INLAND WATERWAYS AUTHORITY OF INDIA

Bid Identification No: IWAI / PR-17 / INTG (IFC) / 2016
Date of Publishing: July 15, 2016
Date of Publishing Revised Documents: September 30, 2016

Objectives

The Inland Waterways Authority of India ("**Authority**") has resolved to develop navigable waterways as a reliable mode of transport to complement traditional modes of transport. In order to achieve the aforementioned objective, the Authority is keen to develop the inland waterway transport terminal(s) at existing terminals at Gaighat, Patna and Garden Reach, Kolkata and proposed terminal at Kalughat, Patna, on operation, maintenance and management ("**O&M**") basis ("**Project**").

The Authority now invites interested companies and consortiums ("**Bidders**") to participate in the bidding process. The Authority seeks to qualify and select a Bidder to undertake the Project through a competitive bidding process.

Issue of Request for Proposal ("**RFP**")

The RFP includes the detailed terms and conditions for qualification of Bidders, bid submission and selection of a Bidder, as well as the draft terminal services contract ("**Contract**") to be entered into by the Authority and the Selected Bidder (*as defined below*) directly or through a SPV (*as defined below*) to be incorporated by the Selected Bidder. All those interested in obtaining the RFP may download it either from the website of the Authority http://iwai.nic.in or from the Central Public Procurement Portal https://eprocure.gov.in/eprocure/app.

Pre-bid conference

August 19, 2016

Bid Due Date

November 4, 2016 (15.00 hours)

For further information, contact:

Member (Traffic)/Chairman,
Inland Waterways Authority of India,
Head Office, A-13, Sector 1, Noida – 201 301,
Uttar Pradesh, India.

Document Control Sheet

S. No.	Particular	Details
1.	RFP Document Reference No.	IWAI / PR-17 / INTG (IFC) / 2016
2.	Name of the Client *(Authority inviting RFP)*	Member (Traffic) / Project Director JMVP Inland Waterways Authority of India
3.	Method of Selection	Single stage two envelope method
4.	Release of RFP	July 15, 2016
5.	Sale of bidding document - Start	July 16, 2016
6.	Facilitating Site Visit	July 20, 2016 – July 25, 2016
7.	Pre-bid Meeting	August 19, 2016
8.	Last date of receiving queries	August 26, 2016
9.	Response to queries	September 30, 2016
10.	Issue of revised bidding documents	September 30, 2016
11.	Last date and time for receipt of bid in all respect	November 4, 2016 (1500 hours)
12.	Date and time of opening of Qualification Bids	November 4, 2016 (1530 hours)
13.	Date of opening of Selection Bids	November 11, 2016
14.	Issue of Letter of Award	November 21, 2016
15.	Receipt of Letter of Award	November 28, 2016
16.	Signing of Contract	December 5, 2016
17.	Cost of RFP document (payable on submission of RFP)	Rs. 25,000/- (Rupees Twenty-Five Thousand)
18.	Bid Security	Rs. 40,00,000/- (Rupees Forty Lakh)
19.	Name of the Contact Officer	Member (Traffic) / Project Director JMVP
20.	Website for uploading proposal	https://eprocure.gov.in/eprocure/app
21.	Email ID	MC.iwai@nic.in; Mt.iwai@nic.in; vc.iwai@nic.in ;
22.	Address for submission of Bid Security and cost of RFP	Inland Waterways Authority of India Head Office, A-13, Secotr-1, Noida – 201301 Uttar Pradesh, India.

Note: This document is not transferable

All bidders are advised to check for any further clarifications and corrigendum related to this RFP at the following websites http://iwai.nic.in and https://eprocure.gov.in/eprocure/app. All documents by the Bidder shall be submitted on https://eprocure.gov.in/eprocure/app in accordance with the instructions specified in Annexure K.

EQUIPPING, OPERATING AND MANAGING INLAND WATERWAY TRANSPORT AT GARDEN REACH TERMINAL IN KOLKATA AND GAIGHAT TERMINAL AND KALUGHAT TERMINAL IN PATNA

REQUEST FOR PROPOSAL

(Single Stage Two Envelope Method)

INLAND WATERWAYS AUTHORITY OF INDIA MINISTRY OF SHIPPING, GOVERNMENT OF INDIA

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GLOSSARY

Addendum	As defined in Clause 2.9.1
Applicable Laws	All laws, brought into force and effect by Government of India or the Government of West Bengal or the Government of Bihar, including rules, regulations and notifications made thereunder, and judgments, decrees, injunctions, writs and orders of any court of record, applicable to this RFP
Associate	As defined in Clause 2.1.14
Authority	As defined in Objectives
Bank Guarantee	As defined in Clause 2.20.1
Bid	The Qualification Bid and Selection Bid together shall be referred to as the Bid
Bid Due Date	As defined in Clause 1.1.8
Bid Security	As defined in Clause 1.2.5 (b)
Bidding Documents	As defined in Clause 1.1.8
Bidding Process	As defined in Clause 1.2.1
Companies Act	Companies Act, 2013 for the repealed provisions of the Companies Act, 1956 and otherwise Companies Act, 1956, (as amended from time to time)
Conflict of Interest	As defined in Clause 2.1.14
Consortium	As defined in Clause 2.2.1 (a)
Consortium Agreement	As defined in Clause 2.2.4 (e)
Contract	As defined in Issue of Request for Proposal
Damages	As defined in Clause 2.1.14
Financial Capacity	As defined in Clause 2.2.2 (b)
First Round	As defined in Clause 3.6.4
Highest Bidder	As defined in Clause 1.2.7
IFC	As defined in Clause 1.1.2
IST	Indian Standard Time
Lead Member	As defined in Clause 2.2.4 (c)
LOA or Letter of Award	As defined in Clause 3.6.6
Member	Member of a Consortium
Minimum Eligibility Criteria	As defined in Clause 2.2.2
Net Worth	As defined in Clause 2.2.3 (b)
Operator	As defined in Clause 1.1.4
Performance Security	As defined in the Contract
Project	As defined in Objectives
Promoter	A person: (a) who has been named as such in a prospectus or is identified by the company in the annual return referred to in Section 92 of the Companies Act, 2013; or (b) who has control over the affairs of the company, directly or indirectly whether as a shareholder, director or otherwise; or (c) in accordance with whose advice, directions or instructions the Board of Directors of the company is accustomed to act: Provided that nothing in sub-clause (c) shall apply to a person who is acting merely in a professional capacity.
Qualification Bid	As defined in Clause 1.2.1
Qualified Bidders	As defined in Clause 1.2.2

RFP	As defined in the Disclaimer
Second Round	As defined in Clause 3.6.4
Selected Bidder	As defined in Clause 3.6.2
Selection Bid	As defined in Clause 1.2.1
SPV	As defined in Clause 2.2.4
Subject Person	As defined in Clause 2.1.14 (a)
Technical Capacity	As defined in Clause 2.2.2 (a)
Third Round	As defined in Clause 3.6.5
Tie Bidders	As defined in Clause 3.6.3

The words and expressions beginning with capital letters and defined in this document shall, unless repugnant to the context, have the meaning ascribed thereto herein.

DISCLAIMER

The information contained in this RFP or subsequently provided to Bidder(s), whether verbally or in documentary or any other form by or on behalf of the Authority or any of its employees or advisors, is provided to Bidder(s) on the terms and conditions set out in this RFP and such other terms and conditions subject to which such information is provided.

This RFP is not an agreement and is neither an offer nor invitation by the Authority to the prospective Bidders or any other person. The purpose of this RFP is to provide interested parties with information that may be useful to them in making their financial offers pursuant to this RFP. This RFP includes statements, which reflect various assumptions and assessments arrived at by the Authority in relation to the Project. This RFP document and any assumptions, assessments and statements made herein do not purport to contain all the information that each Bidder may require. This RFP may not be appropriate for all persons, and it is not possible for the Authority, its employees or advisors to consider the investment objectives, financial situation and particular needs of each party who reads or uses this RFP. The assumptions, assessments, statements and information contained in the Bidding Documents may not be complete, accurate, adequate or correct. Each Bidder should, therefore, conduct its own investigations and analysis and should check the accuracy, adequacy, correctness, reliability and completeness of the assumptions, assessments, statements and information contained in this RFP and obtain independent advice from appropriate sources.

Information provided in this RFP to the Bidder(s) is on a wide range of matters, some of which may depend upon interpretation of law. The information given is not intended to be an exhaustive account of statutory requirements and should not be regarded as a complete or authoritative statement of law. The Authority accepts no responsibility for the accuracy or otherwise for any interpretation or opinion on law expressed herein.

The Authority, its employees and advisors make no representation or warranty and shall have no liability to any person, including any Bidder or Bidder(s) under any law, statute, rules or regulations or tort, principles of restitution or unjust enrichment or otherwise for any loss, damages, cost or expense which may arise from or be incurred or suffered on account of anything contained in this RFP or otherwise, including the accuracy, adequacy, correctness, completeness or reliability of the RFP and any assessment, assumption, statement or information contained therein or deemed to form part of this RFP or arising in any way for participation in this Bid.

The Authority also accepts no liability of any nature whether resulting from negligence or otherwise howsoever caused arising from reliance of any Bidder upon the statements contained in this RFP. The Authority may in its absolute discretion, but without being under any obligation to do so, update, amend or supplement the information, assessment or assumptions contained in this RFP.

The issue of this RFP does not imply that the Authority is bound to select a Bidder or to appoint the Selected Bidder, as the case may be, for the Project and the Authority reserves the right to reject all or any of the Bids without assigning any reason whatsoever.

The Bidder shall bear all its costs associated with or relating to the preparation and submission of its Bid including but not limited to preparation, copying, postage, delivery fees, expenses associated with any demonstrations or presentations which may be required by the Authority or any other costs incurred in connection with or relating to its Bid. All such costs and expenses will remain with the Bidder and the Authority shall not be liable in any manner whatsoever for the same or for any other costs or other expenses incurred by a Bidder in preparation or submission of the Bid, regardless of the conduct or outcome of the Bidding Process.

1. INTRODUCTION

1.1 Background

1.1.1 The Authority has resolved to develop navigable waterways as a reliable mode of transport to complement traditional modes of transport. In order to achieve the said objective, the Authority is keen to increase the usage and improve productivity of the existing inland water transport terminals at Garden Reach Kolkata, India and Gaighat, Patna, India. Further, the Authority also intends to develop a new terminal at Kalughat, Patna, India. The Authority is keen to bring on board a private partner on an O&M basis for the Garden Reach, Kolkata terminal and provide an option to the private partner for O&M of the Gaighat, Patna, India terminal and Kalughat, Patna, India terminal.

1.1.2 In order to undertake the Project as a reliable mode of transport on O&M basis, the Authority has decided to carry out the bidding process for selection of a private developer to whom the Project may be awarded. The Authority has appointed the International Finance Corporation ("**IFC**"), a member of the World Bank Group, to assist the Authority in identifying a private partner and ensuring the implementation of the O&M of the Project through private sector participation.

1.1.3 The Authority has identified the Terminals (as defined in the Contract) for the performance of the O&M Services.

The details of the Terminals are provided in the Contract. The O&M Services at the existing Gaighat Terminal and proposed Kalughat Terminal at Patna, Bihar, shall be given as an option to the private developer, as detailed in Clause 4.5 of the Contract.

1.1.4 The Selected Bidder, who is either a company registered in India under Companies Act, or a Consortium who undertakes to incorporate a company in India under Companies Act for the execution of the Contract ("**Operator**") shall be responsible for providing O&M services at the Terminals under and in accordance with the provisions of the Contract to be entered into between the Operator and the Authority in the form provided herein.

1.1.5 The scope of work will broadly include equipping, operating, managing, financing and maintaining the Project under the Applicable Laws.

1.1.6 The Contract sets forth the detailed terms and conditions for grant of the operatorship to the Operator, including the exclusive right, licence and authority to equip, finance, operate, manage and maintain the Terminals ("**Operatorship**").

1.1.7 The statements and explanations contained in this RFP are intended to provide a better understanding to the Bidders about the subject matter of this RFP and should not be construed or interpreted as limiting in any way or manner the scope of services and obligations of the Operator set forth in the Contract or the Authority's rights to amend, alter, change, supplement or clarify the scope of work, the Operatorship to be awarded pursuant to this RFP or the terms thereof or herein contained. Consequently, any omissions, conflicts or contradictions in the Bidding Documents are to be noted, interpreted and applied appropriately to give effect to this intent, and no claims on that account shall be entertained by the Authority.

1.1.8 The Authority shall receive Bids pursuant to this RFP in accordance with the terms set forth in this RFP and other documents to be provided by the Authority pursuant to this RFP, as modified, altered, amended and clarified from time to time by the Authority (collectively the "**Bidding Documents**"), and all Bids shall be prepared and submitted

in accordance with such terms on or before the date specified in Clause 1.3 for submission of Bids ("**Bid Due Date**").

1.2 Brief description of Bidding Process

1.2.1 The Authority has adopted a single-stage two envelope process ("**Bidding Process**") for selection of the Bidder for award of the Project. All Bidders shall simultaneously submit their relevant qualification details ("**Qualification Bid**") for the purpose of meeting the Minimum Eligibility Criteria and selection proposal ("**Selection Bid**") quoting the percentage share of the Turnover[1] earned by the Operator in the form of Service Charges (*as defined in the Contract*) and Other Charges (*as defined in the Contract*) in numbers and words upto two decimal digits ("**Revenue Share**"). It is clarified that, for the purposes of the determination of the Revenue Share, the Statutory Charges, indirect taxes, the proceeds of any refundable payment deposits, capital receipts and insurance claims, shall not form part of the Turnover. The Bidders are required to submit this information on the Central Public Procurement Portal https://eprocure.gov.in/eprocure/app.

1.2.2 In the first step, the Qualification Bids of all Bidders shall be evaluated as to whether they meet the Minimum Eligibility Criteria as set forth in Clause 2.2.2 of this RFP for undertaking the Project. The information submitted by the Bidder would be used for the purposes of obtaining security clearance in accordance with the provisions of the Applicable Laws. At the end of this stage, the Authority shall announce the qualified Bidders. The Selection Bids of only those Bidders who meet the Minimum Eligibility Criteria and are shortlisted in accordance with Clause 3.6 of this RFP ("**Qualified Bidders**") would be opened and evaluated for the purpose of identifying the Selected Bidder, subject to the security clearance from the Ministry of Home Affairs, Government of India.

1.2.3 As part of the Bidding Process, interested parties who believe that they fulfil the Minimum Eligibility Criteria as set forth in this RFP are being called upon to submit their Bids in accordance with the Bidding Documents.

1.2.4 The Bidding Documents include the draft Contract which shall be provided to the Bidders on date of issue of RFP. The aforesaid documents and any Addendum issued subsequent to this RFP, but prior to the Bid Due Date, will be deemed to form part of the Bidding Documents.

1.2.5 In terms of this RFP, a Bidder is required to deposit the following at the address given at Clause 2.11.5:

(a) as the cost of the RFP process, a sum of Rs. 25,000/- (Rupees Twenty-Five Thousand); and

(b) a bid security equivalent to Rs. 40,00,000/- (Rupees Forty Lakh) ("**Bid Security**") in accordance with the terms set out in Clause 2.1.9.

For the avoidance of any doubt, it is clarified that the Bidders are required to submit the scanned copy of the documents set out in sub-clause (a) and (b) above on https://eprocure.gov.in/eprocure/app.

1.2.6 The Bidders are invited to examine the Terminals in greater detail, and to carry out, at their cost, such studies as may be required for submitting their respective Bids for

[1] "**Turnover**" means gross revenues net of any indirect and transaction tax.

award of the Operatorship including implementation of the Project.

1.2.7 The Selection Bids are invited for the Project on the basis of the offer made by a Bidder for the Revenue Share. Subject to Clause 2.16 of this RFP, the Project will be awarded to the Qualified Bidder quoting the highest Revenue Share ("**Highest Bidder**").

1.2.8 Any queries or request for additional information concerning this RFP shall be submitted in writing on the Authority's website http://iwai.nic.in and the Central Public Procurement Portal https://eprocure.gov.in/eprocure/app.

1.3 Schedule of Bidding Process

The Authority shall endeavour to adhere to the following CRITICAL DATE SHEET:

Event Description	Date
Date of publishing	July 15, 2016
Issue of draft Bidding Documents/ Document Download / Sale Start Date	July 16, 2016
Document Download / Sale End Date	November 4, 2016
Facilitating Site Visit	July 20, 2016 – July 25, 2016
Pre-Bid Meeting Date	August 19, 2016
Seek Clarification Start Date	July 16, 2016
Last date for receiving queries / Seek Clarification End Date	August 26, 2016
Response to pre-bid queries latest by	September 30, 2016
Issue of final Bidding Documents	September 30, 2016
Bid Submission Start Date	October 1, 2016
Bid Due Date and time/ Bid submission Closing Date	November 4, 2016 (1500 hrs)
Opening of Qualification Bids / Bid Opening Date	November 4, 2016 (1530 hours)
Opening & Evaluation of Selection Bids[2] / Bid Opening Date	November 11, 2016
Issue of Letter of Award (LOA)	November 21, 2016
Receipt of LOA from the Selected Bidder	November 29, 2016
Signing of Contract	December 5, 2016

The above schedule is indicative in nature and the Authority may, in its sole discretion and without prior notice to the Bidders, amend the schedule. Bidders shall not rely in any way whatsoever on the Schedule and the Authority shall not incur any liability whatsoever arising out of amendments to the schedule. The Authority shall give notice of changes to the schedule, if any, by Addendum uploaded on the Authority's website http://iwai.nic.in and on the Central Public Procurement Portal at https://eprocure.gov.in/eprocure/app.

[2] Subject to security clearance from the Ministry of Home Affairs, Government of India

2. INSTRUCTIONS TO BIDDERS

A. GENERAL

2.1 General terms of Bidding

2.1.1 A Bidder bidding individually or as a Member of a Consortium shall not be entitled to submit another bid for the Project either individually or as a Member of any Consortium, as the case may be.

2.1.2 Unless the context otherwise requires, the terms not defined in this RFP, but defined in the Contract shall have the meaning assigned thereto in the Contract.

2.1.3 The Bidding Documents can be downloaded from the website of the Authority by accessing the weblink http://iwai.nic.in and the Central Public Procurement Portal https://eprocure.gov.in/eprocure/app. However, at the time of submission of the Bid, the Bidder shall submit a Demand Draft of Rs. 25,000/- (Rupees Twenty-Five Thousand) in favour of Inland Waterways Authority of India payable at Noida, Uttar Pradesh, towards the cost of the document along with its Bid.

2.1.4 Notwithstanding anything to the contrary contained in this RFP, the detailed terms specified in the draft Contract shall have overriding effect; provided, however, that any conditions or obligations imposed on the Bidder hereunder shall continue to have effect in addition to its obligations under the Contract.

2.1.5 The Qualification Bid shall be furnished as per formats provided in Appendix I. The Qualification Bid shall include the following:

ANNEXURE A	Letter comprising the Bid
ANNEXURE B	General Information of Bidder[3]
ANNEXURE C	Power of Attorney for Signing of Bid
ANNEXURE D	Power of Attorney for Lead Member of Consortium
ANNEXURE E	Bid Security (Bank Guarantee)
ANNEXURE F	Consortium Agreement
ANNEXURE G	Technical Capacity of Bidder
ANNEXURE H	Financial Capacity of Bidder
ANNEXURE I	Format of Contract
ANNEXURE J	Proposal Checklist
Annexure K	Instructions for online submission

2.1.6 The Selection Bid should be furnished in the format at Appendix II, clearly indicating the Revenue Share in both figures and words and signed by the Bidder's authorized signatory. In the event of any difference between figures and words, the amount indicated in words shall be taken into account.

2.1.7 The Bidder shall collect User Fees (*as defined in the Contract*) for providing the O&M Services (*as defined in the Contract*) as per the terms and conditions of the Contract.

2.1.8 As mentioned in Clause 1.2.5 above, the Bidder shall deposit a Bid Security in accordance with the provisions of this RFP. The Bidder has to provide the Bid Security in the form of a Bank Guarantee, acceptable to the Authority, as per format at Annexure E, Appendix I.

[3] To be submitted separately for each Member in case of a Consortium

2.1.9 The validity period of the Bid Security shall not be less than 240 (two hundred and forty) days from the Bid Due Date, and may be extended as may be mutually agreed between the Authority and Bidder from time to time. The Bid shall be summarily rejected if it is not accompanied by the Bid Security. The Bid Security shall be refundable not later than 240 (two hundred and forty) days from the Bid Due Date except in the case of the Selected Bidder whose Bid Security shall be retained till it has provided the Contract Performance Security under the Contract. In the event any Bidder fails to procure extension of the Bid Security on a written request of the Authority, the Bid of such a Bidder shall stand disqualified on expiry of such Bid Security.

2.1.10 The Bidder should submit a Power of Attorney as per the format at Annexure C, Appendix I, authorising the signatory of the Bid to commit the Bidder. In case the Bidder is a Consortium, the Members thereof should furnish a Power of Attorney in favour of the Lead Member in the format at Annexure D, Appendix I.

2.1.11 The Bid shall be unconditional and unqualified. Any condition or qualification or any other stipulation contained in the Bid shall render the Bid liable to rejection as a non-responsive Bid.

2.1.12 The Bid and all communications in relation to or concerning the Bidding Documents shall be in English language.

2.1.13 The Bidding Documents and all attached documents provided by the Authority, are and shall remain or become the property of the Authority and are transmitted to the Bidders solely for the purpose of preparation and the submission of a Bid in accordance herewith. Bidders are to treat all information as strictly confidential and shall not use it for any purpose other than for preparation and submission of their Bid. The provisions of this Clause 2.1.13 shall also apply *mutatis mutandis* to Bids and all other documents submitted by the Bidders, and the Authority, unless otherwise provided in the Bidding Documents, will not return any Bid or any information provided along therewith.

2.1.14 A Bidder shall not have a conflict of interest ("**Conflict of Interest**") that affects the Bidding Process. Any Bidder found to have a Conflict of Interest shall be disqualified. In the event of disqualification, the Authority shall be entitled to forfeit and appropriate the Bid Security, or the Contract Performance Security, as the case may be, as mutually agreed genuine pre-estimated loss and damages likely to be suffered and incurred by the Authority and not by way of penalty for, *inter alia*, the time, cost and effort of the Authority, including consideration of such Bidder's Bid ("**Damages**"), without prejudice to any other right or remedy that may be available to the Authority under the Bidding Documents and/or Contract or otherwise. Without limiting the generality of the above, a Bidder shall be deemed to have a Conflict of Interest that affects the Bidding Process, if:

(a) the Bidder, its Member or Associate (or any constituent thereof) and any other Bidder, its Member or Associate (or any constituent thereof) have common controlling shareholders or other ownership interest; provided that this qualification shall not apply in cases where the direct or indirect shareholding of a Bidder, its Member or an Associate thereof (or any shareholder thereof having a shareholding of more than 5% (five percent) of the subscribed and paid up share capital of such Bidder, Member or Associate, as the case may be) in the other Bidder(s), its Member or Associate is less than 5% (five percent) of the paid up and subscribed equity share capital thereof; provided further that this disqualification shall not apply to any ownership by a bank, insurance

company, pension fund or a public financial institution referred to in Section 2(72) of the Companies Act, 2013. For the purposes of this Clause 2.1.14, indirect shareholding held through one or more intermediate persons shall be computed as follows: (aa) where any intermediary is controlled by a person through management control or otherwise, the entire shareholding held by such controlled intermediary in any other person ("**Subject Person**") shall be taken into account for computing the shareholding of such controlling person in the Subject Person; and (bb) subject always to sub-clause (aa) above, where a person does not exercise control over an intermediary, which has shareholding in the Subject Person, the computation of indirect shareholding of such person in the Subject Person shall be undertaken on a proportionate basis; provided, however, that no such shareholding shall be reckoned under this sub-clause (bb) if the shareholding of such person in the intermediary is less than 26% (twenty six percent) of the subscribed and paid up equity shareholding of such intermediary; or

(b) a constituent of such Bidder is also a constituent of another Bidder; or

(c) such Bidder, its Member or any Associate thereof receives or has received any direct or indirect subsidy, grant, concessional loan or subordinated debt from any other Bidder, its Member or Associate, or has provided any such subsidy, grant, concessional loan or subordinated debt to any other Bidder, its Member or Associate; or

(d) such Bidder has the same legal representative for purposes of this Bid as any other Bidder; or

(e) such Bidder or any Associate thereof has a relationship with another Bidder or any Associate thereof, directly or through common third parties, that puts either or both of them in a position to have access to each other's information about, or to influence the Bid of either or each of the other Bidder; or

(f) such Bidder or any Associate thereof has participated as a consultant to the Authority in the preparation of any documents, design or technical specifications of the Project.

Explanation:

In case a Bidder is a Consortium, then the term Bidder as used in this Clause 2.1.14, shall include each Member of such Consortium.

For purposes of this RFP, associate means, in relation to the Bidder/ Consortium Member, a person who controls, is controlled by, or is under the common control with such Bidder/ Consortium Member ("**Associate**"). As used in this definition, the expression "control" shall include the right to appoint majority of the directors or to control the management or policy decisions exercisable by a person or persons acting individually or in concert, directly or indirectly, including by virtue of their shareholding or management rights or shareholders' agreements or voting agreements or in any other manner.

2.1.15 Bidder shall be liable for disqualification and forfeiture of Bid Security if any legal, financial or technical adviser of the Authority in relation to the Project is engaged by the Bidder, its Members or any Associate thereof, as the case may be, in any manner for matters related to or incidental to such Project at any time prior to the execution of the Contract. In the event any such adviser is engaged by the Selected Bidder

subsequent to the issuance of the LOA but prior to the execution of the Contract for matters related or incidental to the Project, then notwithstanding anything to the contrary contained herein or in the LOA or the Contract and without prejudice to any other right or remedy of the Authority, including the forfeiture and appropriation of the Bid Security or the Performance Security, as the case may be, which the Authority may have thereunder or otherwise, the LOA or the Contract, as the case may be, shall be liable to be terminated without the Authority being liable in any manner whatsoever to the Selected Bidder or Operator for the same. For the avoidance of doubt, this disqualification shall not apply where such adviser was engaged by the Bidder, its Member or Associate in the past but its assignment expired or was terminated 6 (six) months prior to the date of issue of RFP for the Project. Nor will this disqualification apply where such adviser is engaged after the execution of the Contract.

2.1.16 Any award of Operatorship pursuant to this RFP shall be subject to the terms of Bidding Documents.

2.2 Eligibility of Bidders

2.2.1 For determining the eligibility of Bidders for their technical-qualification hereunder, the following shall apply:

(a) The Bidder for qualification may be a single entity or a group of entities ("**Consortium**"), coming together to implement the Project. The term Bidder used herein would apply to both a single entity and a Consortium.

(b) A Bidder may be a, private entity or any combination of them with a formal intent to enter into an agreement or under an existing agreement to form a Consortium. A Consortium shall be eligible for consideration subject to the conditions set out in Clause 2.2.5 below.

2.2.2 To be considered as technically qualified, a Bidder shall fulfil the following minimum eligibility criteria ("**Minimum Eligibility Criteria**"):

(a) **Technical Capacity**: For demonstrating technical capacity and experience ("**Technical Capacity**"), the Bidder or its Associate, (or in the case of a Consortium, the Lead Member or its Associate) shall, over the past 3 (three) financial years, have experience providing CFS/ICD/container terminal services and should have handled at least 100,000 (one hundred thousand) twenty foot equivalent unit ("**TEU**") or 600,000 (six hundred thousand) Tons of break bulk cargo.

(b) **Financial Capacity**: The Bidder shall have a minimum Net Worth ("**Financial Capacity"**) of INR 2500 million (Rupees two billion five hundred million) as per the latest audited financial statements and which shall be within the preceding 2 (two) financial years.

(c) **Equity Shareholding of a Member in the SPV**:

(i) In case of a Consortium, the Technical Capacity of only those Members, who have and shall continue to have an equity share of at least 51% (fifty-one percent) each in the SPV, shall be considered to satisfy the above conditions of eligibility; provided that each such Member shall, for a period of 5 (five) years from the date of commercial operation of the Project, hold equity share capital not less than 51% (fifty-one

percent) of the subscribed and paid up equity of the SPV.

(ii) Further, the Net Worth of only those Members, who have and shall continue to have an equity share of at least 26% (twenty-six percent) each in the SPV, shall be considered to satisfy the above conditions of eligibility; provided that each such Member shall, for a period of 5 (five) years from the Appointed Date (*as defined in the Contract*), hold equity share capital not less than 26% (twenty-six percent) of the subscribed and paid up equity of the SPV.

For this purpose, the Net Worth of the Bidder in case of a Consortium will be calculated as the weighted average of the Net Worth of each of such Members at the close of the preceding financial year and the weights will be based on the proposed equity stake of such Member in the total equity share capital of the SPV.

2.2.3 The Bidders shall enclose with its Bid, to be submitted as per the format at Appendix I, complete with its Annexes, the following:

(a) certificate(s) confirming that the Bidder has the Technical Capacity; and

(b) certificate(s) from its statutory auditors specifying the average net worth of the Bidder, over the preceding 3 (three) financial years, and also specifying that the methodology adopted for calculating such net worth conforms to the provisions of this Clause 2.2.3 (b). For the purposes of this RFP, net worth ("**Net Worth**") shall mean the sum of subscribed and paid up equity and reserves from which shall be deducted the sum of revaluation reserves, miscellaneous expenditure not written off and reserves not available for distribution to equity shareholders.

2.2.4 In case the Bidder is a Consortium, it shall incorporate a special purpose vehicle ("**SPV**") under the Companies Act to implement the Project. In case the Bidder is a company incorporated under the Companies Act, then it may either execute the project directly through company or through incorporation of a SPV and shall also comply with the following additional requirements:

(a) number of Members in a Consortium should be limited to 3 (three);

(b) subject to the provisions of sub clause (a) above, the Bid should contain the information required for each member of the Consortium;

(c) members of the Consortium shall nominate 1 (one) member as the lead member ("**Lead Member**"), who shall have an equity share holding of at least 51% (fifty-one percent) of the paid-up and subscribed equity of the SPV. The nomination of the Lead Member shall be supported by a Power of Attorney, as per the format at Annexure D, Appendix I, signed by all the other members of the Consortium;

(d) an individual Bidder cannot at the same time be member of a Consortium for participating in the Bidding Process. Further, a member of a particular Consortium cannot be member of any other Consortium participating in the Bidding Process;

(e) the Lead Member of the Consortium may enter into the Contract on behalf of the Consortium and novate the Contract in favour of the SPV;

(f) members of the Consortium shall enter into a binding consortium agreement in the format prescribed in Annexure F ("**Consortium Agreement**") for the purpose of submitting the Bid. The Consortium Agreement shall, inter alia:

(i) convey the intent of the Members to form an SPV with shareholding/ ownership equity commitment(s) in accordance with this RFP, which would enter into the Contract and subsequently carry out all the responsibilities as Operator in terms of the Contract, in case the operatorship to undertake the Project is awarded to the Consortium;

(ii) clearly outline the proposed roles and responsibilities of each Member at each stage;

(iii) commit the minimum equity stake to be held by each Member;

(iv) commit that the member, whose Technical Capacity has been evaluated for the purposes of this RFP, shall subscribe to 51% (fifty-one percent) or more of the paid-up and subscribed equity of the SPV and shall further commit that such member shall for a period of 5 (five) years from the Appointed Date, hold equity share capital of not less than 51% (fifty-one percent) of the subscribed and paid up equity share capital of the SPV; and

(v) commit that the members, whose Net Worth has been evaluated for the purposes of this RFP, shall subscribe to 26% (twenty-six percent) or more of the paid up and subscribed equity of the SPV and shall further commit that such member shall for a period of 5 (five) years from the Appointed Date of commercial operations of the Project, hold equity share capital of not less than 26 % (twenty-six percent) of the subscribed and paid up equity share capital of the SPV; and

(vi) include a statement to the effect that all members of the Consortium shall be liable jointly and severally for all obligations of the Operator in relation to the Project until the Appointed Date (*as defined in the Contract*) is achieved in accordance with the Contract.

(g) except as provided under this RFP and the Bidding Documents, there shall not be any amendment to the Consortium Agreement without the prior written consent of the Authority.

(***Note***: A copy of the Consortium Agreement should be submitted along with the Bid. The Consortium Agreement entered into between the members of the Consortium should be specific to the Project and should fulfil the above requirements, failing which the Bid shall be considered non-responsive.)

2.2.5 Any entity which has been barred by the Central/ State Government, or any entity controlled by it, from participating in any project, and the bar subsists as on the Bid Due Date, would not be eligible to submit a Bid, either individually or as member of a Consortium. Further, if any entity, which has been barred or sanctioned or can be barred or sanctioned by the World Bank, under its Guidelines for Procurement of Goods, Works and Non-Consulting Services, or the World Bank Group Anti-Corruption policies and sanctions procedures, then, such entity would not be eligible to submit a Bid, either individually or as member of a Consortium.

