services related to cargo operation.
- k. Ensuring safety and proper delivery of goods and containers with due compliance of applicable laws (e.g. the laws of free zones, special economic zones and customs administrations).
- l. The Concessionaire is obliged to observe best practice regarding loading, unloading and storing of goods at port facilities and Comply with the specified norms for the discharge and loading of goods, container, and loading and unloading from trucks during the concession period and should comply with the obligations of the international conventions for safety and protection of goods and the containers containing dangerous goods (IMDG CODE), Convention on Safe Containers (CSC), (ISPS CODE) and other related codes and conventions for handling operations.
- m. The Concessionaire shall ensure compliance with the safety standards set out under Applicable Law/international conventions, as relevant, from time to time. Ensuring compliance to Quality, Environmental, Occupational Health, Safety and ISPS codes as may be prevailing from time to time and should comply with all related standards, conventions, codes and executive guidelines approved by the Ports and Maritime Organization, Government of India which are related to Health, Safety and Environment (HSE), firefighting, security, information technology, repair of superstructures and infrastructures.
- n. The Concessionaire has to undertake periodic maintenance dredging of Brownfield Port facilities to maintain the sea bed level of minimum (-) 9.0 m CD.

8.2. Repairs and Maintenance

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 at its own cost:

- a. Repair as necessary and maintain the Project Facilities and Services or any part thereof 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's; and
- b. Maintain the Project Facilities and Services 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.
- c. 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.
- d. 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.
- e. 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.

8.3. Installation of Desalination and ETP Plant in Brownfield Port Facility

As mandated in Environmental Clearance, the Concessionaire at his cost should install a 100 KLD desalination plant to meet the water requirements and as per TNPCB norms, the Concessionaire at his cost should setup an ETP plant.

8.4. Installation of Equipment

The Concessionaire is permitted to install necessary equipment required for the regular operation of the port at his cost with prior intimation to the Concessions Authority. At the end of the Concession period, the Concessionaire shall have the option of taking back the equipment's or transfer to the Concessions Authority at the book value.

8.5. 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.

8.6. Removal / Replacement of Assets

Except as provided/authorized, 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.

8.7. Creation of Additional wharf / facilities in the Brownfield Port Facility

- a. The Concessionaire shall create additional wharf / other facilities such as ship repairs etc. at his cost.
- b. If the facility is used for handling of cargo, the prevailing cargo charges applicable to the existing facility shall be paid to the Concessions Authority.

8.8. Construction of Godown / Office Space

The Concessionaire shall construct godown, office space or any other facilities that may be required for effective and efficient operation of the port at his cost. There shall be sufficient space in the office to accommodate at least 6 officers and staff of Concessions Authority.

8.9. Utilities and Services

The Concessionaire may, at its cost, make alternate arrangements for power including but not limited to installation of generators, sewage and water subject to obtaining Applicable permits, if any.

8.10. Payments to Concessioneing Authority

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

8.11. Access for Inspection

- a. The Concessioneing Authority at its cost will appoint an Independent Engineer to access the cost of the assets to be created, compliance etc. during the agreement period.
- b. The Concessionaire shall be obliged to extend all co-operation to Experts appointed by the Concessioneing Authority 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.
- c. Additionally, the Concessionaire shall upon prior intimation by the Concessioneing Authority provide the authorized representatives of the Concessioneing 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 Terms of Contract.
- d. 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 Concessioneing Authority for conducting a safety audit and verifying that the Project/Project Facilities and Services are in strict compliance with the Safety Standards.

8.12. Submission of monthly reports

The Concessionaire shall provide the Concessioneing Authority, Monthly reports on cargo traffic, unit gross output/ discharge rates at berth, daily output rated per vessel, revenue generated and effective working time to waiting within 7 (seven) days following the end of each Month, and any other information relating to operations which the Concessioneing Authority may require from time to time. If so desired by the Concessioneing Authority, the

Concessionaire shall provide the reports in prescribed formats and in electronic form so as to provide online access to the Concessing Authority and its representatives.

8.13. 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 specified by the Concessing Authority from time to time. In addition, the Concessionaire shall takeover, maintain the wireless system, upgrade it as per rules and maintain it at their cost during the Concession period.

8.14. Security Arrangements

- a. The Concessionaire should 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 Concessing Authority or a Government Authority from time to time.
- b. The Concessionaire shall obtain Statement of Compliance (SoC) 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.

8.15. 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. As far as possible, preference shall be given for personnel belonging to Cuddalore district.

8.16. Minimum Guaranteed Throughput (MGT)

The Concessionaire should achieve the Minimum Guaranteed Throughput (MGT) per annum set out as below in the Brownfield Port facilities and it shall not be entitled to any relaxation of its guarantee in this respect:

Years	Minimum Guaranteed Throughput (Tonnes)	Years	Minimum Guaranteed Throughput (Tonnes)
1	3.00 lakh	26	35.00 lakh
2	4.50 lakh	27	35.00 lakh
3	6.75 lakh	28	35.00 lakh
4	10.13 lakh	29	35.00 lakh
5	15.19 lakh	30	35.00 lakh
6	22.78 lakh	31	35.00 lakh
7	35.00 lakh	32	35.00 lakh
8	35.00 lakh	33	35.00 lakh
9	35.00 lakh	34	35.00 lakh
10	35.00 lakh	35	35.00 lakh
11	35.00 lakh	36	35.00 lakh
12	35.00 lakh	37	35.00 lakh
13	35.00 lakh	38	35.00 lakh
14	35.00 lakh	39	35.00 lakh
15	35.00 lakh	40	35.00 lakh
16	35.00 lakh	41	35.00 lakh
17	35.00 lakh	42	35.00 lakh
18	35.00 lakh	43	35.00 lakh
19	35.00 lakh	44	35.00 lakh
20	35.00 lakh	45	35.00 lakh
21	35.00 lakh	46	35.00 lakh
22	35.00 lakh	47	35.00 lakh
23	35.00 lakh	48	35.00 lakh
24	35.00 lakh	49	35.00 lakh
25	35.00 lakh	50	35.00 lakh

For the purpose of estimating Throughput, one loaded TEU will be considered at 12.00 MT and one empty TEU will be considered at 2.00 MT.

Failure to comply with the same will result in levying of penalty as per clause 8.20

8.17. Indemnity Against Claims for Loss of Goods

Notwithstanding anything contained in the Indian Ports 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 Concessions 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 5 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 Indemnities 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.

8.18. 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 shall also be linked to the Concessions Authority's 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 the Concessions Authority and maintain a proof of reply.
- c. If the Concessionaire fails to address the grievance and the complaint makes a reference to the Concessions Authority, it will issue directions which shall be complied by the Concessionaire.
- d. Any information sought by the Concessions Authority at any point of time during the concession period should be shared by the Concessionaire immediately.

8.19. Rights of Concessionaire

i. Preferential and Priority Berthing

- a. 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 between Concessionaire and the Concessions Authority.
- b. The Concessionaire shall permit the vessels of Navy, Coast Guard and other vessels as specified by the Concessions Authority to use the port on priority basis without affecting the commercial operations of the port.

ii. Unclaimed cargo

The Concessionaire may at his 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 Indian Ports 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.

8.20. Penalty for shortfall in performance

In the event the Concessions Authority, whether from the review of reports submitted by the Concessionaire or otherwise, observes that the Project/Project Facilities and Services do not comply with the Performance Standards or fall short of the Performance Standards, the Concessions Authority shall calculate the amount of penalty payable by the Concessionaire

in accordance with Article 9.7 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 the Concessionaire. Provided that on receipt of the demand the Concessionaire may make a written representation to the Concessing Authority which shall be considered by Concessing Authority on merits and the Concessing Authority may waive the penalty in part or full, if it is satisfied that the Concessionaire 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 Concessionaire.

8.21. Levy and Recovery of the Tariff

The Concessionaire shall be entitled to recover Tariff from the users of the Project Facilities for the port services rendered. Further, it shall be entitled to fix its own tariff for various services provided in the Port in accordance with applicable Indian laws.

