CONCESSION AGREEMENT

BETWEEN

TAMIL NADU MARITIME BOARD
(THE CONCESSIONING AUTHORITY)

AND

_____

(THE CONCESSIONAIRE)

FOR

OPERATION, MAINTENANCE & MARKETING OF PORT AT CUDDALORE FOR A CONCESSION PERIOD OF 40 YEARS

DATED _____

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CONCESSION AGREEMENT

THIS CONCESSION AGREEMENT is executed at Chennai on this the _____ day of _____ **("Effective Date")**

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 Concessioning 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 Concessioning Authority is desirous of the Selection of port operator (Concessionaire) for Operation, Maintenance & Marketing, of Port at Cuddalore, for a Concession Period of 40 Years;

B. The Concessioning Authority vide RFP No._____ dated _____ invited bid from the interested parties for Selection of Port Operator for Operation, Maintenance & Marketing, of Port at Cuddalore, for a Concession period of 40 years;

C. In response to the invitation referred to in recital 'B' above, the Concessioning Authority received the bid dated _____ submitted by the Bidder in accordance with the tender.

D. The Concessioning 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 Concessioning Authority has agreed to grant the Concession to the Concessionaire to take over the assets created and carry out the Operation, Maintenance & Marketing, of Port at Cuddalore, for a Concession period of 40 years 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 7.17

"**Additional Auditor**" means the firm of Charted Accountants duly licensed to practice in India.

"**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 WPI, and for any Reference Date occurring:

a) on or before Date of Commercial Operation of Port, 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 WPI occurring between the first day of the month of Appointed Date and the Reference Date;
b) from Date of Commercial Operation of Port till the expiry of the Concession Period, an amount equal to the Adjusted Equity as on Date of Commercial Operation of Port 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 year following Date of Commercial Operation of Port to the extent of variations in WPI occurring between Date of Commercial Operation of Port and 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 WPI shall continue to be made.

"**Additional Project Cost**" means the lowest of the following costs incurred by the Concessionaire, with the prior approval of the Concessioning Authority, for the Capacity Augmentation of the Port Facility in respect of Specified Assets that are constructed, acquired, or installed after the fifth (5th) anniversary but no later than the twentieth (20th) anniversary of the Date of Commercial Operations of the Port:

a. the cost of Capacity Augmentation of Project Facilities and Services as approved by Senior Lenders;
b. the cost of Capacity Augmentation of Project Facilities and Services upon completion thereof; and
c. the estimated cost of Capacity Augmentation, as reasonably approved by the Authority, and prior to commencement of construction thereof.

"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 percent) 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.

"**Appointed Date**" 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.

"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 Bidder and/or the Consortium in response to the RFP.

"Bidder" means (The name and registered office address of the single Bid to be inserted)

"**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 Guarantee;

"**Board**" means Tamil Nadu Maritime Board.

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

"**Charges / Fees**" includes all charges and fees, revenue payable by the Concessionaire to the Concessioning Authority, pursuant to Article 8 hereof.

"Completion Certificate" shall have the meaning assigned to it under Article 6.5.

"**Concession**" means the Concession granted by the Concessioning 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.

"**Concessioning 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 Period**" means the time period between Appointed Date to Date of Commercial Operation of the Port.

"**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 3.

"**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.

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

"**Date of Commercial Operation of Port**" will be the issue of Completion Certificate by the Concessioning Authority or twenty-four (24) months from the Effective Date, 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 Concessioning 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 up to 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 Concessioning Authority Default;

Provided further that the Debt Due, on or after 4th Anniversary from the Appointed Date, shall in no case exceed 70 % 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 Concessioning Authority 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 9.1.

"**Escrow Agreement**" means the agreement to be executed inter alia between the Concessionaire, the Concessioning Authority and the Senior Lenders/Senior Lenders' representative.

"**Escrow Bank**" shall have the meaning assigned to it under Article 9.1.

"**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, 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 Bidder/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.

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

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

"**Force Majeure Event**" shall have the meaning ascribed to it in Article 15.1 of this Agreement.

"**GoI**" 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 GoTN or any department of GoTN including 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 Concessioning Authority.

"**GoTN**" mean Government of Tamil Nadu.

"**Indemnitees**" shall have the meaning assigned to it under Article 7.17.

"**Independent Engineer**" means a technical consultancy firm appointed in accordance with Article 6.1 by the concessioning 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.

"**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 8.2.

"**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.

"**Minimum Guaranteed Throughput (MGT)**" shall have the meaning ascribed to it in Article 7.16

"**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.

"**Operations and Maintenance Standards**" means the minimum standards of operations and maintenance set out in the Appendix 3 with regards the Project Facilities and Services.

"**Other Events**" means the Force Majeure Events set out in Article 15.4.

"**Party**" means either the Concessioning Authority or the Concessionaire as the context may require or admit and "Parties" means both Concessioning Authority and Concessionaire.

"**Performance Standards**" means the minimum standards set out in Appendix 3, set out respectively for the Concessionaire and the Concessioning 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 Concessioning 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 2, belonging to the Concessioning Authority

"**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 Port Operator for Operation, Maintenance & Marketing, of Port at Cuddalore, for a Concession period of 40 years .

"**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 Contracts**" means collectively this Agreement, the EPC contract, 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 & Services**" means the facilities and services provided by the Concessionaire during the Concession Period, in accordance with this Agreement. This could include facilities such as Logistics and distribution hub / Warehouse and storage / Distribution centre / Industrial and manufacturing site / Solar farm / Wind farm / Marina and yacht club / Cruise terminal / Marine research centre / Shipyards / Dry docks / Offshore support facilities / Marine equipment manufacturing/ Handling of all type of EC approved cargo – coal, fertilizer, cement, container & clean cargo.

"**Project Site/ Port Facility**" means the berths, 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.

"**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

Concessioning Authority along with this document including any addendum / clarifications issued in respect thereof by the Concessioning 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 3 with regards the Project/Project Facilities and Services.

"**SBI MCLR**" means the prevailing marginal cost of funds-based lending rate for a tenor of 1 (one) year, notified by State Bank of India from time to time;

"**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.

"**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 6, to be entered into between the Concessioning Authority, the Concessionaire and the Senior Lenders.

"**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.

"**Tariff**" means the applicable rate(s) 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 20.02.2025 vide ref no._____, issued by the Concessioning Authority inviting Proposals in accordance therewith for selection of Bidder, and includes any addendum / clarifications issued in respect thereof by the Concessioning Authority.

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

"Termination Payment" means the amount payable by the Concessioning 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 port facilities of the Cuddalore Port.

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

a) The capital cost of the Project Facilities and Services as per the approved Master Plan submitted by the Concessionaire; or
b) The Capital cost of the Project Facilities and Services, as set forth in the Financial Package; or
c) The actual capital cost of the Project Facilities and Services upon completion of the Project;

Provided further that, as and when applicable, the Total Project Cost shall include the Additional Project Cost, as defined in this Agreement. In the event of termination, the Total Project Cost, inclusive of the Additional Project Cost (if any), shall be adjusted to reflect any variation in the Price Index occurring in respect of Adjusted Equity, as applicable, 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 Concessioning 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. Operation, Maintenance & Marketing, of Port at Cuddalore, for a Concession period of 40 years in accordance with the provisions of this Agreement and in conformity with the Standards set forth in Appendix 3;

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 Port facilities:

Mandatory Facilities

- Desalination plant (100 KLD)
- Effluent Treatment plant
- Other Statutory Requirements such as ISPS, NSPC, Communication, etc.
- Any other supporting Infrastructure

d. Master Plan for **Project Facilities**

i. The Concessionaire shall at its cost, charges and expenses, prepare the Master Plan, Designs and Drawings for the project facilities within the Project Site, in conformity with the Scope of Work to be developed during the concession period as per Article 4.

ii. The Concessionaire will be permitted to develop required infrastructure / facilities within the project site based on the approved master plan. The infrastructure / facilities proposed to be developed should be included in the master plan along with timeline for implementation and operationalization of each facility.

iii. The Concessionaire shall seek approval of the Concessioning authority for any modifications in the master plan for undertaking the development works not covered in the approved master plan.

ARTICLE 3

CONCESSION AND PORT ASSETS

3.1. Concession

In consideration of the Concessionaire agreeing to pay to the Concessioning Authority the Charges, and performing its obligations as set out in this Agreement, the Concessioning Authority hereby grants to the Concessionaire, subject to the provisions of this Agreement, an exclusive license for the Operation, Maintenance & Marketing, of the Project Facilities and Services, installation of new equipment, construction of any other infrastructure/facilities within the project site based on the approved master plan.

3.2. Concession Period

The Concession hereby granted is for a period of 40 years commencing from the Appointed Date during which the Concessionaire is authorized and obliged to undertake development activities and provide the Services in accordance with the provisions hereof.

Provided that: -

a. in the event of the Concession being extended by the Concessioning Authority beyond the said period of 40 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 Appointed Date 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 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 Concessioning 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 2.

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 Concessioning Authority use the Project Site and the Port's Assets for any purpose other than for the purposes of the Project Facilities and Services and purposes incidental thereto as permitted under this Agreement or as may otherwise be approved by the Concessioning 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 and Appendix 2, respectively is provided by the Concessioning Authority in good faith and with due regard to the matters for which such information is required by the Concessionaire. The Concessioning Authority agrees to provide to the Concessionaire, upon a reasonable request, any further information relating to the Project Site and Port Assets, which the Concessioning Authority may now possess or may hereafter come to possess, as may be relevant to the implementation of the Project. Subject to this, the Concessioning 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 Concessioning 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 Concessioning 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 copies (certified as true copies by a director of the Concessionaire) of the constituent documents of the Concessionaire;

   ii. 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;

   iii. Opening the Escrow Account and executing the Escrow Agreement;

   iv. Furnishing a certificate from its principal officer/director on the shareholding pattern of the Concessionaire;

   v. Procuring and furnishing the following confirmations, in original, from the Bidder

      a. 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 Concessioning Authority of its Financing Package, Financial Model and Financing Documents for the Project Facilities 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 Concessioning Authority to enter into this Agreement with the Concessionaire and has agreed to and unconditionally accepted the terms and conditions set forth in this Agreement;

vi. Furnishing to the Concessioning Authority a legal opinion from the legal counsel of the Concessionaire with respect to the authority of the Concessionaire to enter into this Agreement and the enforceability hereof;

vii. Execution of the Escrow and Substitution Agreement.

viii. Furnishing of **Approved Master plan and Detailed Project Report within 90 days** from the Effective Date. The **following steps outline the procedure for the submission and approval of the Master Plan and Detailed Project Report (DPR)**:

a. The Concessionaire shall submit the **initial draft of the Master Plan** to the Independent Engineer and the Concessioning Authority within **60 (sixty) days** from the Effective Date.

b. The Independent Engineer shall review the submitted Master Plan and provide comments to both the Concessionaire and the Concessioning Authority within **7 (seven) days** of receipt. Any revised submissions shall also be reviewed within the same timeframe.

c. The Concessionaire shall submit the detailed design, construction methodology, quality assurance procedures, and the procurement, engineering, and construction time schedule to the Independent Engineer, who shall provide its comments within 15 (fifteen) days of receipt.

d. In case the Concessionaire submits any modified Drawings or supporting documents, **the Independent Engineer shall review them and furnish its comments within 7 days of receipt.**

e. The Concessionaire shall address the comments and observations, incorporate the **revisions suggested by the Authority within 7 (seven) days of receipt,** and obtain the Authority's approval on the detailed Development Plan for the Project.;

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

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

ii. Execution of Escrow and Substitution Agreement.

iii. The Concessioning Authority shall review the master plan, consider feedback from the Independent Engineer, and grant its approval within 30 days from the date of submission.

4.2 The aforesaid Conditions Precedent shall be complied with within 180 (One Hundred and Eighty) Days of the sign 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 Concessioning Authority at any time in its sole discretion or the Concessioning 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 Concessioning 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 If the Concessioning 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 0.2% (zero point two percent) of the Performance Guarantee for each day's delay until fulfilment of the Conditions Precedent subject to a maximum of 20% (Twenty 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 are 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;

4.5 If the Concessionaire has fulfilled all the Conditions Precedent under Article 4.1(a) including the furnishing of the Performance Guarantee and has not waived or extended the time under Clause 4.3 above, and if the Concessioning Authority has failed to fulfil the Conditions Precedent to be fulfilled by it under Article 4.1(b) (and which are within the power of the Concessioning Authority), the Concessioning Authority 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 20% 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 are paid and if, after the extended period the Concessioning Authority is still not in a position to comply with the Conditions Precedent, then the agreement shall be liable to be terminated as provided for in Clause 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 4.5, this Agreement shall be liable to be terminated. If such termination is on account of failure of the Concessionaire to comply with the Conditions Precedent, the Performance Guarantee / Bid Security shall stand forfeited. If such termination is on account of failure of the Concessioning Authority, the Concessioning Authority shall be obliged to return the Performance Guarantee. It is clarified that except for the payment stipulated in the foregoing articles 4.4 and 4.5 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 Concessioning Authority an unconditional and irrevocable bank guarantee, in favour of the Concessioning Authority encash able 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. Till such time the Concessionaire provides to Concessioning 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 Concessioning 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 Concessioning 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 Concessioning 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 Concessioning Authority shall appoint a technical consulting firm, to be the Independent Engineer under this Agreement (the "Independent Engineer") to monitoring any **Project Facilities and Services** developments. The appointment shall be made no later than 90 (ninety) days from the date of this Agreement and shall be for a period of 2 (two) years or such other term as it may deem it fit. On expiry or termination of the aforesaid period, the Concessioning Authority shall appoint an Independent Engineer for a further term of 2 (two) years, if deemed fit 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. Review by Independent Engineer

a. 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 Concessioning Authority and the

Concessionaire as per Article 4. 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 the submitted master plan and provide its comments to the Concessioning Authority and the Concessionaire within 7 days of receipt.

c. 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.