2.2.6 A Bidder including any Consortium Member or Associate should, in the last 3 (three) years, have neither failed to perform on any contract, as evidenced by imposition of a penalty by an arbitral or judicial authority or a judicial pronouncement or arbitration award against the Bidder, Consortium Member or Associate or the said penalty has been accepted by the Bidder, Consortium Member or Associate, as the case may be, nor has been expelled from any project or contract by any public entity nor have had any contract terminated by any public entity for breach by such Bidder, Consortium Member or Associate.

2.2.7 In computing the Technical Capacity and Net Worth of the Bidder/ Consortium Members under Clauses 2.2.2, 2.2.3 and 3.3, the Technical Capacity and Net Worth of their respective Associates would also be eligible hereunder.

2.2.8 No change in the composition of the Consortium is allowed subsequent to the submission of the Bid during the Bidding Process.

2.2.9 The following conditions shall be adhered to while submitting a Bid:

(a) the Bidders should attach clearly marked and referenced continuation sheets in the event that the space provided in the prescribed forms in the Annexes is insufficient. Alternatively, Bidders may format the prescribed forms making due provision for incorporation of the requested information;

(b) information supplied by a Bidder (or other constituent Member if the Bidder is a Consortium) must apply to the Bidder, Member or Associate named in the Bid and not, unless specifically requested, to other associated companies or firms;

(c) the Bidders should demonstrate their capabilities in accordance with Clause 2.2.2 above; and

(d) in case the Bidder is a Consortium, each Member should substantially satisfy requirements to the extent specified herein.

2.2.10 While Qualification Bid is open to persons from any country, the following provisions shall apply:

(a) where, on the date of the Bid, not less than 15% (fifteen percent) of the aggregate issued, subscribed and paid up equity share capital in a Bidder or its Member is held by persons' resident outside India or where a Bidder or its Member is controlled by persons' resident outside India; or

(b) if at any subsequent stage after the date of the Bid, there is an acquisition of not less than 15% (fifteen percent) of the aggregate issued, subscribed and paid up equity share capital or control, by persons' resident outside India, in or of the Bidder or its Member;

then, the Qualification Bid of such Bidder or in the event described in sub-clause (b) above, the continued Qualification Bid of the Bidder shall be subject to approval of the Authority from national security and public interest perspective. The decision of the Authority in this behalf shall be final and conclusive and binding on the Bidder. The holding or acquisition of equity or control, as above, shall include direct or indirect holding/ acquisition, including by transfer, of the direct or indirect legal or beneficial ownership or control, by persons acting for themselves or in concert and in determining such holding or acquisition, the Authority shall be guided by the principles, precedents and definitions contained in the SEBI (Substantial Acquisition

of Shares and Takeovers) Regulations, 2011, as may be amended from time to time or any substitute thereof, as in force on the date of such acquisition. The Bidder shall promptly inform the Authority of any change in the shareholding, as above, and failure to do so shall render the Bidder liable for disqualification from the Bidding Process.

2.2.11 Financial year shall, for the purposes of a Bid hereunder, means the Accounting Year (*as defined in the Contract*) followed by the Bidder in the course of its normal business.

2.3 Change in Ownership

2.3.1 By submitting the Bid, the Bidder acknowledges and undertakes that it is meeting the Minimum Eligibility Criteria on the basis of Technical Capacity and Financial Capacity of those of its Consortium Members. It is further agreed that:

(a) the Consortium Member whose Technical Capacity was taken into consideration for the purposes of technical qualification under and in accordance with the RFP, shall until 5 (five) years from Appointed Date (*as defined in the Contract*), hold equity share capital representing not less than 51% (fifty-one percent) of the subscribed and paid-up equity of the SPV; and

(b) each Consortium Member whose Financial Capacity was taken into consideration for the purposes of technical qualification under and in accordance with the RFP, shall until 5 (five) years from Appointed Date (*as defined in the Contract*), hold equity share capital representing not less than 26% (twenty-six percent) of the subscribed and paid-up equity of the SPV;

(c) The Bidder further acknowledges and agrees that the aforesaid obligation shall be the minimum, and shall be in addition to such other obligations as may be contained in the Contract, and a breach hereof shall, notwithstanding anything to the contrary contained in the Contract, be deemed to be a breach of the Contract and dealt with as such thereunder. For the avoidance of doubt, the provisions of this Clause 2.3.1 shall apply only when the Bidder is a Consortium.

2.3.2 By submitting the Bid, the Bidder shall also be deemed to have acknowledged and agreed that in the event of a change in control of a Consortium Member or an Associate whose Technical Capacity and/ or Financial Capacity was taken into consideration for the purposes of technical qualification under and in accordance with the RFP, the Bidder shall be deemed to have knowledge of the same and shall be required to inform the Authority forthwith along with all relevant particulars about the same and the Authority may, in its sole discretion, disqualify the Bidder or withdraw the LOA from the Selected Bidder, as the case may be. In the event of any change in the ownership, notwithstanding anything to the contrary contained in the Contract, the Authority shall forfeit and appropriate the Bid Security or the Performance Security, as the case may be, as compensation and damages payable to the Authority for, inter alia, time, cost and effort of the Authority, without prejudice to any other right or remedy that may be available to the Authority hereunder or otherwise.

2.4 Cost of Bidding

The Bidders shall be responsible for all of the costs associated with the preparation of their Bids and their participation in the Bidding Process. The Authority will not be responsible or in any way liable for such costs, regardless of the conduct or outcome of the Bidding Process.

2.5 Site visit and verification of information

2.5.1 The Bidders are encouraged to submit their respective Bids after visiting the Terminals and ascertaining for themselves the conditions, location, surroundings, climate, availability of power, water and other utilities for construction, access to Terminals, emergency medical needs, healthcare infrastructure, Applicable Laws, applicable permits and regulations, and any other matter considered relevant by them. For the purpose of examination of the Terminals, the Authority undertakes to organise an official site visit on the dates specified in Clause 1.3 of this RFP.

2.5.2 It shall be deemed that by submitting a Bid, the Bidder has:

(a) made a complete and careful examination of the Bidding Documents;

(b) received all relevant information requested from the Authority;

(c) acknowledged and accepted the risk of inadequacy, error or mistake in the information provided in the Bidding Documents or furnished by or on behalf of the Authority relating to any of the matters referred to in Clause 2.5.1 above;

(d) satisfied itself about all matters, things and information including matters referred to in Clause 2.5.1 hereinabove necessary and required for submitting an informed Bid, execution of the Project in accordance with the Bidding Documents and performance of all of its obligations thereunder;

(e) acknowledged and agreed that inadequacy, lack of completeness or incorrectness of information provided in the Bidding Documents or ignorance of any of the matters referred to in Clause 2.5.1 hereinabove shall not be a basis for any claim for compensation, damages, extension of time for performance of its obligations, loss of profits etc. from the Authority, or a ground for termination of the Contract; and

(f) agreed to be bound by the undertakings provided by it under and in terms hereof.

2.5.3 The Authority shall not be liable for any omission, mistake or error on the part of the Bidder in respect of any of the above or on account of any matter or thing arising out of or concerning or relating to the Bidding Documents or the Bidding Process, including any error or mistake therein or in any information or data given by the Authority.

2.6 Right to accept and to reject any or all Bids

2.6.1 The Authority reserves the right to verify all statements, information and documents submitted by the Bidder in response to the Bidding Documents and the Bidder shall, when so required by the Authority, make available all such information, evidence and documents as may be necessary for such verification. Any such verification or lack of such verification, by the Authority shall not relieve the Bidder of its obligations or liabilities hereunder nor will it affect any rights of the Authority thereunder.

2.6.2 Notwithstanding anything contained in the Bidding Documents, the Authority reserves the right to accept or reject any Bid and to annul the Bidding Process and reject all Bids at any time without any liability or any obligation for such acceptance, rejection or annulment, and without assigning any reasons thereof. In the event that the Authority rejects or annuls all the Bids, it may, in its discretion, invite all eligible Bidders to

submit fresh Bids hereunder.

2.6.3 The Authority reserves the right to reject any Bid and appropriate the Bid Security if, at any time, a material misrepresentation is made or uncovered or the Bidder does not provide, within the time specified by the Authority, supplemental information sought by the Authority for evaluation of the Bid. Such misrepresentation/ improper response shall lead to the disqualification of the Bidder. If the Bidder is a Consortium, then the entire Consortium shall be disqualified/ rejected. If such disqualification/ rejection occurs after the Bids have been opened and the Highest Bidder gets disqualified/ rejected, then the Authority reserves the right to:

(a) invite the remaining Qualified Bidders to submit Bids in accordance with Clause 3.6.4; or

(b) take any such measure as may be deemed fit in the sole discretion of the Authority, including annulment of the Bidding Process.

2.6.4 In case it is found during the evaluation or at any time before signing of the Contract or after its execution and during the period of subsistence thereof, including the Operatorship thereby granted by the Authority, that one or more of the Minimum Eligibility Criteria have not been met by the Bidder or the Bidder has made material misrepresentation or has given any materially incorrect or false information, the Bidder shall be disqualified forthwith if not yet appointed as the Operator either by issue of the LOA or entering into of the Contract, and if the Bidder has already been issued the LOA or has entered into the Contract, as the case may be, the same shall, notwithstanding anything to the contrary contained therein or in the Bidding Documents, be liable to be terminated, by a communication in writing by the Authority to the Bidder, without the Authority being liable in any manner whatsoever to the Bidder or Operator, as the case may be. In such an event, the Authority shall forfeit and appropriate the Bid Security or the Performance Security, as the case may be, as compensation and damages payable to the Authority for, inter alia, time, cost and effort of the Authority, without prejudice to any other right or remedy that may be available to the Authority.

B. DOCUMENTS

2.7 Contents of the RFP

2.7.1 This RFP comprises the Disclaimer set forth hereinabove, the contents as listed below, and will additionally include any Addendum issued in accordance with Clause 2.9.

Invitation for Bids

Section 1. Introduction
Section 2. Instructions to Bidders
Section 3. Evaluation of Bids
Section 4. Fraud and Corrupt Practices
Section 5. Pre-Bid Conference
Section 6. Miscellaneous

Appendices

I. Formats for Qualification Bid

ANNEXURE A	Letter comprising the Bid

ANNEXURE B	General Information of Bidder[4]
ANNEXURE C	Power of Attorney for Signing of Bid
ANNEXURE D	Power of Attorney for Lead Member of Consortium
ANNEXURE E	Bid Security (Bank Guarantee)
ANNEXURE F	Consortium Agreement
ANNEXURE G	Technical Capacity of Bidder
ANNEXURE H	Financial Capacity of Bidder
ANNEXURE I	Format of Contract
ANNEXURE J	Proposal Checklist
ANNEXURE K	Instructions for online submission

II. Format for Selection Bid

2.7.2 The draft Contract to be provided by the Authority as part of the Bid Documents shall be deemed to be part of this RFP.

2.8 Clarifications

2.8.1 Bidders requiring any clarification on the Bidding Documents may notify the Authority in writing or by fax or by e-mail in accordance with Clause 1.2.8. They should send in their queries before the date mentioned in the Schedule of Bidding Process specified in Clause 1.3.

2.8.2 The Authority shall endeavour to respond to the questions raised or clarifications sought by the Bidders within the period specified therein, but no later than 15 (fifteen) days prior to the Bid Due Date. The responses will be uploaded on the Authority's website http://iwai.nic.in and on the Central Public Procurement Portal https://eprocure.gov.in/eprocure/app. The Authority will forward all the queries and its responses thereto, to all Bidders without identifying the source of queries. However, the Authority reserves the right not to respond to any question or provide any clarification, in its sole discretion, and nothing in this Clause 2.8.2 shall be taken or read as compelling or requiring the Authority to respond to any question or to provide any clarification.

2.8.3 The Authority may also on its own motion, if deemed necessary, issue interpretations and clarifications to all Bidders. All clarifications and interpretations issued by the Authority shall be deemed to be part of the Bidding Documents. Verbal clarifications and information given by Authority or its employees or representatives shall not in any way or manner be binding on the Authority. These will be put up on the Authority's website and the Central Public Procurement Portal and may be accessed by the Bidder by accessing the weblink http://iwai.nic.in and https://eprocure.gov.in/eprocure/app, respectively.

2.9 Amendment of RFP

2.9.1 At any time prior to the deadline for submission of Bids, the Authority may, for any reason, whether at its own initiative or in response to clarifications requested by a Bidder, modify the RFP by the issuance of an addendum ("**Addendum**").

2.9.2 Any Addendum thus issued will be sent in writing to all the Bidders and will be put up on the Authority's website http://iwai.nic.in and on the Central Public Procurement Portal on https://eprocure.gov.in/eprocure/app.

[4] To be submitted separately for each Member in case of a Consortium

2.9.3 In order to afford the Bidders a reasonable time for taking an Addendum into account, or for any other reason, the Authority may, at its own discretion, extend the Bid Due Date.

C. PREPARATION AND SUBMISSION OF BIDS

2.10 Format and Signing of Bid

2.10.1 The Bidder shall provide all the information sought under this RFP. The Authority will evaluate only those Bids that are received in the required formats and complete in all respects.

2.10.2 The Bid shall be typed or written in indelible ink and signed by the authorised signatory of the Bidder who shall also initial each page, in blue ink. In case of printed and published documents, only the cover shall be initialled. All the alterations, omissions, additions or any other amendments made to the Bid shall be initialled by the person(s) signing the Bid.

2.11 Sealing and Marking of Bids

2.11.1 The Bidder shall upload the Qualification Bid on Central Public Procurement Portal https://eprocure.gov.in/eprocure/app, in the formats specified under Appendix-I, and mark it as "QUALIFICATION BID". The Qualification Bid shall include:

(a) Letter comprising the Bid (Appendix – I - **ANNEXURE A**);

(b) General Information of Bidder (Appendix – I - **ANNEXURE B**);

(c) Power of Attorney for signing of Bid in the prescribed format (Appendix – I - **ANNEXURE C**);

(d) If applicable, the Power of Attorney for Lead Member of Consortium in the prescribed format (Appendix – I - **ANNEXURE D**);

(e) Bid Security in the prescribed format (Appendix – I - **ANNEXURE E**);

(f) Consortium Agreement (in case of Consortium) (Appendix – I - **ANNEXURE F**);

(g) Technical Capacity of the Bidder (Appendix – I - **ANNEXURE G**);

(h) Financial Capacity of the Bidder (Appendix – I - **ANNEXURE H**);

(i) Format of Contract: The copy of the Contract with each page initialled by the person signing the Bid in pursuance of the Power of Attorney referred to in Clause (c) hereinabove (Appendix – I - **ANNEXURE I**); and

(j) Proposal Checklist (Appendix – I - **ANNEXURE J**).

2.11.2 The Bidder shall separately upload the Selection Bid of the Project in the format specified in Appendix – II and mark it as "SELECTION BID".

2.11.3 Intentionally Left Blank

2.11.4 The documents required to be submitted in accordance with Clause 1.2.5 shall be placed in an envelope, which shall be sealed. The envelope shall clearly bear the

following identification:

"**Bid for Equipping, Operating and Managing Inland Waterway Transport Terminals at Garden Reach in Kolkata and existing Gaighat and proposed Kalughat in Patna**" and shall clearly indicate the name and address of the Bidder. In addition, the Bid Due Date should be indicated on the right hand top corner of each of the envelopes.

2.11.5 Each of the envelopes shall be addressed to:

The Chairman,
Inland Waterways Authority of India,
Head Office, A-13, Sector 1, Noida – 201 301
Uttar Pradesh, India.

2.11.6 If the envelopes are not sealed and marked as instructed above, the Authority assumes no responsibility for the misplacement or premature opening of the contents of the Bid submitted.

2.11.7 Save and except the Bid Security and the cost of the RFP, the Bids shall be submitted online on the Central Public Procurement Portal https://eprocure.gov.in/eprocure/app, in accordance with the Instructions for online submission as specified in Annexure K. Bids submitted by fax, telex, telegram or e-mail shall not be entertained and shall be rejected.

2.12 Bid Due Date

2.12.1 Bids should be submitted before **1600** hours IST on the Bid Due Date on the Central Public Procurement Portal https://eprocure.gov.in/eprocure/app and the Bid Security and the cost of RFP at the address provided in Clause 2.11.5, in the manner and form as detailed in this RFP.

2.12.2 The Authority may, in its sole discretion, extend the Bid Due Date by issuing an Addendum in accordance with Clause 2.9 uniformly for all Bidders.

2.13 Late Bids

Bids received by the Authority after the specified time on the Bid Due Date shall not be eligible for consideration and shall be summarily rejected and be returned un-opened.

2.14 Contents of the Bid

2.14.1 The Qualification Bid shall be furnished in the formats provided under Appendix I.

2.14.2 The Selection Bid shall be furnished in the format at Appendix II and shall consist of the Revenue Share to be quoted by the Bidder.

2.14.3 The opening of Bids and acceptance thereof shall be substantially in accordance with this RFP.

2.14.4 The proposed Contract shall be deemed to be part of the Bid.

2.14.5 All submissions required by the Bidders should be in accordance with the Instructions for online submission specified in Annexure K and in accordance with the

requirements set out in the RFP.

2.15 Substitution/ Withdrawal of Bids

2.15.1 The Bidder may substitute or withdraw its Bid after submission, provided that written notice of the substitution or withdrawal is received by the Authority prior to Bid Due Date on the Central Public Procurement Portal https://eprocure.gov.in/eprocure/app. No Bid shall be substituted or withdrawn by the Bidder on or after the Bid Due Date.

2.16 Rejection of Bids

2.16.1 Notwithstanding anything contained in this RFP, the Authority reserves the right to reject any Bid and to annul Bidding Process and to reject all Bids at any time without any liability or any obligation for such acceptance, rejection or annulment, and without assigning any reason whatsoever. In the event that the Authority rejects or annuls all the Bids, it may, in its discretion, invite all eligible Bidders to submit fresh Bids hereunder.

2.16.2 The Authority reserves the right not to proceed with the Bidding Process at any time, without notice or liability, and to reject any Bid without assigning any reasons.

2.17 Validity of Bids

The Bids shall be valid for a period of not less than 180 (one hundred and eighty) days from the Bid Due Date. A Bid valid for a period shorter than that specified will be rejected by the Authority as non-responsive. The validity of Bids may be extended by mutual consent of the respective Bidders and the Authority.

2.18 Confidentiality

Information relating to the examination, clarification, evaluation and recommendation for the Bidders shall not be disclosed to any person who is not officially concerned with the Bidding Process or is not a retained professional advisor advising the Authority in relation to, or matters arising out of, or concerning the Bidding Process. The Authority will treat all information, submitted as part of the Bid, in confidence and will require all those who have access to such material to treat the same in confidence. The Authority may not divulge any such information unless it is directed to do so by any statutory entity that has the power under law to require its disclosure or is to enforce or assert any right or privilege of the statutory entity and/ or the Authority or as may be required by law or in connection with any legal process.

2.19 Correspondence with the Bidder

Save and except as provided in this RFP, the Authority shall not entertain any correspondence with any Bidder in relation to acceptance or rejection of any Bid.

D. BID SECURITY

2.20 Bid Security

2.20.1 The Bidder shall furnish as part of its Bid, a Bid Security referred to in Clauses 2.1.8 and 2.1.9 hereinabove in the form of a bank guarantee issued by a Scheduled Bank (*as defined under Section 2(e) of the Reserve Bank of India Act, 1934*) in India, in favour of the Authority in the format at Annexure E, Appendix I ("**Bank Guarantee**") and having a validity period of not less than 240 (two hundred and forty) days from the Bid Due

Date, as may be required to be extended by the Bidder from time to time. In case the Bank Guarantee is issued by a foreign bank outside India, confirmation of the same by any nationalized bank in India is required.

2.20.2 The Authority shall not be liable to pay any interest on the Bid Security deposit so made and the same shall be interest free.

2.20.3 Save as provided in Clauses 2.20.6 below, the Bid Security of unsuccessful Bidders will be returned by the Authority, without any interest, as promptly as possible on acceptance of the Bid of the Selected Bidder or when the Bidding process is cancelled by the Authority.

2.20.4 The Selected Bidder's Bid Security will be returned, without any interest, upon the Bidder signing the Contract and furnishing the Performance Security in accordance with the provisions thereof.

2.20.5 The Authority shall be entitled to forfeit and appropriate the Bid Security as Damages *inter-alia* in any of the events specified in Clause 2.20.6 herein below. The Bidder, by submitting its Bid pursuant to this RFP, shall be deemed to have acknowledged and confirmed that the Authority will suffer loss and damage on account of withdrawal of its Bid or for any other default by the Bidder during the Bid validity period. No relaxation of any kind on Bid Security shall be given to any Bidder.

2.20.6 The Bid Security shall be forfeited and appropriated by the Authority as Damages without prejudice to any other right or remedy that may be available to the Authority under the Bidding Documents and/or the Contract, or otherwise, under the following conditions:

(a) If a Bidder engages in a corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice as specified in Section 4 of this RFP;

(b) If a Bidder withdraws its Bid during the period of Bid validity as specified in this RFP and as extended by the Bidder from time to time;

(c) In the case of Selected Bidder, if it fails within the specified time limit:

(i) to sign and return the duplicate copy of LOA;

(ii) to sign the Contract; or

(iii) to incorporate the SPV and/or to novate the Contract in favour of the SPV, if applicable; or

(iv) to furnish the Performance Security within the period prescribed thereof in the Contract; or

(d) In case the Selected Bidder, having signed the Contract, commits any breach thereof prior to furnishing the Performance Security.

2.20.7 The Bid Security of Bidders whose Bid is rejected on account of not meeting the Minimum Eligibility Criteria will be returned/refunded within a period of 60 (sixty) days from the date of intimating the rejection of the Bid by Authority to the Bidder.

E. PROJECT DEVELOPMENT FEES

2.21 Project Development Fees

The Selected Bidder shall pay to International Finance Corporation, fees of US$ 130,000/- (United State Dollars One Hundred Thirty Thousand) or its rupee equivalent, without any deductions whatsoever for taxes, duties, charges or other withholdings which are exempted under the International Finance Corporation (Status, Immunities and Privileges) Act, 1958 and if any such amount is levied then all such amount shall be borne by the Selected Bidder, into the following bank account:

Wells Fargo Bank, N.A.
375, Park Avenue: New York, NY 10152,
United States of America,

Account Number:	2000192003476
For Credit:	International Bank for Reconstruction and Development
SWIFT ID:	PNBPUS3NNYC
ABA:	026005092

or in such other bank account at such place as the International Finance Corporation may intimate prior to such payment.

3. EVALUATION OF BIDS

3.1 Opening and Evaluation of Bids

3.1.1 ***Intentionally Left Blank***

3.1.2 The Authority will examine and evaluate the Qualification Bid in accordance with the provisions set out in this Section 3.

3.1.3 To facilitate evaluation of Qualification Bid, the Authority may, at its sole discretion, seek clarifications in writing from any Bidder regarding its Qualification Bid on Central Public Procurement Portal https://eprocure.gov.in/eprocure/app.

3.2 Tests of responsiveness

3.2.1 Prior to evaluation of Qualification Bid, the Authority shall determine whether each Bid is responsive to the requirements of the RFP. A Bid shall be considered responsive only if:

(a) it is received as per the format at Appendix – I;

(b) it is accompanied by the demand draft as stipulated in Clause 2.1.3;

(c) it is received by the Bid Due Date including any extension thereof pursuant to Clause 2.9.3;

(d) it is uploaded on the Central Public Procurement Portal https://eprocure.gov.in/eprocure/app in accordance with the Instructions for online submission specified in Annexure K] and original thereof are signed, sealed, hard bound and marked as stipulated in Clauses 2.10 and 2.11;

(e) it is accompanied by the Bid Security as specified in Clause 1.2.5;

(f) it is accompanied by the Power(s) of Attorney as specified in Clause 2.1.10 and in the case of a Consortium, the Power of Attorney as specified in Clause 2.1.10

as the case may be;

(g) it contains all the information (complete in all respects) as requested in this RFP and/or Bidding Documents (in formats same as those specified);

(h) it does not contain any condition or qualification;

(i) it is accompanied by the Consortium Agreement (for Consortium), as stipulated in this RFP;

(j) it is accompanied by a copy of the Contract with each page initialled by the person signing the Bid in pursuance to the Power of Attorney; and

(k) it is not non-responsive in terms hereof.

3.2.2 The Authority reserves the right to reject any Bid which is non-responsive and no request for alteration, modification, substitution or withdrawal shall be entertained by the Authority in respect of such Bid.

3.3 Evaluation Parameters

3.3.1 The Bidders adjudged as responsive in terms of Clause 3.2.1 and fulfilling the Minimum Eligibility Criteria as set forth in Clause 2.2.2 shall qualify for evaluation under this Section 3.

3.3.2 The Bidder's competence and capability for the purpose of this RFP is proposed to be established by the following parameters:

(a) Technical Capacity; and

(b) Financial Capacity.

3.4 Details of Experience

3.4.1 The Bidder should furnish the details of its experience for the last 3 (three) financial years immediately preceding the Bid Due Date.

3.4.2 The Bidders must provide the necessary information relating to Technical Capacity as per format at Annexure G, Appendix I.

3.4.3 The Bidder should furnish the required Project-specific information and evidence in support of its claim of Technical Capacity, as per format at Annexure G, Appendix I.

3.5 Financial information for purpose of evaluation

3.5.1 The Bid must be accompanied by the audited annual report ("**Annual Report**") of the Bidder (of each Member in case of a Consortium) for the last 3 (three) financial years, preceding the year in which the Bid is made.

3.5.2 In case the annual accounts for the latest financial year are not audited and therefore the Bidder cannot make it available, the Bidder shall give an undertaking to this effect and the statutory auditor shall certify the same. In such a case, the Bidder shall provide the Audited Annual Reports for 3 (three) years preceding the year for which the Audited Annual Report is not being provided.

3.5.3 The Bidder must establish the minimum Net Worth specified in Clause 2.2.2 (b), and provide details as per format at Annexure H, Appendix I.

3.6 Selection of Bidder

3.6.1 Selection Bids of only Qualified Bidders shall be considered for evaluation. Only Qualified Bidders shall be invited for the opening of Selection Bids; the date on which the Selection Bids will be opened shall be intimated to the Qualified Bidders. The Bid Security and the cost of RFP as stated in Clause 1.2.5 of all except the Selected Bidder will be returned to the relevant Bidders.

3.6.2 Subject to compliance of its Bid to the terms of the RFP, the Bidder quoting the highest Revenue Share (in numbers and words upto two decimal digits) to be provided by the Operator shall be declared as the selected Bidder ("**Selected Bidder**").

3.6.3 In the event that two or more Qualified Bidders quote the same Revenue Share for the Project ("**Tie Bidders**") for the Project, the Qualified Bidder with the highest Net Worth shall be declared as the Selected Bidder for the Project.

3.6.4 In the event that the Highest Bidder withdraws or is not selected for any reason in the first instance ("**First Round**"), the Authority may invite the Qualified Bidders whose Bid is second highest to match the Selection Bid of the aforesaid Highest Bidder after revalidating or extending its Bid Security, if required ("**Second Round"**). If in the Second Round, the said second ranked Qualified Bidder matches the Highest Bidder, it shall be the Selected Bidder.

3.6.5 In the event that the second ranked Qualified Bidder does not offer to match the Highest Bidder in the Second Round as specified in Clause 3.6.4 for the Project, the Authority may, in its discretion, invite fresh Selection Bids ("**Third Round**") from all Qualified Bidders except Highest Bidder of the First Round, or annul the Bidding Process, as the case may be. In case the Bidders are invited in the Third Round to revalidate or extend their Bid Security, as necessary, and offer fresh Selection Bids, they shall be eligible for submission of fresh Selection Bids provided, however, that in such Third Round only such Bids shall be eligible for consideration which are higher than the Bid of the second Highest Bidder in the First Round.

3.6.6 After selection, a Letter of Award ("**LOA**") shall be issued, in duplicate, by the Authority to the Selected Bidder and the Selected Bidder shall, within 7 (seven) days of the receipt of the LOA, sign and return the duplicate copy of the LOA in acknowledgement thereof. In the event the duplicate copy of the LOA duly signed by the Selected Bidder is not received by the stipulated date, the Authority may, unless it consents to extension of time for submission thereof, appropriate the Bid Security of such Bidder as Damages on account of failure of the Selected Bidder to acknowledge the LOA, and the process under Clauses 3.6.4 to 3.6.6 will be followed.

3.6.7 After acknowledgement of the LOA as aforesaid by the Selected Bidder, it shall execute the Contract within the period prescribed in Clause 1.3 or such other time period as may be prescribed by the Authority at its sole discretion, and also incorporate the SPV within 60 (sixty) days of issuance of the LOA. The Contract shall be executed by: (a) the SPV if it is incorporated within the time specified for execution of the same; (b) the Lead Member of the Selected Bidder, if the SPV is not incorporated within the time specified for execution of the same, in which case, the Contract will be novated in favour of the SPV upon its incorporation; and (c) the Selected Bidder (i) if the SPV is not required to be incorporated or (ii) if the SPV is not required to be incorporated, however, the Selected Bidder wishes to incorporate a SPV for execution of the

Contract, in which case, the Contract will be novated in favour of the SPV if the SPV is incorporated within the timeline provided in the Contract. The Selected Bidder shall not be entitled to seek any deviation in the Contract. In the event the Selected Bidder fails to execute the Contract within the stipulated time period or novate the Contract in favour of the SPV, if it was required to incorporate the SPV, then, the Authority may, unless it consents to extension of time for execution thereof, appropriate the Bid Security of such Bidder and require the Bidder to pay Damages on account of failure of the Selected Bidder to execute the Contract.

3.7 Contacts during Bid Evaluation

Bids shall be deemed to be under consideration immediately after they are opened and until such time the Authority makes official intimation of award/ rejection to the Bidders. While the Bids are under consideration, Bidders and/ or their representatives or other interested parties are advised to refrain from contacting by any means, the Authority and/ or their employees/ representatives on matters related to the Bids under consideration.

4. FRAUD AND CORRUPT PRACTICES

4.1 The Bidders and their respective officers, employees, agents and advisers shall observe the highest standard of ethics during the Bidding Process and subsequent to the issue of the LOA and during the subsistence of the Contract. Should any corrupt practice, fraudulent practice, coercive practice, collusive practice, undesirable practice or restrictive practice of any kind come to the knowledge of the Authority it will, in the first place allow the Bidder to provide an explanation and action shall be taken only when a satisfactory explanation is not received. Such action and reasons thereof shall be recorded in the record of the procurement proceedings and promptly communicated to the concerned Bidder. Any communications between the Bidder and the Authority related to the matters of alleged corrupt practice, fraudulent practice, coercive practice, collusive practice, undesirable practice or restrictive practice in the Bidding Process shall be in writing.

4.2 If corrupt practice, fraudulent practice, coercive practice, collusive practice, undesirable practice or restrictive practice in the Bidding Process of any kind is determined by the Authority against any Bidder directly or indirectly or through an agent, the Authority shall, notwithstanding anything to the contrary contained herein, or in the LOA or the Contract:

(a) reject a Bid, withdraw the LOA, or terminate the Contract, as the case may be, without being liable in any manner whatsoever to the Bidder or the Operator, as the case may be. In such an event, the Authority shall forfeit and appropriate the Bid Security or the Performance Security, as the case may be, as Damages without prejudice to any other right or remedy that may be available to the Authority hereunder or otherwise.

(b) declare, at its discretion that the concerned Bidder is ineligible to participate in further procurement proceedings either indefinitely or for a specific period of time.

4.3 For the purposes of this Section 4, the following terms shall have the meaning hereinafter respectively assigned to them:

(a) "**corrupt practice**" means offering, giving or promising to give, receiving, or soliciting, either directly or indirectly, to any officer or employee of the Authority or other public or private authority or individual, a gratuity in any form; employment or any other thing or service of value as an inducement with respect to an act or decision or method followed by Authority in connection with a procurement proceeding or contract execution;

(b) "**fraudulent practice**" means the misrepresentation or omission of facts in order to influence a decision to be taken in a procurement proceeding or contract execution;

(c) "**collusive practice**" means a scheme or arrangement between two or more persons, with or without the knowledge of the Authority, that is designed to arbitrarily reduce the number of Bids submitted or fix tender prices at artificial, non-competitive levels, thereby denying a procuring entity the benefits of competitive price arising from genuine and open competition;

(d) "**coercive practice**" means harming or threatening to harm, directly or indirectly, persons or their property to influence a decision to be taken in a procurement proceeding or the execution of a contract, and this will include

creating obstructions in the normal submission process used for Bids, applications, proposals or quotations;

(e) "**undesirable practice**" means (i) establishing contact with any person connected with or employed or engaged by the Authority with the objective of canvassing, lobbying or in any manner influencing or attempting to influence the Bidding Process; or (ii) having a Conflict of Interest; and

(f) "**restrictive practice**" means forming a cartel or arriving at any understanding or arrangement among Bidders with the objective of restricting or manipulating a full and fair competition in the Bidding Process.