ARTICLE 9

PAYMENTS TO THE CONCESSIONING AUTHORITY

9.1. License fee for land

The Concessionaire shall pay the Concessioning Authority the license fee for utilizing 111.72 acres of land in the Brownfield Port facilities and 47.14 acres in the Greenfield Port facilities as below:

Timeline	Brownfield Port Facility	Greenfield Port Facility
Signing of Concession Agreement= A	₹4 crores	₹2.75 crores
A + 13 months	₹1.71 crores	₹0.72 crores
A + 24 months	₹1.71 crores	₹0.72 crores
A + 36 months	₹1.71 crores	₹0.72 crores
A + 48 months	₹1.71 crores	₹0.72 crores
A + 60 months	₹1.71 crores	₹0.72 crores
A + 72 months	₹1.71 crores	₹0.72 crores
A + 84 months	₹1.71 crores	₹0.72 crores
A + 96 months	₹1.71 crores	₹0.72 crores
A + 108 months	₹1.71 crores	₹0.72 crores
A + 120 months	₹1.71 crores	₹0.72 crores
A + 132 months	₹1.71 crores	₹0.72 crores
A + 144 months	₹1.71 crores	₹0.72 crores
A + 156 months	₹1.71 crores	₹0.72 crores
A + 168 months	₹1.71 crores	₹0.72 crores
A + 180 months	₹1.71 crores	₹0.72 crores
A + 192 months	₹1.71 crores	₹0.72 crores
A + 204 months	₹1.71 crores	₹0.72 crores
A + 216 months	₹1.71 crores	₹0.72 crores
A + 228 months	₹1.71 crores	₹0.72 crores
A + 240 months	₹1.71 crores	₹0.72 crores

9.2. Cargo charges payable for the Brownfield Port Facility

9.2.1 The Concessionaire shall pay the Concessioning Authority on monthly basis the amount whichever is higher among the following:

- Cargo handled per month X Approved cargo charges
- (Minimum Guaranteed Throughput (MGT) / 12) X Approved cargo charges

The payment will take effect from the date of commercial operation of brownfield port.

- 9.2.2 The cargo charges for every month has to be remitted before 5th of the succeeding month. If 5th is a banking holiday in the geographical region, the amount has to be remitted on the next working day.
- 9.2.3 An escalation of 15% on the cargo charges will be considered after completion of every three financial years and the Concessionaire is bound to pay the same to the Concessioneing Authority (i.e.) An increase of 15% on the cargo charges approved for the first year will be considered for the fourth year and 15% increase of the fourth-year rate will be considered for seventh year and so on. For the purpose of same, the start of financial year (i.e.) 1st of April will be considered as the start of a year.
- 9.2.4 A mobilization period of 12 months from the date of signing of this agreement shall be permitted to mobilize the resources for commercial operation of the Brownfield port facilities. No extension shall be given beyond this period. During mobilization period, the Concessionaire shall not be liable to pay the Concessioneing Authority any amount as per Article 9.2.1.
- 9.2.5 The concessionaire should commence the commercial operation of port before the completion of mobilization period. Otherwise, the succeeding day after the completion of mobilization period will be deemed as the date of commercial operation of port.
- 9.2.6 If the closure of financial year is more than 180 days from the date of completion of mobilization period, the same will be treated as a full financial year for the purpose of applying increase in cargo charges.
- 9.2.7 Upon completion of the concession period, Performance Guarantee will be released, after certifying by the concerned authority that there are no dues to be paid to the Concessioneing Authority after completion of concession period and smooth transfer of the work to the next incumbent.
- 9.2.8 The Concessioneing Authority also reserves the right to recover any dues from the Concessionaire, which is found on later date, during audit/excess payment, after final settlement is made to them. The Concessionaire is liable to pay such dues to the Concessioneing Authority immediately on demand, without raising any dispute/protest.

9.3. Revenue Sharing for the Greenfield Port Facility

- 9.3.1 A mobilization period of 8 years from the date of signing of this agreement shall be permitted to develop and mobilize the resources for commercial operation of the

Greenfield Port facilities. No extension shall be given beyond this period. During mobilization period, the Concessionaire shall not be liable to pay the Concessions Authority any amount.

- 9.3.2 The Concessionaire shall pay the Concessions Authority on monthly basis ____% of the Gross Revenue generated from the Greenfield Port facilities to be developed by the Concessionaire. The Revenue share table will be as below:

Upto 15 years	____% of the gross revenue --- > (A)
16-30	1.5 X A
31 years – 50 years	2 X A

- 9.3.3 Gross Revenue means and includes, Gross income generated from the operation of the port or any other service in respect of vessels and cargo as audited by audit firms approved by the Concessions Authority including but not limited to berth hire, pilotage, tug assistance fee, hire charges for flotilla, towage, stevedoring, wharfage, transshipment, lighterage, intraport transportation, demurrage, storage, cargo handling including stuffing and destuffing of containers, hire of floating crafts, railway services and all other revenues from services within port except port dues and interest income whether collected or not by the Concessions Authority and its assignees or sub-contractors or sub-licensees. It is clarified that discounts, if any offered by the Concessionaire to the users for any reason whatsoever in respect of the Project Facilities and Services, shall be ignored for the purpose of Gross Revenue.

- 9.3.4 The payment towards revenue sharing has to be made to the Concessions Authority on monthly basis and to be remitted before 5th of the succeeding month. If 5th is a banking holiday in the geographical region, the amount has to be remitted on the next working day.

9.4. Collection of Cesses and Charges

The Concessionaire shall collect all cesses and charges including infrastructure cess, if any levied on the users 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.

9.5. Certified Accounts

- a. 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, Charges payable to the Concessioneing Authority etc. The Concessionaire should submit to the Concessioneing Authority a financial statement of the Gross Revenue 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.

- b. The Concessioneing 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") to conduct a special audit of the Gross Revenue and the financial statements, documents and supporting evidences thereto as may be mandated by the Concessioneing Authority and report to the Concessioneing Authority such information as may be desired by the Concessioneing Authority for any period ("Special Audit").
- c. 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 the Charges reported by the Additional Auditor. The Concessionaire shall also pay interest @12% (twelve percent) on the difference amount for the intervening period. 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% (five percent), the Concessioneing Authority shall at its sole discretion have the right to require a Special Audit for the entire outstanding tenure of the Concession.

9.6. Escrow Account

- a. 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.
- b. The nature and scope of the Escrow Account are fully described in the agreement ("Escrow Agreement") to be entered into amongst the Concessionaire, the Concessioneing Authority, the Escrow Bank and the Senior Lenders through the Lenders' Representative, which shall be substantially in the form set forth in Appendix 11.
- c. **Deposits into Escrow Account**

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

- i. all monies received in relation to the Project from Banks, other lenders, shareholders and insurance companies;
- ii. 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;
- iii. all Tariff collected by the Concessioneing Authority in exercise of its rights under the Concession Agreement;
- iv. all payments by the Concessioneing Authority, after deduction of any outstanding License Fee and Royalty; and
- v. 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.

d. Withdrawals during Concession Period

At the beginning of every month post Date of Commercial operation of Brownfield, 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;
- ii. all construction/implementation expenses relating to the Project/Project Facilities and Services, subject to limits if any set out under the Financing Documents;
- iii. 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;
- iv. towards payment of Royalty to the Authority;
- v. towards its debt service obligations under the Financing Documents;
- vi. towards payment of other sums payable to the Concessioneing Authority and liquidated damages, if any;
- vii. towards any reserve requirements in accordance with the Financing Documents;
- viii. balance, if any, in accordance with the instructions of the Concessionaire

e. Withdrawal 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:

- i. all taxes due and payable by the Concessionaire for and in respect of the Project;

- ii. 90% of Debt Due excluding subordinated debt;
- iii. all payments of outstanding Licence Fee, Royalties and damages certified by the Concessioneing Authority as due and payable to it by the Concessionaire;
- iv. outstanding debt service including the balance of Debt Due excluding subordinated debt;
- v. outstanding subordinated debt;
- vi. incurred or accrued operation & maintenance expenses;
- vii. any other payments required to be made under this Agreement; and
- viii. balance, if any, in accordance with the instructions of the Concessionaire; Provided that no appropriations shall be made under this Clause 9.6 until a Vesting Certificate has been issued by the Concessioneing Authority.

f. 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:

- i. compensation to Senior Lenders in terms of the Financing Documents towards discharge of the Concessionaire’s liability under such Financing Documents;
- ii. towards taxes and statutory dues payable by the Concessionaire;
- iii. 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:
 - a. 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;
 - b. it the Escrow Agent has received a confirmation of final settlement by the Senior Lenders and/or Concessioneing Authority; and
 - c. Vesting Certificate has been issued by the Concessioneing Authority.

9.7. Penalty

- a. Failure to pay the amount committed to the Concessioneing Authority within the respective due dates would carry interest @ 24% per annum from the due date until the date of payment or realization thereof.
- b. If the Annual Minimum Guaranteed Throughput is not achieved, the Competent Authority will constitute a committee to analyse the reasons for the shortfall. If any lapses on the Concessionaire is found, the Competent Authority reserves the

right to levy penalty for an amount equivalent to 100% of the approved cargo charges for the year under review on the shortfall quantity.