6.4. Construction Period

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

b. 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 Concessioning Authority and the Concessionaire within 7 (seven) days of the inspection.

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

d. 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 Concessioning 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.

e. 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.

f. 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.

g. 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.

h. 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 Concessioning Authority and the Concessionaire forthwith.

i. 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 Concessioning Authority forthwith, identifying the whole or part of the Construction Works that should be suspended for ensuring safety in respect thereof.

j. 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 Concessioning Authority forthwith, recommending whether or not such suspension may be revoked by the Concessioning Authority.

k. 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 Concessioning Authority and the Concessionaire of the same.

l. 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 (l) and all matters incidental thereto, the Independent Engineer shall act under and in accordance with the provisions of Clause 6.5.

m. Upon reference from the Concessioning 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 Concessioning Authority to the Concessionaire.

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

6.5. Issue of Completion Certificate

a. At least 60 (sixty) Days prior to the likely completion of the Project Facilities and Statutory Approvals, the Concessionaire shall notify the Independent Engineer. 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 Concessioning Authority for issuing Completion Certificate to the Concessionaire;

6.6. Miscellaneous

a. The Independent Engineer shall notify its programme of inspection to the Concessioning 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 Concessioning 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 Concessioning 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 Concessioning Authority or such other person as the Concessioning 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 Concessioning 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 Concessioning Authority. One-Half of such renumeration, cost and expenses shall be reimbursed by the concessionaire to Concessioning Authority within 15(fifteen) days of receiving a statement of expenditure from Concessioning Authority.

6.8. Termination of appointment

a. The Authority may, in its discretion, terminate the appointment of the Independent Engineer at any time, but only after appointment of another Independent Engineer in accordance with Clause 6.1.

b. If the Concessionaire has reason to believe that the Independent Engineer is not discharging its duties and functions in a fair, efficient and diligent manner, it may make a written representation to the Authority and seek termination of the appointment of the

Independent Engineer. Upon receipt of such representation, the Authority shall hold a tripartite meeting with the Concessionaire and Independent Engineer for an amicable resolution of the Dispute, and if any difference or disagreement between the Authority and the Concessionaire remains unresolved, the Dispute shall be settled in accordance with the Dispute Resolution Procedure. In the event that the appointment of the Independent Engineer is terminated hereunder, the Authority shall appoint forthwith another Independent Engineer in accordance with Clause 6.1.

6.9. Authorised signatories

The Concessioning Authority shall require the Independent Engineer to designate and notify to the Concessioning 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 Authority does not appoint an Independent Engineer, or the Independent Engineer so appointed has relinquished its functions or defaulted in discharge thereof, the Authority may, in the interim, designate and authorize any person to discharge the functions of the Independent Engineer in accordance with the provisions of this Agreement, save and except that such person shall not exercise any functions relating to review, comment, approval or inspection as specified in this Agreement for and in respect of the Independent Engineer, and such functions shall be discharged as and when an Independent Engineer is appointed in accordance with the provisions of this Agreement. Provided, however, that nothing contained in this Clause 6.11 shall in any manner restrict the rights of the Authority to enforce compliance of the provisions of this Agreement.

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ARTICLE 7

OPERATIONS & MAINTENANCE

7.1 Operation & Maintenance

In addition to any of its other obligations under this Agreement, the Concessionaire shall Operate, Maintain & undertake Marketing of Port Facility, entirely at its cost, charges, expenses, and risk in accordance with the provisions of this Agreement. The Concessionaire's obligations under this Article 7 shall include but shall not be limited to the following:

i. The Concessionaire shall:

a. Promptly commence operations upon the Project Facilities and Services being declared by the Concessioning Authority as ready for operations.

b. Make efforts to maximise possible cargo 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 Concessioning 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 Port facilities to maintain the sea bed level of minimum (-) 9.0 m CD.

7.2 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 Concessioning 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 Concessioning 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.

7.3 Installation of Desalination and ETP Plant in 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.

7.4 Installation of Equipment

The Concessionaire is permitted to install necessary equipment required for the regular operation of the project facilities & Services at his cost with prior intimation to the Concessioning Authority. At the end of the Concession period, the Concessionaire shall have the option of taking back the equipment's or transfer to the Concessioning Authority at free of cost.

7.5 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.

7.6 Removal / Replacement of Assets

Except as provided/authorized, the Concessionaire shall not, without the prior written intimation to the Concessioning 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.

7.7 Creation of Additional wharf / facilities in the Port Facility

a. The Concessionaire may if needed, at their own cost, develop additional wharf or other facilities, such as ship repair facilities, subject to applicable approvals.

b. The Concessionaire may create any facilities such as Logistics and distribution hub / Warehouse and storage / Distribution centre / Industrial and manufacturing site / Solar farm / Wind farm / Marina and yacht club / Cruise terminal / Marine research centre / Shipyard / Dry docks / Offshore support facilities / Marine equipment manufacturing/ Handling of all type of EC approved cargo – coal, fertilizer, cement, container & clean cargo.

c. In the event the facility is utilized for cargo handling or for other ancillary operations, the Concessionaire shall remit to the Concessioning Authority the applicable charges as per clause 8.3.

7.8 Construction of Godown / Office Space

The Concessionaire may if needed, at its own cost, construct godowns, office spaces, or any other facilities deemed necessary for the effective and efficient operation of the project

facilities and Services, subject to mutual agreement. The office space, if constructed, should be adequate to accommodate at least six officers and staff of the Concessioning Authority.

7.9 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.

7.10 Payments to Concessioning Authority

The Concessionaire shall make/ensure payments to the Concessioning Authority as per Article 8.

7.11 Access for Inspection

a. The Concessioning Authority shall retain full rights to access, review, and verify the costs of assets to be developed, as well as ensure compliance with all applicable provisions, throughout the duration of the agreement period.

b. The Concessionaire shall be obliged to extend all co-operation to Experts appointed by the Concessioning 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 Concessioning Authority provide the authorized representatives of the Concessioning 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 Concessioning Authority for conducting a safety audit and verifying that the Project/Project Facilities and Services are in strict compliance with the Safety Standards.

7.12 Submission of monthly reports

The Concessionaire shall provide the Concessioning 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 Concessioning Authority may require from time to time. If so desired by the Concessioning Authority, the Concessionaire shall provide the reports in prescribed formats and in electronic form so as to provide online access to the Concessioning Authority and its representatives.

7.13 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 Concessioning 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.

7.14 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 Concessioning 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.

7.15 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.

7.16 Minimum Guaranteed Throughput (MGT)

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

Years	Minimum Guaranteed Throughput (Lakhs Tonnes)	Years	Minimum Guaranteed Throughput (Lakhs Tonnes)	Years	Minimum Guaranteed Throughput (Lakhs Tonnes)
1	3.00	14	15.45	27	35.00
2	3.30	15	17.77	28	35.00
3	3.63	16	21.32	29	35.00
4	3.99	17	25.59	30	35.00
5	4.39	18	30.71	31	35.00
6	5.05	19	35.00	32	35.00
7	5.81	20	35.00	33	35.00
8	6.68	21	35.00	34	35.00
9	7.68	22	35.00	35	35.00
10	8.83	23	35.00	36	35.00
11	10.16	24	35.00	37	35.00
12	11.68	25	35.00	38	35.00
13	13.44	26	35.00		

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.

7.17 Indemnity Against Claims for Loss of Goods

Notwithstanding anything contained in the Indian Ports Act or any other applicable 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 Concessioning 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.

7.18 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 Concessioning 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 Concessioning Authority and maintain a proof of reply.

c. If the Concessionaire fails to address the grievance and the complaint makes a reference to the Concessioning Authority, it will issue directions which shall be complied by the Concessionaire.

d. Any information sought by the Concessioning Authority at any point of time during the concession period should be shared by the Concessionaire immediately.

7.19 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 Concessioning Authority.

b. The Concessionaire shall permit the vessels of Navy, Coast Guard and other vessels as specified by the Concessioning 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 Concessioning Authority agrees to provide all reasonable assistance necessary in this regard to the Concessionaire.

7.20 Penalty for shortfall in performance

In the event the Concessioning 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 Concessioning Authority shall calculate the amount of penalty payable by the Concessionaire in accordance with Article 8.4 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 Concessioning Authority which shall be considered by Concessioning Authority on merits and the Concessioning 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.

7.21 Levy and Recovery of the Tariff

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

ARTICLE 8

PAYMENTS TO THE CONCESSIONING AUTHORITY

8.1 Components of Payment to Authority

The components of the revenue are :

- Port dues per tonnage of the vessel in accordance with the prevailing Scale of Rates as prescribed under the applicable regulations of the Tamil Nadu Maritime Board shall be paid by the Vessel Owner/ Master/ Agent to the Authority.
- The land license amount for the Port Facility shall be paid by the Concessionaire to the Authority and,
- The Approved Cargo Charges per tonne (bid parameter), as quoted and finalized during the bidding process by the H1 (Highest) Bidder, shall be applicable for the cargo handled or the Minimum Guaranteed Tonnage (MGT), as specified in Appendix 5, subject to the relevant terms and conditions. The applicable charges will be determined as the higher of the two and shall be paid by the Concessionaire to the Authority.

8.2 License fee for land

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

Timeline	Payment for License Fee for Land (Cr)
Signing of Concession Agreement= A	0
A + 12 months	0.10
A + 24 month	0.10
A + 36 months	1.00
A + 48 months	1.08
A + 60 months	1.16
A + 72 months	1.24
A + 84 months	1.34
A + 96 months	1.44
A + 108 months	1.54
A + 120 months	1.66
A + 132 months	1.78
A + 144 months	1.92
A + 156 months	2.06
A + 168 months	2.22
A + 180 months	2.38

A + 192 months	2.56
A + 204 months	2.75
A + 216 months	2.96
A + 228 months	3.18
A + 240 months	3.42
A + 252 months	3.68
A + 264 months	3.95
A + 276 months	4.25
A + 288 months	4.57
A + 300 months	4.91
A + 312 months	5.28
A + 324 months	5.67
A + 336 months	6.10
A + 348 months	6.56
A + 360 months	7.05
A + 372 months	7.58
A + 384 months	8.14
A + 396 months	8.75
A + 408 months	9.41
A + 420 months	10.12
A + 432 months	10.88
A + 444 months	11.69
A + 456 months	12.57
A + 468 months	13.51
A + 480 months	14.52

8.3 Approved Cargo charges for the Port Facility

8.3.1 If the date of first arrival of any commercial vessel is before the Date of Commercial operation of port, the Concessionaire shall pay the Concessioning Authority, on quarterly basis the amount equal to:

a. Cargo handled per quarter X Approved cargo charges.

8.3.2 If the date of first arrival of any commercial vessel is after the Date of Commercial Operation of the port, the Concessionaire shall pay the Concessioning Authority, on quarterly basis the amount whichever is higher among the following:

a. Cargo handled per quarter X Approved cargo charges.

b. (MGT / 4) X Approved cargo charges.

8.3.3 The Approved cargo charges for each financial quarter has to be remitted before 5th day of the succeeding quarter to the concessioning Authority. If 5th day is a banking holiday in the geographical region, the amount has to be remitted on the next working day. For illustration, For the April–June quarter, the remittance shall be made by July 5th.

8.3.4 The Approved cargo charges shall be escalated by 15% after completion of every three financial years from the Date of first arrival of any commercial and the Concessionaire is bound to pay the same to the Concessioning Authority (i.e.) An increase of 15% on the Approved 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.

8.3.5 If the closure of financial year is more than 180 days from the date of completion of construction period, the same will be treated as a full financial year for the purpose of applying increase in Approved cargo charges.

8.3.6 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 Concessioning Authority after completion of concession period and smooth transfer of the work to the next incumbent.

8.3.7 The Concessioning 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 Concessioning Authority immediately on demand, without raising any dispute/protest.

8.4 Penalty

a. Failure to remit the amounts due to the Concessioning Authority within the specified due dates shall attract interest at a rate equivalent to the State Bank of India's Marginal Cost of Funds-Based Lending Rate (SBI MCLR) plus 3% per annum, calculated from the due date until the date of payment or realization thereof.
b. Failure to achieve Minimum Guaranteed Throughput as per clause 7.16 for a consecutive period of 3 years will lead to termination of this Agreement and forfeiture of Performance Guarantee.

ARTICLE 9

Escrow Account

9.1 Escrow Account

a. The Concessionaire shall, prior to the Appointed Date, 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 Concessioning Authority, the Escrow Bank and the Senior Lenders through the Lenders' Representative, which shall be substantially in the form set forth in Appendix 8.