5. SITE VISIT AND PRE-BID CONFERENCE

5.1 Pre-Bid conferences of the Bidders shall be convened at the designated date, time and place. Only those persons who have procured the Bidding Documents in accordance with the terms of this RFP shall be allowed to participate in the Pre-Bid conference. A maximum of 3 (three) representatives of each Bidder shall be allowed to participate on production of authority letter from the Bidder.

5.2 During the course of Pre-Bid conferences, the Bidders shall be free to seek clarifications and make suggestions for consideration of the Authority. The Authority shall endeavour to provide clarifications and such further information as it may, at its sole discretion, consider appropriate for facilitating a fair, transparent and competitive Bidding Process.

5.3 Minutes of the Pre-Bid conference, including the text of the questions raised and the responses given, together with any responses prepared after meeting, will be uploaded on the Authority's website http://iwai.nic.in and the Central Public Procurement Portal https://eprocure.gov.in/eprocure/app . Any revision to the Bidding Documents listed in the RFP that may become necessary as a result of the Pre-Bid conference will be made by the Authority exclusively through the issue of an Addendum pursuant to RFP and not through the minutes of the Pre-Bid conference.

6. MISCELLANEOUS

6.1 The Bidding Process shall be governed by, and construed in accordance with, the laws of India and the courts at New Delhi shall have exclusive jurisdiction over all disputes arising under, pursuant to and/ or in connection with the Bidding Process.

6.2 The Authority, in its sole discretion and without incurring any obligation or liability, reserves the right, at any time, to;

(a) suspend and/ or cancel the Bidding Process and/ or amend and/ or supplement the Bidding Process or modify the dates or other terms and conditions relating thereto;

(b) consult with any Bidder in order to receive clarification or further information;

(c) retain any information and/ or evidence submitted to the Authority by, on behalf of, and/ or in relation to any Bidder; or

(d) independently verify, disqualify, reject and/ or accept any and all submissions or other information and/ or evidence submitted by or on behalf of any Bidder.

6.3 It shall be deemed that by submitting the Bid, the Bidder agrees and releases the Authority, its employees, agents and advisers, irrevocably, unconditionally, fully and finally from any and all liability for claims, losses, damages, costs, expenses or liabilities in any way related to or arising from the exercise of any rights and/ or performance of any obligations hereunder, pursuant hereto and/ or in connection herewith and waives any and all rights and/ or claims it may have in this respect, whether actual or contingent, whether present or future.

6.4 The equipping, operation and management of the Project shall be in compliance with the Applicable Laws and consistent with IFC's Performance Standards (2012 version) (or applicable environmental and social standards and guidelines to which the Equator Principles refer), which can be accessed on the external webpage:

http://www.ifc.org/wps/wcm/connect/topics_ext_content/ifc_external_corporate_site/ifc+sustainability/our+approach/risk+management/performance+standards/environmental+and+social+performance+standards+and+guidance+notes

APPENDIX I - Formats for Qualification Bid

ANNEXURE A – Letter comprising the Bid

Dated:

To
……..
……..
…….
Tel:
Fax:

Sub: Bid for "Equipping, Operating and Managing Inland Waterway Transport Terminals at Garden Reach in Kolkata and existing Gaighat and proposed Kalughat in Patna"

Dear Sir,

1. With reference to the RFP document dated [_____], I/we, having examined the Bidding Documents and understood their contents, hereby submit my/our Bid for the aforesaid Project. The Bid is unconditional and unqualified.

2. All information provided in the Bid and in the Appendices is true and correct.

3. This statement is made for the express purpose of qualifying as a Bidder for the equipping, operating, managing, financing and maintaining of the Terminals.

4. I/ We shall make available to the Authority any additional information it may find necessary or require to supplement or authenticate the Bid.

5. I/ We acknowledge the right of the Authority to reject our Bid without assigning any reason or otherwise and hereby waive our right to challenge the same on any account whatsoever.

6. We certify that in the last 3 (three) years, we/ any of the Consortium Members (and/or the Associates which have been used to satisfy Qualification Criteria) have neither failed to perform on any contract, as evidenced by imposition of a total penalty which has exceeded 5% (five percent) of the project revenues in that year or a judicial pronouncement or arbitration award, nor been expelled from any project or contract nor have had any contract terminated for breach on our part.

7. I/ We declare that:

   (a) I/ We have examined and have no reservations to the Bidding Documents, including any Addendum issued by the Authority.

   (b) I/ We do not have any conflict of interest in accordance with Clause 2.1.14 of the RFP document;

   (c) I/We have not directly or indirectly or through an agent engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice, as defined in Clause 4.3 of the RFP document, in respect of any tender or request for proposal issued by or any agreement entered into with any other public sector enterprise or any authority, Central

or State; and

(d) I/ We hereby certify that we have taken steps to ensure that in conformity with the provisions of Clause 4 of the RFP, no person acting for us or on our behalf has engaged or will engage in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice.

8. I/ We understand that the Authority may cancel the Bidding Process at any time and that the Authority are neither bound to accept any Bid that the Authority may receive nor to invite the Bidders to Bid for the Project, without incurring any liability to the Bidders, in accordance with Clause 2.6.3 of the RFP.

9. I/ We declare that we/ any Member of the Consortium are/ is not a Member of a/ any other Consortium submitting a Bid for the Project.

10. I/ We certify that in regard to matters other than security and integrity of the country, we have not been convicted by a Court of Law or indicted or has adverse orders passed by a regulatory authority which could cast a doubt on our ability to undertake the Project or which relates to a grave offence that outrages the moral sense of the community.

11. I/We further certify that in regard to matters relating to security and integrity of the country, we have not been charge-sheeted by any agency of the Authority or convicted by a Court of Law for any offence committed by us or by any of our Associates.

12. I/ We further certify that no investigation by a regulatory authority is pending either against us or against our Associates or against our CEO or any of our Directors on the Board of the {insert name of the Selected Bidder or Members of the Consortium}.

13. I/ We undertake that in case due to any change in facts or circumstances during the Bidding Process, we are attracted by the provisions of disqualification in terms of the guidelines referred to above, we shall intimate the Authority of the same immediately.

14. We acknowledge that our Consortium/ proposed Consortium is qualified on the basis of:

(a) [Technical Capacity of those of its Members who shall each, for a period of 5 (five) years from the date of the commercial operation of the Project, hold equity share capital not less than 51% (fifty-one percent) of the subscribed and paid-up equity of the Operator; and]

(b) [Financial Capacity of those of its Members who shall each, for a period of 5 (five) years from the date of the commercial operation of the Project, hold equity share capital not less than 26% (twenty-six percent) of the subscribed and paid-up equity of the Operator; and]

We further agree and acknowledge that the aforesaid obligation shall be in addition to the obligations contained in the Contract in respect of Change in Ownership.

15. I/We acknowledge and agree that in the event of a change in control of an Associate whose Technical Capacity and/ or Financial Capacity was taken into consideration for the purposes of short-listing and pre-qualification under and in accordance with the RFP, I/We shall inform the Authority forthwith along with all relevant particulars and the Authority may, in its sole discretion, disqualify us or withdraw the Letter of Award, as the case may be. I/We further acknowledge and agree that any such breach would,

notwithstanding anything to the contrary contained in the Contract, be deemed a breach thereof, and the Contract shall be liable to be terminated without the Authority being liable to us in any manner whatsoever.

16. I/ We understand that the Selected Bidder shall be a company registered in India under Companies Act or from outside India under equivalent law {and shall incorporate a company under the Indian Companies Act, 2013 in terms of the Bidding Documents}.

17. I/We hereby irrevocably waive any right which we may have at any stage at law or howsoever otherwise arising to challenge or question any decision taken by the Authority in connection with the selection of the Bidder, or in connection with the Bidding Process itself, in respect of the above mentioned Project and the terms and implementation thereof.

18. In the event of my/ our being declared as the Selected Bidder, I/We agree to enter into a Contract in accordance with the draft that has been provided to me/us prior to the Bid Due Date. We agree not to seek any changes in the aforesaid draft and agree to abide by the same.

19. I/We have studied all the Bidding Documents carefully and also surveyed the Terminals. We understand that except to the extent as expressly set forth in the Contract, we shall have no claim, right or title arising out of any documents or information provided to us by the Authority or in respect of any matter arising out of it.

20. The Revenue Share for the Project has been quoted by me/us after taking into consideration all the terms and conditions stated in the RFP; draft Contract, our own estimates of costs call volumes and after a careful assessment of the state and all the conditions that may affect the Bid.

21. I/We offer a Bid Security of [_____] to the Authority in accordance with the RFP Document.

22. The Bid Security in the form of a Bank Guarantee is attached.

23. I/We agree and understand that the Bid is subject to the provisions of the Bidding Documents. In no case, I/We shall have any claim or right of whatsoever nature if the Project / Operatorship is not awarded to me/us or our Bid is not opened.

24. I/We agree and undertake to abide by all the terms and conditions of the RFP document.

25. We agree and undertake to be jointly and severally liable for all the obligations of the Operator under the Contract till the [_____] in accordance with the Contract.

In witness thereof, I/we submit this Bid under and in accordance with the terms of the RFP document.

Yours faithfully,
Date: (Signature of the Authorised signatory)
Place: (Name and designation of the of the Authorised signatory)
Name and seal of Bidder/Lead Member

ANNEXURE B – General Information of Bidder

1. Details

   (a) Name:

   (b) Country of incorporation:

   (c) Address of the corporate headquarters and its branch office(s), if any, in India:

   (d) Date of incorporation and/ or commencement of business:

2. Brief description of the company including details of its main lines of business and proposed role and responsibilities in the Project:

3. Details of individual who will serve as the point of contact/ communication for the Authority:

   (a) Name :

   (b) Designation :

   (c) Company :

   (d) Address :

   (e) Telephone Number :

   (f) E-Mail Address :

   (g) Fax Number :

4. Particulars of the Authorised Signatory of the Bidder:

   (a) Name :

   (b) Designation :

   (c) Address :

   (d) Phone Number :

   (e) Fax Number :

5. In case of a Consortium:

   (a) The information above (1-4) should be provided for all the Members of the Consortium.

   (b) A copy of the Consortium Agreement, as envisaged in Clause 2.2.5(e) should be attached to the Bid.

   (c) Information regarding the role of each Member should be provided as per table below:

#	Name of Member	Role*{Refer Clause 2.2.4(e)}[5]	Percentage of equity in the Consortium {Refer Clauses 2.2.4(a), (b) & (e)}
1			
2			
3			

* The role of each Member, as may be determined by the Bidder, should be indicated in accordance with instruction 4 at Annexure I, Appendix I.

(a) The following information shall also be provided for each Member of the Consortium:

Name of Bidder/ Member of Consortium:

#	Criteria	Yes	No
(a)	Has the Bidder/ constituent of the Consortium been barred by the Central/ State authority, or any entity controlled by it, from participating in any project.		
(b)	If the answer to 1 is yes, does the bar subsist as on the date of Bid.		
(c)	Has the Bidder/ constituent of the Consortium (or the relevant Associate) paid liquidated damages of more than 5% (five percent) of the annual contract value in a contract due to delay or has been penalised due to any other reason in relation to execution of a contract, in the last 5 (five) years?		
(d)	Has the Bidder/ constituent of the Consortium ever failed, in last 5 (five) years, to complete any work awarded to it by any public authority/ entity in last five years?		
(e)	Has the Bidder/ constituent of the Consortium, in case of a consortium, suffered bankruptcy/insolvency in the last 5 (five) years or filed for bankruptcy/insolvency/liquidation proceedings?		
(f)	Has the Bidder/ constituent of the Consortium been blacklisted or adverse orders passed by any Government department/ Public Sector Undertaking/ Regulatory Authority/ multilateral institutions (like World Bank Group) in the last 5 (five) years?		

[5] All provisions contained in curly parenthesis shall be suitably modified by the Bidder to reflect the particulars relating to such Bidder

ANNEXURE C – Power of Attorney for Signing of Bid

(Refer Clause 2.1.10)

Know all men by these presents, We, [_____] (name of the firm and address of the registered office) do hereby irrevocably constitute, nominate, appoint and authorize Mr [_____]/ Ms [_____], son/ daughter/ wife of [_____] and presently residing at [_____], who is presently employed with us/ the Lead Member of our Consortium and holding the position of [_____], as our true and lawful attorney (hereinafter referred to as the "**Attorney"**) to do in our name and on our behalf, all such acts, deeds and things as are necessary or required in connection with or incidental to submission of our bid for Equipping, Operating and Managing Inland Waterway Transport Terminals at Garden Reach in Kolkata and existing Gaighat and proposed Kalughat in Patna on an O&M basis ("**Project**") proposed or being developed by the Inland Waterway Authority of India, Ministry of Shipping, Government of India ("**Authority**") including but not limited to signing and submission of all applications, bids and other documents and writings, participate in bidders and other conferences and providing information /responses to the Authority, representing us in all matters before the Authority, signing and execution of all contracts including the Contract and undertakings consequent to acceptance of our bid, and generally dealing with the Authority in all matters in connection with or relating to or arising out of our bid for the said Project and/or upon award thereof to us and/or till the entering into of the Contract with the Authority or any entity representing the Authority.

AND we hereby agree to ratify and confirm and do hereby ratify and confirm all acts, deeds and things lawfully done or caused to be done by our said Attorney pursuant to and in exercise of the powers conferred by this Power of Attorney and that all acts, deeds and things done by our said Attorney in exercise of the powers hereby conferred shall and shall always be deemed to have been done by us.

IN WITNESS WHEREOF WE, [_____], THE ABOVE NAMED PRINCIPAL HAVE EXECUTED THIS POWER OF ATTORNEY ON THIS DAY OF [_____], 20[___].

For [_____]

(Signature)

Witnesses:
(Name, Title and Address)
1.

2.

Accepted [Notarised]

(Signature)

(Name, Title and Address of the Attorney)

Notes:

- *The mode of execution of the Power of Attorney should be in accordance with the procedure, if any, laid down by the applicable laws and the charter documents of the executant(s) and when it is so required, the same should be under common seal affixed in accordance with the required procedure.*

- *Also, wherever required, the Bidder should submit for verification the extract of the*

charter documents and documents such as a resolution/ power of attorney in favour of the person executing this Power of Attorney for the delegation of power hereunder on behalf of the Bidder.

- *Power of Attorney should be executed on a non-judicial stamp paper of appropriate value as relevant to the place of execution.*

- *For a Power of Attorney executed and issued overseas, the document shall be legalized by the Indian Embassy and notarized in the jurisdiction where the Power of Attorney has been executed.*

ANNEXURE D – Power of Attorney for Lead Member of Consortium

(Refer Clause 2.1.10)

Whereas the Inland Waterway Authority of India, Ministry of Shipping, Government of India ("**Authority**") has invited Bids from eligible applicants for Equipping, Operating and Managing Inland Waterway Transport Terminals at Garden Reach in Kolkata and existing Gaighat and proposed Kalughat in Patna on an O&M basis ("**Project**"). Whereas, [_____] and [_____] (collectively the "**Consortium**") being Members of the Consortium are interested in bidding for the Project in accordance with the terms and conditions of the RFP and other connected documents in respect of the Project, and

Whereas, it is necessary for the Members of the Consortium to designate one of them as the Lead Member with all necessary power and authority to do for and on behalf of the Consortium, all acts, deeds and things as may be necessary in connection with the Consortium's bid for the Project and its execution.

NOW THEREFORE KNOW ALL MEN BY THESE PRESENTS

We, [_____] having our registered office at [_____], M/s. [_____], having our registered office at [_____], and M/s. [_____], having our registered office at [_____],the respective names and addresses of the registered office (hereinafter collectively referred to as the "**Principals**") do hereby irrevocably designate, nominate, constitute, appoint and authorize M/s [_____], having its registered office at [_____], being one of the Members of the Consortium, as the Lead Member and true and lawful attorney of the Consortium (hereinafter referred to as the "**Attorney**") and hereby irrevocably authorize the Attorney (with power to sub-delegate) to conduct all business for and on behalf of the Consortium and any one of us during the Bidding Process and, in the event the Consortium is awarded the Operatorship, during the execution of the Project, and in this regard, to do on our behalf and on behalf of the Consortium, all or any of such acts, deeds or things as are necessary or required or incidental to the submission of its bid for the Project, including but not limited to signing and submission of all applications, bids and other documents and writings, participate in bidders' and other conferences, respond to queries, submit information/ documents, sign and execute contracts and undertakings consequent to acceptance of the bid of the Consortium and generally to represent the Consortium in all its dealings with the Authority, and/ or any other Authority Agency or any person, in all matters in connection with or relating to or arising out of the Consortium's bid for the Project and/ or upon award thereof till the Contract is entered into with the Authority.

AND hereby agree to ratify and confirm and do hereby ratify and confirm all acts, deeds and things lawfully done or caused to be done by our said Attorney pursuant to and in exercise of the powers conferred by this Power of Attorney and that all acts, deeds and things done by our said Attorney in exercise of the powers hereby conferred shall and shall always be deemed to have been done by us/ Consortium.

IN WITNESS WHEREOF WE THE PRINCIPALS ABOVE NAMED HAVE EXECUTED THIS POWER OF ATTORNEY ON THIS DAY OF 20[___].

For _____
(Name & Title)

For _____
(Name & Title)

For _____
(Name & Title)

Witnesses:

1.

2.

(Executants)
(To be executed by all the Members of the Consortium)

Notes:

- *The mode of execution of the Power of Attorney should be in accordance with the procedure, if any, laid down by the applicable law and the charter documents of the executant(s) and when it is so required, the same should be under common seal affixed in accordance with the required procedure.*

- *Also, wherever required, the Bidder should submit for verification the extract of the charter documents and documents such as a resolution/ power of attorney in favour of the person executing this Power of Attorney for the delegation of power hereunder on behalf of the Bidder.*

- *Power of Attorney should be executed on a non-judicial stamp paper of appropriate value as relevant to the place of execution.*

- *For a Power of Attorney executed and issued overseas, the document shall be legalized by the Indian Embassy and notarized in the jurisdiction where the Power of Attorney has been executed.*

ANNEXURE E – Format for Bid Security (Bank Guarantee)

(Refer Clauses 1.2.5 and 2.20.1)

(To be executed on Stamp paper of appropriate value)

B.G. No. Dated:

1. In consideration of you, Inland Waterway Authority of India, Ministry of Shipping, Government of India, having its office in [_____] India (hereinafter referred to as the "**Authority**", which expression shall unless it be repugnant to the subject or context thereof include its, successors and assigns) having agreed to receive the Bid of [_____], a company registered under provision of the Companies Act or from outside India under equivalent law and having its registered office at [_____] and acting on behalf of its Consortium (hereinafter referred to as the "**Bidder**" which expression shall unless it be repugnant to the subject or context thereof include its/their executors administrators, successors and assigns), for "Equipping, Operating and Managing Inland Waterway Transport Terminals at Garden Reach in Kolkata and existing Gaighat and proposed Kalughat in Patna on an O&M basis" ("**Project**") pursuant to the RFP Document dated [_____] issued in respect of the Project and other related documents (hereinafter collectively referred to as "**Bidding Documents**"), we [Name of the Bank] having our registered office at [_____] and one of its branches at [_____] (hereinafter referred to as the "**Bank**"), at the request of the Bidder, do hereby in terms of Clause 1.2.5 read with Clause 2.20.1 of the RFP Document, irrevocably, unconditionally and without reservation guarantee the due and faithful fulfilment and compliance of the terms and conditions of the Bidding Documents (including the RFP Document) by the said Bidder and unconditionally and irrevocably undertake to pay forthwith to the Authority an amount of Rs. [_____] as bid security (hereinafter referred to as the "**Bid Security**") as our primary obligation without any demur, reservation, recourse, contest or protest and without reference to the Bidder if the Bidder shall fail to fulfil or comply with all or any of the terms and conditions contained in the said Bidding Documents.

2. Any such written demand made by the Authority stating that the Bidder is in default of the due and faithful fulfilment and compliance with the terms and conditions contained in the Bidding Documents shall be final, conclusive and binding on the Bank.

   (a) We, the Bank, do hereby unconditionally undertake to pay the amounts due and payable under this Guarantee without any demur, reservation, recourse, contest or protest and without any reference to the Bidder or any other person and irrespective of whether the claim of the Authority is disputed by the Bidder or not merely on the first demand from the Authority stating that the amount claimed is due to the Authority by reason of failure of the Bidder to fulfil and comply with the terms and conditions contained in the Bidding Documents including failure of the said Bidder to keep its Bid open during the Bid validity period as set forth in the said Bidding Documents for any reason whatsoever. Any such demand made on the Bank shall be conclusive as regards amount due and payable by the Bank under this Guarantee. However, our liability under this Guarantee shall be restricted to an amount not exceeding Rs. [_____].

   (b) This Guarantee shall be irrevocable and remain in full force for a period of not less than 240 (two hundred and forty) or for such extended period as may be mutually agreed between the Authority and the Bidder, and agreed to by the Bank, and shall continue to be enforceable till all amounts under this Guarantee have been paid.

(c) We, the Bank, further agree that the Authority shall be the sole judge to decide as to whether the Bidder is in default of due and faithful fulfilment and compliance with the terms and conditions contained in the Bidding Documents including, inter alia, the failure of the Bidder to keep its Bid open during the Bid validity period set forth in the said Bidding Documents, and the decision of the Authority that the Bidder is in default as aforesaid shall be final and binding on us, notwithstanding any differences between the Authority and the Bidder or any dispute pending before any Court, Tribunal, Arbitrator or any other Authority.

(d) The Guarantee shall not be affected by any change in the constitution or winding up of the Bidder or the Bank or any absorption, merger or amalgamation of the Bidder or the Bank with any other person.

(e) In order to give full effect to this Guarantee, the Authority shall be entitled to treat the Bank as the principal debtor. The Authority shall have the fullest liberty without affecting in any way the liability of the Bank under this Guarantee from time to time to vary any of the terms and conditions contained in the said Bidding Documents or to extend time for submission of the Bids or the Bid validity period or the period for conveying acceptance of Letter of Award by the Bidder or the period for fulfilment and compliance with all or any of the terms and conditions contained in the said Bidding Documents by the said Bidder or to postpone for any time and from time to time any of the powers exercisable by it against the said Bidder and either to enforce or forbear from enforcing any of the terms and conditions contained in the said Bidding Documents or the securities available to the Authority, and the Bank shall not be released from its liability under these presents by any exercise by the Authority of the liberty with reference to the matters aforesaid or by reason of time being given to the said Bidder or any other forbearance, act or omission on the part of the Authority or any indulgence by the Authority to the said Bidder or by any change in the constitution of the Authority or its absorption, merger or amalgamation with any other person or any other matter or thing whatsoever which under the law relating to sureties would but for this provision have the effect of releasing the Bank from its such liability.

(f) Any notice by way of request, demand or otherwise hereunder shall be sufficiently given or made if addressed to the Bank and sent by courier or by registered mail to the Bank at the address set forth herein.

(g) We undertake to make the payment on receipt of your notice of claim on us addressed to [name of Bank along with branch address] and delivered at our above branch who shall be deemed to have been duly authorised to receive the said notice of claim.

(h) It shall not be necessary for the Authority to proceed against the said Bidder before proceeding against the Bank and the guarantee herein contained shall be enforceable against the Bank, notwithstanding any other security which the Authority may have obtained from the said Bidder or any other person and which shall, at the time when proceedings are taken against the Bank hereunder, be outstanding or unrealized.

(i) We, the Bank, further undertake not to revoke this Guarantee during its currency except with the previous express consent of the Authority in writing.

(j) The Bank declares that it has power to issue this Guarantee and discharge the

obligations contemplated herein, the undersigned is duly authorised and has full power to execute this Guarantee for and on behalf of the Bank.

3. Notwithstanding anything contained hereinabove:

(a) Our Liability under this guarantee shall not exceed Rs. [_____] (Rupees [_____]).

(b) This Bank Guarantee shall be valid upto [_____].

(c) We shall be liable to pay amount or any part thereof under this Bank Guarantee only and only if we receive a written claim or demand on or before [_____]."

Signed and Delivered by _____ Bank

By the hand of Mr./Ms _____, its _____ and authorised official.

(Signature of the Authorised Signatory)

(Official Seal)

ANNEXURE F – Consortium Agreement

(Refer Clause 2.2.4 (e))

(To be executed on Stamp paper of appropriate value)

THIS CONSORTIUM AGREEMENT is entered into on this the [_____] day of [_____] 20[__]

AMONGST

1. {……. Limited, a company incorporated under the ……} and having its registered office at ……. (hereinafter referred to as the "**First Part**" which expression shall, unless repugnant to the context include its successors and permitted assigns)

AND

2. {……. Limited, a company incorporated under the ……} and having its registered office at ……. (hereinafter referred to as the "**Second Part**" which expression shall, unless repugnant to the context include its successors and permitted assigns)[6]

AND

3. {……. Limited, a company incorporated under the ……} and having its registered office at ……. (hereinafter referred to as the "**Third Part**" which expression shall, unless repugnant to the context include its successors and permitted assigns)[7]

The above mentioned parties of the First, Second and Third Part are collectively referred to as the "**Parties**" and each is individually referred to as a "**Party**".

WHEREAS,

(A) The Inland Waterway Authority of India, Ministry of Shipping, Government of India (hereinafter referred to as the "**Authority**" which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and assigns) has invited bids ("**Bids**") by its Request for Proposal No. [_____] dated [_____] ("**RFP**") for selection of bidders for Equipping, Operating and Managing Inland Waterway Transport Terminals at Garden Reach in Kolkata and existing Gaighat and proposed Kalughat in Patna on an O&M basis ("**Project**").

(B) The Parties are interested in jointly bidding for the Project as Members of a Consortium and in accordance with the terms and conditions of the RFP document and other bid documents in respect of the Project.

(C) It is a necessary condition under the RFP document that the Members of the Consortium shall enter into a Consortium Agreement and furnish a copy thereof with the Bid.

NOW IT IS HEREBY AGREED as follows:

1. Definitions and Interpretations

In this Agreement, the capitalized terms shall, unless the context otherwise requires, have the meaning ascribed thereto under the RFP.

[6] Number of Parties would be shown here, as applicable, subject to however a maximum of three.

[7] Number of Parties would be shown here, as applicable, subject to however a maximum of three.

2. Consortium

2.1 The Parties do hereby irrevocably constitute a joint venture, consortium or association ("**Consortium**") for the purposes of jointly participating in the Bidding Process for the Project.

2.2 The Parties hereby undertake to participate in the Bidding Process only through this Consortium and not individually and/ or through any other joint venture, consortium or association constituted for this Project, either directly or indirectly or through any of their Associates.

3. Covenants

The Parties hereby undertake that in the event the Consortium is declared the Selected Bidder and awarded the Project, it shall incorporate a special purpose vehicle ("**SPV**") under the Companies Act within 60 (sixty) days of issuance of the LOA, for performing all its obligations as the Operator in terms of the Contract for the Project. If, for any reason, the SPV is not incorporated within the time specified for the execution of the Contract, the Lead Member shall execute the same and the Project shall be novated to the SPV upon its incorporation.

4. Role of the Parties

The Parties hereby undertakes that Party of the First Part shall be the Lead Member of the Consortium and shall have the power of attorney from all Parties for conducting all business for and on behalf of the Consortium during the Bidding Process and until the Appointed Date under the Contract when all the obligations of the SPV shall become effective.

5. Joint and Several Liability

The Parties do hereby undertake to be jointly and severally responsible for all obligations and liabilities relating to the Project and in accordance with the terms of the RFP and the Contract in accordance with the Contract.

6. Shareholding in the SPV

6.1 The Parties agree that the proportion of shareholding among the Parties in the SPV shall be as follows:

First Party:

Second Party:

Third Party:

6.2 The Parties undertake that they shall comply with all equity lock-in requirements set forth in the RFP and Contract.

7. Representation of the Parties

Each Party represents to the other Parties as of the date of this Agreement that:

(a) Such Party is duly organized, validly existing and in good standing under the

laws of its incorporation and has all requisite power and authority to enter into this Agreement;

(b) The execution, delivery and performance by such Party of this Agreement has been authorised by all necessary and appropriate corporate or Authority action and a copy of the extract of the charter documents and board resolution/ power of attorney in favour of the person executing this Agreement for the delegation of power and authority to execute this Agreement on behalf of the Consortium Member is annexed to this Agreement, and will not, to the best of its knowledge:

(i) require any consent or approval not already obtained;

(ii) violate any Applicable Law presently in effect and having applicability to it;

(iii) violate the memorandum and articles of association, by-laws or other applicable organizational documents thereof;

(iv) violate any clearance, permit, concession, grant, license or other Governmental authorization, approval, judgment, order or decree or any mortgage agreement, indenture or any other instrument to which such Party is a party or by which such Party or any of its properties or assets are bound or that is otherwise applicable to such Party; or

(v) create or impose any liens, mortgages, pledges, claims, security interests, charges or encumbrances or obligations to create a lien, charge, pledge, security interest, encumbrances or mortgage in or on the property of such Party, except for encumbrances that would not, individually or in the aggregate, have a material adverse effect on the financial condition or prospects or business of such Party so as to prevent such Party from fulfilling its obligations under this Agreement;

(c) this Agreement is the legal and binding obligation of such Party, enforceable in accordance with its terms against it; and

(d) there is no litigation pending or, to the best of such Party's knowledge, threatened to which it or any of its Affiliates is a party that presently affects or which would have a material adverse effect on the financial condition or prospects or business of such Party in the fulfilment of its obligations under this Agreement.

8. Termination

This Agreement shall be effective from the date hereof and shall continue in full force in accordance with the Contract, in case the Project is awarded to the Consortium. However, in case the Consortium is either not prequalified for the Project or does not get selected for award of the Project, the Agreement will stand terminated in case the Bidder is not pre-qualified or upon return of the Bid Security by the Authority to the Bidder, as the case may be.

9. Miscellaneous

9.1 This Consortium Agreement shall be governed by laws of {India}.

9.2 The Parties acknowledge and accept that this Agreement shall not be amended by the Parties without the prior written consent of the Authority.

IN WITNESS WHEREOF THE PARTIES ABOVE NAMED HAVE EXECUTED AND DELIVERED THIS AGREEMENT AS OF THE DATE FIRST ABOVE WRITTEN.

SIGNED, SEALED AND DELIVERED
For and on behalf of
LEAD MEMBER by:

(Signature)

(Name)
(Designation)
(Address)

SIGNED, SEALED AND DELIVERED
For and on behalf of
SECOND PART

(Signature)

(Name)
(Designation)
(Address)

SIGNED, SEALED AND DELIVERED
For and on behalf of
THIRD PART

(Signature)

(Name)
(Designation)
(Address)

In the presence of:

1. 2.

Notes:

1. *The mode of the execution of the Consortium Agreement should be in accordance with the procedure, if any, laid down by the Applicable Law and the charter documents of the executant(s) and when it is so required, the same should be under common seal affixed in accordance with the required procedure.*

2. *Each Consortium Agreement should attach a copy of the extract of the charter documents and documents such as resolution / power of attorney in favour of the person executing this Agreement for the delegation of power and authority to execute this Agreement on behalf of the Consortium Member.*

3. *For a Consortium Agreement executed and issued overseas, the document shall be legalized by the Indian Embassy and notarized in the jurisdiction where the Power of Attorney has been executed.*

ANNEXURE G – Technical Capacity of the Bidder [@]

(*Refer to Clauses 2.2.2(a), 3.3 and 3.4 of the RFP*)

[@] Provide details of only those projects that have been undertaken by the Bidder under its own name and/ or by an Associate specified in Clause 2.1.14.

ANNEXURE H – Financial Capacity of Bidder

(*Refer to Clauses 2.2.2(b) and 2.2.3 (b) of the RFP*)

(Rs. million)

Bidder type [$]	Member Code[£]	Proposed Equity Shareholding in Consortium (%)	Net Worth[€]
(1)	(2)	(3)	(4)
Single entity Bidder			
Consortium Member 1			
Consortium Member 2			
Consortium Member 3			
TOTAL			

Instructions:

1. The Bidder/ each of its constituent Consortium Members shall attach copies of the balance sheets, financial statements and Annual Reports for 3 (three) years preceding the Bid Due Date. The financial statements shall:

   (a) reflect the financial situation of the Bidder or each of its Consortium Members and its/ their Associates where the Bidder is relying on its Associate's financials;

   (b) be audited by a statutory auditor;

   (c) be complete, including all notes to the financial statements; and

   (d) correspond to accounting periods already completed and audited (no statements for partial periods shall be requested or accepted).