- c. Failure to achieve Minimum Guaranteed Throughput for a consecutive period of 3 years will lead to termination of this Agreement and forfeiture of Performance Guarantee.

9.8. Documentation and Processing Fee

The Concessioneing Authority will charge one-time documentation Fee from the Concessionaire, and the timeline and the value for the same are as follows:

- a. For the brownfield port facilities, 0.5% of the capital cost spent by the authority as per the appendix 3 which will be charged on the date of signing of Concession Agreement and
- b. 0.5% of the cost of additional Infrastructure developed at the Brownfield Port Facility would be charged on the date of Approval of Master plan for Brownfield Port Facility.
and
- c. For the Greenfield port facilities, 0.5% of the project cost would be charged on the date of approval of the Master plan for Greenfield Port Facility.

Bidders have to provide the UTR particulars of NEFT/RTGS/IMPS to the concessioneing Authority on the dates specified above.

ARTICLE 10

ASSET OWNERSHIP

10.1. Ownership of Assets

The ownership of the Project Site and Port's Assets shall always remain vested with the Concessioneing Authority. The rights of the Concessionaire in the Project Site and Port's Assets shall only be that of a bare licensee of such assets and the Concessionaire shall neither assign, transfer, sublet, create any charge, mortgage or Encumbrance, nor shall the Concessionaire create or permit creation of any third-party rights whatsoever, on whole or any part of the Port's Assets or Project Site. Further, any such rights of the Concessionaire shall always be subject to existing rights of way. It is expressly agreed that the Concessionaire's rights in the Project Site and/or the Port's Assets shall cease without the need for any action to be taken by the Concessioneing Authority upon the termination of this Agreement for any reason whatsoever.

10.2. Assets created or provided by the Concessionaire

The ownership of all infrastructure assets, buildings, structures, berths, wharfs, equipment and other immovable and movable assets constructed, installed, located, created or provided by the Concessionaire at the Project Site and/or in the Port's Assets pursuant to this Agreement shall, until expiry of the concession period or transfer to the Concessioneing Authority on Termination in accordance with this Agreement, be with the Concessionaire. However, such ownership of buildings etc. erected by the Concessionaire at the Project Site shall not be construed as and shall not confer any rights in the Project Site or other Port's Assets upon the Concessionaire, save as that of a bare licensee as provided for in this tender.

ARTICLE 11

SHAREHOLDING

11.1. Ownership Structure

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

S.No.	Shareholder's Name	No. of Shares	Percentage
1			
2			
Total Shareholding of the Concessionaire			100.00%

11.2. Shareholding

- 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 26% of such equity until 10th (tenth) anniversary from the date of Award of Concession. At any time, 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. 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 Concessions 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.

11.3. Constituent Documents

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

- b. 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 Concessions Authority as soon as may be reasonably possible.
- c. 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 Concessions Authority and the articles of association and memorandum of association of the Concessionaire shall include a specific provision to this effect.

ARTICLE 12

GENERAL CONDITIONS

12.1. General Conditions

- a. Concessioneing Authority reserves the right to relax or waive or amend any of the conditions.
- b. Sub-assign, pledging, mortgaging of the project site and facilities is not permitted.
- c. Concessioneing Authority or its authorized representative is at their liberty to visit the site for monitoring and inspection at any time during the concession period. Any mid-course correction advised by Concessioneing Authority shall be duly incorporated.
- d. If on account of non-compliance with the provisions of any laws, Concessioneing Authority is called upon to make any payment to or in respect of his employees, the Concessionaire shall be liable and pay Concessioneing Authority all such amounts. No liability whatsoever shall attach to Concessioneing Authority on account of or any failure on the part of the Concessionaire to observe these regulations.
- e. Any liability arising out of any litigation (including those in consumer courts) due to any act of agencies/personnel shall be directly borne by the Concessionaire including all compensation/damage/expenses/fines, the concerned Concessionaire personnel shall attend the court as and when required.
- f. Concessioneing Authority will have no responsibility in case of any loss is caused to any life or property due to accident, fire or any other reasons. The Concessionaire is required to take appropriate safety and insurance measures to safeguard against any loss to human life.
- g. Concessioneing Authority will have no liability on account of any omission or commission of regulatory/statutory requirement by the Concessionaire.
- h. Concessioneing Authority shall not be accountable either directly or indirectly to the lenders of the Concessionaire at any point of time.
- i. Concessioneing Authority shall not be made a party to any litigation by or on behalf of the Concessionaire.

- j. The Concessionaire shall abide by all statutory national and international laws as applicable for marketing, operation and maintenance of port.
- k. All infrastructure requirements for obtaining statutory approval towards commencement of port operation shall be carried out by the Concessionaire.
- l. The Conservancy of the port shall vest with Concessioneing Authority and port dues and surcharge on port dues shall be directly payable to Concessioneing Authority as per the scale of rates of Concessioneing Authority. Port entry and clearance will be issued by the Concessioneing Authority on receipt of no dues certificate from the port Developer.
- m. The merchant overtime fees shall be directly payable to the Concessioneing Authority as per the scale of rates of the Concessioneing Authority.
- n. Any further maintenance of channel and channel depth is the responsibility of the Concessionaire.
- o. The Concessionaire will indemnify, defend and hold harmless the Concessioneing Authority from and against, and in respect to, any and all losses, expenses, costs, obligations, liabilities and damages, including interest, penalties and attorney's fees and expenses, that the Concessionaire may incur as a result of any negligent or wilful acts or omissions of the Concessionaire.
- p. All statutory dues and taxes including municipal taxes, renewal fees for Consent to Operate (CTO) to TNPCB should be paid by the Concessionaire during the concession period.
- q. The movement of Harbour crafts from Cuddalore Port to Marine Terminal Facility of Chemplast Cuddalore Vinyls Limited located within Cuddalore port limits shall not be interrupted for men and materials movement. Fishing vessels movement in and out of the channel for livelihood shall be allowed without hindrance. To facilitate smooth movement of vessels, the Concessionaire shall be permitted to regulate the use of approach channels and other water area within the port limits to perform and discharge its obligations.
- r. Any notice regarding any problems, to the Concessionaire shall deemed to be sufficiently served, if given in writing at his usual or last known place of business.

- s. In the course of discussion and instruction Concessioneing Authority may disclose information of confidential and proprietary nature relating to the port, knowhow, to the Concessionaire. Such information shall be considered as confidential.
- t. The Concessionaire may assign, transfer, sublet, create any charge, mortgage or Encumbrance, or any third-party rights in respect of Project Assets & Facilities created by the Concessionaire.
- u. Right of First Refusal: During the period of concession, the Concessionaire will hold the Right of First Refusal for any development proposed within Cuddalore port. On refusal by Concessionaire, the Concessioneing Authority will be free to invite bids for development by other parties.

ARTICLE 13

GENERAL RIGHTS, DUTIES AND OBLIGATIONS

13.1. Of the Concessionaire

a. Applicable Permits

- a. The Concessionaire shall at all times during the Concession Period maintain and comply with the Applicable Permits.
- b. The Concessionaire shall obtain all approvals for statutory approvals for safe and peaceful operation of port / facilities.
- c. The Concessionaire shall obtain all statutory approvals for creation of additional wharf / facilities, godown, office space etc.

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, customs duty, etc. 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 should, at its cost and expense, purchase and maintain insurances as are prudent, including but not limited to the following:

- a. loss, damage or destruction of the Project Facilities and Services, at replacement value;
- b. comprehensive third-party liability insurance including injury or death to personnel of the Concessioning Authority and others who may enter the Project Site or the Port's Assets;
- c. workmen's compensation insurance;
- d. marine cum storage cum erection insurance; and

- e. 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 (d).