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 such as Fee for Pilotage, hauling, mooring, remooring and other services collected by the Concessioning Authority in exercise of its rights under the Concession Agreement;
iv. all payments by the Concessioning Authority, after deduction of any outstanding License Fee and Approved cargo charges; 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**

The Concessionaire shall, at the time of opening the Escrow Account, give irrevocable instruction, by way of an Escrow Agreement, to the Escrow Bank instructing, inter alia, that deposits in the Escrow Account shall be appropriated in the following order every month, or at shorter intervals as necessary, and if not due in a month, then appropriated proportionately in such month and retained in the Escrow Account and paid out therefrom in the month when due:

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 the operations and maintenance of the Project, excluding the License Fee, which shall be a separate item.
iv. For the payment of charges, including approved cargo fees, land licensing fees, and any other amounts payable to the Concessioning Authority, as well as any applicable liquidated damages.
v. towards its debt service obligations under the Financing Documents;
vi. towards payment of other sums payable to the Concessioning 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:

a. all taxes due and statutory payments due and payable by the Concessionaire for and in respect of the Project;
b. 90% (ninety per cent) of Debt Due excluding subordinate Debt as per the terms of the Financing Agreements;
c. outstanding License Fee, Approved Cargo Charges and Port Dues, if any;
d. all payments and Damages certified by the Authority as due and payable to it by the Concessionaire;
e. retention and payments relating to the liability for defects and deficiencies set forth herein;
f. outstanding Debt Service Payments including the balance of Debt Due excluding subordinated debt;
g. outstanding subordinated debt;
h. incurred or accrued O&M Expenses;
i. any other payments required to be made under this Agreement; and
j. balance, if any, in accordance with the instructions of the Concessionaire.

Provided that no appropriations shall be made under Sub-clause (i) of this Clause until a Vesting Certificate has been issued by the Authority under the provisions of this Agreement.

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. towards taxes and statutory dues payable by the Concessionaire;
ii. compensation to Senior Lenders in terms of the Financing Documents towards discharge of the Concessionaire's liability under such Financing Documents;
iii. all amounts due to the Concessioning Authority and amounts payable towards transfer of the Project Facilities and Services by the Concessionaire in accordance with this Agreement; and
iv. 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 Concessioning Authority;
    b. The Escrow Agent has received a confirmation of final settlement by the Senior Lenders and/or Concessioning Authority; and
    c. Vesting Certificate has been issued by the Concessioning Authority.

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 Concessioning 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 shall be coterminous with the Concession period. 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. Sub-licensing of the facilities can be permitted upon approval from the Authority. The Concessionaire shall ensure that such sub-license deed shall, incorporate clauses, that (i) the Sub-License Deed(s) shall be co-terminus with this Agreement and shall stand terminated immediately upon Termination of this Agreement (either by efflux of time or pre- mature, as the case may be). 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 Concessioning Authority upon the termination of this Agreement or upon the expiry of the Concession period, for any reason whatsoever.

ARTICLE 11

SHAREHOLDING

11.1 Ownership Structure

The Bidder/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/Members of the Consortium undertake that they shall collectively hold 100% (hundred per cent) of the subscribed and paid-up equity of the SPV (with Lead Member maintaining 51% or more as specified in the Joint Bidding Agreement) at all times until the fifth anniversary of the Date of Commercial Operation of Port; and 51% (fifty one percent) thereafter for the balance Concession Period with the Member whose Technical & O&M credentials are being relied upon by the Consortium to meet the requirements as prescribed in Bid Document, maintaining at least 26% or more. 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 Concessioning 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 Bidder/Consortium.

b. 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 Concessioning 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. Concessioning Authority reserves the right to relax or waive or amend any of the conditions.

b. Sub-assign, pledging, mortgaging of the project sites and facilities is not permitted. Sub-licensing of the facilities can be permitted upon approval from the Authority.

c. Concessioning 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 Concessioning Authority shall be duly incorporated.

d. If on account of non-compliance with the provisions of any laws, Concessioning Authority is called upon to make any payment to or in respect of his employees, the Concessionaire shall be liable and pay Concessioning Authority all such amounts. No liability whatsoever shall attach to Concessioning 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. Concessioning 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. Concessioning Authority will have no liability on account of any omission or commission of regulatory/statutory requirement by the Concessionaire.

h. Concessioning Authority shall not be accountable either directly or indirectly to the lenders of the Concessionaire at any point of time.

i. Concessioning 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.

k. The Concessionaire shall abide by and ensure full compliance with the existing Environmental Clearance (EC) for the Port, in accordance with all applicable laws and regulations.

l. All infrastructure requirements for obtaining statutory approval towards commencement of project operation shall be carried out by the Concessionaire.

m. The Conservancy of the port shall vest with Concessioning Authority and port dues and surcharge on port dues shall be directly payable to Concessioning Authority as per the scale of rates of Concessioning Authority. Port entry and clearance will be issued by the Concessioning Authority on receipt of no dues certificate from the Developer.

n. The merchant overtime fees shall be directly payable to the Concessioning Authority as per the scale of rates of the Concessioning Authority.

o. Any further maintenance of channel and channel depth is the responsibility of the Concessionaire.

p. The Concessionaire will indemnify, defend and hold harmless the Concessioning 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.

q. All statutory dues and taxes including the property tax should be paid by the Concessionaire during the concession period.

r. The movement of Harbour crafts between Cuddalore Port and 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.

s. 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.

t. In the course of discussion and instruction Concessioning Authority may disclose information of confidential and proprietary nature relating to the port, knowhow, to the Concessionaire. Such information shall be considered as confidential.

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 necessary statutory approvals for the development of additional infrastructure and facilities, including but not limited to wharves, terminals, godowns, office spaces, container yards, storage facilities, bunkering stations, pipelines, roads, drainage systems, and any other structures essential for the Project.

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 Concessioning 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 Concessioning 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(s) on such insurance policy(ies) to ensure that the policy(ies) remain in force and valid throughout the Concession Period and shall provide copies of the same to the Concessioning Authority. Each insurance policy shall include a provision that it shall not be cancelled or terminated without providing the Concessioning Authority with at least 10 (ten) days' clear notice in writing. If at any time

the Concessionaire fails to purchase and maintain in full force and affect any and all of the required insurances, the Concessioning Authority may, at its discretion, purchase and maintain such insurance, and all costs incurred by the Concessioning Authority shall be reimbursed by the Concessionaire with interest at the State Bank of India Marginal Cost of Funds-Based Lending Rate (SBI MCLR) plus 3% per annum, immediately upon demand. In the event of non-payment, the Concessioning Authority may recover the amounts by exercising its right of set-off or by any other legal means.

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 Concessioning 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 Concessionaire 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 Concessioning 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 Concessioning 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 Concessionaire or as a result of failure on the part of the Concessionaire to perform any of its obligations under this Agreement or on the Concessionaire committing breach of any of the terms and conditions of this Agreement or on the failure of the Concessionaire 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 Concessionaire 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 Concessionaire'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 Concessioning 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;

f. Change in Ownership

The Concessionaire shall not undertake or permit any Change in Ownership, except with the prior written approval of the Concessioning 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 Concessioning Authority from national security and public interest perspective, the decision of the Concessioning 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 Concessioning Authority. For the avoidance of doubt, it is expressly agreed that approval of the Concessioning Authority hereunder shall be limited to national security and public interest perspective, and the Concessioning Authority shall endeavor to convey its decision thereon expeditiously. It is also agreed that the Concessioning 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 Concessioning 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 Concessioning 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 Concessioning Authority

a. Assistance in obtaining Approvals, Permits and Licenses

The Concessioning 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 Concessioning 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.

c. Road and Rail Connectivity

A road connecting National Highway No. 32 to the port entry gate is already in place and can be utilized for the evacuation of cargo and other related activities.

13.3. Of the Concessioning 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 Concessioning Authority's Documents

Documents and computer programs or copies thereof, if any, provided by the Concessioning Authority to the Concessionaire, shall always remain the property of the Concessioning 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 Concessioning Authority, be returned by the Concessionaire to the Concessioning 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 Concessioning 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 6 hereunder, will/may be executed within 30 (thirty) Days of notice by the Concessionaire to the Concessioning Authority of the Senior Lenders' readiness to execute the same.

ARTICLE 14

CHANGE IN LAW

14.1. Change in Law

"Change in Law" means the occurrence of any of the following after the Bid Date and having Adverse Impact :

i. the enactment of any new Indian law;

ii. the repeal, modification or re-enactment of any existing Indian law or any international treaty to which Government of India is a signatory;

iii. the commencement of any Indian law which has not entered into effect until the Bid Date;

iv. a change in the interpretation or application of any Indian law by a judgement of a court of record which has become final, conclusive and binding, as compared to such interpretation or application by a court of record prior to the Bid Date; or

14.2. The Concessionaire's Remedy

i. In the event of Change in Law, the Concessionaire may propose to Concessioning 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 Concessioning 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 Project 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 Project Cost.

iii. Upon receipt of the notice of Change in Law issued by the Concessionaire pursuant to the preceding sub-article (ii), Concessioning 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 Project Cost and to determine the quantum of the Additional Project 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;

14.3. No Claim

Notwithstanding anything to the contrary contained in this Agreement, the Authority shall not in any manner be liable to reimburse to the Concessionaire any sums on account of a Change in Law.

14.4. Financial Implications

Any increase in costs or reduction in net after tax return or other financial burden, due to Change in Law shall be borne by the respective Parties. Provided however, 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.

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 does not offset compensation being payable to the Concessionaire by 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.

f. any judgment or order of any court of competent jurisdiction or statutory authority made against the Concessionaire in any proceedings for reasons other than (i) 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) exercise of any of its rights under this Agreement by the Authority;

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 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 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 is bound;

c. early determination of this Agreement by Concessioning Authority for reasons of national emergency, national security or the public interest;

d. ; 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 for a continuous period of 24 (twenty-four) hours and exceeding an aggregate period of 7 (seven) days in an Accounting Year;

c. any civil commotion, boycott or political agitation which prevents collection of Revenue by the Concessionaire for an aggregate period exceeding 7 (seven) days in an Accounting Year;

d. failure of the Authority to permit the Concessionaire to continue the Scope of Work, with or without modifications, in the event of stoppage of such works after discovery of any geological or archaeological finds or for any other reason;

e. any political or economic upheaval, disturbance, movement, struggle or similar occurrence which could not have been anticipated or foreseen by a prudent person and which causes the operation of the Project to be financially unviable or otherwise not feasible;

f. any Other Event that causes a Non-Political Event; or

g. 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 Concessioning 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 Concessioning 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 Concessioning 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 Concessioning Authority for 3 (three) consecutive Quarters or more than (10) (ten) times in the aggregate during the Concession Period;

iii. Delay in payment of Land licensing fees to the Concessioning Authority for 2 (two) consecutive years or more than 5 (five) times in the aggregate during the Concession Period;

iv. 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 Facilities and Services, materially;

v. the Concessionaire fails to achieve Minimum Guaranteed Throughput as per clause 7.16 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;

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 distrain 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 distrain 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 Bidder 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.

xvi. If the Concessionaire fails to complete the construction works in accordance with the approved Master Plan within the stipulated construction period, the Concessioning Authority may, at its sole discretion, grant an extension of up to 3 (Three) months upon the concessionaire paying liquidated damages at a

rate of 0.2% (zero point two percent) of the Performance Guarantee for each day of delay until the issuance of the Completion Certificate, subject to a maximum of 20% (Twenty percent) of the Performance Guarantee amount.

xvii. If the construction works remain incomplete beyond this extended period, the Concessioning Authority may, at its sole discretion, grant a further extension of up to 3 (Three) months more upon the concessionaire paying additional liquidated damages at a rate of 0.3% (zero point three percent) of the Performance Guarantee for each day of delay, after the first extension, until the issuance of the Completion Certificate, subject to a maximum of 30% (forty percent) of the Performance Guarantee amount. Failure to complete the construction works in accordance with the approved Master Plan even after the extended time period of 6 months shall constitute an Event of Default.

b. The Concessioning Authority Event of Default

i. The Concessioning 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 Concessioning 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 Concessioning Authority (unless such proceedings are initiated as a consequence of any Concessionaire Event of Default).

iv. levy of an execution or distrain on the Port's Assets in any proceedings against the Concessioning 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 distrain 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 Concessioning Authority shall without prejudice to any other rights and remedies available to it under this Agreement be entitled to terminate this Agreement.

(ii) Upon the occurrence of the Concessioning 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 Concessioning 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 Concessioning 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 Concessioning Authority 's Rights of Step-in

Upon a Termination Notice being issued due to Concessionaire Event of Default, the Concessioning 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 Concessioning 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 Concessioning 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.

Provided, that in such circumstances, the Concessioning Authority shall assume the obligations of the Concessionaire, either by itself or through an operation and maintenance contractor appointed in consultation with the Senior Lenders, with respect to the Senior Lenders during such Remedial Period out of the cash flows of the project. Provided further, the Concessionaire acknowledges that any payments made by the Concessioning Authority during the Remedial Period shall be adjusted against compensation payable by the Concessioning Authority to the Concessionaire in terms of the provisions of this Agreement.

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 Concessioning 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 Concessioning Authority shall by a notice in writing ("Requisition") call upon the Concessionaire to furnish the following information to enable the Concessioning Authority to estimate the likely compensation payable by the Concessioning 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 Concessioning 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 Concessioning 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 Concessioning 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 Concessioning 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 Concessioning Authority on the Transfer Date.

b. If, as a result of the condition survey, the Concessioning 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 Concessioning Authority may itself cause the condition survey and inventory of Port's Assets and the Project Facilities and Services to be conducted. The Concessioning 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 Concessioning Authority shall be entitled to encash any subsisting bank guarantee(s) provided by the Concessionaire against any amounts owing to Concessioning Authority by the Concessionaire.