2. Net Worth shall mean (Subscribed and Paid-up Equity + Reserves) less (Revaluation reserves + miscellaneous expenditure not written off + reserves not available for distribution to equity shareholders).

3. Year 1 will be the latest completed financial year, preceding the bidding. Year 2 shall be the year immediately preceding Year 1 and so on. In case the Bid Due Date falls within 3 (three) months of the close of the latest financial year, refer to Clause 2.2.11.

4. In the case of a Consortium, a copy of the Consortium Agreement shall be submitted in accordance with Clause 2.2.5 (e) of the RFP document.

5. The Bidder shall also provide the name and address of the Bankers to the Bidder.

6. The Bidder shall provide an Auditor's Certificate specifying the net worth of the Bidder and also specifying the methodology adopted for calculating such net worth in accordance with Clause 2.2.3 (ii) of the RFP document.

[$]*A Bidder consisting of a single entity should fill in details as per the row titled Single entity*

Bidder and ignore the rows titled Consortium Member. In case of a Consortium, the row titled Single entity Bidder may be ignored. In case credit is claimed for an Associate, necessary evidence to establish the relationship of the Bidder with such Associate, in terms of Clause 2.1.14, shall be provided.

€Net Worth is computed on the basis of financial statements as on the last date of the preceding financial year

£Member Code shall indicate NA for Not Applicable in case of a single entity Bidder. For other Members, the following abbreviations are suggested viz. LM means Lead Member and OM means Other Member.

ANNEXURE I – Format of Contract

[*Separately enclosed***]**

ANNEXURE J – Proposal Checklist

#	Item	Checked by Bidder	Checked by Authority
1	Letter comprising the Bid (Appendix I - Annexure A);		
2	General Information of Bidder (Appendix I - Annexure B)		
3	Power of Attorney for signing of Bid in the prescribed format (Appendix I - Annexure C)		
4	If applicable, the Power of Attorney for Lead Member of Consortium in the prescribed format (Appendix I - Annexure D)		
5	Bid Security in the prescribed format (Appendix I - Annexure E)		
6	Consortium Agreement (in case of Consortium) (Appendix I - Annexure F)		
7	Technical Capacity of the Bidder (Appendix I - Annexure G)		
8	Financial Capacity of the Bidder (Appendix I - Annexure H)		
10	Format of Contract (Appendix I – Annexure I)		

Annexure K – Instructions for online submission

Instructions to the Contractors/Bidders for the e-submission of the bids online through the Central Public Procurement Portal for eProcurement https://eprocure.gov.in/eprocure/app

1) Possession of valid Digital Signature Certificate (DSC) and enrolment/registration of the contractors/bidders on the e-procurement/e-tender portal is a prerequisite for e-tendering.

2) BidderS should do the enrolment in the e-Procurement site using the https://eprocure.gov.in/eprocure/app option available on the home page. Portal enrolment is generally free of charge. During enrolment/registration, the bidders should provide the correct/true information including valid email_id. All the correspondence shall be made directly with the contractors/bidders through email_id provided.

3) Bidder need to login to the site through their user ID/ password chosen during enrolment/registration.

4) Then the Digital Signature Certificate (Class II or Class III Certificates with signing key usage) issued by SIFY/TCS/nCode/e-Mudra or any Certifying Authority recognized by CCA India on eToken/SmartCard, should be registered.

5) The DSC that is registered only, should be used by the bidder and should ensure safety of the same.

6) Contractor/Bidder may go through the tenders published on the site and download the required tender documents/schedules for the tenders he/she is interested.

7) After downloading / getting the tender document/schedules, the Bidder should go thorough them carefully and then submit the documents as asked.

8) If there are any clarifications, this may be obtained online thro' the tender site, or thro' the contact details. Bidder should take into account of the corrigendum published before submitting the bids online.

9) Bidder then logs in to the site through the secured log in by giving the user id/ password chosen during enrolment/registration and then by giving the password of the eToken/SmartCard to access DSC.

10) Bidder selects the tender which he/she is interested in by using the search option & then moves it to the 'my favourites' folder.

11) From the my favourites folder, he selects the tender to view all the details indicated.

12) It is construed that the bidder has read all the terms and conditions before submitting their offer. Bidder should go through the tender schedules carefully and upload the documents as asked, otherwise, the bid will be rejected.

13) Bidder, in advance, should get ready the bid documents to be submitted as indicated in the tender document/schedule and generally, they can be in PDF/xls/rar/jpg/

14) formats. If there is more than one document, they can be clubbed together and can be provided in the requested format. Each document to be uploaded through online for the tenders should be less than 2MB. If any document is more than 2MB, it can be

reduced through zip/rar and the same can be uploaded, if permitted.

15) If there are any clarifications, this may be obtained through the site, or during the pre-bid meeting if any. Bidder should take into account the corrigendum published from time to time before submitting the online bids.

16) The Bidders can update well in advance, the documents such as certificates, annual report details etc., under My Space option and these can be selected as per tender requirements and then send along with bid documents during bid submission. This will facilitate the bid submission process faster by reducing upload time of bids.

17) Bidder should submit the Tender Fee/ EMD as specified in the tender. The original payment instruments should be posted/couriered/given in person to the Tender Inviting Authority within the due date as mentioned in this tender document. Scanned copy of the instrument should be uploaded as part of the offer, if asked for.

18) While submitting the bids online, the bidder reads the terms & conditions and accepts the same to proceed further to submit the bid packets.

19) The bidder has to select the payment option as offline to pay the Tender FEE/ EMD as applicable and enter details of the instruments.

20) The details of the DD/any other accepted instrument, physically sent, should tally with the details available in the scanned copy and the data entered during bid submission time. Otherwise submitted bid will not be acceptable.

21) The bidder has to digitally sign and upload the required bid documents one by one as indicated. Bidders to note that the very act of using DSC for downloading the bids and uploading their offers shall be deemed to be a confirmation that they have read all sections and pages of the bid document including General conditions of contract without any exception and have understood the entire document and are clear about the requirements of the tender requirements.

22) The bidder has to upload the relevant files required as indicated in the cover content. In case of any irrelevant files, the bid will be rejected.

23) If the price bid format is provided in a spread sheet file like BoQ_xxxx.xls, the rates offered should be entered in the allotted space only and uploaded after filling the relevant columns. The Price Bid/BOQ template must not be modified/replaced by the bidder, else the bid submitted is liable to be rejected for this tender.

24) The bidders are requested to submit the bids through online e-tendering system to the Tender Inviting Authority (TIA) well before the bid submission end date & time (as per Server System Clock). The TIA will not be held responsible for any sort of delay or the difficulties faced during the submission of bids online by the bidders at the eleventh hour.

25) After the bid submission, the acknowledgement number, given by the e-tendering system should be printed by the bidder and kept as a record of evidence for online submission of bid for the particular tender and will also act as an entry pass to participate in the bid opening date.

26) The bidder should ensure/see that the bid documents submitted should be free from virus and if the documents could not be opened, due to virus, during tender opening, the bid is likely/liable to be rejected.

27) The time settings fixed in the server side & displayed at the top of the tender site, will be valid for all actions of requesting, bid submission, bid opening etc., in the e-tender system. The bidders should follow this time during bid submission.

28) All the data being entered by the bidders would be encrypted using PKI encryption techniques to ensure the secrecy of the data. The data entered will not viewable by unauthorized persons during bid submission & not be viewable by any one until the time of bid opening.

29) Any bid document that is uploaded to the server is subjected to symmetric encryption using a system generated symmetric key. Further this key is subjected to asymmetric encryption using buyers/bid openers public keys. Overall, the uploaded tender documents become readable only after the tender opening by the authorized bid openers.

30) The confidentiality of the bids is maintained since the secured Socket Layer 128 bit encryption technology is used. Data storage encryption of sensitive fields is done.

31) The bidder should logout of the tendering system using the normal logout option available at the top right hand corner and not by selecting the (X) exit option in the browser.

32) For any queries regarding e-tendering process, the bidders are requested to contact through the modes given below:

E-mail: _____
Contact Telephone Numbers: 1800-3070-2232
Fax No.: _____
In person: _____.

APPENDIX II – Format for Selection Bid
Financial Proposal
(Refer Clauses 2.1.6 and 2.1.7)

Dated:

To
……..
……..
……..
Tel:
Fax:

Sub: Bid for "Equipping, Operating and Managing Inland Waterway Transport Terminals at Garden Reach in Kolkata and existing Gaighat and proposed Kalughat in Patna"

Dear Sir,

1. With reference to your RFP document dated [___], I/we, having examined the Bidding Documents and understood their contents, hereby submit my/our Bid for the aforesaid Project. The Bid is unconditional and unqualified.

2. I/We hereby submit our Bid and quote the Revenue Share for the Project, details of which has been provided in Annexure A to this Appendix II.

3. I/We agree to keep this offer valid for 180 (one hundred and eighty) days from the Bid Due Date specified in the RFP.

4. I/We agree and undertake to abide by all the terms and conditions of the RFP document. In witness thereof, I/we submit this Bid under and in accordance with the terms of the RFP document.

Yours faithfully,

Date: (Signature of the Authorised signatory)
Place: (Name and designation of the of the Authorised signatory)
Name and seal of Bidder/Lead Member

ANNEXURE A – Revenue Share

[*To be provided by the Bidder in numbers and words upto two decimal digits, and the figure quoted in words shall prevail over numbers in case of any inconsistency*]

TERMINAL SERVICES CONTRACT

By and Between

INLAND WATERWAYS AUTHORITY OF INDIA
(as "Authority")

And

[_____]
(as "Operator")

Dated: [_____]

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[***To be executed on stamp paper***]

THIS TERMINAL SERVICES CONTRACT ("**Contract**") is made on this [____] day of [_____], at [_____]:

BY AND BETWEEN:

INLAND WATERWAYS AUTHORITY OF INDIA, a statutory body established by the Government of India under the provisions of Inland Waterways Authority of India Act, 1985, having its head office at A-13, Sector – 1, Noida – 201 301, Uttar Pradesh, represented by its [Chairman] (hereinafter referred to as the "**Authority**", which expression shall, unless repugnant to the context or meaning thereof, include its successors and assigns);

AND

[_____], a company incorporated under the provisions of the [Companies Act, 2013], having corporate identity number [_____] and its registered office at [_____] (hereinafter referred to as the "**Operator**", which expression shall, unless repugnant to the context or meaning thereof, include its successors, permitted assigns and substitutes).

As the context may require, the Authority and the Operator will hereinafter be referred to individually as a "**Party**" and collectively as the "**Parties**".

WHEREAS:

A. The Authority owns and operates the Gaighat Terminal (*as defined below*) and Kolkata Terminal (*as defined below*), and further proposes to develop the Kalughat Terminal (*as defined below*).

B. In order to increase the usage of the inland water terminals and achieve better productivity at the Terminals (*as defined below*), the Authority intends to hand-over the operation, maintenance and management of the Terminals to a competent and qualified Person (*as defined below*) on the basis of the payment of the Revenue Share (*as defined below*), in the form and manner provided herein.

C. In this regard, the Authority invited bids through international competitive bidding process by issuing its Request for Proposal No. [_____] dated [_____] ("**RFP**") for the selection of a preferred bidder for the performance of the O&M Services (*as defined below*).

D. Pursuant to the evaluation of the Bids (*as defined in the RFP*) submitted by the Bidders (*as defined in the RFP*), the Authority selected [_____] {Sole Selected Bidder/ consortium comprising [_____] and [_____] (collectively the "**Consortium**") with [_____] as its lead member} as the Selected Bidder (*as defined in the RFP*) for the performance of the O&M Services.

E. The Authority accordingly issued its Letter of Award No. [_____] dated [_____] ("**LOA**") to the Selected Bidder, requiring the Selected Bidder, *inter alia*, to execute this Contract.

F. {The Selected Bidder is a limited liability company under the Companies Act, 1956/2013, and has requested the Authority to accept the Selected Bidder as the entity, which shall undertake and perform the obligations and exercise the rights of the Selected Bidder under the LOA, including the obligation to enter into this Contract for undertaking and performing the O&M Services.}

Or

{The Selected Bidder is a limited liability company under the Companies Act, 1956/2013, and wishes to incorporate a special purpose vehicle (**SPV**) under the Companies Act, 2013 in accordance with the terms of the RFP, and has requested the Authority to accept the SPV as the Operator, which shall undertake and perform the obligations and exercise the rights of the Selected Bidder under the LOA, including the obligation to enter into this Contract for undertaking and performing the O&M Services. The Selected Bidder shall incorporate the SPV and novate this Contract to the SPV within a period of 60 (sixty) days from the Effective Date. If the Selected Bidder fails to incorporate the SPV and novate this Contract to the SPV within the said period, then the Selected Bidder will be treated as the Operator.}

Or

{The Lead Member of the Selected Bidder is executing this Contract and represents that the Lead Member will incorporate a special purpose vehicle (**SPV**) under the Companies Act, 2013, within a period of 60 (sixty) days of execution of this Contract and upon incorporation of the SPV, the Lead Member will novate this Contract to the SPV. The SPV shall undertake and perform the obligations and exercise the rights of the Selected Bidder under the LOA, including the obligations under this Contract for undertaking and performing the O&M Services. If the Lead Member fails to incorporate the SPV and novate this Contract to the SPV within the said period, then this Contract shall stand automatically terminated at the end of the 60th (sixtieth) day from the Effective Date.}

Or

{The Selected Bidder is a Consortium and has since promoted and incorporated the Operator as a special purpose vehicle in the form of a limited liability company under the Companies Act, 2013 in accordance with the terms of the RFP, and has requested the Authority to accept the Operator as the entity, which shall undertake and perform the obligations and exercise the rights of the Selected Bidder under the LOA, including the obligation to enter into this Contract for undertaking and performing the O&M Services.}

G. {By its letter dated [_____], the Operator, while representing that it has been promoted by the Selected Bidder for the purposes hereof, joined in the request of the Selected Bidder to the Authority, to accept the Operator as the entity which shall undertake and perform the obligations and exercise the rights of the Selected Bidder including the obligation to enter into this Contract pursuant to the LOA.}

H. The Operator has represented and warranted to the Authority that it, {while assuming the technical and operational capabilities of the Selected Bidder,} is qualified and competent to perform the O&M Services at the Terminals, as per the terms of this Contract.

I. In view of the aforesaid and based on the representations and warranties provided by the Operator {and the Selected Bidder} and set out in this Contract, the Authority has agreed to the said request of {the Selected Bidder and} the Operator, and has accordingly agreed to enter into this Contract with the Operator for the performance of the O&M Services at the Terminals, subject to and on the terms and conditions set forth hereinafter.

NOW, THEREFORE, in consideration of the foregoing and the respective covenants and agreements set forth in this Contract, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound hereby, the Parties agree as follows:

1. DEFINITIONS AND INTERPRETATION

1.1 *Definitions*

In this Contract, unless the context otherwise requires, the following terms shall have the following meaning:

"**Accident**" means an incident resulting in an injury which incapacitates a Person from undertaking the work assigned to him, for a continuous period exceeding 24 (twenty-four) hours.

"**Accounting Year**" means the financial year commencing from the 1st (first) day of April of any calendar year and ending on 31st (thirty-first) day of March of the next calendar year, *provided that*, for the purposes of the 1st (first) Accounting Year, such period shall commence from the Appointed Date and end on immediate following 31st (thirty-first) day of March and for the last calendar year of the Operating Period, such period shall commence from 1st (first) day of April and shall end on the last day of the Operating Period.

"**Additional Auditors**" has the meaning specified in Clause 14.2.3.

"**Affected Party**" has the meaning specified in Clause 18.1.

"**Affiliate**" means with respect to a Party, a company or other Person that directly or indirectly, through one or more intermediate Persons, controls or is controlled by, or is under common control with such Party. For the purposes of this definition, '*control*' shall include the right to appoint majority of the directors or to control the management or policy decisions exercisable by a Person(s) acting individually or in concert, directly or indirectly, including by virtue of their shareholding or management rights or shareholders' agreements or voting agreements or in any other manner.

"**Annual Maintenance Program**" means the maintenance program prepared by the Operator, in accordance with Clause 6.16.

"**Applicable Law**" means the substantive or procedural laws of India, including all applicable legislations, acts, rules, notifications, guidelines, policy, laws, by-laws, statutes, Environmental Standards, orders, decrees, judgments, injunctions, ordinances, directives, regulations, codes, requirements, permits, licenses, approvals, instructions, standards of any Government Instrumentality, having the force of law.

"**Applicable Permits**" means all approvals, authorizations, permits, licenses, visas, arrival permits, consents, clearances, etc., required to be obtained or maintained under Applicable Laws in connection with the performance of the O&M Services from any Government Instrumentality.

"**Appointed Date**" means the date on which every Condition Precedent is either satisfied or waived, in accordance with the provisions of Clause 4.1 of the Contract.

"**Authority**" has the meaning specified in the description of the Parties herein.

"**Authority's Manager**" has the meaning specified in Clause 5.6.1.

"**Bid**" means the documents in their entirety comprised in the bid submitted by the Selected Bidder in response to the RFP in accordance with the provisions thereof.

"**Bid Security**" means the security provided by the Selected Bidder to the Authority along with the Bid, in accordance with the RFP, and which is to remain in force until substituted by the Contract Performance Security.

"**Business Day**" means any day in a week other than a Sunday or a day declared to be public holiday, in the State of Bihar in respect of the Patna Terminals and in the State of West Bengal in respect of the Kolkata Terminal, under the provisions of the Negotiable Instruments Act, 1881.

"**Change in Ownership**" means a transfer of the direct and/or indirect legal or beneficial ownership of any shares, or securities convertible into shares that causes the change in the shareholding against the provisions of Clause 6.9.

"**Conditions Precedent**" means the conditions set out in Clause 4, which are required to be fulfilled by the Authority and the Operator.

"**Condition Subsequent Period**" shall have the meaning provided in Clause 4.5.1A.

"**Contract**" means this terminal services contract entered into between the Authority and the Operator, including the Recitals, the Schedules hereto, as amended, modified or supplemented from time to time in accordance with provisions herein.

"**Contract Performance Security**" means the bank guarantee to be provided by the Operator in terms of Clause 10.2 to ensure due performance of its obligations under this Contract.

"**CPI**" means all India average of consumer price index (general) for industrial workers as published by the Labour Bureau, Ministry of Labour and Employment, Government of India and shall include any index which substitutes the same, and any reference to it shall, unless the context otherwise requires, be construed as a reference to the latest monthly CPI published no later than 30 (thirty) days prior to the date of consideration hereunder.

"**Damages**" means a genuine pre-estimated loss and damage likely to be suffered and incurred by a Party entitled to receive the same and are not by way of penalty, as more particularly set forth in this Contract.

"**Deemed Performance Security**" has the meaning specified in Clause 10.4.

"**Designated GOI Agency**" means a department or other entity under the control of any Government Instrumentality and assigned statutory functions, in respect of the operation, maintenance and management of the Terminals.

"**Dispute**" has the meaning specified in Clause 22.1.

"**Effective Date**" has the meaning specified in Clause 2.1.1.

"**Emergency Event**" means a sudden and unexpected event or circumstance which has caused or reasonably threatens to cause:

(a) serious bodily injury to any personnel employed at the Terminals or any other Person at or in the vicinity of the Terminals;

(b) serious physical damage to the Terminals, including the Terminals or other material or property located at or in the vicinity of the Terminals;

(c) stoppage of performance of O&M Services or other serious labour disturbance at the Terminals;

(d) a shutdown or other serious interruption in or interference with the operation or functioning of the facilities at the Terminals, in full or considerable part, or otherwise affecting the Terminals;

(e) imposition of fines or other penalties or sanctions under any Applicable Law, where such fines, penalties or sanctions under Applicable Law are likely to affect seriously the ability of Authority or the Operator to perform any of its or their obligations under this Contract; or

(f) an occurrence of any accident materially impacting the environment.

"**Environmental Claim**" means with respect to any Person, any and all claims, suits, actions, demands, liabilities, legal proceedings, notices of violation, demands, losses, costs and expenses, including reasonable attorneys' fees and expenses, civil fines or penalties, in each case assessed against or sustained by such Person because of any breach or alleged breach of any Environmental Standards.

"**Environmental Standards**" means Applicable Law, Technical Specifications, codes, rules and regulations relating to:

(a) labour and working conditions including those for workers engaged through Sub-Contractors;

(b) pollution, contamination, clean-up, protection and reclamation of the environment;

(c) health or safety, including, without limitation, the exposure of employees or other Persons to any Hazardous Materials;

(d) the release or threatened release of any Hazardous Materials;

(e) management of traffic, security, events linked to life and fire safety, emergency response etc.;

(f) management of impacts arising on account of land acquisition and related physical as well as economic displacement (if any);

(g) the management of any Hazardous Materials, including, without limitation, the manufacture, generation, formulation, processing, labelling, distribution, introduction into commerce, registration, use, treatment, handling, storage, disposal of materials, the discharge of chemicals, gases or other substances or materials into the environment, the presence of such materials, chemicals, gases or other substances in or around the Terminals, transportation, reuse, recycling or reclamation of any Hazardous Materials;

(h) any Applicable Permit issued by a Government Instrumentality with respect to the foregoing; and

(i) applicable IFC Performance Standards on Environmental and Social Sustainability 2012.

"Equal Access" means where equivalent circumstances exist, the Operator shall not unfairly discriminate for or against any particular or set or group of Users by allowing a preferential access or refusing to provide a service at all or on the same timely basis as such service is provided to other Users, *provided however that*, the Authority shall at all times in accordance with prevailing circumstances and having regard in particular to the provisions of the Applicable Law and to matters relating to safety, security or national emergency (economic or otherwise) or to the prevention, containment or restriction of pollution, may instruct the Operator to give preferential treatment or restrict or limit the facilities or services or benefits at the Terminals.

"**Equity**" means the sum expressed in Indian Rupees representing the paid up equity share capital of the Operator, and for the purposes of this Contract shall include convertible instruments or other similar forms of capital, which shall compulsorily convert into equity share capital of the Operator.

"**Escrow Account**" means an account to be opened and maintained in accordance with the provisions of Clause 9.1.

"**Escrow Agreement**" has the meaning specified in Clause 9.1.

"**Escrow Bank**" means a nationalised bank in India which has been identified as such in the Escrow Agreement.

"**ESMS**" means the environmental and social management system to be developed and maintained by the Operator as indicated in Clause 6.15.

"**ETA**" means expected time of arrival.

"**Fee Regulations**" means the Inland Waterways Authority of India (Levy and collection of fees and charges) Regulations, 2011, to be amended and notified as per the Applicable Laws, allowing the Operator to charge the Service Charges as per the terms of this Contract.

"**Force Majeure Event**" has the meaning specified in Clause 18.1.

"**Forward Major Maintenance & Improvement Program**" means the 5 (five) year rolling program for major maintenance and improvement including (a) maintenance and repair that are required over and above (i) regular operational maintenance and (ii) normal wear and tear, (b) replacement of damaged or life expired assets that is necessary to bring the assets at the Terminal to or close to its original specifications; and (c) improvement and/or upgrade of assets at the Terminal over its original specifications, which is prepared by the Operator and submitted to the Authority in accordance with Clause 6.17.

"**Functional Guarantee**" means the performance parameters set out in Schedule 3 (*Functional Guarantees and Damages*).

"**Gaighat Terminal**" means the existing inland water transport terminal at Gaighat, Patna, details of which are mentioned in Schedule 1 (*Details of Terminals*).

"**Good Industry Practice**" means the practices, methods, techniques, designs, standards, as updated from time to time and the exercise of that degree of skill, diligence, efficiency, reliability and prudence that are generally accepted for use in the terminal services

industry at the international level, which would reasonably and ordinarily be expected from a skilled, prudent and experienced contractor applying the standards generally adopted by contractors in providing the operation and maintenance services of the terminals, barges and related facilities and performing O&M Services required to be performed by the Operator in accordance with this Contract and Applicable Laws, in reliable, safe, economical and efficient manner.

"**Government Instrumentality**" means any Indian governmental instrumentality, including any national, state, regional or local government, any subdivision, agency, board, commission, corporation or authority thereof, including any inland waterways authority, regulatory authority, or any quasi-governmental organization or quasi-judicial authority as the case may be, and having jurisdiction over all or any part of the Terminals or the performance of all or any of the services or obligations of the Operator under or pursuant to this Contract.

"**Hazardous Materials**" means:

(a) cargo classified as hazardous by International Maritime Organisation;

(b) any element, compound, substance, preparation, chemical, physio-chemical properties or biological derivative, radiation, noise, vibration, material or combination thereof which by reason of its composition or characteristics is defined in Applicable Law as a hazardous material; or

(c) any other material which any Government Instrumentality determines from time to time to be harmful, toxic, or dangerous, or otherwise ineligible for handling, storage or disposal by unregulated means or is liable to cause harm to human beings, other living creatures, plant, micro-organism, property or the environment.

"**IWAI Act**" means the Inland Waterways Authority of India Act, 1985 and shall include the rules and regulations framed thereunder from time to time and its modifications, amendments and replacements.

"**Kalughat Terminal**" means a new inland water transport terminal to be developed by the Authority at Kalughat, Patna, details of which are mentioned in Schedule 1 (*Details of Terminals*).

"**Kolkata Terminal**" means the existing inland water transport terminal at Garden Reach, Kolkata, details of which are mentioned in Schedule 1 (*Details of Terminals*).

"**LOA**" or "**Letter of Award**" has the meaning specified in Recital E.

"**Material Adverse Effect**" means any adverse effect of any act or event on the ability of either Party to perform any of its obligations under and in accordance with the provisions of this Contract and which act or event causes a material financial burden or loss to either Party, for an amount more than Rs. 33,50,000/- (Rupees Thirty-Three Lakh Fifty Thousand).

"**Minimum Eligibility Criteria**" has the meaning ascribed to it in the RFP.

"**O&M**" means operations, maintenance and management.

"**O&M Manual**" means the manuals for the O&M of the equipment deployed at the

Terminals, which will include any management and administrative policies and O&M procedures required in this Contract or provided by the OEM.

"**O&M Services**" means operation and maintenance services to be provided at the Terminals by the Operator to ensure that each asset at the Terminal is kept in normal operating condition and performing efficiently and any or all of the obligations to be performed, responsibilities to be carried out, and goods, equipment and material to be procured by the Operator pursuant to this Contract, including any services that are incidental to any such obligations/ responsibilities and which can be reasonably foreseen to be necessary to the performance of such obligations/responsibilities, in relation to the Terminals.

"**OEM**" means the equipment and material manufacturer of the plant and equipment deployed or used at any place at the Terminals for the purposes of the performance of the O&M Services or any part thereof.

"**Operator**" has the meaning specified in the description of the Parties herein.

"**Operator's Manager**" has the meaning specified in Clause 6.5.

"**Operating Period**" means the period commencing on the Appointed Date and ending on the Termination of the Contract.

"**Other Charges**" means any and all charges or amounts other than the Statutory Charges and Service Charges, which are not specifically identified in the Fee Regulations, but can be charged by the Operator from the Users or received from any Person, for providing any form of O&M Services or for the usage of any part of the Terminals or otherwise at the rate determined by it as per applicable market rates.

"**Panel of Chartered Accountants**" has the meaning specified in Clause 14.2.1.

"**Patna Terminals**" means collectively the Gaighat Terminal and Kalughat Terminal, and individually either of them, with effect from the date, the Operator conveys its decision of acceptance, in accordance with Clause 4.5.2.

"**Person**" means and includes any individual, sole proprietorship, unincorporated association, body corporate, corporation, company, partnership, limited liability partnership, joint venture, Government Instrumentality or trust or any other entity or organization.

"**Reserved Services**" means the services, which can be provided/ discharged by any Government Instrumentality only in accordance with the provisions of the Applicable Laws, and such services cannot be contracted to the Operator herein.

"**Revenue Share**" means the percentage of Turnover from the O&M Services provided at the Terminals, as quoted by the Selected Bidder in its Selection Bid (*as defined in the RFP*) as per the terms of the RFP. It is clarified that for the purposes of the determination of the Revenue Share, the Statutory Charges, indirect taxes, proceeds of any refundable payment deposits, capital receipts and insurance claims, shall not form part of the Turnover.

"**RFP**" means has the meaning specified in Recital C.

"**Right of Way**" means the constructive possession of the Terminals, together with all way leaves, easements, unrestricted access, waterfront and other rights of way, howsoever

described, necessary for the O&M Services at the Terminals in accordance with this Contract;

"**Rupees**" or "**Rs**" means Indian Rupees, the lawful currency of the Republic of India.

"**Selected Bidder**" has the meaning ascribed to it in the RFP.

"**Service Charges**" means collectively the (i) Cargo Related Charges, (ii) Composite Charges, and (iii) Miscellaneous Charges, as identified in the schedule to the Fee Regulations, which shall be determined, levied and collected by the Operator from the Users for providing the O&M Services at the Terminals.

"**Statutory Auditor**" means a reputable firm of chartered accountants acting as the statutory auditors of the Operator under the provisions of the Companies Act, 2013, and appointed in accordance with Clause 14.2.1.

"**Statutory Charges**" means collectively the Waterways Usage Charges and Vessel Related Charges as such identified in the schedule to the Fee Regulations.

"**Sub-Contract**" means any contract entered into by the Operator with a Third Party for carrying out any of the responsibilities or obligations of the Operator under this Contract.

"**Sub-Contractor**" means any Person, including vendors of the Operator, to whom execution of any part of its obligations under this Contract, is contracted by the Operator or with whom the Operator has entered into any contract for supply of items, goods, materials or equipment in connection with the O&M Services hereunder and includes their successors, permitted assigns or sub-contractors of such Person, and does not include the Authority or Authority's Personnel.

"**Successor Operator**" has the meaning specified in Clause 20.5.4(b).

"**Technical Specifications**" means the indicative technical specifications and the requirements set forth in Schedule 2 (*Technical Specifications*).

"**Terminals**" means Kolkata Terminal until the Operator exercises its right to undertake and perform the O&M Services at the Patna Terminals as per Clause 4.5, and if such right is exercised by the Operator, then, means collectively the Kolkata Terminal and Patna Terminals.

"**Termination**" means expiry or termination of this Contract.

"**Third Party**" means any party other than Authority and the Operator, or their respective employees, representatives and agents.

"**Transition Period**" has the meaning specified in Clause 20.5.4(b).

"**Turnover**" means gross revenues net of any indirect and transaction tax.

"**User**" means a Person including any ship, vessel, cargo, passenger, visitor or other Person, who uses or intends to use a Terminal or any part thereof, on payment of the User Fees or in accordance with the provisions of this Contract and Applicable Laws.

"**User Fees**" means collectively the Statutory Charges, the Service Charges and the Other Charges.

"**WBG EHS Guidelines**" means the World Bank Group General Environmental Health and Safety (EHS) Guidelines April 30, 2007 and the EHS Guidelines for Ports, harbours and Terminals April 30, 2007, as updated from time to time.

"**Wilful Misconduct**" means, with respect to any Party or Person an intentional, and conscious, or reckless, disregard by such Party or Person, of Applicable Law, any common duty of care, any provision of this Contract, any other document prepared pursuant to this Contract or of Good Industry Practice, and relating to the performance by such Party of its obligations there under, but will not include any error of judgment or mistake made in good faith.

"**WPI**" means the wholesale price index for all commodities as published by the Ministry of Industry, Government of India and shall include any index which substitutes the same, and any reference to it shall, unless the context otherwise requires, be construed as a reference to the latest monthly WPI published no later than 30 (thirty) days prior to the date of consideration hereunder.

1.2 ***Interpretation***

In the interpretation of this Contract, unless the context otherwise requires:

1.2.1 Reference to the singular will include reference to the plural and *vice-versa* and a reference to any gender will include a reference to the other genders, except where the context otherwise requires.

1.2.2 The headings and sub-headings in this Contract are included for ease of reference, and will not affect the meaning or the interpretation of this Contract.

1.2.3 Unless the context otherwise requires, a reference to any Clause, Recital and Schedule will be to the Clause, Recital and Schedule of this Contract respectively.

1.2.4 The array of the Parties and the recitals will form an integral part of this Contract.

1.2.5 The Schedules to this Contract form part of this Contract and will be in full force and effect, and the provisions of this Contract and the Schedules hereto will be interpreted harmoniously, and in case of any discrepancy or ambiguity between the provision contained in the main part of the Contract and the Schedule, the provision contained in the main part of the Contract would prevail over the latter.

1.2.6 Reference to any Applicable Law includes a reference to that law or regulation, as from time to time, amended, modified, supplemented, extended or re-enacted.

1.2.7 The words "include" or "including" will be deemed to be followed by "without limitation" or "but not limited to" whether or not they are followed by such phrases.