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

All insurance proceeds shall only be credited in the Escrow Account. All money 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 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 Concessioneing 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 the Concessioneing Authority in writing. If at any time the Concessionaire fails to purchase and maintain in full force and affect any and all of the

insurances required, the Concessioneing Authority may at its option purchase and maintain such insurance and all sums incurred by the Concessioneing Authority shall be reimbursed with interest @ 18% per annum by the Concessioneaire forthwith on demand, failing which the same shall be recovered by the Concessioneing 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 Concessioneing 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.

d. Indemnification

The Concessioneaire shall during the pendency of this Agreement and thereafter until all claims and demands in respect to the acts and omissions during the period of the Agreement as described hereunder are duly settled, indemnify and keep indemnified and otherwise save harmless, the Concessioneing Authority, its agents and employees, from and against all claims, demands made against and/or loss caused and/or damages suffered and/or cost, charges/expenses incurred to and/or penalty levied and/or any claim due to injury to or death of any person and/or loss or damage caused or suffered to property owned or belonging to the Concessioneing Authority, its agents and employees or third party as a result of any acts, deeds or thing done or omitted to be done by the Concessioneaire or as a result of failure on the part of the Concessioneaire to perform any of its obligations under this Agreement or on the Concessioneaire committing breach of any of the terms and conditions of this Agreement or on the failure of the Concessioneaire to perform any of its duties and/or obligations including statutory duties or as a consequence of any notice, action, suit or proceedings, given, initiated, filed or commenced by consignee or owner of goods or vessel owner/agent or its employees or any third party or Government Authority or as a result of any failure or negligence or default of the Concessioneaire or its Contractor(s), sub-contractor(s), or employees, servants, agents of such Contractor(s) and/or sub-contractor(s) and/or invitees as the case may be, in connection with or arising out of this Agreement and/or arising out of or, in connection with the Concessioneaire's use and occupation of the Project Site or Port's Assets and/or operation and maintenance of the Project Facilities and Services.

e. Engagement of Contractors

The Concessionaire may engage any Person possessing the requisite skill, expertise and capability for 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 non-performance or for any defect, deficiency or delay in 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 Concessionaire should have obtained requisite security clearance if required for the Contractor the Concessionaire intends to engage;
- iii. the Concessionaire shall ensure that the Project Contracts contain provisions that entitle the Concessioneing 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. Change in Ownership

The Concessionaire shall not undertake or permit any Change in Ownership, except with the prior written approval of the Concessioneing Authority.

Notwithstanding anything to the contrary contained in this Agreement, the Concessionaire agrees and acknowledges that:

- (i) all acquisitions of Equity by an acquirer, either by himself or with any person acting in concert, directly or indirectly, including by transfer of the direct or indirect legal or beneficial ownership or control of any Equity, in aggregate of 25% (twenty-five per cent) or more of the total Equity of the Concessionaire; or

- (ii) acquisition of any control directly or indirectly of the Board of Directors of the Concessionaire by any person either by himself or together with any person or persons acting in concert with him:

shall constitute a Change in Ownership requiring prior approval of the Concessioneing Authority from national security and public interest perspective, the decision of the Concessioneing Authority in this behalf being final, conclusive and binding on the Concessionaire, and undertakes that it shall not give effect to any such acquisition of Equity or control of the Board of Directors of the Concessionaire without such prior approval of the Concessioneing Authority. For the avoidance of doubt, it is expressly agreed that approval of the Concessioneing Authority hereunder shall be limited to national security and public interest perspective, and the Concessioneing Authority shall endeavor to convey its decision thereon expeditiously. It is also agreed that the Concessioneing Authority shall not be liable in any manner on account of grant or otherwise of such approval and that such approval or denial thereof shall not in any manner absolve the Concessionaire from any liability or obligation under this Agreement.

For the purposes of this Clause:

1. the expression “acquirer”, “control” and “person acting in concert” shall have the meaning ascribed thereto in the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeover) Regulations, 2011 or any statutory re-enactment thereof as in force as on the date of acquisition of Equity, or the control of the Board of Directors, as the case may be, of the Concessionaire;
2. the indirect transfer or control of legal or beneficial ownership of Equity shall mean transfer of the direct or indirect beneficial ownership or control of any company or companies whether in India or abroad which results in the acquirer acquiring control over the shares or voting rights of shares of the Concessionaire; and
3. power to appoint, whether by contract or by virtue of control or acquisition of shares of any company holding directly or through one or more companies (whether situated in India or abroad) the Equity of the Concessionaire, not less than half of the directors on the Board of Directors of the Concessionaire or of any company, directly or indirectly whether situated in India or abroad, having ultimate control of 25% (twenty five per cent) or more of the Equity of the Concessionaire shall constitute acquisition of control, directly or indirectly, of the Board of Directors of the Concessionaire.

g. Condition Survey

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 Expert appointed by the Parties by mutual consent, 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 therefore under this Agreement (normal wear and tear accepted) 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.

13.2. 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 to assist the Concessionaire in obtaining all the Applicable Permits including renewals thereof. Provided that, nothing contained in this clause 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. General rights of inspection and verification

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

13.3. Of the Concessioneing Authority and the Concessionaire

a. Compliance with Laws and Regulations

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

b. Rights to Documents

i. The Concessing Authority's Documents

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

ii. Concessionaire's Documents

Documents and computer programs provided by the Concessionaire, or which are developed (and owned by the Concessionaire) for operation and/or maintenance of the Project /the Project Facilities and Services shall be handed over by the Concessionaire to the Concessing 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 in Appendix 7 hereunder, will/may be executed within 30 (thirty) Days' of notice by the Concessionaire to the Concessing Authority of the Senior Lenders' readiness to execute the same.

ARTICLE 14

CHANGE IN LAW

14.1. Change in Law

“Change in Law” means any of the following events which has a Material Adverse Effect:

- i. adoption, promulgation, modification, reinterpretation or repeal after the date of this Agreement by any Government Authority of any statute, rule, ordinance, regulation or order, treaty, convention, directive, guideline, policy having force of law; or
- ii. the imposition by any Government Authority of any material condition (other than a condition which has been imposed as a consequence of a violation by the Concessionaire of any Applicable Permit) in connection with the issuance, renewal or modification of any Applicable Permits after the date of this Agreement which renders the performance by the Concessionaire of any of the terms of this Agreement impossible or unviable; or
- iii. any Applicable Permit previously granted, ceasing to remain in full force and effect for reasons other than breach/violation by or the negligence of the Concessionaire or if granted for a limited period, being renewed on terms different from those previously stipulated.

Provided any (i) imposition of new taxes, duties, cess and the like and/or the increase in taxes, duties, cess and the like effected from time to time by any Government Authority, and/or (ii) imposition of standards and condition of operations, maintenance and safety arising out of a new or revised Environmental Law; and/or (iii) imposition of standards and terms of employment and working conditions of labor and workmen; and/or (iii) any rules or regulations stipulated by Concessioneing Authority or other regulatory authority having jurisdiction over the Project in respect of the standards of service shall not constitute a Change in Law.

14.2. The Concessionaire’s Remedy

- i. In the event of Change in Law the Concessionaire may propose to Concessioneing Authority modifications to the relevant terms of this Agreement which are reasonable and intended to mitigate the effect of the Change in Law. Thereupon, the Parties shall, in good faith, negotiate and agree upon suitable changes in the terms of this Agreement including extension of the Concession Period, so as to place the Concessionaire in substantially the same legal and financial position as it were prior to

such Change in Law. Provided however, that if the resultant Material Adverse Effect is such that this Agreement is frustrated or is rendered illegal or impossible of performance, the Change in Law shall be deemed to be a Political Event, whereupon the provisions with respect thereto shall apply.

- ii. Upon occurrence of a Change in Law, the Concessionaire shall notify Concessioneing Authority, of the following:
 1. The particulars, nature and the impact of Change in Law on the Project;
 2. In sufficient detail, the estimate of the Additional Cost likely to be incurred by the Concessionaire on account of the Change in Law; and
 3. The measures, which the Concessionaire has taken or proposes to take to mitigate the impact of Change in Law, including in particular, minimizing the Additional Cost.
- iii. Upon receipt of the notice of Change in Law issued by the Concessionaire pursuant to the preceding sub-article (ii), Concessioneing Authority and the Concessionaire shall hold discussions and take all such steps as may be necessary including determination/certification by an Expert, appointed by the Parties by mutual consent, of the Additional Cost and to determine the quantum of the Additional Cost to be incurred.
- iv. Notwithstanding the aforesaid, if in terms of Good Industry Practice, the event constituting a Change in Law could be insured, the Concessionaire shall not be entitled to any remedy under Article 14.2;

ARTICLE 15

FORCE MAJEURE

15.1. Force Majeure Event

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 Article 15.2, 15.3 and 15.4 respectively including the impact / consequence thereof which:

- a. is beyond the control of the Party claiming to be affected thereby (the “**Affected Party**”);
- b. prevents the Affected Party from performing or discharging its obligations under this Agreement; and
- c. the Affected Party has been unable to overcome or prevent despite exercise of due care and diligence.

15.2. 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 / pandemic, 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 15.4, 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 archaeological remains on the Project Site 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.