Notwithstanding anything contained in this Agreement, except for ensuring the deposit of the compensation payable to the Concessionaire in the Escrow Account as per the Agreement, the Concessioning 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 Concessioning 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 Concessioning 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

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 Concessioning Authority Event of Default under Article 16.1 (a).

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

ii. Termination due to Concessionaire Event of Default

a. If the termination is on or after the Date of Commercial Operation of Port, due to a Concessionaire Event of Default, the Termination Payment payable by the Concessioning Authority to the Concessionaire shall be an amount equal to 90% of the Debt Due less Insurance Cover.

Provided that if any insurance claims forming part of the Insurance Cover are not admitted and paid, then 80% of such unpaid claims shall be included in the computation of Debt Due.

b. Upon termination due to Concessionaire Default during the Construction Period, no Termination Payment shall be made for the first 30% of the Total Project Cost. If expenditure exceeds this threshold and forms part of Debt Due, Termination Payment shall apply only to the excess amount. For clarity, if 90% of the Total Project Cost has been incurred, only 60% shall be considered for Termination Payment, which shall be the lower of 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 Concessioning Authority Event of Default

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

i. Debt Due less Insurance Cover; and
ii. 120% of the Adjusted Equity.

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 Project Site, Port's Assets and the Project Facilities and Services free of cost and Encumbrance.

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. Concessioning Authority in the event of termination due to Concessioning 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 prevailing SBI MCLR on the amount of Termination Payment remaining unpaid; for the period of delay. 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 Concessioning Authority the Concessionaire fails to transfer assets, rights and contracts on the Transfer Date in accordance with Article 17 read with Article 18, there shall be no suspension of the operation and maintenance of the Project Facilities and Services and the Concessionaire shall, as a trustee of Concessioning Authority, (a) continue to operate and maintain the Project Facilities and Services or such of them, as directed by Concessioning Authority until completion of the relative transfer formalities and (b) account for and pay to Concessioning Authority the Approved Cargo Charges as applicable on Transfer Date , from such operations. In the event of failure to do so, the Concessionaire shall be liable to pay to Concessioning Authority, for every Day of delay, liquidated damages computed at the rate equivalent to SBI MCLR plus 3% per annum . 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 Concessioning Authority in accordance with the requirements thereof under this Agreement.

In case the transfer of assets by the Concessionaire to Concessioning Authority is delayed for reasons attributable to Concessioning Authority, the Concessionaire shall nonetheless continue to operate the Project Facilities and Services but as agent of Concessioning Authority. Provided however, the Concessionaire shall be liable to pay Fees, Charges and Revenue in accordance with Article 8.

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.

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 18.2 and 18.3.

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 Concessioning 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 Concessioning 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 Concessioning Authority any Project Contracts which are (i) valid and subsisting; (ii) capable of being transferred to the Concessioning Authority; and (iii) those the Concessioning Authority has chosen to take over, and cancel or cause to be cancelled such Project Contracts not transferred to the Concessioning Authority. For this purpose, the Concessionaire shall ensure that all Project Contracts are assignable in favour of the Concessioning 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 Concessioning Authority;

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

20.3. Concessioning Authority's Obligations

Except in the event of expiry of the Concession by efflux of time, the Concessioning Authority shall pay compensation payable to the Concessionaire in accordance with Article 18.1 to the Concessionaire. The Concessionaire confirms that upon such payment being made, the Concessioning 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 Concessioning Authority in accordance with this Article 20 shall be a valid discharge to the Concessioning Authority in respect of the Concessioning 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 Concessioning Authority under this Agreement.

20.5. Vesting Certificate

The divestment of all rights, title and interest in the Project shall be deemed to be complete on the date when all of the obligations under Clause 20.2 and 20.3 hereinabove have been fulfilled, and the Concessioning Authority shall, without unreasonable delay, thereupon issue a certificate (the "Vesting Certificate") as per the format in Appendix 11, which will have the effect of constituting evidence of divestment by the Concessionaire of all of its rights, title and interest in the Project, and their vesting in the Concessioning Authority pursuant hereto. It is expressly agreed that any defect or deficiency in the obligations under Clause 20.2 and 20.3 shall not in any manner be construed or interpreted as restricting the exercise of any

rights by the Concessioning Authority or its nominee on or in respect of, the Project on the footing that all obligations under Clause 20.2 have been complied with by the Concessionaire.

ARTICLE 21

DISPUTE RESOLUTION

21.1. Dispute Resolution

i. Any dispute, difference or controversy of whatever nature howsoever arising under or out of or in relation to this Agreement (including its interpretation) between the Parties, and so notified in writing by either Party to the other Party (the "Dispute") shall, in the first instance, be attempted to be resolved amicably in accordance with the conciliation procedure set forth in Clause 21.2.

ii. The Parties agree to use their best efforts for resolving all Disputes arising under or in respect of this Agreement promptly, equitably and in good faith, and further agree to provide each other with reasonable access during normal business hours to all non-privileged records, information and data pertaining to any Dispute.

21.2. Conciliation

a. A Dispute Resolution Committee (DRC) shall be formed in order to resolve the disputes that may arise during the currency of this Agreement. The members of the DRC shall be nominated by the Concessioning Authority and the Concessionaire as per clause 21.2.

b. The DRC shall comprise three members. The Concessioning Authority shall, send a panel of 7 independent and neutral members who shall be professionals, experienced in the relevant field. The members shall not be ex-employees or directly or indirectly associated with Concessioning Authority. The panel list shall be indicative. Each party shall choose any one member from the panel provided by the Concessioning Authority. The first two members shall recommend a third member from the panel and the Parties shall agree upon the same, who shall then act as Chairman of the DRC.

c. The remuneration payable to the adjudicators shall be mutually agreed to by the Concessioning Authority and the Concessionaire and shall be shared by both Parties equally.

d. If at any time the Parties so agree, they may jointly refer a dispute or any matter to the DRC for it to give its opinion. Neither Party shall consult the DRC members on any matter without the agreement of the other Party.

e. If any member of the DRC declines to act or is unable to act as a result of death, disability, resignation or termination of appointment, a replacement shall be made in the same manner as the replaced person was appointed.

f. The appointment of any member may be terminated by mutual agreement of both Parties, but not by the Concessioning Authority or the Concessionaire acting alone.

g. The DRC shall be appointed as and when a request is raised

h. If any party is not satisfied with the decision of DRC, the issue shall be referred to Arbitration under clause 21.3.

21.3. Arbitration

a. Any Dispute which is not resolved amicably by conciliation, as provided in Clause 21.2, shall be finally decided by reference to arbitration by an arbitral tribunal constituted in accordance with Clause 21.3 (b). Such arbitration shall be held in accordance with the Rules of Arbitration of the Nani Palkhivala Arbitration Centre, Chennai (the "Rules"), or such other rules as may be mutually agreed by the Parties and shall be subject to the provisions of the Arbitration and Conciliation Act, 1996. The place of such arbitration shall be the Chennai and the language of arbitration proceedings shall be English.
b. There shall be an arbitral tribunal comprising 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.
c. The arbitral tribunal shall make a reasoned award (the "Award"). Any Award made in any arbitration held pursuant to this Article shall be final and binding on the Parties as from the date it is made, and the Concessionaire and the Authority agree and undertake to carry out such Award without delay.
d. The Concessionaire and the Authority agree that an Award may be enforced against the
e. Concessionaire and/or the Authority, as the case may be, and their respective assets wherever situated.
f. This Agreement and the rights and obligations of the Parties shall remain in full force and effect, pending the Award in any arbitration proceedings hereunder.

ARTICLE 22

REPRESENTATIONS AND WARRANTIES

22.1. Representations and Warranties of the Concessionaire

The Concessionaire represents and warrants to the Concessioning 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 Concessioning 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 Concessioning 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 Concessioning 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 Concessioning 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 Concessioning Authority

The Concessioning 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 Concessioning 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 Concessioning 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 Concessioning 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 Concessioning 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 Concessioning 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 Concessioning Authority to give any notice pursuant to this Article 23.1.d shall not prejudice the disclaimer of the Concessioning Authority contained in Article 23.1.a and shall not in any manner shift to the Concessioning 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 Concessioning Authority shall not be liable in any manner for such risks or the consequences thereof.

ARTICLE 24

MISCELLANEOUS PROVISIONS

24.1. Accounts and Audits

a. Audited Accounts

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

ii. The Concessionaire shall, within 30 (thirty) days of the close of each quarter of an Accounting Year, furnish to the Concessioning Authority its unaudited financial results in respect of the preceding quarter, providing summarised information on the cargo types handled and liable for payment of Tariff therefor, along with any other information, in the manner and form prescribed by the Securities and Exchange Board of India for the publication of quarterly results by companies listed on a stock exchange.

iii. On or before the 31st day of August each year, the Concessionaire shall provide to the Concessioning Authority, for the preceding Accounting Year, a statement duly audited by its Statutory Auditors, giving summarised information on (a) the cargo traffic liable for payment of Approved cargo charges therefor, (b) the dues charged and received, along with other revenues derived from the Project and any other assets associated

with the Project and earned directly by the Concessionaire, and (c) such other information as the Concessioning Authority may reasonably require.

b. Appointment of Auditors

i. The Concessionaire shall appoint, and maintain throughout the subsistence of this Agreement, a firm as its Statutory Auditors, selected from a mutually agreed list of 5 (five) reputable firms of chartered accountants ("Panel of Chartered Accountants"), such list to be prepared substantially. All fees and expenses of the Statutory Auditors shall be borne by the Concessionaire.

ii. The Concessionaire may terminate the appointment of its Statutory Auditors upon providing 45 (forty-five) days' prior notice to the Concessioning Authority, subject to the condition that replacement Statutory Auditors are appointed from the Panel of Chartered Accountants.

iii. Notwithstanding anything to the contrary contained in this Agreement, the Concessioning Authority shall have the right, but not the obligation, to appoint, at its own cost, another firm (the "Additional Auditors") from the Panel of Chartered Accountants to audit and verify any matters, expenses, costs, realizations, or activities that the Statutory Auditors are required to address, undertake, or certify under this Agreement.

iv. The Concessioning Authority shall also have the right, but not the obligation, to appoint, at its own cost and for the duration of the Construction Period, another firm (the "Concurrent Auditors") from the Panel of Chartered Accountants to conduct a concurrent audit of the Concessionaire's accounts.

c. Certification of Claims by Statutory Auditors

Any claim or document submitted by the Concessionaire to the Concessioning Authority in connection with or relating to receipts, income, payments, costs, expenses, accounts, audits, or any matter incidental thereto shall be considered valid and effective only if certified by its Statutory Auditors. For the avoidance of doubt, such certification shall not be required for the exchange of information in the ordinary course of business, including the submission of License Fee as stipulated in the agreement.

d. Set – Off

In the event that any amount is due and payable by the Concessioning Authority to the Concessionaire, the Concessioning Authority may set off any sums owed to it by the

Concessionaire against such amount and remit the balance, if any, to the Concessionaire. The exercise of rights by the Concessioning Authority under this Clause 24.1 (d) shall be without prejudice to any other rights or remedies available to it under this Agreement or applicable law.

e. Dispute Resolution

In the event of any differences arising between the findings of the Additional Auditors or Concurrent Auditors, as applicable, and the certification provided by the Statutory Auditors, the respective auditors shall convene to resolve the discrepancies. If the differences remain unresolved, the dispute shall be referred to the Concessioning Authority and resolved in accordance with the dispute resolution procedure set forth in Article 21.

24.2. 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.

24.3. 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.

24.4. 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 Concessioning 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.

24.5. 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. 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.

24.6. 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.

24.7. 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.

24.8. 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.