1.2.8 In case of any discrepancy between words and figures, the words will prevail over the figures.

1.2.9 Whenever provision is made for the giving of notice, approval or consent by any Person, unless otherwise specified, such notice, approval or consent will be in writing and the words "notify" and "approve" will be construed accordingly.

1.2.10 Provisions including the word "agree", "agreed", "agreement" require the agreement to be recorded in writing.

1.2.11 Any reference, at any time, to any agreement, deed, instrument, licence or document of any description shall be construed as reference to that agreement, deed, instrument, licence or other document as amended, varied, supplemented, modified or suspended at the time of such reference.

1.2.12 Any reference to the term "development" includes, unless the context otherwise requires, construction, expansion, renovation, refurbishing, augmentation, upgradation and other activities incidental thereto, and "develop" shall be construed accordingly.

1.2.13 The words "hereof", "herein", "hereto" and "hereunder" and words of similar import, when used in this Contract shall refer to this Contract as a whole and not to any particular provision of this Contract.

1.2.14 Wherever provision is made for the giving or issuing of any notice, endorsement, consent, approval, certificate or determination by any Person, unless otherwise specified, such notice, endorsement, consent, approval, certificate or determination shall be in writing and the words "notify", "endorse", "approve", "certify" or "determine" shall be construed accordingly.

1.2.15 Where any notice, consent or approval is to be given by the Authority, the notice, consent or approval shall be given on its behalf only by either the Chairman of the Authority or such other Person nominated by the Authority from time to time.

1.2.16 Where the last day for performance of an obligation under this Contract falls on a day which is not a Business Day, the latest time for performance shall be extended to noon on the next following Business Day.

1.2.17 Any reference to the term "indebtedness" shall be construed so as to include any obligation (whether incurred as principal or surety) for the payment or repayment of money, whether present or future, actual or contingent.

1.2.18 References to the "winding-up", "dissolution", "insolvency", or "reorganisation" of a company or corporation shall be construed so as to include any equivalent or analogous proceedings under the law of the jurisdiction in which such company or corporation is incorporated or any jurisdiction in which such company or corporation carries on business including the seeking of liquidation, winding-up, reorganisation, dissolution, arrangement, protection or relief of debtors.

1.2.19 Unless otherwise specified herein, all accounting terms used herein will be interpreted, and all financial statements and certificates and reports as to financial matters required to be furnished hereunder will be prepared, in accordance with the applicable Indian Accounting Standards, and all technical terms and statements will be interpreted and applied in accordance with the Good Industry Practices.

1.2.20 No specific provision, representation or warranty will limit the applicability of a more general provision, representation or warranty, and it is the intent of the Parties that, each representation, warranty, covenant, condition and agreement contained in this Contract, will be given full, separate and independent effect and that such provisions are cumulative.

1.2.21 All amounts (and not percentages) specified in this Contract for the purposes of any form of payment by either Party to the other Party including the payment of Damages, shall stand revised as on the date of the payment, to reflect the variation in the CPI and WPI in the ratio of 60:40, with reference to the base date being reference to the date of the month of the occurrence of the Effective Date.

1.3 *Priority of Documents*

This Contract, and all other agreements and documents forming part of or referred to in this Contract are to be taken as mutually explanatory and, unless otherwise expressly provided elsewhere in this Contract, the priority of this Contract and other documents and agreements forming part hereof or referred to herein shall, in the event of any conflict between them, be in the following order:

(a) this Contract;

(b) addendums to the bidding documents, or any other document, in relation to the performance of the O&M Services; and

(c) all other agreements and documents forming part hereof or referred herein.

i.e. the Contract at (a) above, will prevail over documents and agreements at (b) and (c) and likewise.

2. EFFECTIVE DATE AND TERM

2.1 *Effective Date and Appointed Date*

2.1.1 This Contract will become effective on the date of signing of this Contract by the Parties, i.e., the date first written hereof ("**Effective Date**").

2.1.2 The obligations of the Operator concerning the performance of the O&M Services shall commence from the Appointed Date, in accordance with the terms of this Contract.

2.2 *Operating Period and Extension*

2.2.1 Unless otherwise terminated in accordance with the terms hereof and notwithstanding the provisions of Clause 4.5, the Operating Period of this Contract shall commence from the Appointed Date and shall be valid and effective for a period of 30 (thirty) years from the Appointed Date.

2.2.2 The Contract shall expire on the 30th (thirtieth) anniversary of the Appointed Date and the Authority or its nominee shall acquire all of the rights, title and interests in and to the Terminals in the manner set forth in Clause 20.5.2.

3. SCOPE OF O&M SERVICES

3.1 *Scope*

The Operator shall perform the O&M Services at the Terminals in a manner such that the Functional Guarantees are achieved and maintained at all times, in accordance with the terms hereof. The consideration for the performance of the O&M Services is the right of levying, collecting and appropriating the Service Charges and Other Charges as the case may be, in the form and manner agreed in this Contract.

Subject to the Operator procuring the Applicable Permits (if any required), there are no restrictions on the Operator with regards to the types of cargos that the Operator may handle at the Terminals.

3.2 *Standards for Performance of Obligations*

3.2.1 The Operator will operate and maintain the Terminals and perform the O&M Services, with an objective to increase the efficiency and minimize the overall operations and maintenance costs while meeting the Functional Guarantees, in accordance with the express or implied standards and requirements of this Contract including without limitation, the following:

(a) O&M Manual and Technical Specifications;

(b) Annual Maintenance Program and the policies, procedures and other plans established pursuant to this Contract;

(c) Good Industry Practice;

(d) all relevant Applicable Permits, from time to time in force, irrespective of whether such Applicable Permits are obtained by or are in the name of the Authority;

(e) in a manner consistent with insurance policies maintained either on behalf of the Operator or the Authority in relation to any portion or all of the Terminals and so as not to vitiate or annul any cover afforded by such a policy of insurance;

(f) the standard operating procedure prepared by the Operator;

(g) all Environmental Standards; and

(h) all safety standards as per OHSAS 18001 or any other equivalent or higher standard.

3.2.2 The Operator will be solely responsible for all means, methods, techniques, sequences, procedures, efficiency and adequacy of its planning, environment and safety programmes in connection with the performance of its obligations under this Contract. The Operator agrees to take full responsibility for the adequacy, stability and safety of all operations and co-ordination with its Sub-Contractors.

3.2.3 The Operator will be solely responsible for and will be liable towards the costs for any repairs and/or replacements caused due to any improper use at the Terminals by it and/or for non-compliance with the standards of performance set out in Clause 3.2.

3.2.4 In the event that the Operator determines in its reasonable judgment that a conflict or inconsistency exists amongst the performance standards and requirements described in this Clause 3.2 or elsewhere in this Contract, the Operator will notify the Authority in writing as soon as practicable of such conflict or inconsistency and follow the more stringent, restrictive or onerous of the standards or requirements for the Operator's performance of the O&M Services. The Operator will act in accordance with such recommendation unless the Operator is instructed to the contrary by the Authority.

4. CONDITIONS PRECEDENT AND APPOINTED DATE

4.1 *Conditions Precedent*

4.1.1 Save and except as expressly provided in Clause 1, Clause 4, Clause 5, Clause 6, Clause 8, Clause 9, Clause 11, Clause 15, Clause 17, Clause 18, Clause 20, Clause 21, Clause 22 and Clause 23, or unless the context otherwise requires, the respective rights and obligations

of the Parties under this Contract shall be subject to the satisfaction in full of the conditions precedent specified in this Clause 4.1 ("**Conditions Precedent**"). *Provided however that* a Party may grant waiver from satisfaction of any Condition Precedent by the other Party in accordance with the provisions of Clause 4.1.2 or Clause 4.1.3, as the case may be, and to the extent of such waiver, that Condition Precedent shall be deemed to be fulfilled for the purposes of this Clause 4.1.1.

4.1.2 The Operator may, upon providing the Contract Performance Security to the Authority, by notice require the Authority to satisfy any or all of the Conditions Precedent set forth in this Clause 4.1.2 by the time the Operator is required to achieve the Appointed Date, *provided that* such time period shall not be less than 30 (thirty) days from the date of notice to the Authority, and the Conditions Precedent required to be satisfied by the Authority shall be deemed to have been fulfilled when the Authority shall have:

(a) notified the amended Fee Regulations, enabling the Operator to levy, collect and appropriate the Service Charges as per the terms contained herein;

(b) procure the Applicable Permits set forth in Schedule 5 (*Government Applicable Permits*) as are required for undertaking the development activities at the Terminals and required to be obtained prior to the Appointed Date by the Authority only.

4.1.3 Except as may have been specifically otherwise provided in this Contract, the Conditions Precedent required to be satisfied by the Operator within a period of 60 (sixty) days from the Effective Date, shall be deemed to have been fulfilled, when the Operator shall, subject to the satisfaction of the Authority, have:

(a) provided Contract Performance Security to the Authority;

(b) if not paid in accordance with the terms of the RFP, the Operator shall pay to International Finance Corporation, a fees of US$ 130,000/- (United State Dollars One Hundred Thirty Thousand) or its rupee equivalent, without any deductions whatsoever for taxes, duties, charges or other withholdings which are exempted under the International Finance Corporation (Status, Immunities and Privileges) Act, 1958 and if any such amount is levied then all such amount shall be borne by the Operator, into the following bank account:

Wells Fargo Bank, N.A.
375, Park Avenue: New York, NY 10152,
United States of America,
Account Number: 2000192003476
For Credit: International Bank for Reconstruction and Development
SWIFT ID: PNBPUS3NNYC
ABA: 026005092

or in such other bank account at such place as the International Finance Corporation may intimate to the Operator prior to such payment; and

(c) opened an Escrow Account with the Escrow Bank and executed an Escrow Agreement in such regard along with the Authority in the form and manner provided in Schedule 7 (*Format of Escrow Agreement*), providing for the deposit of the entire revenue generated by way of levying and collection of the Service Charges and Other Charges at the Terminals due to the performance of the O&M Services and withdrawal of amounts therefrom.

Provided that upon request in writing by the Operator, the Authority may, in its discretion, waive any (fully or partially) of the Conditions Precedent set forth in this Clause 4.1.3 for the purposes of the achievement of the Appointed Date. The Authority may, in its sole discretion, grant any waiver hereunder with such conditions as it may deem fit.

4.1.4 Each Party shall make all reasonable endeavours to satisfy the Conditions Precedent within the time stipulated and shall provide the other Party with such reasonable cooperation as may be required to assist that Party in satisfying the Conditions Precedent for which that Party is responsible.

4.1.5 On satisfaction of the obligations by the Parties as stated in Clause 4.1.2 and 4.1.3, the Parties shall jointly fulfil the obligations stated in Clause 11.3.1 (*Procurement of Terminals*).

4.1.6 The Parties shall notify each other in writing on the progress made in satisfying the Conditions Precedent. Each Party shall promptly inform the other Party when any Condition Precedent for which it is responsible has been satisfied.

4.2 *Damages for delay by the Operator*

4.2.1 In the event that:

(a) the Operator does not procure fulfilment or waiver of any or all of the Conditions Precedent set forth in Clause 4.1.3 within the period specified in that Clause, and

(b) the delay has not occurred as a result of failure to fulfil the obligations by the Authority under Clause 4.1.2 or other breach of this Contract by the Authority or due to Force Majeure;

the Operator shall pay to the Authority, Damages in an amount calculated at the rate of Rs. 5,000/- (Rupees Five Thousand) for each day of delay until the fulfilment of such Conditions Precedent, subject to a maximum amount equal to 10% (ten percent) of the Contract Performance Security, and upon reaching such maximum, the Authority may, in its sole discretion and subject to the provisions of Clause 10.3, terminate the Contract.

4.2.2 In the event of delay by the Authority in procuring fulfilment of the Conditions Precedent specified in Clause 4.1.2 having a direct impact on the fulfilment of any the Conditions Precedent to be fulfilled by the Operator under Clause 4.1.3, no Damages shall be due or payable by the Operator under this Clause 4.2 until the date on which the Authority shall have procured fulfilment of its such Condition Precedent. The payment of Damages pursuant to this Clause 4.2 is independent of the Operator's obligations under any other provision of this Contract.

4.3 *Damages for delay by the Authority*

4.3.1 In the event that:

(a) the Authority does not procure fulfilment or waiver of any or all of the Conditions Precedent set forth in Clause 4.1.2 within the period specified in that Clause, and

(b) the delay has not occurred as a result of failure to fulfil the obligations by the Operator under Clause 4.1.3 or other breach of this Contract by the Operator or due to Force Majeure;

the Authority shall pay to the Operator, Damages in an amount calculated at the rate of Rs. 1,000/- (Rupees One Thousand) for each day of delay until the fulfilment of such Conditions Precedent, subject to a maximum amount equal to 10% (ten percent) of the Contract Performance Security, and upon reaching such maximum, the Operator may, in its sole discretion and subject to the provisions of Clause 10.3, terminate the Contract.

4.3.2 In the event of delay by the Operator in procuring fulfilment of the Conditions Precedent specified in Clause 4.1.2 having a direct impact on the fulfilment of any the Conditions Precedent to be fulfilled by the Authority under Clause 4.1.2, no Damages shall be due or payable by the Authority under this Clause 4.3 until the date on which the Operator shall have procured fulfilment of its such Condition Precedent. The payment of Damages pursuant to this Clause 4.3 is independent of the Authority's obligations under any other provision of this Contract.

4.4 *Deemed Termination upon Delay*

4.4.1 Without prejudice to the provisions of Clause 4.2 and 4.3, and subject to the provisions of Clause 10.2 and Clause 10.3, the Parties expressly agree that in the event the Appointed Date does not occur, for any reason whatsoever, before the expiry of 240 (two hundred forty) days after the Effective Date or any extended period, as per the terms of this Contract or as otherwise agreed between the Parties, all rights, privileges, claims and entitlements of the Operator under or arising out of this Contract shall be deemed to have been waived by, and to have ceased with the concurrence of the Operator, and the Contract shall be deemed to have been terminated by mutual agreement of the Parties. Provided, however, that in the event the delay in occurrence of the Appointed Date is for reasons attributable to the Operator, then, notwithstanding the provisions of Clause 4.2 above, the Contract Performance Security of the Operator shall be encashed and appropriated by the Authority as Damages thereof.

4.4.2 Upon such Termination:

(a) The Operator shall discharge all liabilities, if any created, in any form whatsoever, within 60 (sixty) days of such Termination

(b) Where the Operator is a special purpose vehicle, the Selected Bidder, or in the case of a Consortium, each member of the Consortium, shall transfer its entire shareholding in the Operator to the Authority or any of its nominees, at its own cost, within 90 (ninety) days of the Termination, and each of them shall take all such actions and proceedings, as may be required under the Applicable Laws, to complete such transfer.

(c) Where the Operator is a special purpose vehicle, the Selected Bidder, or in the case of a Consortium, each member of the Consortium, shall cause all the Directors on the Board of the Operator, except as may be appointed by the Authority or its nominees, to resign from the Board within 90 (ninety) days of the Termination, and each of such resigning Directors shall take all actions and proceedings, as may be required under the Applicable Laws, to complete such process.

4.5 *Patna Terminals*

4.5.1 The Operator shall have the option to undertake the performance of the O&M Services at either or both the Gaighat Terminal and the Kalughat Terminal.

4.5.1A The Authority shall complete the following activities and provide a notice to such effect to the Operator within a period of 1 (one) year from the Appointed Date or such extended period as may be mutually agreed between the Parties ("**Condition Subsequent Period**"):

(a) modification of the India–Nepal Protocol to the Treaty of Transit, 1999, to specifically include inland waterways amongst the list of 'mutually agreed routes' for transporting Nepal's inbound or outbound cargo; and

(b) finalization of the final front end engineering design of the Kalughat Terminal.

4.5.1B If the Authority fails to fulfil its obligations provided in Clause 4.5.1A within the Condition Subsequent Period, then the Operator shall have the right (irrespective of whether the Operator has experienced the right under Clause 4.5.1), which shall to be exercised within 6 months of the end of the Condition Subsequent Period, to:

i. terminate this Contract in full; or

ii. terminate this Contract in part for either the Kalughat Terminal or Gaighat Terminal or for both the Patna Terminals.

4.5.2 The option available to the Operator under Clause 4.5.1 may be exercised by the Operator anytime during the Condition Subsequent Period; however, if the notice has been issued by the Authority under Clause 4.5.1A, then within 3 (three) months from date of receipt of the notice from the Authority, by conveying an unconditional and irrevocable acceptance to the Authority, in respect of either one or both the Gaighat Terminal and the Kalughat Terminal.

4.5.3 If the Operator exercises its option to provide the O&M Services at the Gaighat Terminal and has informed as such to the Authority as per Clause 4.5.2, then the Authority shall hand over the Gaighat Terminal to the Operator on '*as is where is*' basis, within a period of 2 (two) months from the date of the receipt of such notice from the Operator. Upon taking over of the Gaighat Terminal, the Operator may, at its discretion, return the Gaighat Terminal to the Authority any time during the term of this Contract.

4.5.4 If the Operator exercises its option to provide the O&M Services at the Kalughat Terminal and has informed as such to the Authority as per Clause 4.5.2, then the Authority shall undertake the development activities at the Kalughat Terminal in such a manner that the Kalughat Terminal is completed within a period of 3 (three) years from the date of the receipt of such acceptance from the Operator. If such development activities are not completed within the said period of 3 (three) years, then the Authority shall intimate the Operator regarding the same and shall seek to complete the same within an additional period of 1 (one) year, without being liable to the Operator in any form or manner whatsoever.

4.5.5 If the Authority is not able to complete such development activities at the Kalughat Terminal as per Clause 4.5.4 above, then it shall be eligible for another extension of 1 (one) year, subject to the payment of Damages to the Operator at the rate of Rs. 5,000/- (Rupees Five Thousand) per day of delay for such additional period of 1 (one) year. *Provided that*, no such amount shall be payable, if such failure is not attributable to any cause on account of the Operator or a Force Majeure Event. If the Authority fails to complete the development activities at the Kalughat Terminal during this additional period, then the Operator shall have a right to:

(a) terminate this Contract in full; or

(b) terminate this Contract in part for either the Kalughat Terminal or Gaighat Terminal or for both the Patna Terminals; or

(c) allow extension of time to the Authority to fulfil the obligation stated in Clause 4.5.5, without being liable to the Operator in any form or manner whatsoever, including any amounts in excess of the Damages specified above.

4.5.6 Upon the completion of the activities as per Clause 4.5.4 or Clause 4.5.5, as the case may be, the Authority shall notify the Operator of the same and handover the Kalughat Terminal to the Operator within 30 (thirty) days thereof.

4.5.7 Upon taking over the Kalughat Terminal from the Authority for the purposes of providing the O&M Services therein, the Operator will have a right to:

(a) continue with the O&M Services at the Gaighat Terminal; or

(b) continue with the O&M Services at the Gaighat Terminal with modification to the Functional Guarantees for the Gaighat Terminal in mutual agreement with the Authority, and if such agreement could not be reached between the Parties, then the Operator shall surrender the performance of the O&M Services at the Gaighat Terminal; or

(c) surrender the performance of the O&M Services at the Gaighat Terminal at any time during the terms of this Contract, and the Operator will demobilise all its Operator's Staff and equipment, tool, tackles, machineries, etc. at its own cost and risk.

4.5.7A For the avoidance of doubt, it is hereby clarified that even if the Gaighat Terminal is returned to the Authority by the Operator under the Clause 4.5.3 or Clause 4.5.7, the Parties shall, during the term of this Contract, continue to performance its obligations for the other Terminals in accordance with this Contract.

4.5.8 If the Authority has completed the developmental activities at the Kalughat Terminal and is ready and prepared to hand-over the same to the Operator, but the Operator acts in such a manner that the Kalughat Terminal is not being able to be handed-over to the Operator within the period prescribed in Clause 4.5.6, then the Authority shall, without prejudice to any other remedy available to it under this Contract and Applicable Laws, have a right to terminate this Contract as per Clause 20.3.2 on account of Operator's default.

4.5.9 Any reference to the term Terminals under this Contract shall include Patna Terminals (i.e., Gaighat Terminal and/ or Kalughat Terminal) only upon the exercise of the option available to the Operator in respect of such Terminal as per this Clause 4.5. Notwithstanding the date of handing over of the Gaighat Terminal and/ or the Kalughat Terminal to the Operator as per this Clause 4.5, the Operating Period shall be valid and effective as per Clause 2.2.1, i.e., a period of 30 (thirty) years from the Appointed Date.

4.5.10 The Operator shall be required to procure, mobilise, install and make available all the necessary equipment, items, goods, materials as may be required for the performance of the O&M Services at the Gaighat Terminal and Kalughat Terminal and achieve the Functional Guarantees, within a period of 1 (one) year from the date of handing over of the Gaighat Terminal and Kalughat Terminal respectively.

5. RESPONSIBILITIES AND RIGHTS OF THE AUTHORITY

5.1 *Statutory Obligations of the Authority*

5.1.1 The terms of this Contract shall not derogate from the statutory obligations of the Authority under Applicable Laws, but shall only supplement such obligations and shall be performed by the Authority so as not to be inconsistent with its statutory obligations.

5.1.2 The rights and obligations under this Contract are recognized and performed only in conformity with Applicable Laws and no right under this Contract becomes enforceable and no obligation requires performance if such right or obligation violates any Applicable Laws.

5.2 *Obligations of the Authority under the Contract*

5.2.1 The Authority shall, at its own cost and expense, undertake, comply with and perform all its obligations set out in this Contract or arising hereunder.

5.2.2 In addition to any other obligation appearing in any other provision of this Contract, the Authority agrees to provide support to the Operator and undertakes to observe, comply with and perform, subject to and in accordance with the provisions of this Contract and Applicable Laws and Good Industry Practices, the following:

(a) upon written request from the Operator and subject to the Operator complying with Applicable Laws, procure the Government Applicable Permits for the (i) development activities at the Kalughat Terminal, and (ii) activities as per Forward Major Maintenance & Improvement Program provided in Clause 6.17, required from any Government Instrumentality for the performance of the O&M Services, at the cost and expense of the Authority and maintain the same throughout the Operating Period;

(b) upon written request from the Operator and subject to the provisions of Clause 6.17 and Operator complying with Applicable Laws and the terms of this Contract, repair, maintain, undertake and complete the development of the infrastructural facilities at the Terminals;

(c) O&M Services for the activities provided in Clause 16.3.1;

(d) maintain least available depth of up to 3 meters in the channel between Kolkata Terminal and the Gaighat Terminal (as and when it is handed over) or Kalughat Terminal (as and when it is handed over), whichever is farther from the Kolkata Terminal;

(e) upon written request from the Operator and subject to the Operator complying with Applicable Laws, provide reasonable support and assistance to the Operator to procure the Applicable Permits required from any Government Instrumentality for the performance of the O&M Services;

(f) upon written request from the Operator, provide reasonable assistance to the Operator in obtaining access to all necessary infrastructure facilities and utilities, including water and electricity at rates and on terms no less favourable to the Operator than those generally available to similar utility customers receiving substantially equivalent services;

(g) procuring that no barriers are erected or placed on or about the Terminals by any Government Instrumentality or Persons claiming through or under it, except for reasons of safety requirements, Emergency Event, national security, or law and order;

(h) subject to and in accordance with Applicable Laws and the Applicable Permits, grant to the Operator, the authority to regulate Users at the Terminals for and on behalf of the Authority;

(i) assisting the Operator in procuring assistance from relevant Government Instrumentality for removal of trespassers and security on or at the Terminals;

(j) doing or omitting to do any act, deed or thing which may in any manner be violative of any of the provisions of this Contract;

(k) providing the Operator, its authorized personnel and its Sub-Contractors, access to the Terminals, at all reasonable times, so far it is necessary to perform the O&M Services in accordance with the terms of this Contract, subject to security and safety requirements;

(l) providing such cooperation and information to the Operator to facilitate it, in liasioning with the Government Instrumentality and public as the Authority may determine to be necessary or appropriate under the circumstances on matters that are related to or will affect the provision of O&M Services in this Contract;

(m) providing all relevant technical, operational and other information in Authority's possession regarding the Terminals that are required for the achievement of the Functional Guarantees and all other applicable data;

(n) nominating a Person as the 'Authority's Manager' to co-ordinate with the Operator on all matters and appointing qualified personnel to represent the Authority in all matters related to the obligations of the Authority under this Contract;

(o) notifying the Operator within 72 (seventy-two) hours of it becoming aware of any events within the exclusive knowledge of the Authority that may have a Material Adverse Effect on the performance of the O&M Services; and

(p) any information requested by the Operator required for the performance of the O&M Services.

5.3 *Retained Powers*

The Authority will retain all rights and powers (relating to Terminals) not specifically granted to the Operator under this Contract.

5.4 *Obligations relating to Reserved Services*

5.4.1 Subject to and in accordance with the provisions of this Contract, the Applicable Laws and Applicable Permits, the Authority shall extend support in procuring the performance of the Reserved Services to be provided through the Designated GOI Agency, and shall at all times enable movement of cargo and barges at the Terminals or the barge in accordance with the Applicable Laws, the Applicable Permits and Good Industry Practice.

5.4.2 The Authority shall extend support for the performance of all the Reserved Services in accordance with the provisions of this Contract and the Applicable Laws and the Applicable Permits.

5.5 *Obligations relating to Term of Kolkata Terminal*

The Authority hereby undertakes to ensure the extension of the lease with Kolkata Port Trust in respect of the Terminal in Garden Reach for such period that is more than or at least equal to the Operating Period of this Contract.

5.6 *Authority's Manager*

5.6.1 The Authority will identify and designate a suitable Person from time to time, as its manager for the Terminals ("**Authority's Manager**"). The Authority's Manager will have full authority to act for and on behalf of the Authority in all matters concerning this Contract and to fulfil the Authority's obligations under this Contract, except the authority to agree to any amendments or modifications to any terms of this Contract unless expressly granted by Authority from time to time.

5.6.2 The Authority agrees and confirms that any decisions, instructions, orders or approvals given by the Authority's Manager to the Operator will have the same effect as though it had been given by the Authority.

6. RESPONSIBILITIES AND RIGHTS OF THE OPERATOR

6.1 *General*

6.1.1 The Operator will provide and make available as necessary, all such labour, professional, supervisory and managerial personnel as well as equipment as are required to perform its obligations under this Contract to achieve and maintain the Functional Guarantees and in compliance with Applicable Laws and Good Industry Practices.

6.1.2 To provide the O&M Service, the Operator is free to use refurbished, hired and/or leased equipment, provided that the Functional Guarantees are complied with by the Operator and the O&M Services are provided in accordance with the Applicable Law and Good Industry Practice.

6.1.3 Subject to approval of the Authority, the Operator may develop or alter any building or structure at the Terminals for the purpose of providing the O&M Services including, if any, required under the Forward Major Maintenance & Repair Program.

6.1.4 All such Persons employed by the Operator will perform their duties at the directions and under the supervision and responsibility of the Operator. The Operator will be responsible to the Authority for all the acts and omissions of such personnel in course of providing the O&M Services.

6.1.5 Notwithstanding any provision in this Contract to the contrary, unless otherwise approved in writing by the Authority, the Operator will not:

(a) sell, lease, pledge, mortgage, encumber, convey, license, exchange or make any other transfer or disposition of any property or assets (including the land at the Terminals) of the Authority;

(b) amend, terminate, modify or supplement any documents on behalf of or in the name of the Authority;

(c) settle, compromise, assign, pledge, transfer, release or consent to the compromise, assignment, pledge, transfer or release of, any claim, suit, debt, demand or judgment against or due by, the Authority or the Operator, or submit any such claim, dispute or controversy to arbitration or judicial process, or stipulate in respect thereof to a judgment, or consent to the same; or

(d) engage in any other transaction on behalf of the Authority not permitted under this Contract.

6.2 *Procurement*

6.2.1 The Operator will be responsible for procurement of goods, items, equipment, services, materials, etc. which are required for the performance of the O&M Services to meet the Functional Guarantees. Such procurement by the Operator will be done taking into account quality and safety standards prescribed in accordance with Applicable Laws and Good Industry Practices.

6.2.2 Save and except the Government Applicable Permits, the Operator is responsible for obtaining all other Applicable Permits required for providing the O&M Services.

6.2.3 The Operator will take good and reasonable care of all goods, items, equipment, services, materials, etc. so procured and will use or store the same at the Terminals in a prudent manner as per Good Industry Practices, in the performance of the O&M Services so as to ensure there is no disruption or stoppage in the discharge of the O&M Services.

6.2.4 The Operator shall, before takeover of any Terminal in accordance with this Contract, jointly with the Authority make an inventory of all items and equipment made available by the Authority to the Operator in the form of an asset register. Upon such preparation, the asset register shall be signed jointly by the Parties, by the Appointed Date. Thereafter, the Operator shall submit the said asset register with updation, if any, on periodic (i.e., every 12 (twelve) months) basis, with effect from the Appointed Date during the Operating Period.

6.3 *Operator's Staff*

6.3.1 All personnel deployed by the Operator will be qualified to perform and shall be appropriately experienced (or be efficiently trained) in the duties that are assigned to them. The Operator will send the resumes of its key personnel to be deployed for the performance of the O&M Services, including any changes to such key personnel from time to time, to the Authority for the Authority's information and records. Providing such information to the Authority will not absolve the Operator of its obligations and liabilities under this Contract.

6.3.2 The Operator will deploy at its own cost any additional experts required for performing the O&M Services including the experts from the OEM.

6.3.3 All personnel, employees, labour (skilled, semi-skilled and unskilled), Sub-Contractors, and their respective employees, contractors (of the Sub-Contractors), officers, licensees, invitees, agents and representatives engaged in the performance of the Operator's obligations under this Contract and who are assigned at the Terminals and any other personnel notified to the Authority by the Operator as the personnel acting for or on behalf of the Operator will be the employees of the Operator ("**Operator's Staff**"). The working hours, rates of remuneration, and all other matters relating to their employment, subject to requirement of Applicable Law, will be determined solely by the Operator, the

Operator will be responsible for all the acts and omissions of the Operator's Staff in the course of providing the O&M Services, including non-fulfilment of obligations, negligence, Wilful Misconduct and violation of the terms and conditions of this Contract.

6.3.4 The Operator will be solely responsible with respect to the employment policies regulating the Operator's Staff.

6.3.5 The Operator will be responsible for paying the salaries and all benefits of the Operator's Staff. There will be no liability on the Authority for the costs of employment during and beyond the Operating Period, unless any of the concerned Operator's Staff has been retained by the Authority, after the Termination. The Operator shall indemnify the Authority and hold the Authority harmless, for all costs and consequences in respect of any claim that may be made against the Authority in this regard.

6.3.6 The Operator will ensure at all times that sufficient number of the Operator's Staff are present for providing the O&M Services during the Operating Period. Also, in emergency situations, the Operator will make necessary arrangements and bear all the costs associated with such arrangements for ensuring that adequate Operator's Staff is present on Terminals for providing uninterrupted O&M Services.

6.3.7 Additional manpower may be deployed by the Operator, as and when required, to meet the Functional Guarantees.

6.3.8 The Operator will establish procedures designed to ensure that all the Operator's Staff at the Terminals comply with the safety requirements.

6.4 *Compliance of Labour Laws*

6.4.1 This Contract does not and will not be construed to create any employer-employee or principal-agent relationship between the Authority and the Operator/ Operator's Staff in the performance of the O&M Services.

6.4.2 The Operator, *inter-alia*, agrees that the O&M Services will be rendered in strict compliance with the provisions of all the Applicable Laws and the Applicable Permits. The Operator will make statutory payments/ remittances, applicable tax deductions as are required to be made under labour related and Applicable Laws.

6.4.3 The Authority reserves the right to recover from the Operator any amounts towards discharge of any claim or statutory obligations arising out of the breach of any of the labour laws or other Applicable Laws by the Operator or Sub-Contractors, without prejudice to any of its rights and other remedies herein stated or available under other Applicable Laws.

6.4.4 The contract labour, if any, engaged by the Operator, will be at its own risk and cost. The contract labour employed to perform the O&M Services will be paid by the Operator, the wages in conformity with the applicable wages notified by the respective Government Instrumentality from time to time. The Operator will be solely responsible for payment of all wages, salaries and any expenses of the personnel employed including, without limitation, all amounts payable towards employee's insurance, provident fund, pension, or employment compensation, or any other payment to be made under the Applicable Law, and/or otherwise to the professionals, technicians or workmen employed and/or contracted in relation to the provision of O&M Services under this Contract. The Operator will ensure that the labour and working conditions of contract labour meets the requirements as required under the Environmental Standards.