15.3. 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 14, resulting in Material Adverse Effect;
- 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 Project Requirements, Applicable Laws, Applicable Permits, any judgment or order of a Governmental Agency or of any contract by which the Concessionaire or the Contractor as the case may be is bound;
- c. early determination of this Agreement by Concessioneing 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.

15.4. 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 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 Concessioning Authority; or
- e. any event or circumstance of a nature analogous to any of the foregoing.

15.5. 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 15.5.(b) and such other information as the other Party may reasonably request.

15.6. 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 15.8 or
- b. termination of this Agreement pursuant to Article 15.10 hereof.

15.7. 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. 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.

15.8. 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.

15.9. Costs, Revised Timetable

- a. Costs
Each Party shall bear its costs, if any, incurred as a consequence of the Force Majeure Event.

b. Extension of time/period

The Affected Party shall be granted by the other Party, extension of time specified in this Agreement for the performance of any obligation by such period not exceeding the period during which the relative performance was affected by the Force Majeure Event. Such extension may include extension of the Concession Period by Concessioneing Authority in appropriate cases if permissible under Applicable Law.

15.10. 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 Article 17 and Article 18 shall, to the extent expressly made applicable, apply.

ARTICLE 16

EVENTS OF DEFAULT

16.1. Events of Default

Event of Default means the Concessionaire Event of Default or the Concessions 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 Concessions 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. Delay in payments to the Concessions Authority for 2 (two) consecutive Months or more than (5) (five) times in the aggregate during the Concession Period;
- iii. 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;
- iv. the Concessionaire fails to achieve Minimum Guaranteed Cargo for a consecutive period of 3 (three) years. Provided, the Concessionaire shall not be deemed to be in default if such non achievement is due to a substantial change in economic policies including the policy regarding import/export of a particular commodity as a result of which the throughput could not be achieved;
- v. The Concessionaire's failure to develop the Greenfield Port Facility portion of port;
- vi. any representation made or warranties given by the Concessionaire under this Agreement is found to be false or misleading;
- vii. the Concessionaire passing a resolution for voluntary winding up;

- viii. 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;
- ix. 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;
- x. levy of an execution or distraint 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 distraint remaining in force for a period exceeding 90 (ninety) Days;
- xi. the Security Deposit / Performance Guarantee is not maintained in terms of the provisions hereof;
- xii. the Concessionaire abandons or expresses its intention to revoke/terminate this Agreement without being entitled to do so as is expressly provided in this Agreement;
- xiii. a change in shareholding such that the beneficial interest of the Applicant 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;
- xiv. 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
- xv. 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 this 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 Concessioneing 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 Concessioneing Authority (unless such proceedings are initiated as a consequence of any Concessionaire Event of Default).
- iv. levy of an execution or distraint on the Port's Assets in any proceedings against the Concessioneing 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 distraint remaining in force for a period exceeding 90 (ninety) Days.

16.2. Parties Rights

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

Except,

in case if the Concessionaire fails to develop Greenfield Port Facility, within the stipulated period as per the clause 7.3 under unforeseen conditions i.e., difficulty in Land Acquisition, Road and Rail Connectivity issues, Environmental Issues, Public Issues etc, the authority should be given an explanation for the delay. And the Concessioneing Authority shall have the full right to terminate the agreement on Greenfield Port Facility development or at its sole discretion may extend the timeframe for the completion of development works as per clause 7.3 (d) on valid grounds. However, the Concessionaire shall continue to operate the Brownfield port facility on the same terms and conditions.

- (ii) Upon the occurrence of the Concessioneing 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.

16.3. Consultation Notice

Either Party exercising its right under Article 16.2, 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 to consider possible measures of curing or otherwise dealing with the underlying Event of Default (“Consultation Notice”).

16.4. 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, 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 Concessions Authority shall 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:

- i. the change of management or control/ownership of the Concessionaire;
- ii. the replacement of the Concessionaire by a new developer (“Selectee”) proposed by the Senior Lenders (in terms of the Substitution Agreement), and the specific terms and conditions of such replacement which shall include:
 - a. criteria for selection of the Selectee;
 - b. the transfer of rights and obligations of the Concessionaire surviving under this Agreement to the Selectee;
 - c. handing over/ transfer of the Project Site, the Ports Assets and the Project Facilities and Services to the Selectee;
 - d. 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;
 - e. acceptance by the Selectee of any amounts due to the Concessions Authority from the Concessionaire under this Agreement; and
 - f. payment of consideration for the Concessionaire’s assets comprised in the Project Facilities and Services and the manner of appropriation thereof.

16.5. 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.

16.6. Revocation of Consultation Notice

If during the Remedial Period the underlying Event of Default is cured or waived or the Parties agree upon any of the measures set out in Article 16.4, the Consultation Notice shall be withdrawn in writing by the Party who has issued the same.

16.7. 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 have agreed upon any of the measures in accordance with Article 16.4, the Party who has issued the Consultation Notice shall have the right to terminate this Agreement, in which event, the provisions of Article 17 and Article 18 shall, to the extent expressly made applicable, apply.

16.8. The Concessioneing Authority 's Rights of Step-in

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

- i. re-enter upon and take possession and control of Project Site/Project Facilities and Services forthwith;
- ii. prohibit the Concessionaire and any Person claiming through or under the Concessionaire from entering upon/dealing with the Project Facilities and Services;
- iii. step in and succeed upon selection by the 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 selection to the counter party to the relative Project Contracts.

ARTICLE 17

TERMINATION OF THE CONCESSION/AGREEMENT

17.1. 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 shall do so by issue of a notice in writing (“Termination Notice”) to the other Party. 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.

17.2. Obligations during Termination Period

During Termination Period, the Parties shall subject where applicable to the provisions of this Article 17, 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.

17.3. Requisition

The Concessionaire has no right and no compensation is payable by the Concessions 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 a Concessionaire Event of Default, or otherwise 6 (six) months prior to the expiry of the Concession Period, the Concessions Authority shall by a notice in writing (“Requisition”) call upon the Concessionaire to furnish the following information to enable the Concessions Authority to estimate the likely compensation payable by the Concessions 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. Data or records including test certificates, survey reports, inspection reports, records of maintenance, statutory certificates issued regarding the operation and maintenance of the Project Facilities and Services;
- b. Specifications regarding the Concessionaire’s assets comprised in the Project Facilities and Services; and

- c. Cargo traffic, daily output of jetty or any other information or records regarding Concessionaire, its business, the Project/Project Facilities and Services, assets and liabilities.
- d. The Concessionaire shall within a period of 30 (thirty) Days of receipt of Requisition, furnish the particulars called for by the Concessions Authority.

17.4. 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 thereof 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.

17.5. 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 this Agreement due to a Force Majeure Event or on account of an Event of Default in accordance with Article 20;
- b. the Concessions Authority shall be entitled to encash any subsisting bank guarantee(s) provided by the Concessionaire against any amounts owing to Concessions Authority by the Concessionaire.

Notwithstanding anything contained in this Agreement, except for ensuring the deposit of the compensation payable to the Concessionaire in accordance with Article 18 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 reemployment 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 18
COMPENSATION

18.1. Compensation

i. Termination due to Force Majeure Event

- a. 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 Concessioneing Authority by the Concessionaire under this Agreement LESS all insurance claims received or admitted.
- b. If the termination is due to an Other Event, Termination Payment payable to the Concessionaire shall be aggregate of:
 - I. 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;
 - II. 110% of the Adjusted Equity; and
 - III. 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.
- c. 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 Concessioneing Authority Event of Default under Article 18.1 (i) (b).

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

ii. Termination due to Concessionaire Event of Default

- a. If the termination is after the 10th Anniversary from the Date of Award of Concession, due to a Concessionaire Event of Default, the Termination Payment payable by the Concessioneing Authority to the Concessionaire shall be an amount equal to:
 - I. 90% of the Debt Due less Insurance Cover; and
 - II. 70% of the amount representing the Additional Termination Payment:

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.

For the avoidance of doubt, the Concessionaire hereby acknowledges that no Termination Payment shall be due or payable on account of a Concessionaire Default occurring prior to

10th Anniversary from the Date of Award of Concession, save and except as provided in Clause 18.1 (ii) (b).

- b. Upon termination on account of Concessionaire Default during the Construction Period, no Termination Payment shall be due and payable for and in respect of expenditure comprising the first 30% of the Total Project Cost and in the event of expenditure exceeding such 30% and forming part of Debt Due, 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, the expenditure eligible for computation of Termination Payment hereunder shall be 60% of the Total Project Cost and the Termination Payment due and payable in such event shall not exceed 54% of the Total Project Cost or 90% of the Debt Due.