24.9. Entire Agreement

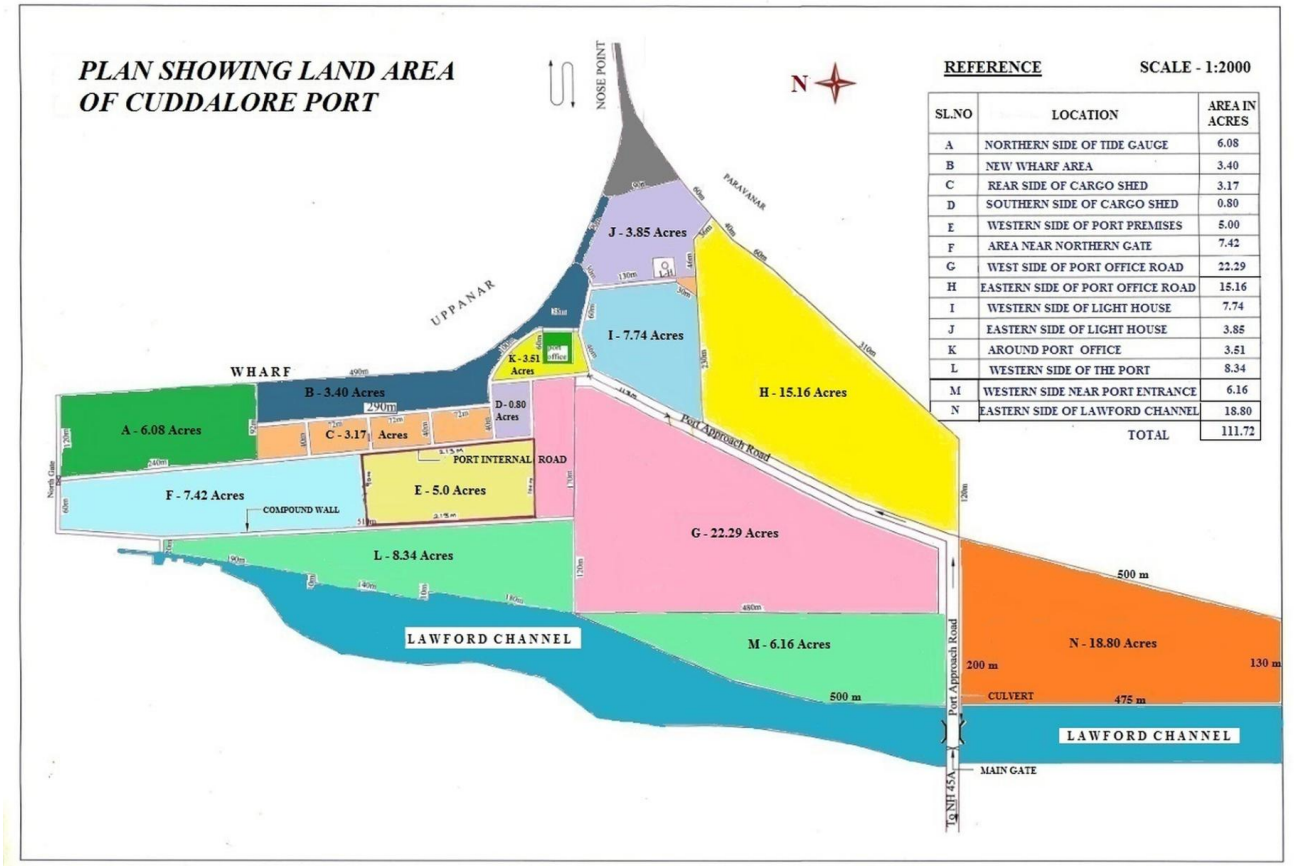
This Agreement and the Appendices together constitute a complete and exclusive statement of the terms of the agreement between the Parties. All prior written or oral understandings, offers or other communications of every kind pertaining to this Agreement unless specifically retained in this Agreement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



Survey Number	Extent
1944	111.72 acres

APPENDIX 2

PORT ASSETS

S.No.	Name Of Structure	Area/ Length	Co-ordinates
(1)	**Existing Infrastructure**		
1	Port Office building for Administrative Officer and Toilet block for staff	360 M^2	Latitude: 11°42'27.92"N Longitude: 79°46'29.58"E
2	Old Cargo Shed No.1	725 M^2	Latitude: 11°42'32.62"N Longitude: 79°46'28.45"E
3	Old Cargo Shed No.2	725 M^2	Latitude: 11°42'35.52"N Longitude: 79°46'28.40"E
4	Old Cargo Shed No.3	725 M^2	Latitude: 11°42'38.38"N Longitude: 79°46'28.41"E
5	Old Wharf	205 M	Latitude: 11°42'30.19"N Longitude: 79°46'30.34"E
		Sub-Total	

S.No.	Name Of Structure	Area/ Length	Co-ordinates
(2)	**New Infrastructure**		
1	North and South Breakwater	North Side= 130 m South Side = 210 m	North B.W Latitude: 11°42’27.03” N North B.W Longitude: 79°47'3.32"E South B.W Latitude: 11°42’19.19” N South B.W Longitude: 79°47'12.11"E
2	Extension of both North and South Breakwater	North Side= 215 m South Side = 420 m	
3	Wharf -I	120 X 21 m	Latitude: 11°42'19.73"N Longitude: 79°46'31.98"E
4	Wharf -II	120 X 21 m	Latitude: 11°42'14.37"N Longitude: 79°46'26.28"E

APPENDIX 3

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 Concessioning 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 4

APPROVED CARGO CHARGES

Cargo Charges approved by the Concessioning Authority

Cargo Charges approved by the Concessioning Authority: **_____ per Tonne of cargo**

	Quoted Price per Tonne of cargo
Approved Cargo Charges to the concessioning authority	

(The quoted price per Tonne of cargo is exclusive of GST)

APPENDIX 5

MINIMUM GARANTEED THROUGHPUT

Years	Minimum Guaranteed Throughput (Lakhs Tonnes)	Years	Minimum Guaranteed Throughput (Lakhs Tonnes)	Years	Minimum Guaranteed Throughput (Lakhs Tonnes)
1	3.00	14	15.45	27	35.00
2	3.30	15	17.77	28	35.00
3	3.63	16	21.32	29	35.00
4	3.99	17	25.59	30	35.00
5	4.39	18	30.71	31	35.00
6	5.05	19	35.00	32	35.00
7	5.81	20	35.00	33	35.00
8	6.68	21	35.00	34	35.00
9	7.68	22	35.00	35	35.00
10	8.83	23	35.00	36	35.00
11	10.16	24	35.00	37	35.00
12	11.68	25	35.00	38	35.00
13	13.44	26	35.00		

APPENDIX 6

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 Concessioning 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 0ffice/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 Concessioning Authority for implementing a Project envisaging Operation, Maintenance & Marketing, of Port at Cuddalore, for a Concession Period of 40 Years by private sector participation (hereinafter referred to as "the Project"), has by the Concession Agreement dated ---------- entered into between the Concessioning 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 Concessioning 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 Concessioning Authority for substituting the

Concessionaire for the residual Concession Period, in accordance with the provisions of this

Agreement.

"Suspension Period" means the Termination Period 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 Concessioning 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 Concessioning 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 Concessioning 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 Concessioning 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 Concessioning 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 Concessioning 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 Concessioning 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 Concessioning 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 Concessioning 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 Concessioning Authority and the Concessionaire hereby agree that on or after the date of Notice of Financial Default or the date of representation to the Concessioning 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 Concessioning Authority for shortlisting the bidders for award of the Concession; provided that the Senior Lenders/ Senior Lenders' Representative may represent to the Concessioning Authority that all or any of such criteria may be waived in the interest of the Project, and if the Concessioning 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 Concessioning 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 Concessioning 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 Concessioning Authority, the Selectee shall be deemed to have been accepted. The Concessioning 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 Concessioning 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 Concessioning 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 Concessioning 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 Concessioning Authority and the Concessionaire shall have no right or remedy to prevent, obstruct or restrain the Concessioning 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 Concessioning Authority to

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

5.3 Realisation of Debt Due

The Concessioning 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 Concessioning 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 Concessioning 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 Concessioning 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 Concessioning 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 "Concessioning Authority", the "Concessionaire", the "Senior Lender" and the "Senior Lenders' Representative", "Selectee" herein used shall unless there be anything repugnant to the subject or context include the respective successors and assigns.

iv. This Agreement shall not be affected by reorganisation of any Senior Lender, the Concessionaire or Concessioning Authority, "Selectee" and the successor in interest of the Senior Lender or Concessioning 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 Concessioning 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 7

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 Concessioning 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, 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 Bidder") and issued the Letter of Intent No _____dated _____ ("LOI") to the Consortium/Bidder 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 Bidder /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 Period.

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 Period.
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 Concessioning 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 Concessioning 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 Concessioning Authority's part to enforce, assert or to exercise any right, power or remedy conferred on the Concessioning 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 Concessioning 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 8

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 Tamil Nadu Maritime Board Act, 1997 and having its Administrative Office at _____ _____ _____, hereinafter referred to as "**the Concessioning Authority**" (which expression shall, unless repugnant to the context or meaning thereof, include its successors and permitted assigns);

WHEREAS:

A. The Concessioning Authority has entered into a Concession Agreement dated [●] with the Concessionaire (the "Concession Agreement") for undertaking the Project (as defined in the Concession Agreement). 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 8;

"**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 8, 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 1.2, 1.3 and 1.4 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 Concessioning 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 Concessioning 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 Concessioning 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 Concessioning 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 Concessioning 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 Appointed Date, 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 Concessioning 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 Concessioning 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 Concessioning 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 Concessioning Authority in exercise of its rights under the Concession Agreement; and
d. all payments by the Concessioning Authority, after deduction of any outstanding License Fee, Approved 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 Concessioning 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 Concessioning 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

Upon Termination of the Concession Agreement, all amounts standing to the credit of the Escrow Account shall, notwithstanding anything in this Agreement, be appropriated and dealt with in the following order:

a. All taxes and statutory payments due and payable by the Concessionaire for and in respect of the Project;
b. 90% (ninety per cent) of Debt Due as per the terms of the Financing Agreements;
c. all payments of outstanding Licence Fee, Approved cargo charges and damages certified by the Concessioning Authority as due and payable to it by the Concessionaire;
d. all payments and Damages certified by the Authority as due and payable to it by the Concessionaire;
e. retention and payments relating to the liability for defects and deficiencies set forth herein;
f. outstanding Debt Service Payments including the balance of Debt Due;
g. incurred or accrued O&M Expenses;
h. any other payments required to be made under this Agreement; and
i. balance, if any, in accordance with the instructions of the Concessionaire.

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 and the Vesting Certificate has been issued by the Authority.

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 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 Concessioning 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 Concessioning Authority;
b. it the Escrow Agent has received a confirmation of final settlement by the Senior Lenders and/or Concessioning Authority; and
c. Vesting Certificate has been issued by the Concessioning Authority.

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 Concessioning 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 Concessioning Authority, Escrow Bank and the Senior Lenders, acting through the Senior Lenders' Representative, harmless against any and all proceedings, actions and third-party claims for any loss, damage, cost and expense arising out of any breach by the Concessionaire of any of its obligations under this Agreement or on account of failure of the Concessionaire to comply with Applicable Laws and Applicable Permits.

9.1.2 The Concessioning 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 Concessioning 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 their lawful functions by the Concessioning 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 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 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 Concessioning 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 Concessioning 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 Concessioning 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 titled 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 Concessioning Authority by: (Signature)

(Name)

(Designation)

(Address) (Fax No.)

In the presence of:

1.

2.

APPENDIX 9

PORT DUES AS PER SOR

ABSTRACT

Tamil Nadu Maritime Board – Schedule of Rates for collection of various fees/dues by Tamil Nadu Maritime Board as per Indian Ports Act, 1908 (Central Act XV of 1908) – Enhancement w.e.f 01.04.2020 - Deferred – Orders – Issued.

Highways & Minor Ports (HM1) Department

G.O(Ms)No.97 **Dated 04.08.2020.**
சார்வரி, ஆடி 20,
திருவள்ளுவராண்டு 2051.

Read:-

1. G.O.(Ms)No.227, Highways & Minor Ports (HN2) Department, dated: 24.09.2008.
2. G.O.(Ms).No.228, Highways & Minor Ports (HN2) Department, dated 24.09.2008.
3. From the Vice Chairman & Chief Executive Officer (FAC), Tamil Nadu Maritime Board Letter No.3351/S4/2019, dated 17.03.2020.

****

ORDER:

In the Government Order first read above, the consolidated revision of scale of rates of Tamil Nadu Maritime Board were ordered as per Indian Ports Act 1908 (Central Act XV of 1908).For fixing Tariff on commercial cargoes handled in Captive Ports/ Commercial Ports, Fixation of Revenue Share percentage was ordered vide Government Order second read above.

2. The Vice Chairman & Chief Executive Officer (FAC), Tamil Nadu Maritime Board has requested the Government to issue necessary orders for amendment based on the resolutions of the Board, in section II to the Appendix to paras 4 and 5 of the Government Order first read above.

3. The Government have examined the proposal of the Vice Chairman& Chief Executive Officer (FAC), Tamil Nadu Maritime Board in detail and decided to accept the same. Accordingly, the Government defer the enhancement of schedule of rates for collection of various fees, charges, dues etc., as ordered in G.O.(Ms).No.227, Highways and Minor Ports (HN2) Department, dated 24.09.2008 by 20% w.e.f 01.04.2020 and the schedule of rates as on 01.04.2017, as appended to this order shall prevail, until further orders.

4. Accordingly, under section 41 of the Tamil Nadu Maritime Board Act, 1995 (Tamil Nadu Act 4 of 1996), the Governor of Tamil Nadu hereby accords sanction to the revised scale of rates, appended to this order framed by the Board under sections 37, 38 and 39 of the said Act.

5. Tamil Nadu Maritime Board shall make arrangements for publication of the revised scale of rates in the **Tamil Nadu Government Gazette** as required under section 41 of the said Act.

6. This order issues with the concurrence of Finance (BPE) Department vide its U.O.No.14888/Fin(BPE)/2020, dated 26.03.2020.

(By Order of the Governor)

A.Karthik
Principal Secretary to Government

To
The Vice Chairman & Chief Executive Officer (FAC),
Tamil Nadu Maritime Board, Chennai-28.

Copy to:-
The Chief Minister Office, Chennai-9.
The Special Personal Assistant to the Hon'ble Chief Minister, Chennai-9.
The Senior Private Secretary to the Principal Secretary to Government,
Highways & Minor Ports Department, Chennai-9.
The Personal Clerk to the Deputy Secretary to Government,
Highways & Minor Ports Department, Chennai-9.
Finance (BPE) Department, Chennai-9.
SF/SC.
(C.No.4232/HM1/2020)

//Forwarded By Order//

S. Pushpalatha
04/08/2020
Section Officer

APPENDIX

NOTIFICATION I.

In exercise of the powers conferred by sub-section (2) of section 33 of the Indian Ports Act, 1908 (Central Act XV of 1908), the (Governor) of Tamil Nadu hereby makes the following amendment to the First Schedule to the said Act:-

AMENDMENT.