6.4.5 The Operator will, in a timely manner, obtain and/or maintain the licenses, registrations, employment records, registers, certificates and other records and file returns as are required under Applicable Laws and furnish proof of the same to the Authority on demand. The Operator will obtain requisite registrations, statutory permissions, licenses, Applicable Permits from concerned authorities and furnish proof of the same to the Authority on demand. The Operator will have the absolute control and/ or supervision on its employees/ staff/ contract labour. The Authority will not be liable for any dispute, which may arise between the Operator and the Operator's Staff. The Operator will itself regulate the engagement of its workers and their working conditions, providing statutory benefits, uniform, food in accordance with Applicable Law.

6.4.6 The Operator will be solely responsible for:

(a) all acts and/or omissions by the workmen, technicians, labour, contractors and other personnel engaged in the performance of the O&M Services;

(b) health, safety and security of the workmen, technicians, labour, contractors and other personnel engaged in the performance of the O&M Services; and

(c) ensuring the compliance of oversight procedures with all Applicable Laws.

6.4.7 The Operator will maintain proper books of accounts, registers, records, bills, invoices, receipts, vouchers etc. in respect of the compliance of labour related Applicable Laws and will regularly cause proper entries to be made therein and of all other particulars and matters necessary thereto and furnish a certification of compliance thereof to the Authority. The Operator will make available such information and documents as may be required by the authorised representatives of the Authority for verification.

6.5 *Operator's Manager*

The Operator will appoint a qualified, competent and experienced Person as its manager for the performance of the O&M Services at least 7 (seven) days prior to the Appointed Date ("**Operator's Manager**") who will be authorized and empowered to act for and on behalf of the Operator on all matters concerning this Contract and its obligations hereunder, except the authority to agree to any amendments or modifications to any of the terms of this Contract. In all such matters, the Operator will be bound by the written communications, directions, requests and decisions given or made by the Operator's Manager.

6.6 *Safety Regulations*

6.6.1 The Operator shall comply with the provisions of this Contract, Applicable Laws and Applicable Permits and conform to Good Industry Practices for securing the safety of the Users, goods, materials, equipment and other Persons on or about the Terminals.

6.6.2 The Operator shall ensure safe and healthy living and working conditions for labourers/ workers including labourers/ workers engaged through contract labour suppliers.

6.6.3 The Operator will be solely responsible for all acts and/or omissions by the Operator's Staff engaged for the performance of the O&M Services.

6.6.4 No part of the O&M Services will be carried out by any Person on behalf of the Operator under the Contract who does not have valid Applicable Permits. No work, which may

cause fire hazards will be carried out in the prescribed areas unless Applicable Permits for the same are obtained and necessary precautions are taken to avoid any risk of fire hazards.

6.6.5 The Operator will take necessary measures to protect the Terminals and all Persons from Accidents and occupational diseases.

6.6.6 In the event of any Accident or dangerous occurrence or any damage to the Terminal, occurring on account of any reason whatsoever, the Operator will immediately send a notice of the same to the Authority.

6.6.7 The Operator will promptly, in case of the occurrence of any Emergency Event, mobilize all resources to the said emergency and will co-ordinate with the Authority in this regard.

6.6.8 The Operator and the Operator's Staff will follow all safety rules while working so as to ensure that there will not occur any Accident due to non-observance of the safety conditions mentioned herein and those informed by the Authority from time to time.

6.7 ***Emergency Events***

6.7.1 The Operator agrees that if during the Operating Period, any portion of the Terminals is rendered unsafe on account of any Emergency Event, the Operator will restrict the performance of its obligations, to such portion of the Terminals which is safe and not effected by the said contingency. The Operator will not be responsible for the maintenance of the Functional Guarantees for such portions of the Terminals, which have been affected by any Emergency Event, as long as the said Emergency Event has not occurred due to any act or omission of the Operator or its negligence or Wilful Misconduct, or any breach of the provisions of this Contract.

6.7.2 Notwithstanding anything to the contrary herein, but subject to this Clause 6.7, the Operator may take any operating action as it deems to be necessary in accordance with Good Industry Practices and being guided by the relevant provisions of the WBG EHS Guidelines in the case of an Emergency Event to mitigate the effects thereof or where the Operator considers immediate action to safeguard lives or property.

6.7.3 The Operator shall develop and implement, in line with Environmental Standards, an emergency preparedness and response plan to deal with emergency scenarios while clearly defining roles and responsibilities in case of any Emergency Event. Upon the occurrence of an Emergency Event, the Operator will forthwith notify the Authority of the same and the actions taken. Following such notification, the Parties will discuss without delay, the further actions which should be taken to mitigate the effects of the Emergency Event.

6.7.4 If the Authority considers that any Emergency Event has occurred, the Authority may give notice (which may be oral notice with subsequent written notice) to the Operator specifying the nature of the Emergency Event, which it has identified and the manner in which it requests such Emergency Event to be rectified. The Operator will take all actions to mitigate the effects of such Emergency Event with due diligence. If the Operator fails to comply with such notice promptly, the Authority will be entitled to procure by itself or through any Third Party, such actions, as may be necessary, to remedy such breach by the Operator.

6.7.5 The Operator shall make the necessary arrangements at the Terminals available, for meeting exigencies of the Emergency Events, as per the instructions of the Authority.

6.8 *O&M Services*

6.8.1 The Operator shall provide O&M Services to the extent and on the terms of its obligations provided herein either directly or through its Sub-Contractors.

6.8.2 Subject to and in accordance with the provisions of this Contract, the Operator shall be entitled to demand, collect, recover User Fees from the Users liable for payment of the User Fees in accordance with the terms of this Contract.

6.8.3 While performing the O&M Services, the Operator shall provide Equal Access to all the Users.

6.9 *Obligations relating to Change in Ownership*

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

6.9.2 Notwithstanding anything to the contrary contained in this Contract, the Operator agrees and acknowledges that:

(a) all acquisitions of Equity by an acquirer, either by itself 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 20% (twenty percent) or more of the total Equity of the Operator; or

(b) acquisition of any control directly or indirectly of the Board of Directors of the Operator by any Person either by itself or together with any person acting in concert with it,

shall constitute a Change in Ownership requiring prior approval of the Authority from national security and public interest perspective. The decision of the Authority in this behalf being final, conclusive and binding on the Operator, and the Operator undertakes that it shall not give effect to any such acquisition of Equity or control of the Board of Directors of the Operator without such prior approval of the Authority. Approval of the Authority hereunder shall be limited to national security and public interest perspective, and the Authority shall endeavour to convey its decision thereon expeditiously. The Authority shall not be liable in any manner on account of grant, delay or otherwise of such approval and that such approval, delay, denial or otherwise thereof shall not in any manner absolve, the Operator from any liability or obligation under this Contract.

For the purposes of this Clause 6.9.2:

(i) the expression "acquirer", "control" and "person acting in concert" has 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 Operator;

(ii) 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 Operator; and

(iii) 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 Operator, not less than half of the directors on the Board of Directors of the Operator or of any company, directly or indirectly whether situated in India or abroad, having ultimate control of 20% (twenty percent) or more of the Equity of the Operator shall constitute acquisition of control, directly or indirectly, of the Board of Directors of the Operator.

6.9.3 The Operator hereby agrees that if the Selected Bidder is a special purpose vehicle established primarily for the purposes of holding Equity in the Operator (such Selected Bidder being a "**Promoter SPV**"), a transfer of any shareholding in such Promoter SPV shall constitute an indirect transfer of Equity by the Promoter SPV for the purposes of this Contract and be subject to the restrictions on transfer of shares as set forth in this Contract.

6.9.4 The Operator hereby agrees to ensure that if the Selected Bidder is a Consortium, then:

(a) the lead member, being the technical partner and whose technical capacity has been evaluated for the purpose of its selection, shall hold at least 51% (fifty-one percent) of the Equity of the Operator; and

(b) each member of the Selected Bidder, whose financial capacity has been evaluated, shall individually hold at least 26% (twenty-six percent) or more of the Equity of the Operator;

till the 5th (fifth) anniversary of the Appointed Date.

6.10 *Obligations relating to Employment of Foreign Personnel and Security Clearance*

6.10.1 The Operator acknowledges, agrees and undertakes that employment of foreign personnel by it and/or its Sub-Contractors, shall be subject to grant of requisite regulatory permits and approvals including employment/ residential visas and work permits and security clearance, if any required. The Authority may provide reasonable assistance, if any required by the Operator in this regard.

6.10.2 Notwithstanding anything to the contrary contained in this Contract, the engagement of employees, staff and personnel of the Operator and of its Sub-Contractors shall always be subject to security clearance by the Designated GOI Agency and only Persons having a valid security clearance shall be permitted at the Terminals.

6.10.3 The obligation to apply for and obtain approvals and permits as per this Clause 6.10.3, will always be of the Operator, and notwithstanding anything to the contrary contained in this Contract, any refusal of or inability to obtain any such approvals and permits by the Operator or any of its Sub-Contractors shall not constitute Force Majeure Event, and shall not in any manner excuse the Operator from the performance and discharge of its obligations and liabilities under this Contract.

6.11 *Security*

6.11.1 The Operator shall be responsible for the maintenance of all perimeter fencing around the Terminals and providing the general security within therein, in order to maintain the proper and orderly conduct of its business and the general security.

6.11.2 The Authority shall be entitled to deploy its own security services or of any Designated

GOI Agency, as it wishes throughout the Terminals for reasons of national security, which includes the security of the Terminals, or to perform its statutory obligations or to protect the health or safety of Persons or to safeguard the environment or to prevent damage to or loss of property in the exercise of its statutory obligations, if the Authority, acting reasonably, considers such urgent actions are required to be taken, in which case, the Authority shall bear its own costs in taking such actions and the Operator shall not be entitled to any compensation for any disruption of its operations or loss or damage resulting from the Authority's actions other than those resulting from its wilful or negligent acts or omissions.

6.11.3 The Authority and/or the Designated GOI Agency shall be entitled to inspect and search all vehicles and other modes of transportation including ships, barges and vessels entering the Terminals or departing therefrom and similarly to search or question any Person entering the Terminals or departing therefrom.

6.11.4 The Authority shall not be under any obligation to provide any security or related services within the Terminals, but the Authority may at its complete discretion provide any such services if requested by the Operator on such charges and terms as may be determined by the Authority. However, the Authority shall not levy any charges on the Operator for the exercise of its rights under Clause 6.11.2 and Clause 6.11.3.

6.11.5 The Parties acknowledge that security requirements within the Terminals may change from time to time and that representatives of the Parties will meet periodically to review security procedures. The Parties agree to establish, review and implement procedures as may be required from time to time.

6.11.6 The deployment of security and standards with respect to operating practices of security personnel shall comply with the relevant provisions of Environmental Standards.

6.12 *Access to Terminals*

The Operator's access rights to areas outside the Terminals, but pertaining to the O&M Services, shall be determined in accordance with this Contract. The Operator's right to the Terminals will at all times remain subject to the access by the security agencies for periodic and surprise inspections.

6.13 *Access for Users to the Terminals*

6.13.1 The Operator shall regulate the vessels, cargoes and other vehicular traffic within the Terminals in accordance with Applicable Laws and subject to the supervision and control of the Designated GOI Agencies or a substitute thereof, empowered in this behalf under the Applicable Laws.

6.13.2 The Parties acknowledge that rules for allocation of individual berths within the Terminals may be made by the Operator in accordance with Applicable Laws and Applicable Permits, such that it:

(a) prescribes the time and manner in which vessels shall enter and leave the Terminal(s);

(b) allocates priorities to vessels and dealing with all matters concerning the allocation of berths, the timing and manner in which vessels enter/ exit the Terminals; and

(c) allocates priorities for access to and egress from the Terminals and the allocation of berths.

6.13.3 When determining the allocation of services for the purposes of entering/ exiting the Terminals or the allocation of berths, the Operator shall be at liberty to provide priority to the Users in the manner as it may deem fit, while following the principles of Equal Access, compliance of the Applicable Laws, Applicable Permits and Good Industry Practices, for reasons of safety, security or national emergency (economic or otherwise) and to prevent, contain or restrict pollution. In this regard, the Operator may consider providing priorities to the Users having commercial contract with it.

6.13.4 The Operator shall evolve and publicise a system based on Good Industry Practice, such that no User or category of Users is discriminated against or unduly favoured, as the case may be, in the use of the Terminals, and all Users shall have Equal Access to the Terminals.

6.13.5 The Operator shall collect data relating to the ship/ vessel and cargo traffic through the Terminals. A Monthly Statement of such data shall be compiled and furnished forthwith by the Operator to the Authority in the format acceptable to the Authority.

6.14 *Environmental Hazards and Marine Pollution*

6.14.1 The Operator shall comply with Applicable Laws relating to the protection of the environment and the prevention of marine pollution and shall take all reasonable measures for the purpose of preventing any environmental hazards or marine pollution and in doing so, the Operator shall be guided by the applicable provision of the WBG EHS Guidelines. The Operator shall also comply with IFC Performance Standards on Environmental and Social Sustainability 2012 (or applicable environmental and social standards and guidelines to which the Equator Principles refer) in relation to the environmental protection standards.

6.14.2 At the request of the Operator, the Authority may provide environment protection or marine pollution related services to the Operator on such charges and terms as may be determined by the Authority. The Operator shall make payment of all such charges to the Authority for any of these services rendered at the request of the Operator.

6.15 *Environmental and Social Management System*

6.15.1 The Operator shall develop and implement the ESMS in accordance with the requirements of the Environmental Standards. The ESMS should cover key risks and impacts linked (but not limited) to aspects like waste management, life and fire safety, traffic and equipment safety, labour management, security, spill management and prevention, emergency preparedness and response. The ESMS must clearly define and assign operational roles for the environmental and social management and allocate annual funds for the implementation of the environmental and social management plan.

6.15.2 The Operator will conduct preliminary investigation to identify potential contamination (legacy or current) on the Terminals, and if deemed necessary, followed by comprehensive assessment of contamination of soil, sub surface, ground water, and surface water. The responsibility for cleaning/ remediation of contamination (if any) should be agreed between the Parties and implemented within a time bound period.

6.15.3 The Operator shall also ensure that surrounding/ nearby communities are consulted and concerns (if any raised by them) are addressed, in line with the requirements of the applicable provisions of the Environmental Standards.

6.16 *Annual Maintenance Program*

6.16.1 The Operator will prepare and submit to the Authority, its proposed Annual Maintenance Program within 1 (one) year of the Appointed Date, and thereafter 1 (one) month prior to beginning of each Accounting Year for the following Accounting Year. Such proposed Annual Maintenance Program will comprise of:

(a) a list and technical details of the equipment procured by it and deployed at the Terminals for performing the O&M Services and their operating status and capabilities;

(b) expected operations, repairs, capital improvements, teardowns and maintenance plans and other maintenance services;

(c) control strategy and a description of material Sub-Contracts entered or proposed to be entered into by the Operator;

(d) the Operator's recommendation on any matters affecting the O&M Services such as capital improvement or capital expenditure together with reasons thereof;

(e) maintenance and administration of support facilities;

(f) a description of any change in law notified by the Operator affecting the performance of the O&M Services together with a breakdown of the incremental costs associated therewith;

(g) the Operator's environmental plan describing the actions necessary to ensure that the performance of the O&M Services at the Terminals comply with all Applicable Laws and Applicable Permits;

(h) status of compliance of Functional Guarantees;

(i) data regarding other work proposed to be undertaken by the Operator;

(j) time-table of the proposed number of hours of routine maintenance and overhaul schedules; and

(k) the timing of such maintenance and the dates and times of shut down or partial closure and reductions of output predicted to occur as a result of implementation of such maintenance program.

6.16.2 Any actions proposed under the Annual Maintenance Program will be consistent with the O&M Manuals and the Operator's obligations set forth in this Contract. The Operator will promptly notify the Authority of any significant deviations or discrepancies from the projections contained in the Annual Maintenance Program.

6.17 *Forward Major Maintenance & Improvement Program*

6.17.1 The Operator shall prepare and submit to the Authority, the Forward Major Maintenance & Improvement Program within 1 (one) year from the Appointed Date and thereafter within 1 (one) month from the beginning of each Accounting Year, and will set forth in detail the major maintenance and improvement program:

(a) for the Authority's assets at the Terminals; and

(b) any likely expenses to be made by way of major repair, renovation, upgradation or improvement of the existing infrastructure facilities

in the forthcoming 5 (five) Accounting Years such that the Functional Guarantees of the Operator are not affected.

6.17.2 Such details shall also include:

(a) expected operations, repairs, capital improvements, teardowns and major maintenance plans including those required to be undertaken by the Authority;

(b) indicative budgetary requirements for major repair, replacement or improvement of the existing infrastructure of the Authority at the Terminal(s); and

(c) data regarding other work proposed to be undertaken by the Authority or Operator, as the case may be.

6.17.3 In preparing and providing the Forward Major Maintenance & Improvement Program, the Operator will apply the standards of performance consistent with the availability requirements in this Contract and Good Industry Practices, such that it is always in the position of the achievement or maintenance of the Functional Guarantees. The Authority shall review and provide its comments, if any, on the Forward Major Maintenance & Improvement Program within 30 (thirty) days of its receipt.

6.17.4 If the Forward Major Maintenance & Improvement Program requires:

(a) upto Rs. 5,00,00,000/- (Rupees Five Crore) for the forthcoming period of 5 (five) years, then, the same shall be undertaken and performed by the Operator at its own cost and risk; and

(b) for an amount more than Rs. 5,00,00,000/- (Rupees Five Crore) for the forthcoming period of 5 (five) years, the Authority shall be required to undertake such work and pay for the expenses in excess of Rs. 5,00,00,000/- (Rupees Five Crore) in accordance with this Contract.

By way of example, if the cost for major maintenance and repair under the Forward Major Maintenance & Repair Program is Rs. 4,00,00,000/- (Rupees Four Crore) in the forthcoming period of 5 (five) years, then the Operator shall implement and pay the total cost of the works under the Forward Major Maintenance & Repair Program. If the cost for major maintenance and repair under the Forward Major Maintenance & Repair Program is Rs. 6,00,00,000/- (Rupees Six Crore) in the forthcoming period of 5 (five) years, then the Operator will pay for an amount of Rs. 5,00,00,000/- (Rupees Five Crore) and the Authority may pay for the additional Rs. 1,00,00,000/- (Rupees One Crore) under the Forward Major Maintenance & Repair Program in accordance with Clause 6.17.5 and 6.17.6.

The works under the Forward Major Maintenance & Repair Program shall be implemented in accordance with the terms of this Contract.

6.17.5 If the repair, renovation, upgradation or major maintenance of the existing infrastructure at the Terminals are required to be undertaken by the Authority as per Clause 6.17.4(b)

above, then the Authority shall indicate its willingness to undertake the same within 3 (three) months of receiving the Forward Major Maintenance & Improvement Program.

6.17.6 If the Authority agrees to undertake such activity as per Clause 6.17.5 above, then it may initiate the bidding process for undertaking such activity. The Operator shall not have any right to participate in any such bidding process.

6.17.7 If:

(a) the Authority refuses to undertake any such activity which is required to be undertaken by it as per Clause 6.17.4(b) above; or

(b) the Authority does not respond to the Operator within the time period provided in Clause 6.17.5;

then the Operator shall have the right to either (i) subject to the approval of the Authority, undertake the activities required of the Authority under Clause 6.17.4(b) at its own cost and continue providing the O&M Services in accordance with this Contract, or (ii) continue the O&M Services in accordance with this Contract without undertaking the activities required of the Authority under Clause 6.17.4(b), in which case the Operator will be excused from meeting the Functional Guarantees to the extent affected by activities required under Clause 6.17.4(b), or (iii) terminate the Contract by giving a notice of not less than 12 (twelve) months. If the Operator gives Termination notice to the Authority, then during the Termination notice period, the Operator shall continue to provide the O&M Services and shall have the right to collect the User Fees in accordance with this Contract.

6.18 *Branding of Terminals*

The Operator can brand the Terminals by way of advertisement, display or reflect the name or identity of the Operator or its shareholders in the ordinary course of business, in such a manner that the Authority is represented as the owner of the Terminals and the Operator is represented as the operator of the Terminals.

7. DISCLAIMER

7.1 *Disclaimer*

7.1.1 The Operator acknowledges on its behalf and on behalf of the Selected Bidder, that prior to the execution of this Contract, the Selected Bidder and the Operator has, after a complete and careful examination, made an independent evaluation of the RFP, scope of O&M Services, Technical Specifications, Terminals, requirements of the Applicable Permits for effectuating its rights under this Contract, existing structures, local conditions, dredging facilities, physical qualities of ground, subsoil and geology, contingencies, climatic, hydrological, natural conditions, weather, flood levels, natural drainage, environmental aspects, availability of local labour, materials and their rates traffic volumes, and all information provided by the 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 Authority makes no representation whatsoever, express, implicit or otherwise, regarding the accuracy, adequacy, correctness, reliability and/or completeness of any assessment, assumption, statement or information provided by it herein or under the Applicable Laws and the Operator confirms on its behalf and on behalf of the Selected Bidder that it shall have no claim whatsoever against the Authority in this regard.

7.1.2 The Operator acknowledges and hereby accepts on its behalf and, where the Operator is a special purpose vehicle, on behalf of the Selected Bidder, the risk of inadequacy, mistake or error in or relating to any of the matters set forth in Clause 7.1.1 above and hereby acknowledges and agrees that the Authority shall not be liable for the same in any manner whatsoever to the Operator, the Selected Bidder and its Affiliates or any Person claiming through or under any of them.

7.1.3 The Parties agree that any mistake or error in or relating to any of the matters set forth in Clause 7.1.1 above shall not vitiate this Contract or render it voidable.

7.1.4 In the event that either Party becomes aware of any mistake or error relating to any of the matters set forth in Clause 7.1.1 above, that Party shall immediately notify the other Party, specifying the mistake or error, provided, however, that a failure on part of the Authority to give any notice pursuant to this Clause 7.1.4 shall not prejudice the disclaimer of the Authority contained in Clause 7.1.1 and shall not in any manner shift to the Authority any risks assumed by the Operator pursuant to this Contract.

7.1.5 Except as otherwise provided in this Contract, all risks relating to the performance of the O&M Services shall be borne by the Operator and the Authority shall not be liable in any manner for such risks or the consequences thereof.

7.2 *Information*

7.2.1 The Operator will be responsible for obtaining all information required for the performance of its obligations under this Contract.

7.2.2 The Operator has clarified and carefully examined all the documents, data and such other matters as may be necessary or desirable for performing its obligations under this Contract, to its entire satisfaction. Further, the Operator will not be permitted to raise any claims/ Disputes against the Authority and the Authority will not be liable for the same in any manner whatsoever. The Operator will indemnify and hold the Authority harmless of any type of injury or death of any of the Operator's Staff and/or any damage or loss of any property of the Operator due to the above.

7.2.3 The Operator also confirms that it has full knowledge of the various Applicable Laws, Applicable Permits and their implications on this Contract. The Operator will not be permitted to raise any claim/ Dispute against the Authority and the Authority will not be liable for the same in any manner whatsoever for the ignorance of such laws or rules or policies. The Operator will also keep himself up-to-date for various new policies applicable specifically to the inland waterway sector and changes/amendments in such policies.

7.2.4 The Operator confirms that it has full knowledge of the rules and regulations under the Applicable Laws for grant of work permit visas and the absence of grant or refusal of any work permit visas will not excuse the Operator for its failure to perform its obligations under this Contract.

8. USER FEES AND REVENUE SHARE

8.1 *User Fees*

8.1.1 On and from the Appointed Date and till the end of the Operating Period, the Operator shall have the sole and exclusive right to demand and collect User Fees from the Users subject to and in accordance with this Contract, *provided that* the Operator may levy,

collect and appropriate the Service Charges and Other Charges at such rates as it may determine, by public notice to the Users.

8.1.2 The Operator acknowledges and agrees that upon payment of User Fees, any User shall be entitled to have Equal Access to the Terminals and can avail the O&M Services. The Operator shall not place, or cause to be placed, any restriction on such use, except to the extent specified in any Applicable Laws, Applicable Permits or the provisions of this Contract.

8.1.3 The Operator acknowledges and agrees that any User, who is exempted from the payment of the User Fees as per the Applicable Laws and the Applicable Permits, shall be entitled to have the access and the use of the Terminals, without any restrictions except to the extent specified in any Applicable Laws, Applicable Permits or the provisions of this Contract. In addition, the Operator may issue passes to its own employees and the employees of contractors, Sub-Contractors, agents and other Persons for free entry into the Terminals, subject to Applicable Laws, Applicable Permits and the provisions of this Contract.

8.1.4 The Operator shall not give any preferential treatment to its Affiliates in any form whatsoever including in terms of the levying and collection of the User Fees and shall treat the Affiliates at par with other Users.

8.1.5 The Statutory Charges shall belong to the Authority and the Operator shall collect the same on behalf of the Authority. With effect from the Appointed Date, the Operator shall remit the Statutory Charges collected by it in full to the Authority without any deductions or withholding in any manner whatsoever, no later than 3 (three) Business Days from the close of each day. The Authority hereby authorises the Operator to collect the Statutory Charges on its behalf. The Parties further agree that failure by the Operator to collect or deposit the Statutory Charges would be a material breach of its obligations under the Contract, and the Authority shall have right to recover any such uncollected or non-deposited Statutory Charges from the Operator, without prejudice to its rights and remedies under Clause 20.3.1.

8.2 *Penalty for Evasion of User Fees*

Except as otherwise provided in this Contract, if any User uses the Terminals or any part thereof, without payment of the due User Fees, the Operator shall, subject to Applicable Laws and Applicable Permits, be entitled to determine and collect from such Person, the User Fees due and up to 5 (five) times the amount thereof towards Damages for attempt to make unauthorised use of the Terminals or any facility thereof.

8.3 *Revision of Fee*

The Operator may, in its discretion, revise the Service Charges and Other Charges from time to time in the form and manner as it may deem fit to suitably reflect variation in the market condition.

8.4 *Display of User Fees*

8.4.1 The Operator shall on its website and its office, maintain and provide the applicable rates of the User Fees for information of the Users.

8.4.2 The Operator shall not revise, display or collect any amount in excess of the rates of User Fees except as may be otherwise authorised by IWAI Act.

8.4.3 Any discount or reduction that the Operator in its discretion decides to offer on the Service Charges or Other Charges, shall be uniformly applicable to all the Users on Equal Access basis.

8.5 *Revenue Share*

8.5.1 The Operator shall be responsible for the payment of Revenue Share to the Authority for the period commencing from the 4th (fourth) anniversary of the Appointed Date until the Termination. However, if the Operator opts to undertake the O&M Services of any or both of the Patna Terminals as per Clause 4.5, then the Operator's obligation to pay Revenue Share in respect of the Terminals shall commence from the 6th (sixth) anniversary of the Appointed Date. For the avoidance of doubt, it is hereby clarified that the Operator shall pay the same percentage of Revenue Share for all the Terminals for which the O&M Services are provided by the Operator.

8.5.2 The Revenue Share under the provisions of this Clause 8.5 shall be due and payable within 3 (three) Business Days of the close of each calendar month for the previous month. The accounts of the Operator shall be reconciled: (a) within 30 (thirty) Business Days of the end of each quarter of an Accounting Year, and (b) on annual basis as per Clause 14.1.2, to ascertain the total Service Charges and Other Charges levied and collected by the Operator during such period, and the Revenue Share payable on the same. The Operator shall provide 'open book' access to the representatives of the Authority for such reconciliation purposes. Any adjustment (either additional payment or reduction) that may be required on the basis of such reconciliation, shall be made in the immediate following monthly payment of the Revenue Share.

9. ESCROW ARRANGEMENT

9.1 *Escrow Account*

The nature and scope of the opening and maintaining an Escrow Account are fully described in the agreement ("**Escrow Agreement**") to be entered into amongst the Operator, the Authority and the Escrow Bank, which shall be substantially in the form set forth in Schedule 7 (*Format of Escrow Agreement*).

9.2 *Deposits into Escrow Account*

9.2.1 The Operator shall deposit or cause to be deposited all inflows and receipts (including all taxes) arising due to the performance of the O&M Services or any right granted to it pursuant to this Contract but at all times excluding the Statutory Charges, the proceeds of any refundable payment deposits, capital receipts and insurance claims, into the Escrow Account.

9.2.2 Any amounts payable to the Operator pursuant to the Termination of this Contract shall be paid through the Escrow Account and such amount shall be subject to the terms of this Contract and the Escrow Agreement.

9.3 *Withdrawals*

9.3.1 The Operator shall, at the time of opening the Escrow Account, give irrevocable instructions, under the 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:

(a) taxes to the relevant Government Instrumentality;

(b) Revenue Share due and payable to the Authority, less any Damages payable by the Authority to the Operator, which has not been disputed/ contested by the Authority for a period of 3 (three) months from the date of receipt of any such claim from the Operator, and if any such claim has been disputed/ contested by the Authority, then, upon the completion of such adjudication proceedings;

(c) all payments and/ or Damages payable to the Authority, which has not been disputed/ contested by the Operator for a period of 3 (three) months from the date of receipt of any such claim from the Authority, and if any such claim has been disputed/ contested by the Operator, then, upon the completion of such adjudication proceedings; and

(d) balance, if any, in accordance with the instructions of the Operator.

9.3.2 Notwithstanding anything contrary contained elsewhere in this Contract, the withdrawal of any amount from the Escrow Account shall be regulated in accordance with the provisions of the Escrow Agreement. The Escrow Bank will not release or allow withdrawals from the Escrow Account of any amount, except in the manner as provided in the Escrow Agreement.

10. SECURITIES

10.1 *Issuance of Securities*

The Operator will obtain (at its cost) and provide the securities specified in this Clause 10, for proper performance of its obligations under this Contract, in favour of the Authority.

10.2 *Contract Performance Security*

10.2.1 The Operator shall, for the performance of its obligations hereunder in respect of the O&M Services, provide to the Authority, no later than 60 (sixty) days from the Effective Date, an irrevocable and unconditional guarantee from a Bank for a sum equivalent to Rs. 90,00,000/- (Rupees Ninety Lakh) in the form set forth in Schedule 6 (*Format of Contract Performance Security*) ("**Contract Performance Security**"), with a validity upto 1 (one) year from the Appointed Date and shall be renewed not less than 1 (one) month prior to expiry of its validity period, till such time such Contract Performance Security is released in terms hereof.

10.2.2 Until such time the Contract Performance Security is provided by the Operator pursuant hereto and the same comes into effect, the Bid Security shall remain in force and effect, and upon such provision of the Contract Performance Security pursuant hereto, the Authority shall release the Bid Security to the Operator.

10.2.3 Notwithstanding anything to the contrary contained in this Contract, in the event Contract Performance Security is not provided by the Operator within a period of 60 (sixty) days from the Effective Date, the Authority may encash the Bid Security and appropriate the proceeds thereof as Damages, and thereupon all rights, privileges, claims and entitlements of the Operator under or arising out of this Contract shall be deemed to have been waived by, and to have ceased with the concurrence of the Operator, and this Contract shall be deemed to have been terminated by mutual agreement of the Parties.

10.2.4 Upon request made by the Operator for release of the Contract Performance Security along with the particulars which establish satisfaction of the requirements specified under this Clause 10 and more particularly Clause 10.2.5, the Authority shall release the Contract Performance Security.

10.2.5 The Contract Performance Security shall remain in force and effect for a period of: (a) 3 (three) years from the Appointed Date, if the Operator does not opt to operate any of the Patna Terminals as per Clause 4.5; or (b) 3 (three) years from the date of the handing over of the last of the Patna Terminal (*as applicable*), if the Operator opts to operate the Patna Terminals as per Clause 4.5. The Contract Performance Security shall be released after 3 (three) months from such expiry, *provided however that* the Contract Performance Security may not be released, if the Operator is in breach of this Contract. Upon request made by the Operator for release of the Contract Performance Security along with the particulars which establish satisfaction of the requirements specified under this Clause 10.2.5, the Authority shall release the Contract Performance Security forthwith.

10.3 *Invocation*

10.3.1 The Operator acknowledges and agrees that the Contract Performance Security (and shall include Bid Security until its replacement) will be held by the Authority as security for the satisfactory completion of the obligations of the Operator including the fulfilment of the Conditions Precedent by the Operator and to ensure that the Functional Guarantees are maintained at all times in accordance with this Contract, and recovery of any amounts due to the Authority from the Operator. Any right of the Authority under the Contract Performance Security are without prejudice to its other rights and remedies hereunder or in Applicable Laws.

10.3.2 The Authority will have the unconditional option under the Contract Performance Security to invoke and encash the same and will be entitled to recover from such Contract Performance Security, Damages and any other amounts which may become due to the Authority from the Operator.

10.3.3 In the event of encashment of the Contract Performance Security by the Authority, the Authority would intimate the Operator of the reasons/ circumstances for the encashment within 15 (fifteen) Business Days after encashment of the same. Failure to replenish the Contract Performance Security within 3 (three) days of its invocation, shall entitle the Authority to terminate this Contract in accordance with Clause 20.3 (*Termination for Operator's Default*).