Provided, no Termination Payment shall be payable to the Concessionaire if the Concessionaire fails to maintain Insurance Cover as contemplated under Article 13 of this Agreement

iii. Termination due to Concessioneing Authority Event of Default

If the termination is due to Concessioneing Authority Event of Default, the Concessionaire shall take back the movable assets and for the additional facilities (immovable assets) created by the Concessionaire as per the approved master plan, the book value of the assets will be paid by the Concessioneing Authority subject to the condition that the cost of creating such additional facilities as per master plan should have been approved by the Concessioneing Authority. No other compensation shall be payable.

18.2. 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 Port including Project Site, Port's Assets and the Project Facilities and Services including additional facilities (immovable assets) developed by the Concessionaire as per the master plan free from Encumbrance. For the additional immovable assets developed by the Concessionaire as per the master plan, the book value of the assets will be paid by the Concessioneing Authority subject to the condition that the cost of creating such additional facilities as per master plan should have been approved by the Concessioneing Authority.

18.3. 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:

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

18.4. 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

18.5. Delayed Transfer of Assets

If for any reasons other than those attributable to Concessions Authority the Concessionaire fails to transfer assets, rights and contracts on the Transfer Date in accordance with Article 17.5 read with Article 20, there shall be no suspension of the operation and maintenance of the Project Facilities and Services and the Concessionaire shall, as a trustee of 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 Concessions Authority the Gross Revenue 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 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 10th Anniversary from the

Date of Award of Concession till Transfer date in case the Project is terminated less than three years from 10th Anniversary from the Date of Award of Concession. 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 clause shall be deemed or construed to authorise delay in completion of formalities of transfer of assets, rights and contracts by the Concessionaire to Concessions Authority in accordance with the requirements thereof under this Agreement.

In case the transfer of assets by the Concessionaire to Concessions Authority is delayed for reasons attributable to Concessions Authority, the Concessionaire shall nonetheless continue to operate the Project Facilities and Services but as agent of Concessions Authority. Provided however, the Concessionaire shall be liable to pay Fees, Charges and Revenue in accordance with Article 9.

18.6. 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.

18.7. Additional Termination Payment

Payment due and payable in respect of Specified Assets which are constructed, acquired or installed after the 5th (fifth) anniversary of date of commercial operations of brownfield port but no later than the 20th (twentieth) anniversary of the Date of Award of Concession, shall be limited to the lowest of:

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

ARTICLE 19

ASSIGNMENT AND CHARGES

19.1. Restrictions on assignment and charges

- i. Subject to Article 19.2, this Agreement shall not be assigned by the Concessionaire to any person, save and except with the prior consent in writing of the Authority, which consent the Authority shall be entitled to decline without assigning any reason.
- ii. Subject to the provisions of Article 19.2, the Concessionaire shall not create nor permit to subsist any Encumbrance, or otherwise transfer or dispose of all or any of its rights and benefits under this Agreement or any Project Agreement to which the Concessionaire is a party, except with prior consent in writing of the Authority, which consent the Authority shall be entitled to decline without assigning any reason.

19.2. Permitted assignment and charges

The restraints set forth in Article 19.1 shall not apply to:

- i. liens arising by operation of law in the ordinary course of business of the Project;
- ii. Liens or encumbrances required by any Applicable Law.

19.3. Assignment by the Authority

Notwithstanding anything to the contrary contained in this Agreement, the Authority may, after giving 60 (sixty) days' notice to the Concessionaire, assign and/ or transfer any of its rights and benefits and/or obligations under this Agreement to an assignee who is, in the reasonable opinion of the Authority, capable of fulfilling all of the Authority's then outstanding obligations under this Agreement.

ARTICLE 20

TRANSFER ON EXPIRY OF THE CONCESSION PERIOD

20.1. 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 17, the transactions to be consummated and the formalities to be completed by the Parties on the Transfer Date shall be as set out in Article 20.2 and 20.3.

20.2. Concessionaire's Obligations

The Concessionaire shall;

- i. hand over peaceful possession of the Project Site, Port's Assets, the Project and the Project Facilities and Services free of Encumbrance;
- ii. 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;
- iii. hand over to the Concessions Authority all documents including built drawings if any, manuals and records relating to operation and maintenance of the Project Facilities and Services;
- iv. 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;
- v. 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 Concessions Authority. For this purpose, the Concessionaire shall ensure that all Project Contracts are assignable in favour of the Concessions 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 Concessions Authority;

- vi. at its cost, transfer to the Concessioneing Authority all such Applicable Permits which the Concessioneing Authority may require and which can be legally transferred. Provided if the termination is on account of the Concessioneing Authority Event of Default the cost of such transfer shall be borne/ reimbursed by the Concessioneing Authority;
- vii. 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 Concessioneing Authority in terms of the provisions of this Agreement.

20.3. Concessioneing Authority's Obligations

Except in the event of expiry of the Concession by efflux of time, the Concessioneing Authority shall pay compensation payable to the Concessionaire in accordance with Article 18 to the Concessionaire. The Concessionaire confirms that upon such payment being made, the Concessioneing Authority shall stand duly discharged of its obligations regarding payment of compensation under this Agreement.

The Concessionaire further confirms that payment of compensation by the Concessioneing Authority in accordance with this Article 20 shall be a valid discharge to the Concessioneing Authority in respect of the Concessioneing Authority's obligation regarding payment of compensation to the Concessionaire under this Agreement.

20.4. Risk

Until transfer in accordance with this Article 20, 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.

ARTICLE 21

DISPUTE RESOLUTION

21.1. Dispute Resolution Board

A Dispute Resolution Board (DRB) shall be formed in order to resolve the disputes that may arise during the currency of this Agreement. The members of the DRB shall be nominated by the Concessioneing Authority and the Concessionaire. If any party is not satisfied with the decision of DRB, the issue shall be referred to SAROD Ports.

21.2. Arbitration

- a. The issues not resolved by DRB / SAROD Ports shall be finally decided by reference to arbitration by an arbitral tribunal comprising of three arbitrators, of whom each Party shall select one, and the third arbitrator shall be appointed by the two arbitrators so selected and in the event of disagreement between the two arbitrators, the appointment shall be made in accordance with the Rules. The seat of arbitration shall be Chennai and the arbitration shall be conducted in the English language. The Arbitration and Conciliation Act, 1996 shall govern the arbitral proceedings. The remuneration for the arbitrator and other expenses shall be shared equally by the Concessioneing Authority and the Concessionaire.
- b. The venue of the Arbitration shall be at the Head office of the Concessioneing Authority at Chennai. The decision of the Arbitrator shall be final and binding on both the parties to the Arbitration.
- c. The Arbitrator may with the mutual consent of the parties, extend the time for making the award. The award to be passed by the Arbitrator is enforceable in the Court at Chennai city only.
- d. The fees for arbitrator shall be paid as per schedule 4 of Arbitration and Conciliation Act, 1996.

ARTICLE 22

REPRESENTATIONS AND WARRANTIES

22.1. Representations and Warranties of the Concessionaire

The Concessionaire represents and warrants to the Concessioneing 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 authorize 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 fact or 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 vest in the Concessioneing 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 Concessioneing 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 Concessioneing 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 Concessioneing 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.

22.2. Representations and Warranties of the Concessioneing Authority

The Concessioneing 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.

22.3. 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 23

DISCLAIMER

23.1. Disclaimer

- a. The Concessionaire acknowledges that prior to the execution of this Agreement, the Concessionaire has, after a complete and careful examination, made an independent evaluation of the RFP document, Scope of the Project, Specifications and Standards, local conditions and all information provided by the Concessioneing Authority or obtained, procured or gathered otherwise, and has determined to its satisfaction the accuracy or otherwise thereof and the nature and extent of difficulties, risks and hazards as are likely to arise or may be faced by it in the course of performance of its obligations hereunder. The Concessioneing Authority makes no representation whatsoever, express, implicit or otherwise, regarding the accuracy, adequacy, correctness, reliability and/or completeness of any assessment, assumptions, statement or information provided by it and the Concessionaire confirms that it shall have no claim whatsoever against the Concessioneing Authority in this regard.
- b. The Concessionaire acknowledges and hereby accepts the risk of inadequacy, mistake or error in or relating to any of the matters set forth in Article 23.1.a above and hereby acknowledges and agrees that the Concessioneing Authority shall not be liable for the same in any manner whatsoever to the Concessionaire, {the Selected Bidder/ Consortium Members and its/ their} Associates or any person claiming through or under any of them.
- c. The Parties agree that any mistake or error in or relating to any of the matters set forth in Article 23.1.a above shall not vitiate this Agreement or render it voidable.
- d. In the event that either Party becomes aware of any mistake or error relating to any of the matters set forth in Article 23.1.a above, that Party shall immediately notify the other Party, specifying the mistake or error; provided, however, that a failure on part of the Concessioneing Authority to give any notice pursuant to this Article 23.1.d shall not prejudice the disclaimer of the Concessioneing Authority contained in Article 23.1.a and shall not in any manner shift to the Concessioneing Authority any risks assumed by the Concessionaire pursuant to this Agreement.
- e. Except as otherwise provided in this Agreement, all risks relating to the Project shall be borne by the Concessionaire and the Concessioneing Authority shall not be liable in any manner for such risks or the consequences thereof.