In the said Act, in the First Schedule, under the heading "PART V – PORTS UNDER THE CONTROL OF THE GOVERNMENT OF TAMIL NADU", for the entries, the following entries shall be substituted, namely:-

"

Name of the Port	District	Vessels Chargeable	Rate of port dues Classes of vessels	Dues how often chargeable in respect of the vessel
(1)	(2)	(3)	(4)	(5)
(1) Kattupalli (2) Ennore Minor Port	Thiruvallur	Seagoing vessels of 14 Ton and upwards	(a) Foreign vessels calling at any port - Rupees Ten and paise Forty only on Gross Registered Tonnage (b)Sailing Vessels whether mechanized or not - Rupees Eight and paise Sixty Five only on Gross Registered Tonnage	Payable on each entry into the port.
(3) Panaiyur	Chengalpattu			
(4) Cuddalore (5) Thiruchopuram (6) Silambimangalam (7) Parangipettai (8) PY-03 Oil Field	Cuddalore			
(9) Thirukkadaiyur (10) Nagapattinam (11) Thirukkuvalai	Nagapattinam			
(12) Pamban (13) Rameswaram	Ramanathapuram			
(14) Udangudi	Thoothukudi			
(15) Koodankulam	Thirunelveli			

(16) Kanyakumari (17) Colachel	Kanyakumari		(c) Coastal vessels calling at any port - Rupees Ten and paise Forty only on Gross Registered Tonnage. The rates in (a), (b) and (c) above are applicable to all the ports mentioned in column (1)	

"

A.Karthik
Principal Secretary to Government

//True Copy//

S. Pushpalatha
04/08/2020
Section Officer

SD
4/8/2020

NOTIFICATION II.

In exercise of the powers conferred by sub-section (1) of section 33 of the Indian Ports Act, 1908 (Central Act XV of 1908), the Governor of Tamil Nadu hereby directs that the rate of Port dues leviable on vessels specified in column (2) of the schedule below, entering the port specified in column (1) thereof, shall be as specified in column (3) of the schedule, subject to the conditions specified in column (4) of the Schedule.

THE SCHEDULE

PORT DUES

District & Name of the Port	Vessels Chargeable	Classes of vessels and Rate of port dues	Dues how often chargeable in respect of the vessel
(1)	(2)	(3)	(4)
Thiruvallur: (1) Kattupalli (2) Ennore Minor Port	Seagoing vessels of 14 Ton and upwards	a) Foreign vessels calling at any port - Rupees Ten and paise Forty only on Gross Registered Tonnage b)Sailing Vessels whether mechanized or not - Rupees Eight and paise Sixty Five only on Gross Registered Tonnage c)Coastal vessels calling at any port - Rupees Ten and paise Forty only on Gross Registered Tonnage. The rates in (a), (b) and (c) above are applicable to all the ports mentioned in column (1)	Payable on each entry into the port.
Chengalpattu: (3) Panaiyur			
Cuddalore : (4) Cuddalore (5) Thiruchopuram (6) Silambimangalam (7) Parangipettai (8) PY-03 Oil Field			
Nagapattinam: (9) Thirukkadaiyur (10) Nagapattinam (11) Thirukkuvalai			
Ramanathapuram: (12) Pamban (13) Rameswaram			
Thoothukudi: (14) Udangudi			
Thirunelveli: (15) Koodankulam			
Kanyakumari: (16) Kanyakumari (17) Colachel			

A.Karthik
Principal Secretary to Government

//True Copy//

S. Pushpalakha
04/08/2020
Section Officer

NOTIFICATION III.

In exercise of the powers conferred by sub-section (1) of section 35 of the Indian Ports Act, 1908, (Central Act XV of 1908), the Governor of Tamil Nadu hereby directs that the fees may be charged at the following rates mentioned in the Schedule below:-

THE SCHEDULE

I. PILOTAGE FEES AT PAMBAN PORT

1. Rs.17.30/- (Rupees Seventeen and paise thirty only) for every cubic metre or part thereof for all sailing vessels.
2. Rs. 34.60/- (Rupees Thirty four and paise sixty only) for every cubic metre or part thereof for all mechanized vessels.

II. EXAMINATION FEE FOR ISSUING OF CERTIFICATE OF COMPETENCY FOR ENGINE DRIVER OR SERANG

For Serang : Rs. 864/- (Rupees Eight hundred and Sixty Four Only)

For Driver :Rs. 864/- (Rupees Eight hundred and Sixty Four Only)

For the staff of the Tamil Nadu Maritime Board no examination fee will be levied

III. BAR CHANNEL FEES.-

A sum of Rs.17.30/- (Rupees Seventeen and paise Thirty only) shall be leviable as 'BAR CHANNEL FEE' per day per vessel, which enters the channel from seawards and or proceeding to sea from the channel at the ports of Cuddalore and Nagapattinam:

Provided that for vessels registered under the Tamil Nadu Minor Ports Harbour Crafts Rules, 1953 and are regularly employed in the lighterage work at these ports between ship and shore, a quarterly or monthly licence shall be issued instead of the daily levy of the "Bar Channel Fee" at a concessional rate of Rs.864/- (Rupees Eight hundred and Sixty Four only) for a quarter, and Rs.345.60/- (Rupees Three hundred and Forty Five and paise Sixty only) for a month, at the request of the Owner or Master or Tindal of the vessel. The fee for the channel pass shall be paid in advance.

Explanation.-

(1) "A day" means twenty four hours from 6.00 a.m.

(2) "Quarter" means three calendar months ending with 31st March, 30th June, 30th September and 31st December of the year. The date of commencement may be at any date in the quarters.

(3) "Month" means from the date of issue in a calendar month up to but not inclusive of the same date in the next calendar month.

Conditions:-

(1) All vessels which enter the channel from seaward and those proceeding to sea from the channel shall pay the "**BAR CHANNEL FEE**" . The payment shall be made not later than a week from the date of sailing of a vessel.

(2) Harbour Crafts employed in the lighterage traffic at the port shall pay the "**BAR CHANNEL FEE**" collectively through the shippers or the agents who employ the Harbour crafts. The shippers or the agents shall in such case produce a list of harbour crafts employed in Lighterage work for each ship on a particular day with purpose of such engagement (viz., to carry cargo, to transport passengers, to Transport labourers etc.,) duly certified by the Master of the Ship concerned.

(3) The Tindal or the Master of the vessel is generally responsible for the payment of the Bar Channel fee within the time prescribed.

(4) Harbour Craft engaged in lighterage work which leaves the channel on a particular day and could not re-enter the channel on the same day, due to stress or weather or due to any other natural cause, if she re-enters on the next day shall be liable to pay bar channel fee for one day only, provided the officer-in-charge of the Port certifies to that effect.

IV. ANCHORAGE FEES.-

The Anchorage fees payable in respect of vessels arriving in the port limits of Tamil Nadu Maritime Board and remaining on its own anchor per day or part thereof after the first thirty days shall be payable as follows:

Description of vessels at anchorage **(1)**	**Anchorage fees in Rs. per day or part thereof Rate per Gross Registered Tonnage** **(2)**	**Minimum charges in Rupees** **(3)**
Vessels upto 500 GRT	0.90	864
Vessels above 500 GRT	0.90	3456

In respect of any vessels arriving in the port limits and lying idle on its own anchor in stream without loading or unloading cargo, the above charges are payable from the date of entry into the port limits.

Terms and conditions: (1). The anchorage fees shall be payable in advance before the vessels avail of the facilities for which such charges are payable. In case of overstay, beyond stipulated / declared period, subsequent payments shall be made in advance before expiry of the stipulated / declared period.

2. The period of charging anchorage fees at the anchorage shall be as per the period of occupancy.

V. BERTHING FEES.-

The following rates of fees shall be levied on the vessels berthing alongside the wharves, jetties or piers at the ports under the control of Tamil Nadu Maritime Board.

A. CRAFTS USED FOR LIGHTERAGE AND TOWING OPERATIONS

Description (1)	Sailing Vessels, Harbour crafts and fishing vessels (2)	Mechanised vessels (3)
Vessels of overall length upto 10 metres	Rs.17.30	Rs.34.60
Vessels of overall length of 10 metres and upto 15 metres	Rs.34.60	Rs.51.85
Vessels of overall length of 15 metres and upto 25 metres	Rs.51.85	Rs.69.15
Vessels of overall length of 25 metres and above	Rs.69.15	Rs.86.40

B. CRAFTS BERTHED FOR OTHER USES (NOT RELATED TO CARGO / PASSENGER OPERATION)

Description (1)	Sailing Vessels, Harbour crafts and Fishing vessels (2)	Mechanised vessels (3)
All Crafts	Rs.864	Rs.1728

Explanation:

(1) These rates are leviable per day or part thereof.

(2) "Day" means 24 hours from 06.00 A.M.

(3) Harbour crafts engaged in lighterage work shall be required to pay the Berthing Fees only for the days on which they are employed in the lighterage work. No fees shall be leviable on other days irrespective of the fact whether the said crafts may be berthed alongside wharves.

A.Karthik
Principal Secretary to Government

//True Copy//

S. Pushpalatha
04/08/2020
Section Officer
4/8/2020

NOTIFICATION IV.

In exercise of the powers conferred by clause (k) of sub-section (1) of the section 6 of the Indian Ports Act, 1908 (Central Act XV of 1908), the Governor of Tamil Nadu hereby makes the following amendment to the Tamil Nadu Minor Ports Harbour Craft Rules, 1953 the draft the same having been previously published as required under sub-section (2) of section 6 of the said Act.

AMENDMENT.

In the said Rules, in rule 25, for sub-rule (1), the following sub-rule shall be substituted, namely:-

(1) **Fees for Survey, Registration, Licensing, Inspection and Endorsing change of Tindals:-** (1) The following fees shall be leviable for the Survey, Registration, Licensing, Inspection and Endorsing change of Tindals of Harbour crafts:-

Sl. No. (1)	Description (2)	Harbour Craft other than canoes and shoe dhonies (Rs) (3)	Canoes and shoe dhonies (Rs) (4)	Catamarans plying for hire (Rs) (5)
(1).	For Survey, Measurement and Registration at the time of Issue of licence for the first time or after construction.	864	518.40	345.60
(2).	For special Inspection or Survey on each occasion when a Harbour Craft is found unsea Worthy and each Annual Inspection	345.60	172.80	86.40
(3).	For Re-measurement and survey of Harbour Craft on account of changes in Measurements or capacity	518.40	172.80	86.40
(4).	For Registration and issue of Licence on account of change of ownership or change in capacity	345.60	172.80	86.40
(5).	For issue of Duplicate copy of Licence	172.80	86.40	86.40
(6).	For Endorsing Change of Tindal	172.80	86.40	86.40

Provided that no fee shall be levied for amending a licence or register:

Provided further that Annual Inspection fee is leviable only for the year in which the vessel is licensed to ply.

A.Karthik
Principal Secretary to Government

//True Copy//

S. Pushpalatha
04/09/2020
Section Officer

APPENDIX 10

EC & CRZ FOR THE CUDDALORE PORT FACILITY

Cuddalore Port EC & CRZ

F. No. 10-35/2017-IA-III
Government of India
Ministry of Environment, Forest and Climate Change
(IA.III Section)

Indira Paryavaran Bhawan,
Jor Bagh Road, New Delhi - 3

Date: 20th August, 2020



To,

M/s Tamilnadu Maritime Board,
171, South Kesavaperumal puram Off Greenways Road,
Raja Annamalai puram Chennai, Mylapore Triplicane,
Chennai - 600028, Tamil Nadu
E- Mail: portcuddalore@gmail.com

Subject: Capacity Expansion, Cuddalore Port, Tamil Nadu by M/s Tamilnadu Maritime Board - Environmental and CRZ Clearance reg.

Sir,

This has reference to your online Proposal No. IA/TN/MIS/64666/2017 dated 31 January, 2019, submitted to this Ministry for grant of Environmental and CRZ Clearance in terms of the provisions of the Environment Impact Assessment (EIA) Notification, 2006 and Coastal Regulation Zone (CRZ) Notification, 2011, under the Environment (Protection), Act, 1986.

2. The proposal for 'Capacity Expansion, Cuddalore Port, Tamil Nadu by M/s Tamilnadu Maritime Board was considered by the Expert Appraisal Committee (Infra-2) in the Ministry in its 49th meeting held during 25-26 February, 2020, 51st meeting held during 21-22 May, 2020, 52nd meeting held during 18-19 June, 2020 and 53rd meeting held during 23-24 July, 2020.

3. The project/activity is covered under category 'A' of item 7 (e) i.e. 'Ports, harbours, break waters, dredging' of the schedule to the EIA Notification, 2006 and its subsequent amendments, and requires appraisal at Central level by sectoral EAC.

4. The details of the project, as per the documents submitted by the project proponent, and also as informed during the above said EAC meeting, are reported to be as under:-

(i) Tamilnadu Maritime Board (TNMB) operates the Cuddalore Port in Cuddalore in the location where two estuarine rivers Viz., Paravanar and Uppanar have their confluence with Bay of Bengal. The Cuddalore Port is almost defunct for want of dredging to make the existing wharf to become operational for multi Cargo handling for 5.68 MTPA. The Port is pre-EIA Notification and has valid Consent for operation from State Pollution Control Board.

(ii) TNMB intended to enhance the Cargo handling capacity with additional berth construction (2 Numbers; 120 X 21 m each) with required modifications in the existing Breakwaters, Approach Channel & Turning Circle, additional Cargo Storage systems and dredging for 18,73,476 Cu.m TNMB availed the services of the Department of Ocean Engineering, Indian Institute of Technology-Madras for the preparation of Detailed Project Report with feasibility studies for the proposed Capacity Expansion Project of Cuddalore Port. The detailed engineering and structural designs are within the scope of services from IIT-M.