10.4 *Deemed Performance Security*

The Parties expressly agree that upon release of the Contract Performance Security in accordance with the provisions of Clause 10.2.5, a substitute Contract Performance Security for a like amount, shall be deemed to be created under this Clause 10.4, as if it is a Contract Performance Security under Clause 10.2 for and in respect of the Operating Period ("**Deemed Performance Security**"). The Deemed Performance Security shall be unconditional and irrevocable, and shall, notwithstanding anything to the contrary contained in Clause 9.3 or in the Escrow Agreement, constitute the first and exclusive charge on an equivalent balance in the Escrow Account. The Parties agree that no amounts shall be earmarked, frozen or withheld in the Escrow Account for securing payment of any potential Damages that may fall due at a subsequent date, and only the amounts which shall have become due and payable by the Operator shall be liable to appropriation hereunder. Any Damages shall be considered due and payable by the Operator only if any

such demand by the Authority remains uncontested by the Operator for a period of 3 (three) months from the date of demand by the Authority and if it has been contested, then, the same has been adjudicated. The Deemed Performance Security shall be valid until the existence of the Escrow Account in accordance with the terms of the Escrow Agreement.

10.5 *Appropriation of Deemed Performance Security*

The Authority shall, without prejudice to its other rights and remedies hereunder or in Applicable Laws, be entitled to appropriate the relevant amounts from the Deemed Performance Security as Damages.

10.6 *References to Contract Performance Security*

References to Contract Performance Security occurring in this Contract for and in respect of any period prior to the delivery of the Contract Performance Security by the Operator to the Authority, or in respect of any period subsequent to the expiry or release thereof, as the case may be, shall be construed solely for the purposes of calculating the amount of Damages payable by the Operator, and the amount so determined may be appropriated from the Bid Security or Contract Performance Security or Deemed Performance Security, as the case may be or available as on such date.

11. THE TERMINALS AND RIGHT OF WAY

11.1 *The Terminals*

The site of the Patna Terminals and Kolkata Terminal described in Schedule 1 (*Details of Terminals*) and in respect of which the Right of Way shall be provided and granted by the Authority to the Operator as a licensee under and in accordance with this Contract.

11.2 *Licence, Access and Right of Way*

11.2.1 The Authority hereby grants to the Operator access to the Terminals for carrying out any surveys, investigations and tests that the Operator may deem necessary during the period between the Effective Date and the Appointed Date. It being expressly agreed and understood that the Authority shall have no liability whatsoever in respect of survey, investigations and tests carried out or work undertaken by the Operator on or about the Terminals pursuant hereto in the event of Termination or otherwise.

11.2.2 In consideration of the payment of the Revenue Share, this Contract and the covenants and warranties on the part of the Operator contained herein, the Authority hereby grants to the Operator, commencing from the Appointed Date and upto the date of Termination, leave and licence rights in respect of all the land (along with any buildings, constructions or immovable assets, if any, thereon) forming part of the Terminals which is described, delineated and shown in Schedule 1 (*Details of Terminals*), on an "as is where is" basis, free of any encumbrances, to operate and maintain the Terminals, together with all and singular rights, liberties, privileges, easements and appurtenances whatsoever, hereditaments or premises or any part thereof belonging to or in any way appurtenant thereto or enjoyed therewith, for the duration of the Operating Period and, for the purposes permitted under this Contract, and for no other purpose whatsoever, in accordance with the terms and conditions set forth herein.

11.2.3 The licence, access and Right of Way granted by this Contract to the Operator in respect of land and water channels shall always be subject to existing rights of way and the

Operator shall perform its obligations in a manner that the existing land and water channels or an alternative thereof are open to traffic at all times during the Operation Period.

11.2.4 The licence granted hereunder shall terminate automatically and forthwith, without the need for any action to be taken by the Authority to terminate the licence, upon the Termination of this Contract for any reason whatsoever. The Parties expressly agree that notwithstanding any temporary or permanent structures erected on the Terminals by the Operator or its sub-licensees, the licence in respect of the Terminals shall automatically terminate, without any further act of the Parties, upon Termination of this Contract.

11.2.5 The Operator hereby appoints the Authority (acting directly or through a nominee) to be its true and lawful attorney, to execute and sign in the name of the Operator a transfer or surrender of the licence granted hereunder at any time after the Termination, a sufficient proof of which will be the declaration of any duly authorised officer of the Authority, and the Operator consents to it being registered for this purpose.

11.2.6 It is expressly agreed that trees in the Terminals are property of the Authority except that the Operator shall be entitled to exercise usufructory rights thereon during the Operating Period.

11.3 *Procurement of the Terminals*

11.3.1 Pursuant to the satisfaction of the obligations as per Clause 4.1.2 and 4.1.3, the Authority's Manager and the Operator shall, at any mutually agreed date and time, which shall be within 30 (thirty) days of such completion, jointly inspect the Kolkata Terminal and prepare a memorandum containing an inventory at the Terminal including the vacant and unencumbered land, buildings, structures, road works, quay wall, cargo handling equipment, other equipment, trees and any other immovable property on or attached to the Terminals. Signing of the memorandum, in 2 (two) originals, by the authorised representatives of the Parties shall be deemed to constitute a valid licence, Right of Way and handover of the Kolkata Terminal to the Operator for the O&M Services to be provided by the Operator during the Operating Period under and in accordance with the provisions of this Contract and for no other purpose whatsoever. The Parties agree that this process of handover of the Terminal shall be implemented for handover of each of the Patna Terminals.

11.3.2 On and after signing the memorandum referred to in Clause 11.3.1 or taking over the possession of the Patna Terminals as per Clause 4.5, the Operator shall maintain a round-the-clock vigil of the Terminals and shall protect the Terminals by ensuring and procuring that no occupations, encroachments or encumbrances thereon takes place, and in the event of any occupations, encroachments or encumbrances on any part thereof, the Operator shall report such the same forthwith to the Authority and undertake its removal at its cost and expenses.

11.3.3 The Operator shall further neither create or permit any of its Sub-Contractor or other Person claiming through or under the Operator to place or create any occupations, encroachments or encumbrances or security interest over all or any part of the Terminals or on any rights of the Operator therein or under this Contract, save and except as otherwise expressly set forth in this Contract.

11.4 *Terminals to be free from Encumbrances*

Subject to the provisions of Clause 11.3, the Terminals shall be made available by the

Authority to the Operator pursuant hereto free from all encumbrances and occupations and without the Operator being required to make any payment to the Authority on account of any costs, compensation, expenses and charges for the acquisition and use of such Terminals for the duration of the Operating Period, except insofar as otherwise expressly provided in this Contract. The existing rights of way, easements, privileges, liberties and appurtenances to the Terminals shall not be deemed to be encumbrances. It is further agreed that the Operator accepts and undertakes to bear any and all risks arising out of the inadequacy or physical condition of the Terminals.

11.5 *Special/ temporary Right of Way*

The Operator shall bear all costs and charges for any special or temporary right of way required by it in connection with access to the Terminals. The Operator shall obtain at its cost such facilities on or outside the Terminals as may be required by it for the purposes of the O&M Services and the performance of its obligations under this Contract. The Authority agrees that it shall endeavour to provide such temporary facilities to the Operator on best effort basis and subject to payment of such charges as it may reasonably specify.

11.6 *Access to the Authority*

The licence to the Terminals and Right of Way granted to the Operator herein shall always be subject to the right of access of the Authority, its lessor, its employees, agents and representatives for inspection, viewing and exercise of their rights and performance of their obligations under this Contract or as per the requirements of the Applicable Laws and Applicable Permits.

11.7 *Geological and Archaeological Finds*

The mining, geological or archaeological rights do not form part of the licence granted to the Operator under this Contract and the Operator hereby acknowledges that it shall not have any rights or interest in the underlying minerals, fossils, antiquities, structures or other remnants or things either of particular geological or archaeological interest and that such rights, interest and property on or under the Terminals shall vest in and belong to the Authority or the concerned Government Instrumentality. The Operator shall take all reasonable precautions to prevent its workmen or any other Person from removing or damaging such interest or property and shall inform the Authority forthwith of the discovery thereof and comply with such instructions as the Authority or the concerned Government Instrumentality may reasonably give for the removal of such property. Any reasonable expenses incurred by the Operator hereunder shall be reimbursed by the Authority.

12. SUB-CONTRACTORS

12.1 *Sub-Contracting*

The Operator may sub-contract any of its obligations to a Sub-Contractor. Any sub-contracting in terms of this Clause 12 will not relieve or discharge the Operator from any of its liabilities or obligations under this Contract and the Operator will be responsible for the acts, defaults and neglects of all Sub-Contractors and its agents, servants or workmen, or any of them, as fully, as if they were the acts, defaults or neglects of the Operator under the terms of this Contract and the Authority will not be liable on account of the same. No act or omission on the part of any of the Sub-Contractors will allow the Operator to claim an increase in the User Fees, or any other dispensation pursuant to this Contract.

12.2 *Sub-Contractors*

12.2.1 If the Operator enters into any arrangement in accordance with Clause 12, the Operator will ensure that (unless agreed by the Authority in writing), in respect of each material contract or Sub-Contract entered into in connection with the performance of the O&M Services that the contract or Sub-Contract can be freely assigned at the Authority's discretion to the Authority or any of its nominees in the event of Termination of this Contract or any change of control of the Operator without requiring consent from the contractors or Sub-Contractors.

12.2.2 Any arrangement entered into by the Operator in terms of Clause 12, will not relieve or discharge the Operator from any of its liabilities or obligations under this Contract and the Operator will be responsible for the acts, defaults and neglects of all such Sub-Contractors and its agents, servants or workmen, or any of them, as fully, as if they were the acts, defaults or neglects of the Operator under the terms of this Contract.

12.3 *Form of Sub-Contracts*

12.3.1 The Operator will ensure that all contracts with its Sub-Contractors are made in writing. The Operator agrees that the contracts entered into with its Sub-Contractors will be consistent with this Contract and it being expressly agreed and understood that the Authority will have no liability whatsoever towards the Operator's Sub-Contractors.

12.3.2 Each instrument evidencing any contract with its Sub-Contractors will provide for step-in rights to the Authority in case of Termination of this Contract in form and substance satisfactory to the Authority.

12.4 *Copies of Sub-Contracts*

The Operator will provide to the Authority copies of the executed Sub-Contracts along with all schedules, annexure, exhibits and other relevant details, with its Sub-Contractors.

12.5 *Sub-Contracts with Affiliates*

12.5.1 If the Operator enters into a Sub-Contract with an Affiliate, such transaction shall be on an arm's length basis and in compliance with the provisions of the Companies Act, 2013. The Operator shall inform the Authority and disclose details of such Sub-Contract no later than 90 (ninety) days from entering into any such related party transaction or a Sub-Contract.

12.5.2 Notwithstanding anything to the contrary, the Operator agrees that in respect of any transactions with Affiliates, no shareholder of the Operator, and/or key managerial Person that has an interest in the Sub-Contract, shall be involved in the design of the contract, or the contracting process or decision-making.

12.6 *Authority's Rights*

The Operator warrants that no arrangement, agreement or understanding with any Sub-Contractor will directly or indirectly interfere with, restrict or impede the Authority in the exercise of any right or remedy under this Contract.

12.7 *Evidence of Payment*

12.7.1 The Operator will promptly pay all amounts due to any Sub-Contractor. The Operator will, by an appropriate agreement with each Sub-Contractor, require each Sub-Contractor to make payments to its sub-contractors, if any, in a timely manner. The Authority will have no obligation to pay or to verify the payment of any monies to any Sub-Contractor. However, the Authority may, at its discretion, verify the payments made by the Operator to the Sub-Contractors.

12.7.2 The Operator will provide to the Authority, documentary evidence that the Operator has made or caused to be made all payments due to its Sub-Contractors.

13. INSURANCE

13.1 *Obligation to Maintain Insurance*

13.1.1 The Operator will, from the Appointed Date, at its cost and expense, obtain and maintain in effect, or cause to obtained and maintained in effect, till the expiry of the Operating Period, the comprehensive insurance policies in respect of the following:

(a) bodily injury or death caused due to the performance of the O&M Services and other Third Party including contract labours/ workers' liabilities on account of obstruction, loss of amenity, trespass or nuisance;

(b) claims for damage or destruction to Third Party property, caused due to the performance of the O&M Services;

(c) liability on account of causing pollution due to performance of the O&M Services;

(d) loss or damage to the items and equipment used by the Operator, the Operator's Staff or its Sub-Contractors (whether owned or hired by them), excluding the Terminal; and

(e) adequate professional indemnity insurance for any and all claims, liability, action, demand, judgment, loss, damage, costs and expenses (including legal fees) that may be sustained by the Authority arising out of the acts, omissions, negligence or Wilful Misconduct with respect to their professional obligations.

13.1.2 The insurance cover to be obtained by any Party pursuant to this Contract shall sufficiently protect its interests in accordance with Applicable Laws and Applicable Permits.

13.1.3 The Operator or its Sub-Contractors will comply with all warranties and conditions stipulated by the insurers in the insurance policies.

13.1.4 The Operator will conform to the conditions of all insurances and all reasonable requirements of insurers in connection with the raising and/or preparing and/or following claims process and/or any other requirement for settlement of claims, the recovery of losses and the preventive measures.

13.1.5 The Operator will not take or omit to take any step, the taking or omission of which may result in jeopardizing or reducing claim under any insurance policy. If any claim under any insurance policy is reduced or jeopardized as a result of the Operator not following the terms and conditions or warranties of the insurance policy, then, the Operator will, at

its cost and expense, pay any and all deductible amounts relating to such insurance claim.

13.1.6 To the extent that such disclosure is within its control, the Operator will ensure that full disclosure of the following is made to those insurers providing insurance coverage which is required to be taken out and maintained by the Operator pursuant to this Contract:

(a) all information which the insurers specifically request for in writing to the Operator to be disclosed;

(b) all information which is of a type which the insurance advisor in relation to the relevant policy advises in writing to the Operator should be disclosed to insurers;

(c) details of any significant problems with respect to the performance of the O&M Services; and

(d) any information which the Operator, acting in accordance with Good Industry Practice, should reasonably consider to be significant.

13.2 Insurance of Authority

Save and expect as provided in Clause 13.1 above, the Authority shall be required to maintain all other insurance required at the Terminals.

13.3 *Insurance Certificates*

The Operator will deliver to the Authority, certificates of insurance taken by it (along with copies of the insurance policies), within 30 (thirty) days of the Appointed Date, evidencing that the required policies are in full force and effect. The Operator will ensure that the said certificates provide, that a minimum of a 90 (ninety) days' notice will be provided to the Authority by the insurers, prior to lapse, cancellation of or material modification to the respective policy.

13.4 *Sub-Contractor's Insurance*

The Operator will ensure that, where applicable, its Sub-Contractor(s) will obtain and maintain in effect adequate insurance policies for their personnel and vehicles and for work executed by them under the Contract, unless such Sub-Contractors are covered by the policies obtained by the Operator, pursuant to Clause 13.1.

13.5 *Failure to Obtain and/or Maintain Insurance*

If the Operator fails to obtain and/or maintain in effect the insurance policies referred to in Clause 13.1, the Authority may obtain and maintain the same, from time to time. The Operator shall be liable to make payment of all such amounts in the form and manner as may be demanded by the Authority. Any such unpaid amount may be recovered by the Authority as a debt due from the Operator.

13.6 *Deductibles*

All excesses (deductibles), exclusions or limitations and expenses relating to any claims, legal and other expenses applying under the insurance policies obtained by the Operator (in so far as they concern risks for which it is responsible under the terms of this Contract) will be to the account of the Operator.

14. AUDIT, INFORMATION, REPORTS AND INSPECTION

14.1 *Audited Accounts*

14.1.1 The Operator shall maintain books of accounts recording all its receipts (including all the revenues derived/ collected by it from or on account of the User Fees collected by it), income, expenditure, payments, assets and liabilities, in accordance with this Contract, Good Industry Practice, Applicable Laws and Applicable Permits. The Operator shall provide 2 (two) copies of its audited balance sheet, cash flow statement and profit and loss account, along with a report thereon by its Statutory Auditors, within 180 (one hundred eighty) days of the close of each Accounting Year, to which they pertain. The Authority has the right, either through itself or through any of its authorised representative, to inspect the records of the Operator during office hours and require copies of relevant extracts of books of accounts, duly certified by the Statutory Auditors, 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 Contract.

14.1.2 Additionally, the Operator shall, on or before the 31st (thirty-first) day of May of each Accounting Year, provide to the Authority, for the preceding Accounting Year, a statement duly audited by its Statutory Auditors giving summarised information on:

(a) the traffic count for each category of Users using the Terminals or any facility therein and liable for payment of User Fees therefore;

(b) the User Fees charged and received, and all other revenues derived from the Terminals due to the performance of the O&M Services; and

(c) such other information as the Authority may reasonably require.

14.1.3 The Operator shall, within 30 (thirty) days of the close of each quarter of an Accounting Year, furnish to the Authority its unaudited financial results in respect of the preceding quarter, in the manner and form prescribed by the Securities and Exchange Board of India for publication of quarterly results by the companies listed on a stock exchange.

14.2 *Appointment of Auditors*

14.2.1 The Operator shall appoint, and have during the subsistence of this Contract as its Statutory Auditors, a firm chosen by it from the mutually agreed list of 5 (five) reputable firms of chartered accountants ("**Panel of Chartered Accountants**") identified by the Authority. All fees and expenses of the Statutory Auditors shall be borne by the Operator.

14.2.2 The Operator may terminate the appointment of its Statutory Auditors in accordance with the provisions of the Companies Act, 2013, subject to the replacement Statutory Auditors being appointed from the Panel of Chartered Accountants.

14.2.3 Notwithstanding anything to the contrary contained in this Contract, the Authority has the right, but not the obligation, to appoint at its cost from time to time and at any time, another firm ("**Additional Auditors**") from the Panel of Chartered Accountants to audit and verify all those matters, expenses, costs, realisations and things which the Statutory Auditors are required to do, undertake or certify pursuant to this Contract.

14.2.4 Further, the Operator shall change the Statutory Auditor from time to time to comply with the provisions of the Companies Act, 2013 and any rules and regulations framed

thereunder.

14.3 *Certification of claims by Statutory Auditors*

Any claim or document provided by the Operator to the Authority in connection with or relating to receipts, income, payments, costs, expenses, accounts or audit, and any matter incidental thereto shall be valid and effective only if certified by its Statutory Auditors. Such certification shall not be required for exchange of information in the normal course of business.

14.4 *Intentionally Left Blank*

14.5 *Reports*

14.5.1 The Operator will provide to the Authority with both physical and electronic copies of such reports as are required by the Authority on a quarterly basis, and more particularly as stated in Schedule 4 (*Reporting Requirements*) and will comply with all reporting requirements prescribed by Applicable Laws or set out in the O&M Manuals and any Applicable Permits. In addition, the Operator will submit the following information to the Authority:

(a) any litigation or material claims, disputes or actions, threatened or filed, concerning the performance of O&M Services to be performed hereunder;

(b) any refusal or threatened refusal to grant, renew or extend or any action pending or threatened that might affect the granting, renewal or extension of any Applicable Permits;

(c) any dispute with any Government Instrumentality;

(d) all penalties imposed or notice of violation issued by any Government Instrumentality; and

(e) any environment, safety and labour related matters or compliances associated with the performance of the O&M Services.

14.5.2 The Authority may from time to time specify any changes to be made to any of the formats for any report or plan required hereunder. The relevant revised format will then be adopted by the Operator with effect from the date of the agreed revision. The revised format will be applied in relation to the first period to which such report or plan corresponds to, commencing after the receipt of the Authority's notice specifying such changes.

14.5.3 The Authority will have the right to review and provide its comments on the reports submitted to it under this Clause 14.4 which will be binding on the Operator and conduct technical audits as may be required. This review by the Authority will not be construed by the Operator, as limiting any of its responsibilities and liabilities for mistakes and deviations from the requirements, specified under the Functional Guarantees and other terms of this Contract.

14.6 *Books and Records*

14.6.1 The Operator will in accordance with Good Industry Practice maintain complete, accurate and up-to-date records as may be required under Applicable Laws, including records of

the time spent by the Operator's Staff in performance of the obligations under this Contract and the O&M Services performed by the Operator.

14.6.2 The Operator will ensure that such books and records are maintained in English language and are separate and independent from its own books and records. The Operator will retain all such books and records for the Operating Period and thereafter for a minimum period of 2 (two) years, or for a longer period, if required, under Applicable Laws in accordance with and subject to the provisions of this Contract.

14.6.3 The Operator will regularly provide access at all reasonable times to the entire physical and electronic copies of such books and records to the Authority, within 30 (thirty) days from the end of each month, in relation to the books and records maintained for the immediately preceding previous month.

14.7 *Inspection*

14.7.1 The Authority, Authority's Personnel and their respective agents will at all times have access to the Terminals, technical documents, materials, records and accounts relating to such operations for the purpose of inspection and review, consistent with relevant safety procedures. The Authority may from time to time designate any Person to visit and inspect the Terminals, to verify and discuss the O&M Services being performed by the Operator under this Contract, with its officers and the Operator's Staff.

14.7.2 During any inspection, the Authority will comply with all of the Operator's safety and security procedures. The Authority will conduct such inspection and reviews in such a manner so as not to interfere unreasonably with the Operator's activities. The Operator will cooperate with the Authority in allowing the access.

14.8 *Hand Over of Information, Reports and Records*

At the end of the Operating Period, the Operator will hand over all the information, reports, up-dated books and records as it may have been received or prepared or arranged in respect of the performance of O&M Services to the Authority.

14.9 *Dispute Resolution*

In the event of there being any difference between the findings of the Authority and the Statutory Auditor, or the findings of the Additional Auditor and the Statutory Auditor, then, the concerned Persons shall meet to resolve the differences and if they are unable to resolve the same, then the Dispute shall be deemed to have arisen between the Parties and such Dispute shall be resolved by the Parties by recourse to the dispute resolution procedure as per Clause 22.

15. REPRESENTATIONS AND WARRANTIES

15.1 *Representations and Warranties of the Operator*

15.1.1 The Operator makes the following representations and warranties to the Authority, each of which is true and correct as on the Effective Date and the Appointed Date, and which representations and warranties will continue to be true and correct throughout the Operating Period:

(a) it is duly organised and validly existing under the laws of India, and has full power and authority to execute and perform its obligations under this Contract and to

carry out the transactions contemplated hereby;

(b) it has taken all necessary corporate and other actions under Applicable Law to authorise the execution, delivery and performance of this Contract and to validly exercise its rights and perform its obligations under this Contract;

(c) this Contract constitutes its legal, valid and binding obligation, enforceable against it in accordance with the terms hereof, and its obligations under this Contract will be legally valid, binding and enforceable obligations against it in accordance with the terms hereof;

(d) it is subject to Applicable Laws of India, and hereby expressly and irrevocably waives any immunity in any jurisdiction in respect of this Contract or matters arising hereunder including any obligation, liability or responsibility hereunder or issue of jurisdiction;

(e) the execution, delivery and performance of this Contract 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 those of any member of the Selected Bidder 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;

(f) this Contract has been duly authorized by the Operator's board of directors, and has been duly executed by its legal representative and constitutes a legal, valid and binding obligation of the Operator, enforceable in accordance with its terms, except to the extent that such enforcement may be limited by any bankruptcy, agreement of creditors, insolvency, moratorium or similar laws affecting generally the enforcement of creditors' rights;

(g) there are no actions, suits, proceedings, or investigations pending or, to its knowledge, threatened against it or any of its Affiliates at law or in equity before any court or before any other judicial, quasi-judicial or any other authority, the outcome of which may result in the breach of this Contract or which individually or in the aggregate may result in any material impairment of its ability to perform any of its obligations under this Contract;

(h) it has no knowledge of any violation or default with respect to any order, writ, injunction or decree of any court or Government Instrumentality which may result in any Material Adverse Effect on its ability to perform its obligations under this Contract and no fact or circumstance exists which may give rise to such proceedings that would adversely affect the performance of its obligations under this Contract;

(i) it and its Sub-Contractors have the requisite skill, experience, expertise, capacity, capability, licenses, permits and authorizations to perform its obligations and to satisfy and fulfil all their respective obligations and responsibilities under this Contract;

(j) neither it nor its Affiliates, have been convicted by a Court of Law or indicted or adverse orders passed by a regulatory authority which could cast a doubt on its ability to undertake the performance of its obligations or which relates to a grave offence that outrages the moral sense of the community;

(k) neither it nor its Affiliates, have been charge sheeted by any Government Instrumentality or convicted by any Court of Law, in respect of the matters relating to the security and integrity of India;

(l) no investigation by a regulatory authority is pending either against it and the Affiliates, or against any of its chief executive officer or any of the directors, managers or employees;

(m) it is not in default under any mortgage, loan agreement, deed of trust, indenture or other agreement evidencing indebtedness to which it is a party or by which it or its property is bound or affected;

(n) 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 Contract;

(o) it shall at no time undertake or permit any Change in Ownership except with the prior approval of the Authority;

(p) all its rights and interests in the Terminals shall pass to and vest in the Authority upon Termination, in accordance with Applicable Laws and Applicable Permits, free and clear of all encumbrances, liens or claims without any further act or deed on its part or that of the Authority;

(q) it or its Affiliates has or have substantial experience in the performance of the services similar to O&M Services and the Operator is fully qualified and has the technical, commercial and legal capacity to perform each and all of its obligations under this Contract;

(r) it has the full knowledge and awareness of all Applicable Laws, and shall perform the O&M Services:

(i) in a manner consistent with the terms of this Contract, as per the Good Industry Practice and Applicable Laws;

(ii) using the skill, care and diligence to be expected of appropriately qualified and experienced professional engineers with experience in works of a type, nature and complexity similar to the O&M Services performed in the independent inland waterways industry;

(iii) in accordance with good modern operation and maintenance principles and of appropriate grade compatible with the intended purpose;

(iv) using only materials and goods which are safe and the standards of all workmanship, manufacture and fabrication have conformed in all respects as approved by the Authority, and will be of such quality as is intended for the purpose for which it is intended; and

(v) being suitable for the performance of the O&M Services in accordance with the requirements necessary to meet the performance parameters set out in Clause 16.

(s) no representation or warranty by it contained herein or in any other document furnished by it to the Authority or to any Government Instrumentality 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;

(t) 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 Contract or entering into this Contract or for influencing or attempting to influence any officer or employee of the Authority or any Government Instrumentality, in connection herewith or during the bid process;

(u) the execution, delivery of and performance by the Operator of its obligations under this Contract are not in violation of, or in conflict with any provision of the Operator's organizational or authorizing documents, and do not constitute a default under any contracts, agreements or other instruments to which the Operator is a party or by which it is bound, and is not in violation of, or in conflict with, any term or provision of any Applicable Law of any Government Instrumentality, or the conditions of any Applicable Permits, where such violation or default would adversely affect the Operator's ability to perform its obligations under this Contract;

(v) there is no legal action, suit, proceeding, inquiry or investigation against the Operator before or by any Government Instrumentality, of which the Operator has received legal notice or of which it has otherwise become aware, that could be reasonably expected to adversely affect its ability to comply with its obligations under this Contract;

(w) all undertakings and obligations of the Operator arising from the RFP or otherwise shall be binding on the Operator as if they form part of this Contract; and

(x) the equipment installed by the Operator at the Terminals for the performance of the O&M Services, shall remain deployed at the Terminals and the Operator shall not be entitled to remove the same unless for the purposes of repair and maintenance or replacement and any such removal shall not be without prior approval of the Authority, which approval shall not be unreasonably withheld by the Authority.

15.1.2 The Operator, for and on behalf of each member of the Selected Bidder (if the Selected Bidder is a Consortium), hereby makes the following representations and warranties to the Authority, each of which is true and correct as on the Effective Date and the Appointed Date, and which representations and warranties will continue to be true and correct throughout the Operating Period:

(a) the members of the Selected Bidder (including the members thereof, if any) has the financial standing and capacity including but not limited to the conditions required to fulfil the Minimum Eligibility Criteria to undertake the performance of its obligations in accordance with the terms of this Contract;

(b) the information furnished in the Bid by the members of the Selected Bidder and as updated on or before the date of this Contract is true and accurate in all respects as on the date of this Contract;

(c) neither the members of the Selected Bidder nor its Affiliates, have been convicted

by a Court of Law or indicted or adverse orders passed by a regulatory authority which could cast a doubt on its ability to undertake the performance of its obligations or which relates to a grave offence that outrages the moral sense of the community;

(d) neither the members of the Selected Bidder nor its respective Affiliates, have been charge sheeted by any Government Instrumentality or convicted by any Court of Law, in respect of the matters relating to the security and integrity of India;

(e) no investigation by a regulatory authority is pending either against the any member of the Selected Bidder and its Affiliates, or against any of its chief executive officer or any of the directors, managers or employees;

(f) the members of the Selected Bidder and its Affiliates have the financial standing and resources to fund the required Equity and to raise the necessary finances for undertaking the performance of its obligations in accordance with this Contract;

(g) the members of the Selected Bidder are duly organised and validly existing under the laws of the jurisdiction of its incorporation or registration, and has requested the Authority to enter into this Contract with the Operator pursuant to the Letter of Award, and has agreed to and unconditionally accepted the terms and conditions set forth in this Contract; and

(h) all information provided by the members of the Selected Bidder in response to the RFP or otherwise, is to the best of its knowledge and belief, true and accurate in all material respects.

15.1.3 The Authority acknowledges that it is contracting solely for the O&M Services on the basis of the commitments of the Operator expressly set forth herein.

15.1.4 The Authority shall be entitled to the benefit of any Sub-Contractor or manufacturer warranty that extends beyond the Operating Period, and the Operator shall ensure that such warranties are, where possible, assigned to the Authority, and shall execute any assignments or other documents reasonably necessary to assign to the Authority any such warranties.

15.2 *Representations and Warranties of the Authority*

The Authority makes the following representations and warranties to the Operator, each of which is true and correct as on the Effective Date and Appointed Date, which representations and warranties will continue to be true and correct throughout the Operating Period:

(a) it has full power and authority to execute, deliver and perform its obligations under this Contract, to carry out the transactions contemplated herein and that it has taken all actions necessary to execute this Contract, exercise its rights and perform its obligations, under this Contract;

(b) it has the financial standing and capacity to perform its obligations under this Contract;

(c) this Contract constitutes a legal, valid and binding obligation enforceable against it in accordance with the terms hereof;

(d) this Contract has been duly authorized by the Authority's management as per the IWAI Act, and has been duly executed by its legal representative and constitutes a legal, valid and binding obligation of the Authority, enforceable in accordance with its terms except to the extent that such enforcement may be limited by any bankruptcy, agreement of creditors, insolvency, moratorium or similar laws affecting generally the enforcement of creditors' rights;

(e) the execution and delivery of, and performance by the Authority of its obligations under this Contract are not in violation of, or in conflict with, any provision of the Authority's organizational or authorizing documents, and do not constitute a default under any contracts, agreements or other instruments to which the Authority is a party or by which it is bound, and are not in violation of, or in conflict with, any term or provision of any Applicable Law of any Government Instrumentality, or the conditions of any Applicable Permits, where such violation or default would adversely affect the Authority's ability to perform its obligations under this Contract;

(f) it has no knowledge of any violation or default with respect to any order, writ, injunction or any decree of any court or any legally binding order of any Government Instrumentality which may result in any Material Adverse Effect on the Authority's ability to perform its obligations under this Contract;

(g) it has complied with Applicable Laws in all material respects; and

(h) it has good and valid right to the Terminals, and has power and authority to grant a licence in respect thereto to the Operator.

15.3 *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 right, remedy or obligation of either Party under this Contract.

16. FUNCTIONAL GUARANTEES AND DAMAGES

16.1 *Functional Guarantees*

16.1.1 The Operator shall have procured, mobilised, installed and made available, all the necessary equipment, items, goods, materials as may be required for the performance of the O&M Services at the Terminals within 1 (one) year of taking-over the same from the Authority in accordance with the provisions of Clause 4, until the Termination.

16.1.2 The Operator shall accordingly achieve the Functional Guarantees as per the critical performance parameters set out in Schedule 3 (*Functional Guarantees and Damages*).

16.1.3 If any default occurs in the achievement or maintenance of the Functional Guarantees, the Operator will be liable to pay Damages as per Clause 16.2.

16.2 *Damages for Shortfall in Performance*

The Operator will be liable to pay the Damages at the rates set out in Schedule 3

(*Functional Guarantees and Damages*), if the Operator fails to meet the respective Functional Guarantees in the performance of the O&M Services.