ARTICLE 24

MISCELLANEOUS PROVISIONS

24.1. Survival of Obligations

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.

24.2. Articles to survive Termination

The provisions of Articles 17 to 23 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.

24.3. 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.

24.4. 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.

24.5. 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.

24.6. 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:

VICE CHAIRMAN & CHIEF EXECUTIVE OFFICER
TAMIL NADU MARITIME BOARD
NO. 171, SOUTH KESAVAPERUMAL PURAM
OFF GREENWAYS ROAD,
RAJA ANNAMALAIPURAM
CHENNAI - 600 028

The Concessionaire:

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.

24.7. 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 24.6 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.

24.8. Amendments, Modifications or Alterations.

No amendments, modifications or alterations of or any additions to the terms and conditions of this Agreement shall be valid unless the same be in writing and agreed to by the Parties.

24.9. 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.

24.10. Jurisdiction of the Court

Any dispute arising out of non-fulfilment of any of the terms and conditions of this Agreement or any other dispute arising out of the arbitration award will be subject to the jurisdiction of the Courts in the City of Chennai only.

24.11. Entire Agreement

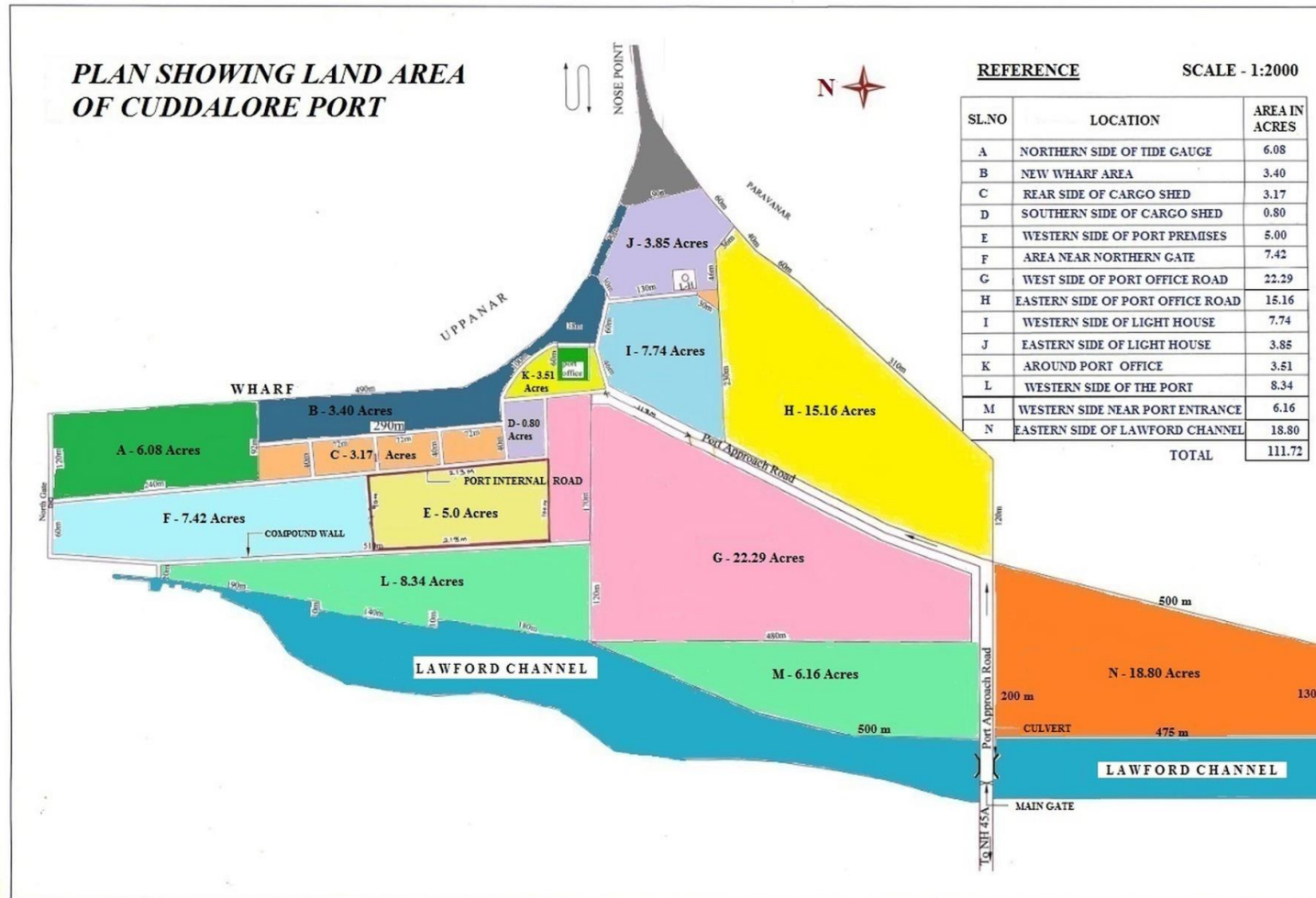
This Agreement and the Appendices together constitute a complete and exclusive statement of the terms of the agreement between the Parties. All prior written or oral understandings, offers or other communications of every kind pertaining to this Agreement unless specifically retained in this Agreement 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:

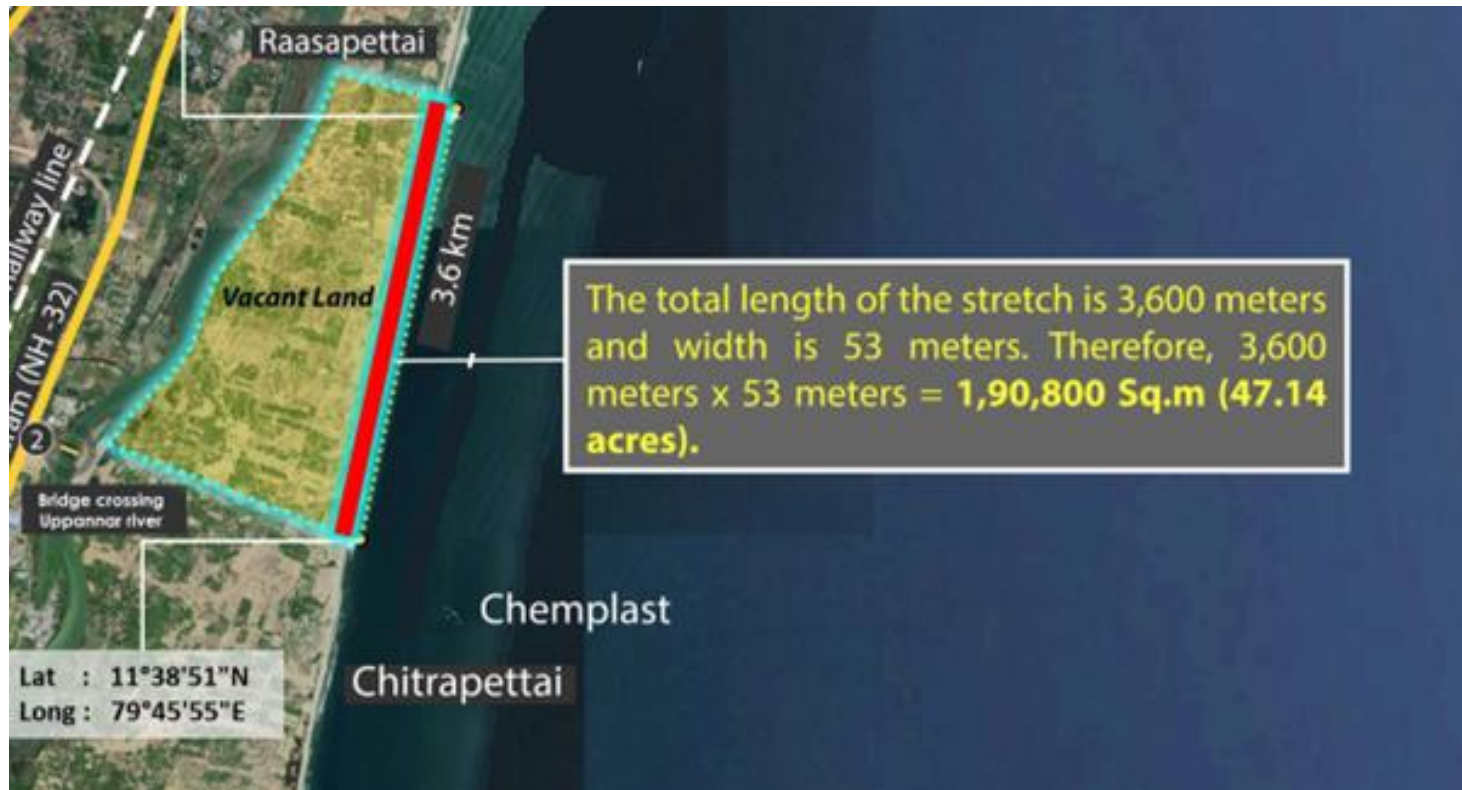
APPENDIX 1

PROJECT SITE – BROWNFIELD PORT FACILITY



APPENDIX 2

PROJECT SITE – GREENFIELD PORT FACILITY



APPENDIX 3

BROWNFIELD PORT ASSETS

S.No.	Name Of Structure	Year of Construction	Area/ Length	Book Value
(1)	Existing Infrastructure			(In Rupees)
1	Port Office building for Administrative Officer and Toilet block for staff	1976	360 M ²	2,38,500
2	Cargo Shed No.1	1982	725 M ²	5,50,000
3	Cargo Shed No.2	1983	725 M ²	6,72,510
4	Cargo Shed No.3	1985	725 M ²	8,65,655
5	Old Wharf	1986	205 M	30,00,000
			Sub-Total	53,26,665
(2)	New Infrastructure			
1	North and South Breakwater	2015-16	North Side= 130 m South Side = 210 m	10,05,00,000
2	Extension of both North and South Breakwater	2020 -21	North Side= 215 m South Side = 420 m	41,87,09,648
3	Wharf -I	2020 -21	120 X 21 m	30,33,66,000
4	Wharf -II	2020 -21	120 X 21 m	30,39,56,940
5	Capital Dredging (Channel Depth:9-10 metres)	2020 -21	1873476 Cum	46,79,19,365
			Sub-Total	159,44,51,953

APPENDIX 4

PROJECT REQUIREMENTS

1 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 below:

2 Civil Construction Work

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
- IS7314: 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
- 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

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.

Cargo Handling Equipment

General

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

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 ISO 4306-1985
- 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 ISO 4301 – 2 :1985
- IS 13870: Part 2: 1993/ Cranes and Lifting Appliances – Selection of Wire
- ISO 4308: 1988 Ropes – Part 2: Mobile Cranes -Coefficient of utilization
- IS 14469: 1997/ Mobile Cranes – Determination of Stability ISO4305 – 1991
- IS 14474: Part 1: 1997/ Mobile Cranes – Experimental Determination of Crane ISO 11662-1:1995 Performance – Part

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

3 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.

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)

4 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 as amended)

11. SOLAS / MARPOL CONVENTION as amended
12. International Maritime Dangerous Goods Code
13. Certification by Navigational Safety in Ports Committee (NSPC)

APPENDIX 5

CARGO CHARGES FIXED FOR BROWNFIELD PORT FACILITY

Years	Fixed charges / MT (Rs.)	Years	Fixed charges / MT (Rs.)
1	55.00	26	121.00
2	55.00	27	121.00
3	55.00	28	129.25
4	63.25	29	129.25
5	63.25	30	129.25
6	63.25	31	137.50
7	71.50	32	137.50
8	71.50	33	137.50
9	71.50	34	145.75
10	79.75	35	145.75
11	79.75	36	145.75
12	79.75	37	154.00
13	88.00	38	154.00
14	88.00	39	154.00
15	88.00	40	162.25
16	96.25	41	162.25
17	96.25	42	162.25
18	96.25	43	170.50
19	104.50	44	170.50
20	100	45	170.50
21	104.40	46	178.75
22	112.75	47	178.75
23	112.75	48	178.75
24	112.75	49	187.00
25	121.00	50	187.00

APPENDIX 6

REVENUE SHARING FOR GREENFIELD PORT FACILITY

Revenue sharing approved by the Concessioneing Authority

Revenue sharing approved by the Concessioneing Authority: _____% of the Gross Revenue

	Base %	Quoted %
Revenue share to the concessioneing authority	3	

(The quoted Revenue % Share is exclusive of GST)

APPENDIX 7

SUBSTITUTION AGREEMENT

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

----- (Month) ---- (Year) at -----.

AMONGST,

Tamil Nadu Maritime Board, Government of Tamil Nadu, a Statutory Board constituted under Tamil Nadu Maritime Board Act 1995 (4 of 1996) and having its Administrative Office at No. 171, South Kesavaperumal Puram, Off Greenways Road, Raja Annamalaipuram, Chennai - 600 028, (hereinafter referred to as “the Concessing 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 Concessing Authority for implementing a Project envisaging development, marketing, operation & maintenance of the Cuddalore Port in Cuddalore District, Tamil Nadu for a period of 50 years by private sector participation (hereinafter referred to as “the Project”), has by the Concession Agreement dated ----- entered into between

the Concessing 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 Concessing 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 17.1 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 Concessing 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 17 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 Concessioning 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 Concessioneing 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 Concessioneing 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 Concessioneing 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 Concessioneing 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 Concessioneing 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 Concessioneing 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 Concessioneing 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 Concessing 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 Concessing 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 Concessing 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 Concessing Authority to

terminate the Concession Agreement forthwith, and upon receipt of such notice, the Concessing 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 Concessing 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 Concessing Authority may terminate the Concession Agreement forthwith in accordance with the provisions thereof.

5.3 Realisation of Debt Due

The Concessing 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

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 Concessing 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 Concessions 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 Concessions 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 Concessions 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 “Concessioneaire”, the “Senior Lender” and the “Senior Lenders’ Representative”, “Selecttee” 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 Concessioneaire or Concessioneing Authority, “Selecttee” 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 HEREUNTO ON THE DAY, MONTH AND YEAR HEREINABOVE MENTIONED.

SIGNED AND DELIVERED ON BEHALF OF
-----LIMITED

BY: _____

Name:

Title:

SIGNED AND DELIVERED ON BEHALF OF

TNMB

BY: _____

Name:

Title:

SIGNED AND DELIVERED ON BEHALF OF

----- ON BEHALF OF THE SENIOR LENDERS SETFORTH IN SCHEDULE A

BY: _____

Name:

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

Tamil Nadu Maritime Board, Government of Tamil Nadu, a Statutory Board constituted under Tamil Nadu Maritime Board Act 1995 (4 of 1996) and having its Administrative Office at No. 171, South Kesavaperumal Puram, Off Greenways Road, Raja Annamalaipuram, Chennai - 600 028, (hereinafter referred to as “the Concessioneing Authority”) which expression shall, unless repugnant to the context or meaning thereof include its administrators, successors or assigns.

WHEREAS

1. 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 Appendix 2, hereinafter referred to as “the Project”);
2. 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;
3. 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.

4. 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,
5. 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. 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 Concessions 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 twelve 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 defence 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

COMPLETION CERTIFICATE

1. I, [●] (Name of the Independent Engineer), acting as Independent Engineer, under and in accordance with the Agreement dated [●], for the [●] Project, through [(Name of Concessionaire)], hereby certify that the Tests specified 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)

APPENDIX 11

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 OF TRUSTEES for _____ PORT, a body corporate constituted under the provisions of the Major Port Authorities Act, 2021 and having its Administrative Office at

_____, 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 in Appendix 11;

“**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 4.1.1 in Appendix 11, 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 Concessions 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 Concessions 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 Concessions 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

2.4.1 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 Concessing 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 Concessing Authority in exercise of its rights under the Concession Agreement; and
- d. all payments by the Concessing Authority, after deduction of any outstanding License Fee, Cargo Charges, Gross Revenue ; 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 Concessing 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):

- 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 Revenue and other charges payable 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.

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 4.1.2.

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 4.1.1 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 concessioning Authority;
- ii. the Escrow Agent has received a confirmation of final settlement by the Senior Lenders and/or Concessioning Authority; and

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 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 Concessioneing 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 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 Concessioning 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 Concessions 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 Concessions 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 Concessions 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 Concessions 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 Concessing 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 Concessioneing 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.