(iii) The proposed cargo is multiple systems as there is a requirement to coalmining, thermal power plants and general industrial growth in the project location. The proposed additional Cargo handling is envisaged for 5.68 MTPA of varied cargo of Coal, Fertilizer, Cement, and Containers and Clean Cargo.

(iv) The proposed berths are to be established in Paravanar with approach Channel for -10 to -11m CD with a Turning Circle for -11 m. The break waters will be further extended with slight change in the existing alignments.

(v) The dredged material will be used for land reclamation behind the proposed berths, erosion prevention on the northern side of the North Breakwater and also in the Off shore area.

(vi) Terms of Reference was granted by MoEFCC vide letter F.No. 10-35/017-IA-III dated 17 August, 2017.

(vii) Public Hearing was conducted by Tamil Nadu Pollution Control Board on 22 February, 2018 at Cuddalore Port in Cuddalore.

(viii) Tamil Nadu Coastal Zone Management Authority (TNCZMA) has recommended the project vide letter No. 19510/EC-3/2018-1 dated 14 November, 2018.

(ix) Investment/Cost of the project is Rs. 135 Crores.

(x) Employment potential: 2500 (Both direct & indirect).

(xi) Benefits of the project: Enhanced utility of Coastal compatibility for Port operation, Improving the operational capability of the existing Fishing Harbor.

5. In the 49th meeting held during 25-26 February, 2020, the EAC during deliberation noted that the project proponent has not provided copy of EIA/EMP report to all the members in the stipulated time. The EAC also noted that there are so many discrepancies in the presentation submitted by the project proponent. Accordingly, the EAC asked the project proponent to submit additional information. The project proponent submitted/uploaded the additional information on 05 May, 2020 on 'Parivesh' Portal. Accordingly, proposal was re-considered by EAC in its 51st meeting held during 21-22 May, 2020, however, project proponent did not attend the meeting and as such, the proposal was deferred.

6. On request of project proponent, proposal was again considered by EAC in its 52nd meeting held during 18-19 June, 2020, the EAC deliberated on the information provided by the PP and further noted that the Environment and Forest (EC.3) Department, Secretariat, Chennai vide letter No. 19530/EC.3/2018-1 dated 14 November, 2018 forwarded the proposal to the Ministry for grant of CRZ clearance to the project under CRZ Notification, 2011. The project proponent also submitted point-wise ToR Compliance along with Annexures, copy of CZMA recommendations given by Tamil Nadu Coastal Zone Management Authority (TNCZMA) and Plan for Corporate Environment Responsibility (CER) as specified under Ministry's Office Memorandum issued vide letter F.No. 22-65/2017-IA.III dated 01 May, 2018. However, PP had not uploaded signed copy of the EIA/EMP Report on PARIVESH porta. Further, the reply given by the Consultant to the query of EAC regarding validity of his accreditation certificate, the EAC observed that accreditation given to Center for Environment Health and Safety (the Consultant) stood expired with effect from February, 2019. They have applied for accreditation and NABET is yet to award accreditation certificate. As per provisions of EIA Notification, 2006, only accredited consultants are eligible to make the presentation. Therefore, the EAC recommended to defer the proposal to seek Valid accreditation certificate of the EIA Consultant M/s Centre for Environment, Health and Safety, Annamalai University and Signed copy of EIA/EMP report containing signature of all the team members. The project proponent submitted a letter dated 02 July, 2020 issued by QCI-NABET regarding validity of accreditation certificate for the consultant. As per the letter, QCI NABET has endorsed the accreditation of the Environmental Consultant. The EAC also noted that the project proponent has also submitted signed portion of the EIA Report. In view, proposal was re-considered by EAC in its 53rd meeting held during 23-24 July, 2020.

7. The EAC in its 53rd meeting held during 23-24 July, 2020, based on the information submitted and clarifications provided by the Project Proponent and detailed discussions held on all the issues, recommended the project for grant of environmental and CRZ clearance with stipulated specific conditions along with other Standard EC Conditions as

...ied by the Ministry vide OM dated 04 January, 2019 for the said project/activity. As ... recommendations of the EAC, the Ministry of Environment, Forest and Climate Change ...ereby accords Environmental and CRZ Clearance to the project 'Capacity Expansion, Cuddalore Port, Tamil Nadu by M/s Tamilnadu Maritime Board, under the provisions of the EIA Notification, 2006 and amendments/circulars issued thereon and CRZ Notification, 2011, and subject to the specific and standard conditions as under:-

A. Specific Conditions:

(i) The Environmental and CRZ Clearance to the project is primarily under provisions of EIA Notification, 2006 and CRZ Notification, 2011. It does not tantamount to approvals/consent/permissions etc required to be obtained under any other Act/Rule/regulation The Project Proponent is under obligation to obtain approvals /clearances under any other Acts/ Regulations or Statutes as applicable to the project.

(ii) The project proponent shall abide by all the commitments and recommendations made in the Form-II, EIA and EMP report, submissions made during Public Hearing and also that have been made during their presentation to EAC.

(iii) Construction activity shall be carried out strictly according to the provisions of the CRZ Notification, 2011. No construction works other than those permitted in Coastal Regulation Zone Notification shall be carried out in Coastal Regulation Zone area.

(iv) All the recommendations and conditions specified by the Tamil Nadu Coastal Zone Management Authority (TNCZMA) vide letter No. 19510/EC-3/2018-1 dated 14 November, 2018 shall be complied with.

(v) The project proponent shall ensure that the project is in consonance with the new CZMP prepared by the State Government under the provisions of CRZ Notification, 2011.

(vi) The Project proponent shall ensure that no creeks or rivers are blocked due to any activities at the project site and free flow of water is maintained.

(vii) Dredging shall not be carried out during the fish breeding season. Dredging, etc. shall be carried out in confined manner to reduce the impacts on marine environment. Turbidity should be monitored during the dredging. While dredging, sediment should be monitored fortnightly at source and disposal location of dredging.

(viii) Dredged material shall be used for beach nourishment and left out material should be disposed safely in the designated areas so that the dumped dredged material does not enter the channel. With the enhanced quantities, the impact of dumping on the coastal environment should be studied and necessary measures shall be taken on priority basis if any adverse impact is observed.

(ix) No underwater blasting is permitted.

(x) An independent monitoring be carried out by any Government Agency/Institute to evaluate the impact during dredging. Impact of dredged material on coastal environment along with shore line changes should be studied by the PP- and necessary mitigation measures be taken in case any adverse impact is observed. The details shall be submitted along with the six-monthly monitoring report.

(xi) The fresh water requirement of 100 KLD shall be met from desalination plant using RO.

(xii) Sewage generated will be collect from the conveniences and rest rooms. This will be mixed with all other liquid waste streams from washing and service yard and will be taken to ETP.

(xiii) Marine ecological studies and its mitigation measures for protection of phytoplankton, zooplanktons, macrobenthos, estuaries, mangroves, coral reefs and sea-grass beds etc. as given in the EIA-EMP Report shall be complied with in letter and spirit.

(xiv) Marine ecology shall be monitored regularly also in terms of sea weeds, sea grasses, mudflats, sand dunes, fisheries, echinoderms, shrimps, turtles, corals, coastal vegetation, mangroves and other marine biodiversity components as part of the management plan. Marine ecology shall be monitored regularly also in terms of all micro, macro and mega floral and faunal components of marine biodiversity.

(xv) A copy of the Marine and riparian biodiversity management plan duly validated by the State Biodiversity Board shall be obtained and implement in letter and spirit.

(xvi) A continuous monitoring programme covering all the seasons on various aspects of the coastal environs need to be undertaken by a competent organization available in the State or by entrusting to the National Institutes/renowned Universities/accredited Consultant with rich experiences in marine science aspects. The monitoring should cover various physico-chemical parameters coupled with biological indices such as microbes, plankton, benthos and fishes on a periodic basis during construction and operation phase of the project. Any deviations in the parameters shall be given adequate care with suitable measures to conserve the marine environment and its resources.

(xvii) Continuous online monitoring of air and water covering the total area shall be carried out and the compliance report of the same shall be submitted along with the 6 monthly compliance report to the regional office of MoEF&CC.

(xviii) The project proponent shall comply with the air pollution mitigation measures as submitted.

(xix) Suitable preventive measures be taken to trap spillage of fuel / engine oil and lubricants from the construction site. Measures should be taken to contain, control and recover the accidental spills of fuel during cargo handling.

(xx) All the recommendations mentioned in the rapid risk assessment report, disaster management plan and safety guidelines shall be implemented.

(xxi) Necessary arrangement for general safety and occupational health of people should be done in letter and spirit.

(xxii) All the mitigation measures submitted in the EIA report shall be prepared in a matrix format and the compliance for each mitigation plan shall be submitted to the RO, MoEF&CC along with half yearly compliance report.

(xxiii) The company shall draw up and implement Corporate Social Responsibility Plan as per the Company's Act of 2013.

(xxiv) As per the Ministry's Office Memorandum F. No. 22-65/2017-IA.III dated 01 May, 2018, project proponent has proposed that an amount of Rs. 1.10 Crores (0.75% of the project expansion cost i.e. Rs. 135 Crores) shall be earmarked under Corporate Environment Responsibility (CER) Plan for the activities such as Potable Water Supply, Village Roads, Domestic Solid Waste Management, Primary Health and Primary Education etc. The activities proposed under CER shall be restricted to the affected area around the project. The entire activities proposed under the CER shall be treated as project and shall be monitored. The monitoring report shall be submitted to the regional office as a part of half yearly compliance report, and to the District Collector. It should be posted on the website of the project proponent.

B. Standard Conditions:

I. Statutory compliance:

i. The project proponent shall obtain forest clearance under the provisions of Forest (Conservation) Act, 1980, in case of the diversion of forest land for non-forest purpose involved in the project.

ii. The project proponent shall obtain clearance from the National Board for Wildlife, if applicable. No dredging is allowed in protected habitat areas without prior permission from NBWL

iii. The project proponent shall prepare a Site-Specific Conservation Plan & Wildlife Management Plan and approved by the Chief Wildlife Warden. The recommendations of the approved Site-Specific Conservation Plan / Wildlife Management Plan shall be implemented in consultation with the State Forest Department. The implementation report shall be furnished along with the six-monthly compliance report (in case of the presence of schedule-I species in the study area).

iv. Construction activity shall be carried out strictly according to the provisions of CRZ Notification, 2011 and the State Coastal Zone Management Plan as drawn up by the State Government. No construction work other than those permitted in Coastal Regulation Zone Notification shall be carried out in Coastal Regulation Zone area.

v. All the recommendations and conditions specified by State Coastal Zone Management Authority for the project shall be complied with.

vi. The project proponent shall obtain Consent to Establish / Operate under the provisions of Air (Prevention & Control of Pollution) Act, 1981 and the Water (Prevention & Control of Pollution) Act, 1974 from the concerned State Pollution Control Board/ Committee.

vii. The project proponent shall obtain the necessary permission from the Central Ground Water Authority, in case of drawl of ground water / from the competent authority concerned in case of drawl of surface water required for the project.

viii. All excavation related dewatering shall be as duly authorized by the CGWA. A NOC from the CGWA shall be obtained for all dewatering and ground water abstraction

ix. A certificate of adequacy of available power from the agency supplying power to the project along with the load allowed for the project should be obtained.

x. All other statutory clearances such as the approvals for storage of diesel from Chief Controller of Explosives, Fire Department, Coast Guard, Civil Aviation Department shall be obtained, as applicable by project proponents from the respective competent authorities.

II. Air quality monitoring and preservation:

i. The project proponent shall install system to carryout Ambient Air Quality monitoring for common/criterion parameters relevant to the main pollutants released (e.g. PM_{10} and $PM_{2.5}$ in reference to PM emission, and SO_2 and NOx in reference to SO_2 and NOx emissions) within and outside the project area at least at four locations (one within and three outside the plant area at an angle of 120°each), covering upwind and downwind directions.

ii. Appropriate Air Pollution Control (APC) system shall be provided for all the dust generating points including fugitive dust from all vulnerable sources, so as to comply prescribed emission standards.

iii. Shrouding shall be carried out in the work site enclosing the dock/proposed facility area. This will act as dust curtain as well achieving zero dust discharge from the site. These curtain or shroud will be immensely effective in restricting disturbance from wind in affecting the dry dock operations, preventing waste dispersion, improving working conditions through provision of shade for the workers.

iv. Dust collectors shall be deployed in all areas where blasting (surface cleaning) and painting operations are to be carried out, supplemented by stacks for effective dispersion.

v. The Vessels shall comply the emission norms prescribed from time to time.

vi. Diesel power generating sets proposed as source of backup power should be of enclosed type and conform to rules made under the Environment (Protection) Act,

1986. The height of stack of DG sets should be equal to the height needed for th combined capacity of all proposed DG sets. Use of low sulphur diesel. The location of the DG sets may be decided with in consultation with State Pollution Control Board.

vii. A detailed traffic management and traffic decongestion plan shall be drawn up to ensure that the current level of service of the roads within a 05 kms radius of the project is maintained and improved upon after the implementation of the project. This plan should be based on cumulative impact of all development and increased habitation being carried out or proposed to be carried out by the project or other agencies in this 05 Kms radius of the site in different scenarios of space and time and the traffic management plan shall be duly validated and certified by the State Urban Development department and the P.W.D./ competent authority for road augmentation and shall also have their consent to the implementation of components of the plan which involve the participation of these departments.

III. Water quality monitoring and preservation:

i. The Project proponent shall ensure that no creeks or rivers are blocked due to any activities at the project site and free flow of water is maintained.

ii. Appropriate measures must be taken while undertaking digging activities to avoid any likely degradation of water quality. Silt curtains shall be used to contain the spreading of suspended sediment during dredging within the dredging area.

iii. No ships docking at the proposed project site will discharge its on-board waste water untreated in to the estuary/ channel. All such wastewater load will be diverted to the proposed Effluent Treatment Plant of the project site.

iv. Measures should be taken to contain, control and recover the accidental spills of fuel and cargo handle.

v. The project proponents will draw up and implement a plan for the management of temperature differences between intake waters and discharge waters.

vi. Spillage of fuel / engine oil and lubricants from the construction site are a source of organic pollution which impacts marine life. This shall be prevented by suitable precautions and also by providing necessary mechanisms to trap the spillage.

vii. Total fresh water use shall not exceed the proposed requirement as provided in the project details. Prior permission from competent authority shall be obtained for use of fresh water.

viii. Sewage Treatment Plant shall be provided to treat the wastewater generated from the project. Treated water shall be reused for horticulture, flushing, backwash, HVAC purposes and dust suppression.

ix. A certificate from the competent authority for discharging treated effluent/ untreated effluents into the Public sewer/ disposal/drainage systems along with the final disposal point should be obtained.

x. No diversion of the natural course of the river shall be made without prior permission from the Ministry of Water resources.

xi. All the erosion control measures shall be taken at water front facilities. Earth protection work shall be carried out to avoid erosion of soil from the shoreline/boundary line from the land area into the marine water body.

IV. Noise monitoring and prevention:

i. Noise level survey shall be carried as per the prescribed guidelines and report in this regard shall be submitted to Regional Officer of the Ministry as a part of six-monthly compliance report.

Noise from vehicles, power machinery and equipment on-site should not exceed the prescribed limit. Equipment should be regularly serviced. Attention should also be given to muffler maintenance and enclosure of noisy equipments.

iii. Acoustic enclosures for DG sets, noise barriers for ground-run bays, ear plugs for operating personnel shall be implemented as mitigation measures for noise impact due to ground sources.

iv. The ambient noise levels should conform to the standards prescribed under E(P)A Rules, 1986 viz. 75 dB(A) during day time and 70 dB(A) during night time.

V. Energy Conservation measures:

i. Provide solar power generation on roof tops of buildings, for solar light system for all common areas, street lights, parking around project area and maintain the same regularly;

ii. Provide LED lights in their offices and residential areas.

VI. Waste management:

i. Dredged material shall be disposed safely in the designated areas.

ii. Shoreline should not be disturbed due to dumping. Periodical study on shore line changes shall be conducted and mitigation carried out, if necessary. The details shall be submitted along with the six monthly monitoring report.

iii. Necessary arrangements for the treatment of the effluents and solid wastes must be made and it must be ensured that they conform to the standards laid down by the competent authorities including the Central or State Pollution Control Board and under the Environment (Protection) Act, 1986.

iv. The solid wastes shall be managed and disposed as per the norms of the Solid Waste Management Rules, 2016.

v. Any wastes from construction and demolition activities related thereto shall be managed so as to strictly conform to the Construction and Demolition Waste Management Rules, 2016.

vi. A certificate from the competent authority handling municipal solid wastes should be obtained, indicating the existing civic capacities of handling and their adequacy to cater to the M.S.W. generated from project.

vii. Used CFLs and TFLs should be properly collected and disposed off/sent for recycling as per the prevailing guidelines/ rules of the regulatory authority to avoid mercury contamination.

viii. Oil spill contingency plan shall be prepared and part of DMP to tackle emergencies. The equipment and recovery of oil from a spill would be assessed. Guidelines given in MARPOL and Shipping Acts for oil spill management would be followed. Mechanism for integration of terminals oil contingency plan with the overall area contingency plan under the co-ordination of Coast should be covered

VII. Green Belt:

i. Green belt shall be developed in area as provided in project details with a native tree species in accordance with CPCB guidelines. The greenbelt shall inter alia cover the entire periphery of the plant.

ii. Top soil shall be separately stored and used in the development of green belt.

VIII. Marine Ecology:

i. Dredging shall not be carried out during the fish breeding and spawning seasons.

ii. Dredging, etc shall be carried out in the confined manner to reduce the impacts on marine environment.

iii. The dredging schedule shall be so planned that the turbidity developed is dispersed soon enough to prevent any stress on the fish population.

iv. While carrying out dredging, an independent monitoring shall be carried out through a Government Agency/Institute to assess the impact and necessary measures shall be taken on priority basis if any adverse impact is observed.

v. A detailed marine biodiversity management plan shall be prepared through the NIO or any other institute of repute on marine, brackish water and fresh water ecology and biodiversity and submitted to and implemented to the satisfaction of the State Biodiversity Board and the CRZ authority. The report shall be based on a study of the impact of the project activities on the intertidal biotopes, corals and coral communities, molluscs, sea grasses, sea weeds, sub-tidal habitats, fishes, other marine and aquatic micro, macro and mega flora and fauna including benthos, plankton, turtles, birds etc. as also the productivity. The data collection and impact assessment shall be as per standards survey methods and include underwater photography.

vi. Marine ecology shall be monitored regularly also in terms of sea weeds, sea grasses, mudflats, sand dunes, fisheries, echinoderms, shrimps, turtles, corals, coastal vegetation, mangroves and other marine biodiversity components including all micro, macro and mega floral and faunal components of marine biodiversity.

vii. The project proponent shall ensure that water traffic does not impact the aquatic wildlife sanctuaries that fall along the stretch of the river.

IX. Public hearing and Human health issues:

i. The work space shall be maintained as per international standards for occupational health and safety with provision of fresh air respirators, blowers, and fans to prevent any accumulation and inhalation of undesirable levels of pollutants including VOCs.

ii. Workers shall be strictly enforced to wear personal protective equipments like dust mask, ear muffs or ear plugs, whenever and wherever necessary/ required. Special visco-elastic gloves will be used by labour exposed to hazards from vibration.

iii. In case of repair of any old vessels, excessive care shall be taken while handling Asbestos & Freon gas. Besides, fully enclosed covering should be provided for the temporary storage of asbestos materials at site before disposal to CTSDF.

iv. Safety training shall be given to all workers specific to their work area and every worker and employee will be engaged in fire hazard awareness training and mock drills which will be conducted regularly. All standard safety and occupational hazard measures shall be implemented and monitored by the concerned officials to prevent the occurrence of untoward incidents/ accidents.

v. Emergency preparedness plan based on the Hazard identification and Risk Assessment (HIRA) and Disaster Management Plan shall be implemented.

vi. Provision shall be made for the housing of construction labour within the site with all necessary infrastructure and facilities such as fuel for cooking, mobile toilets, mobile STP, safe drinking water, medical health care, crèche etc. The housing may be in the form of temporary structures to be removed after the completion of the project.

vii. Occupational health surveillance of the workers shall be done on a regular basis.

X. Corporate Environment Responsibility:

i. The company shall have a well laid down environmental policy duly approved by the Board of Directors. The environmental policy should prescribe for standard operating procedures to have proper checks and balances and to bring into focus any infringements/deviation/violation of the environmental / forest /wildlife norms/ conditions. The company shall have defined system of reporting infringements / deviation / violation of the environmental / forest / wildlife norms / conditions and / or

shareholders / stake holders. The copy of the board resolution in this regard shall be submitted to the MoEF&CC as a part of six-monthly report.

ii. A separate Environmental Cell both at the project and company head quarter level, with qualified personnel shall be set up under the control of senior Executive, who will directly report to the head of the organization.

iii. Action plan for implementing EMP and environmental conditions along with responsibility matrix of the company shall be prepared and shall be duly approved by competent authority. The year wise funds earmarked for environmental protection measures shall be kept in separate account and not to be diverted for any other purpose. Year wise progress of implementation of action plan shall be reported to the Ministry/Regional Office along with the Six Monthly Compliance Report.

iv. Self environmental audit shall be conducted annually. Every three years third party environmental audit shall be carried out.

XI. Miscellaneous:

i. The project proponent shall make public the environmental clearance granted for their project along with the environmental conditions and safeguards at their cost by prominently advertising it at least in two local newspapers of the District or State, of which one shall be in the vernacular language within seven days and in addition this shall also be displayed in the project proponent's website permanently.

ii. The copies of the environmental clearance shall be submitted by the project proponents to the Heads of local bodies, Panchayats and Municipal Bodies in addition to the relevant offices of the Government who in turn has to display the same for 30 days from the date of receipt.

iii. The project proponent shall upload the status of compliance of the stipulated environment clearance conditions, including results of monitored data on their website and update the same on half-yearly basis.

iv. The project proponent shall submit six-monthly reports on the status of the compliance of the stipulated environmental conditions on the website of the ministry of Environment, Forest and Climate Change at environment clearance portal.

v. The project proponent shall submit the environmental statement for each financial year in Form-V to the concerned State Pollution Control Board as prescribed under the Environment (Protection) Rules, 1986, as amended subsequently and put on the website of the company.

vi. The criteria pollutant levels namely; $PM_{2.5}$, PM_{10}, SO_2, NOx (ambient levels) or critical sectoral parameters, indicated for the project shall be monitored and displayed at a convenient location near the main gate of the company in the public domain.

vii. The project proponent shall inform the Regional Office as well as the Ministry, the date of financial closure and final approval of the project by the concerned authorities, commencing the land development work and start of production operation by the project.

viii. The project authorities must strictly adhere to the stipulations made by the State Pollution Control Board and the State Government.

ix. No further expansion or modifications in the plant shall be carried out without prior approval of the Ministry of Environment, Forests and Climate Change (MoEF&CC).

x. Concealing factual data or submission of false/fabricated data may result in revocation of this environmental clearance and attract action under the provisions of Environment (Protection) Act, 1986.

xi. The Ministry may revoke or suspend the clearance, if implementation of any of the above conditions is not satisfactory.

xii. The Ministry reserves the right to stipulate additional conditions if found necessary. The Company in a time bound manner shall implement these conditions.

xiii. The Regional Office of this Ministry shall monitor compliance of the stipulated conditions. The project authorities should extend full cooperation to the officer (s) of the Regional Office by furnishing the requisite data / information/monitoring reports.

xiv. The above conditions shall be enforced, inter-alia under the provisions of the Water (Prevention & Control of Pollution) Act, 1974, the Air (Prevention & Control of Pollution) Act, 1981, the Environment (Protection) Act, 1986, Hazardous and Other Wastes (Management and Transboundary Movement) Rules, 2016 and the Public Liability Insurance Act, 1991 along with their amendments and Rules and any other orders passed by the Hon'ble Supreme Court of India / High Courts and any other Court of Law relating to the subject matter.

xv. Any appeal against this EC shall lie with the National Green Tribunal, if preferred, within a period of 30 days as prescribed under Section 16 of the National Green Tribunal Act, 2010.

8. This issues with the approval of the Competent Authority.

(Dr. Vinod K. Singh)
Scientist E

Copy to:

1) The Secretary, Department of Environment, No.1, Jeenis Road, Panagal Building, Ground Floor, Saidapet, Chennai-600 015, Tamil nadu.

2) Addl. Principal Chief Conservator of Forests (Central), Ministry of Environment, Forests and Climate Change, Ist and IInd Floor, Handloom Export Promotion Council, 34, Cathedral Garden Road, Nungambakkam, Chennai-34.

3) The Member Secretary, Central Pollution Control Board Parivesh Bhavan, CBD-cum-Office Complex, East Arjun Nagar, New Delhi - 110 032.

4) The Member Secretary, Tamil Nadu Pollution Control Board, 76, Mount Salai, Guindy, Chennai - 600 032.

5) Monitoring Cell, MoEF&CC, Indira Paryavaran Bhavan, New Delhi.

6) Guard File/ Record File/ Notice Board.

7) MoEF&CC Website.

(Dr. Vinod K. Singh)
Scientist E

APPENDIX 11

VESTING CERTIFICATE

1 The Chairman of _____ represented by_____ (the "Concessioning Authority") refers to the Concession Agreement dated _____ (the "Agreement") entered into between the Concessioning Authority and ____ (the "Concessionaire") for the Project.

2 The Concessioning Authority hereby acknowledges compliance and fulfilment by the Concessionaire of the obligations set forth in Clause 20.2 of the Agreement on the basis that upon issue of this Vesting Certificate, the Concessioning Authority shall be deemed to have acquired, and all title and interest of the Concessionaire in or about the Project shall be deemed to have vested unto the Concessioning Authority, free from any encumbrances, charges and liens whatsoever.

3 Notwithstanding anything to the contrary contained hereinabove, it shall be a condition of this Vesting Certificate that nothing contained herein shall be construed or interpreted as waiving the obligation of the Concessionaire to rectify and remedy any defect or deficiency in any of the obligations set forth in Clause 20.2 and/or relieving the Concessionaire in any manner of the same.

AGREED, ACCEPTED AND For and on behalf of Concessionaire by:

Signature

Name

Designation

Address

AGREED, ACCEPTED AND For and on behalf of Concessionaire by:

Signature

Name

Designation

Address

Witnesses:

1.

2.