16.3 *Damages for Authority's Default*

16.3.1 The Authority is required to maintain the following critical performance parameters:

S. No.	Performance Parameter	Guarantee
(a)	Navigation Aids	Providing of safe navigation and maintenance of 24*7 and 365 days during the Term, the correct navigation aids, to ensure safe access to the Terminals. This includes buoyed channel, alignments and other navigational aids such as GPS and digital maps.
(b)	Draught in the Gaighat Terminal	3 meters along the jetty front to ensure access to the jetty front and barge turn radius, provided the Gaighat Terminal has been taken over by the Operator in accordance with this Contract.
(c)	Draught in the Kalughat Terminal	3 meters along the jetty front to ensure access to the jetty front and barge turn radius, provided the Kalughat Terminal has been taken over by the Operator in accordance with this Contract.
(d)	Draught in the Kolkata Terminal	3 meters along the jetty front to ensure access to the jetty front and barge turn radius

16.3.2 Subject to the Operator complying with its obligations under the Contract and not being negligent or engaged in any Wilful Misconduct, the Authority will be liable to pay the Damages to the Operator, if the Authority fails to maintain any of the above performance parameters, at the following rates:

(a) Rs. 15,000/- (Rupees Fifteen Thousand) per day, if any such default occurs during the first year of the performance of the O&M Services at the Kolkata Terminal and/ or Gaighat Terminal, as the case may be; and

(b) an amount equivalent to the Revenue Share averaged out to per day in immediately preceding year, on per day basis, if any such default occurs during the second year onwards at any time during the Operating Period.

16.4 *Limits for Damages*

The Damages as detailed out in Schedule 3 (*Functional Guarantees and Damages*) which are payable/ paid by the Operator pursuant to this Clause 16 will be capped at Rs. 90,00,000/- (Rupees Ninety Lakh).

16.5 *Genuine Pre-estimate*

The sums for Damages for shortfall in performance as set out in this Clause 16 and Schedule 3 (*Functional Guarantees and Damages*) represent a genuine pre-estimate of the Damages likely to be suffered by the Authority, if the shortfall in performance described in this Clause 16 and Schedule 3 (*Functional Guarantees and Damages*) occurs. The Parties acknowledge that the losses that will actually be sustained by the Authority are uncertain and impossible to determine with precision. The amounts due under Clause 16 as Damages will be payable by the Operator without any requirement of proof of the actual loss or damage caused by such breach. The sums set out in Clause 16 seek to limit the potential liability of the Operator and constitute Damages and not a penalty.

16.6 *Operator's Obligations*

16.6.1 The payment of Damages by the Operator in terms of this Clause 16 will not in any way relieve the Operator from any of its duties, obligations and responsibilities under this Contract and will be without prejudice to any other rights available to the Authority under this Contract, Applicable Laws or otherwise.

16.6.2 The Authority reserves the right to carry out audits as to whether the O&M Services are being performed in accordance with the guaranteed performance parameters and Functional Guarantees at any time and the comments provided in the audit report will be binding on the Operator.

16.7 *Rights at Law*

If this Clause 16 (or any part hereof) is found for any reason to be void, invalid or otherwise in-operative so as to disentitle the Authority from claiming Damages, the Authority is entitled to claim Damages in accordance with Applicable Law for the shortfall in performance and non-achievement of the Functional Guarantees.

16.8 *Calculation of Damages*

16.8.1 Based on the submission of the quarterly reports as per Clause 14.5, the Authority shall determine and communicate the Damages payable by the Operator pursuant to this Clause 16, within 7 (seven) days of the end of each quarter.

16.8.2 If the Authority determines that the Operator is liable to pay any Damages as per Clause 16.8.1 above, then, the Damages will be payable by the Operator within 7 (seven) days of any such communication. If the Operator fails to pay the Damages in the said period, then, the Authority will be entitled to recover such Damages by invoking the Contract Performance Security or the Deemed Performance Security, as the case may be.

17. INDEMNITY

17.1 *Authority's Indemnity*

17.1.1 The Operator will indemnify, defend and hold harmless the Authority and Authority's Personnel from and against any and all claims, liability, action, demand, judgment, loss, damage, costs and expenses (including legal fees) in respect of:

(a) all and any claims or other lawsuits or proceedings, that may arise on account of breach of any of the labour and other related Applicable Law and/ or that may arise out of breach of any covenants of this Contract including those arising out of

any Accident that may occur during or in relation to the O&M Services, as may be proceeded against the Authority, for any reason whatsoever and assume full responsibility for whatsoever including the payment of indemnification, penalties, attorneys' fees, legal costs and other charges, if any;

(b) damages and losses caused by its negligent or intentional act or omission or any damages and losses caused by the negligent act of the Operator's Staff or any Third Party or Sub-Contractor or agency engaged by the Operator;

(c) damages and losses resulting from the non-compliance with the obligations established hereunder;

(d) any environmental damages caused by it and/or its representatives or employees or employees of any Third Party or Sub-Contractor or agency engaged by the Operator;

(e) breach (either directly by it or through its representatives and/or employees) of any representation and warranty declared herein by it;

(f) any and all claims, actions, suits, proceedings, taxes, duties, levies, costs, expenses, damages and liabilities, including attorneys' fees, arising out of, connected with, or resulting from or arising in relation to this Contract due to neglect, omission or intentional act of the Operator;

(g) bodily injury, sickness, disease or death, of any Person whatsoever arising out of or in the course of or by reason of the performance or non-performance of its O&M Services or obligation under this Contract, unless attributable to any negligence, wilful act or breach of this Contract by the Authority, and

(h) damage to or loss of any property, real or personal, to the extent that such damage or loss:

(i) arises out of or in the course of or by reason of the performance or non-performance of the O&M Services or the obligations of the Operator under this Contract and the remedying of any defects; and

(ii) is not attributable to any negligence, wilful act or breach of this Contract by the Authority, the Authority's Personnel, their respective agents, or anyone directly or indirectly employed by any of them.

17.1.2 Notwithstanding the above, the Operator will indemnify and hold harmless the Authority, the Authority's Personnel and their respective agents against any loss, damage, caused or suffered by any of them, due to the failure on the part of the Operator to perform any of its obligations under this Contract or due to any act or omission on part of the Operator amounting to negligence or Wilful Misconduct or any losses arising directly from any claims/sanctions/penalties by any Government Instrumentalities, including for any tax related default by the Operator.

17.1.3 The Operator will defend, indemnify and hold harmless the Authority, Authority's Personnel, their respective directors, officers, employees, agents, sub-contractors, suppliers, Affiliates, and other representatives, from and against any and all Environmental Claims arising from the Operator's performance or non-performance of its obligations under this Contract, then, the Operator will reimburse to the Authority, all costs and expenses (including reasonable attorneys' fees and expenses) incurred by the

Authority in connection therewith.

17.1.4 In the event of Hazardous Materials being released on to or at the Terminals or into the environment or adjacent to the Terminals (including but not limited to air, ground or water contamination) as a result of the Operator's actions, inactions, breach or default, then, the Operator will forthwith at its own expense, take all such steps as may be necessary to remove the Hazardous Materials from the Terminals and fully restore and reinstate the contaminated area and items.

17.2 ***Third Party Claims***

The Operator will be liable for and will indemnify and hold Authority harmless from and against any and all claims, liability, action, demand, judgment, loss, damage, costs and expenses (including reasonable legal fees) brought by a Third Party, including any of the Operator's Staff, for loss or damage to property or personal injury or death caused by, resulting from, or incidental to the Operator's performance under this Contract, except when caused by the Authority's negligence or Wilful Misconduct.

17.3 ***Proceedings***

17.3.1 If any proceedings are brought or any claim from any Third Party is made against the Authority that might subject the Operator to liability under Clause 17.2, the Authority will promptly give the Operator a notice thereof and the Operator will at its own expense and in the Authority's name, conduct such proceedings or claim and any negotiations for the settlement of any such proceedings or claim.

17.3.2 If the Operator fails to notify the Authority within 7 (seven) days after receipt of such notice or 7 (seven) days prior to the last date of any action required under such notice, whichever is earlier, that it intends to conduct any such proceedings or claim, then the Authority will be free to conduct the same on its own behalf.

17.3.3 The Authority will, at the Operator's request, afford all available assistance to the Operator in conducting such proceedings or claim and will be reimbursed by the Operator for all reasonable expenses incurred in so doing.

17.4 ***Payment of Indemnities***

Where a Party is entitled to payment from the other Party pursuant to this Clause 17, such Party will promptly notify the other Party of the same. The other Party will make payment against the same within 30 (thirty) days from the date of receipt of such notice.

18. FORCE MAJEURE

18.1 ***Force Majeure Event***

Neither Party will be liable to the other Party or be deemed to be in breach of this Contract by reason of any delay in performing or observing, or any failure to perform or observe, any of its obligations under this Contract, if the delay or failure was due to any of the events set out in this Clause 18.1 which is not within the reasonable control, of the Party affected ("**Affected Party**"), and with the exercise of due diligence, was not reasonably foreseeable and could not reasonably be prevented, avoided or removed by such Affected Party through the exercise of reasonable skill or care, and does not result from the Affected Party's negligence or the negligence of its agents, employees or sub-contractors, which causes the Affected Party to be delayed, in whole or in part ("**Force Majeure**

Event"). The following will constitute a Force Majeure Event:

(a) acts of God, flood, lightning, storm, typhoon, tornado, earthquake, landslide, volcanic activity or other natural disaster;

(b) ionising radiation or contamination, radioactivity from any nuclear fuel, radioactive toxic explosive;

(c) any unlawful refusal or unreasonable delay by a Government Instrumentality to grant or renew any Applicable Permits within a reasonable time after application for the same having been duly made;

(d) fire or explosion, in each case not being due to (i) failure to perform the O&M Services in accordance with this Contract, or (ii) circumstances within the reasonable control of the Affected Party;

(e) industry wide lawful strike or lockout by Persons other than the Operator's Staff and Sub-Contractor, having a nationwide impact in India or in the State of Bihar in respect of the Patna Terminals and in the State of West Bengal in respect of the Kolkata Terminal;

(f) event of war, hostilities (whether war to be declared or not), invasion, act of foreign enemy or revolution;

(g) if any Government Instrumentality makes any changes to any Applicable Law, due to which the Operator is prohibited from performing its obligations under this Contract;

(h) acts of expropriation, compulsory acquisition or takeover by Government Instrumentality of the Terminals or any part thereof or of the Operator's rights under Contract;

(i) any unlawful, unauthorized or without justified refusal to issue or to renew or the revocation of any Applicable Permits for reasons other than Operator's breach or failure in complying with the O&M Services requirements, Applicable Laws or Applicable Permits;

(j) rebellion, terrorism, revolution, insurrection, military or usurped power, or civil war; or

(k) discovery of historically significant artefacts at the Terminals.

18.2 ***Exclusions***

The Force Majeure Event will not include:

(a) unavailability, late delivery of equipment or materials from suppliers, sub-suppliers or other vendors (other than late deliveries that are themselves the result of Force Majeure Event), or changes in cost of the plant, machinery, equipment or materials;

(b) delay in the performance of the Operator, any Sub-Contractor or their agents other than due to any Force Majeure Event;

(c) non-performance resulting from normal wear and tear typically experienced in materials and equipment in the inland waterways industry;

(d) weather or ground conditions reasonably expected from the climate in the geographic area of the Terminals or any condition or event arising from the same;

(e) any default or failure by the Operator (or the Third Party) in any agreement entered into by the Operator with a Third Party;

(f) any delay by the Operator in any agreement entered into by it with a Third Party, unless such delay is caused by a Force Majeure Event;

(g) strikes, collective bargaining agreements of the Operator or the Sub-Contractor resulting in a delay or stoppage of the provision of supplies and labour disputes of any kinds;

(h) economic hardship including any insufficiency of finances or funds or this Contract becoming onerous to perform;

(i) effect of market conditions on the price or demand of inland waterways;

(j) malfunctioning, breakdown, destruction or non-availability of any material or tools employed by or on behalf of the Operator unless, such is caused by a Force Majeure Event;

(k) increased costs of materials and labour; or

(l) non-performance caused by, or connected with, the Affected Party's:

(i) negligent or intentional acts, errors or omissions;

(ii) failure to comply with Applicable Law; or

(iii) breach of, or default under this Contract.

18.3 ***Provide Notice***

If the Affected Party is prevented, hindered or delayed from or in performing any of its obligations under this Contract by a Force Majeure Event, then, it will as soon as reasonably practicable notify the other Party of the occurrence of such event and the circumstances thereof including the obligations, the performance of which could be delayed or prevented thereby, but no later than 30 (thirty) days after the occurrence of the Force Majeure Event. If the Force Majeure Event results in break-down of communications, rendering it unreasonable to give notice within the applicable time limit, then, the Affected Party will give such notice as soon as reasonably practicable after reinstatement of communications, but no later than 30 (thirty) day after such reinstatement. It is hereby clarified that if the Affected Party fails to provide the notice within the time specified in this Clause 18.3, the relief on account of the occurrence of the Force Majeure Event will be available to the Affected Party only from the date on which the Affected Party actually notifies the other Party. Provided that, in no event, the occurrence and continuance of any Force Majeure Event will not excuse the Operator from paying the Revenue Share as per the terms of this Contract.

18.4 ***Provide Report***

18.4.1 Promptly after issuance of a notice, but in any event not later than 90 (ninety) days after such notice, pursuant to Clause 18.3, the Affected Party will provide the other Party with a full report about the Force Majeure Event, including particulars of the event or circumstance, the effects of the Force Majeure Event, a general description of the obligations it is likely to affect, an estimate of its likely duration and a statement of the steps and time believed necessary to remedy and/or overcome any resultant failure to fulfil the obligations excused by such Force Majeure Event.

18.4.2 The Affected Party will provide to the other Party further information described in this Clause 18.4, provided that such updates are, in any event, provided at least bi-weekly.

18.5 ***Provide Access***

The Affected Party will forthwith, where practicable, provide or procure the other Party access to the scene of the event which gave rise to the Force Majeure Event for inspection, provided that the expense and risk of such access and inspection will always be that of the requesting Party.

18.6 ***Endeavour to Mitigate***

18.6.1 The Affected Party will use all reasonable endeavours to mitigate the effect of the Force Majeure Event on its performance of this Contract and to fulfil its obligations under this Contract, but without prejudice to the respective Party's right to terminate this Contract under Clause 18.9.1.

18.6.2 If the Operator is the Affected Party, it will use all means and best endeavours to ensure that the loss caused by the Force Majeure Event is minimized as far as possible.

18.6.3 Further, for all matters affected by a Force Majeure Event, the Parties will consult with each other, as soon as reasonably practicable and in any event no later than 90 (ninety) days from the receipt of the notice of the occurrence of such Force Majeure Event, with a view to ending the effect of the Force Majeure Event.

18.7 ***Non-Performance by the Affected Party***

18.7.1 Delay or non-performance by the Affected Party will not:

(a) constitute a default or breach of this Contract; or

(b) give rise to any claim for damages or additional cost or expense occasioned thereby,

if and to the extent that such delay or non-performance is caused by the occurrence of a Force Majeure Event.

18.7.2 In relation to any obligations affected by a Force Majeure Event, each Party will exercise its rights under this Contract in good faith and will act in accordance with Good Industry Practice.

18.8 ***Resume Performance***

18.8.1 The Parties will as soon as possible, from the occurrence of the Force Majeure Event,

resume normal performance of this Contract. During the period prior to resumption of normal performance of this Contract, the Parties will continue to act in accordance with Good Industry Practice and perform their obligations under this Contract to the extent not prevented by such Force Majeure Event.

18.8.2 Immediately upon cessation of the Force Majeure Event or the effects of such Force Majeure Event, the Affected Party will intimate the other Party of the same and will thereafter recommence the performance of its obligations under this Contract.

18.9 ***Extended Force Majeure***

18.9.1 If the performance of this Contract is substantially prevented, hindered or delayed for a consecutive period of more than 90 (ninety) days or an aggregate period of more than 180 (one hundred eighty) days, on account of one or more Force Majeure Events during the Operating Period, the Parties will meet and attempt to develop a mutually satisfactory plan. *Provided that* upon the failure of the Parties to arrive at such a mutually satisfactory plan in relation to such Force Majeure Event within 60 (sixty) days of starting negotiation, either Party may terminate this Contract by giving a written notice to the other Party**.**

18.9.2 In the event of Termination pursuant to Clause 18.9.1, the Authority will be liable to make payment to the Operator in accordance with Clause 20.5.3(e). *Provided that*, prior to the date of applicability of this provision, if there has been a deviation in relation to the performance of the O&M Services, not previously approved by the Authority, the Operator will be liable to pay compensation to the Authority.

18.10 ***Applicability***

The applicability of this Clause 18 should be construed in a fair/reasonable manner and either Party will not take any pretext on account of terms/conditions of this provision to avoid performance of their respective obligations.

18.11 ***Compensation***

Save and except as provided in Clause 18.9.2, neither Party will be entitled for any compensation from the other Party on account of occurrence of a Force Majeure Event.

19. TAXES AND DUTIES

19.1 ***Taxes and Duties***

19.1.1 The Operator will bear and pay all taxes, duties, levies and charges, assessed on the Operator, its Sub-Contractors or their respective employees, by all Government Instrumentalities in connection with the performance of the O&M Services.

19.1.2 The Operator would adopt appropriate measures and strategies to obtain an efficient tax structure for the performance of O&M Services to the extent possible. The Authority reserves the right to suggest certain changes in the transaction structure at a later date to obtain an efficient tax structure. Any such changes would be agreed mutually between the Parties.

19.1.3 Without limiting the generality of Clause 17, the Operator shall fully indemnify, hold harmless and defend the Authority and the Authority Indemnified Persons from and against any and all loss and/or damages arising out of or with respect to payment of taxes required to be made by the Operator in respect of the income or other taxes of the

Operator's contractors, suppliers and representatives.

19.2 *Change in Taxes*

19.2.1 If rates of any taxes, applicable to the income of the Operator, its Sub-Contractors (or their contractors) or their employees are increased, or a new tax is introduced, or an existing tax ceases to have effect, then the same will be to the account of the Operator and the Authority will not be liable for the same.

19.2.2 The Operator will not be required to pass on to the Authority any benefits of exemption, concessions, rebate, set off, credits etc. pertaining to taxes, duties, imposts, fees and levies in respect of the performance or arising out of performance of all or any of the obligations of the Operator under this Contract.

19.3 *Exemptions*

19.3.1 The Operator will be responsible for furnishing all necessary documents, as may be called for by the Authority, for obtaining the exemptions and all other waivers, exemptions and refund claims which are available or may be available in future in respect of taxes, duties, levies, surcharges and cess in India, on the O&M Services availed by the Authority under this Contract.

19.3.2 The Authority will have the right to advise and give instructions to the Operator with respect to the exemptions available and the Operator will follow such instructions and approach the relevant Government Instrumentality to claim the said exemptions. The Operator will at all times be liable to claim all the exemptions and that the Authority will not be liable to reimburse any tax on the failure of the Operator to claim such exemptions.

20. SUSPENSION AND TERMINATION

20.1 *Right of Suspension*

20.1.1 The Authority may, by providing a notice to the Operator in this regard, order the Operator to suspend performance of any or all of its obligations under this Contract. Such notice will specify:

(a) the obligation of which performance is to be suspended and the reasons thereof;

(b) the effective date of the suspension; and

(c) the anticipated duration of such suspension.

20.1.2 The Operator will, upon receipt of such notice, suspend performance of such obligation with immediate effect except those O&M Services, which are necessary for the care or preservation of the Terminals or any part thereof. The Operator will neither place nor enter into any further arrangements, contracts or purchase orders for any aspect with respect to such suspended part of the O&M Services, except to the extent expressly requested by the Authority, until notified to resume such performance by the Authority. The Operator will continue to perform its other obligations under this Contract, which the Authority has not suspended pursuant to this Clause 20.1. During the period suspension, the Authority shall have a right but not an obligation to operate such suspended performance obligations at its own cost.

20.1.3 The Authority may require the Operator to suspend the O&M Services no more than 2

(two) times an Accounting Year for a cumulative period of 30 (thirty) days. The Operator will resume the performance of the suspended O&M Services as expeditiously as possible after receipt of withdrawal of suspension by the Authority. Any loss of revenue suffered by the Operator due to suspension of the O&M Services shall be paid by the Authority within a period of 30 (thirty) days of the receipt of request from the Operator along with the submission of satisfactory documents evidencing the revenue loss, which shall be based on the average revenue generated by the Operator per day in the preceding 30 (thirty) days of suspension of the O&M Services.

20.1.4 If the Authority suspends the Operator's O&M Services for any period exceeding the period specified in Clause 20.1.3 above, any necessary, demonstrable and reasonable costs incurred by the Operator, as a result of suspension of the O&M Services or any part thereof, during such suspension period, pursuant to Clause 20.1, shall be payable by the Authority, provided that such costs are approved by the Authority.

20.2 *Termination for public interest*

The Authority may, at any time, terminate this Contract for public interest by giving the Operator a 90 (ninety) days' notice of Termination.

20.3 *Termination for Operator's Default*

20.3.1 The Authority may, without prejudice to any other rights or remedies it may possess, forthwith terminate this Contract in the following circumstances by giving a notice of Termination, referring to this Clause 20.3.1, if:

(a) the Operator becomes bankrupt or insolvent, has a receiving order issued against it, compounds with its creditors, or if a resolution is passed or order is made for its winding up (other than a voluntary liquidation for the purposes of amalgamation or reconstruction), a receiver is appointed over any part of its undertaking or assets, or if the Operator takes or suffers any other analogous action in consequence of debt;

(b) insolvency, receivership, reorganisation, bankruptcy, or proceedings of a similar nature brought against the Operator and the proceedings are not dismissed or effectively stayed within 60 (sixty) days of such commencement;

(c) the Operator assigns or transfers this Contract or any of its right or interest herein, in violation of the provision of Clause 23.6; or

(d) the Operator, in the reasonable judgment of the Authority, has engaged in corrupt or fraudulent practices in competing for or in executing this Contract.

For the purpose of this sub-clause:

"**corrupt practice**" means the offering, giving, receiving or soliciting of anything of value to influence the action of any official of the Authority in the procurement process or in Contract execution.

"**fraudulent practice**" means a misrepresentation of facts in order to influence a procurement process or the execution of the Contract to the detriment of the Authority and includes collusive practice to increase prices at artificial non-competitive levels to deprive the Authority of the benefits of free and open competition.

20.3.2 If the Operator:

(a) fails to provide, renew or replace the Contract Performance Security, as per the terms of this Contract;

(b) subsequent to the replenishment or furnishing of fresh Contract Performance Security, the Operator fails to meet any Condition Precedent or cure its default, as the case may be, for which whole or part of the Contract Performance Security was appropriated, within a cure period of 7 (seven) days;

(c) has, without valid reason, failed to commence performance of the O&M Services promptly after the occurrence of the Appointed Date or has suspended the performance of the O&M Services for more than (i) 5 (five) times during the Operating Period, or (ii) a cumulative period of more than 30 (thirty) days in any Accounting Year;

(d) fails to exercise its option as per Clause 4.5.2 within the period prescribed therein;

(e) abandons or manifests intention to abandon the performance of the O&M Services without the prior written consent of the Authority;

(f) repudiates this Contract or otherwise takes any action or evidences or conveys an intention not to be bound by this Contract;

(g) fails to perform this Contract in accordance with the provisions of this Contract or neglects to carry out its obligations under this Contract without just cause for a period of more than 15 (fifteen) days;

(h) is in breach or violation of any Applicable Law, and, as a consequence, the Terminals or the Authority's enjoyment of its rights or benefits are adversely effected;

(i) has made any false or inaccurate representations and warranties in Clause 15 (*Representation and Warranties*) of this Contract;

(j) has incurred or is liable for Damages in excess of the amount set out in Clause 16.3;

(k) creates any lien in breach of this Contract;

(l) effects a Change in Ownership in breach of the provisions of Clause 6.9.4;

(m) there is a transfer, pursuant to Applicable Law either of:

(i) the rights and/or obligations of the Operator; or

(ii) or all or part of the assets or undertaking of the Operator, and such transfer causes a Material Adverse Effect;

(n) an execution levied on any of the assets of the Operator has caused a Material Adverse Effect;

(o) submits to the Authority any statement, notice or other document, in written or electronic form, which has a material effect on the Authority's rights, obligations or interests and which is false in material particulars;

(p) has failed to fulfil any obligation, for which failure Termination has been specified in this Contract;

(q) issues a termination notice in violation of the provisions of this Contract;

(r) has failed to pay any amount due and payable under this Contract to the Authority within 30 (thirty) days of the Due Date for such payment; or

(s) has committed a material breach of this Contract,

then, the Authority may, without prejudice to any other rights it may possess under this Contract, provide a notice to the Operator, stating the nature of the default and requiring the Operator to remedy the same. If the Operator fails to remedy or to take steps to remedy the same within 30 (thirty) days of the receipt of such notice, then the Authority may terminate this Contract forthwith by providing a notice of Termination to the Operator that refers to this Clause 20.3.2, without thereby releasing the Operator from any of its obligations or liabilities which have accrued as at the date of Termination of this Contract and without affecting any other rights and powers conferred by this Contract on the Authority.

20.4 ***Termination by the Operator***

20.4.1 The Operator may, without prejudice to any other rights or remedies it may possess, terminate this Contract in accordance with the provisions of this Clause 20.4.

20.4.2 Unless the default has occurred as a result of any breach of this Contract by the Operator or due to the occurrence and continuance of the Force Majeure Event, if the Authority:

(a) becomes bankrupt or insolvent, has a receiving order issued against it, compounds with its creditors, or, if a resolution is passed or order is made for its winding up (other than a voluntary liquidation for the purposes of amalgamation or reconstruction), a receiver is appointed over any part of its undertaking or assets, or if the Authority takes or suffers any other analogous action in consequence of debt; or

(b) has insolvency, receivership, reorganisation, bankruptcy, or proceedings of a similar nature brought against it and the proceedings are not dismissed or effectively stayed within 60 (sixty) days of such commencement,

then, the Operator may, without prejudice to any other rights it may possess under this Contract, provide a notice to the Authority in this regard, requiring the Authority to remedy the same. If the Authority fails to remedy or to take steps to remedy the same within 30 (thirty) days of receipt of such notice, then, the Operator may terminate this Contract forthwith by giving a notice of Termination to the Authority that refers to this Clause 20.4.2.

20.4.3 Unless the default has occurred as a result of any breach of this Contract by the Operator or due to the occurrence and continuance of the Force Majeure Event, if the Authority:

(a) has committed a material breach of this Contract;

(b) has validly suspended the performance of its obligations herein, in accordance with Clause 20.1 and such suspension: (i) continues for a period of 120 (one

hundred twenty) days in any Accounting Year, or (ii) is caused by the Authority for more than 3 (three) times during the Operating Period;

(c) fails to complete its obligations as per Clause 4.5.1A and 4.5.5 within the period prescribed therein;

(d) fails to maintain least available depth of up to 3 meters at the channels between Kolkata Terminal and Gaighat Terminal (as and when it is handed over) or till Kalughat Terminal (as and when it is handed over), whichever is farther from the Kolkata Terminal, for a continuous period of 3 (three) months in any Accounting Year; or

(e) fails to ensure the grant of the relevant Applicable Permit within 120 (one hundred twenty) days of the receipt of request in such regard from the Operator along with satisfactory documents evidencing that the Operator has submitted the form as per the due process and complied with all requirements otherwise in accordance with the Applicable Laws, upon denial or delay in granting or renewing, or the expiration, revocation or cancellation or non-renewal or change in the conditions applicable to any permit available or obtained for the Terminals or any part thereof and the same is not attributable to the Operator;

then, the Operator may provide a notice to the Authority in this regard. If the Authority, pursuant to the receipt of the notice provided in Clause 20.4.2(a), fails to rectify or cure the default within a period of 60 (sixty) days of the receipt of such notice, then, the Operator may by a further notice of 15 (fifteen) days to the Authority referring to this Clause 20.4.2, forthwith terminate this Contract.

20.5 *Consequences Following Termination*

20.5.1 Actions by the Operator

Upon receipt of the notice of Termination under any provision of this Contract including under Clause 20.3.1 or Clause 20.3.2, or Termination of the Contract under Clause 20.4.1 or Clause 20.4.2, the Operator will, either immediately or upon such date as is specified in the notice of Termination:

(a) cease performance of all further O&M Services, except for such O&M Services as the Authority may specify in the notice of Termination, required to leave the Terminals in a clean and safe condition;

(b) place no further orders and not enter into any contracts, or agree, approve or authorize any Sub-Contracts related to the performance of the O&M Services;

(c) terminate all contracts with its Sub-Contractors, except those to be assigned to the Authority and to the extent they relate to execution of the discontinued portion of the O&M Services;

(d) except as may be otherwise required by the Authority, remove the Operator's Staff, Sub-Contractors and the personnel of the Sub-Contractors' from the Terminals, the Operator's equipment and materials and any wreckage, rubbish and debris of any kind and leave the Terminals in a clean and safe condition;

(e) take such action as the Authority may direct for the protection and preservation of the Terminals;

(f) take such additional action as the Authority may direct and/or as may be necessary or appropriate to hand over to the Authority or its authorized representative, the Terminals along with all the infrastructural facilities expanded by the Authority from time to time in accordance with the terms of this Contract, free and clear of all liens; and

(g) to the extent legally possible, assign to the Authority all right, title and benefit of the Operator, as at the date of Termination, and, as may be required by the Authority, in the equipment, items and materials retained by the Authority and any contracts concluded between the Operator and its Sub-Contractors (including all warranties provided by the Sub-Contractor).

20.5.2 Actions by the Authority

Upon Termination for any reason whatsoever, the Authority shall:

(a) take possession and control of the Terminals forthwith;

(b) take possession and control of all materials, stores, implements, items, goods and equipment on or about the Terminals, which are owned by the Authority;

(c) be entitled to restrain the Operator and any Person claiming through or under the Operator from entering upon the Terminals or any part thereof; and

(d) be entitled to contract the O&M of the Terminals to a Third Party.

20.5.3 Payments on Termination

(a) General

(i) The payment of any amount pursuant to the Termination of this Contract shall become due and payable to the Operator by the Authority within 30 (thirty) days of the completion of the process agreed in Clause 20.5.1 and thereafter a demand being made by the Operator along with a certified copy of the Statutory Auditor justifying such demand in accordance with the terms of this Contract and other necessary particulars as may be required by the Authority. If, for any reason other than those attributable to the Operator, such amount is payable by the Authority and is not paid by the Authority to the Operator on Termination as above, the Authority shall be liable to pay default interest at the base rate of State Bank of India (*as applicable on such date*) per annum or part thereof, compounded on per annum basis, from such due date until the payment thereof.

(ii) If this Contract is terminated in terms of this Clause 20, and wherever any amount is payable by the Authority, while calculating such amount, account will be taken of any sum previously paid by the Authority to the Operator or payable by the Operator to the Authority under this Contract.

(iii) Notwithstanding anything to the contrary elsewhere in this Contract, any payment on Termination determined pursuant to this Clause 20.5.3 shall, once paid, be in full and final settlement of any and all claim, demand and/or proceedings of the Operator against the Authority, in relation to any Termination of this Contract and the Operator shall not have any rights or remedy against the Authority in respect of any aspect of this

Contract.

(b) *Termination for End of the Operating Period*

Upon Termination of this Contract due to efflux of time. i.e., end of the Operating Period, the Authority shall not be required to pay any amounts to the Operator.

(c) *Termination for Authority's Convenience or Authority's Default*

Upon Termination of this Contract pursuant to Clause 20.2 and/ or Clause 20.4, the Operator shall appropriate the amounts standing in the credit of Escrow Account to the following extent:

(i) the payments attributable for the part of the O&M Services completed prior to such Termination;

(ii) the costs reasonably incurred by the Operator for the repatriation of the Operator's Staff and the personnel of its Sub-Contractors' and in the removal of the Operator's equipment from the Terminals;

(iii) any amounts to be paid by the Operator to its Sub-Contractors, in connection with the termination of any contracts with the Sub-Contractors (including any cancellation charges) payable in terms thereof;

(iv) the cost of satisfying all other obligations, commitments and claims that the Operator may in good faith have undertaken with Third Parties, in connection with this Contract and that are not provided in any of the above; and

(v) an amount equivalent to the sum of present value of 20% of the Service Charges assumed for the lesser of: (1) 5 (five) year, and (2) years outstanding for completion of the Operating Period under the Contract, and then, discounted at the per annum rate of 15% (fifteen percent), with 20% (twenty percent) of the Service Charges earned by the Operator in the immediate preceding completed Accounting Year being taken as the amount for all these years for the calculation purposes, as reasonable cost of Damages resulting due to such Termination. By way of illustration, the said amount will be calculated as below:

20% Service Charges in the preceding year	[X]				
Discount rate	15%				
Year	Y1	Y2	Y3	Y4	Y5
Present value	[X]/(1+15%)^1	[X]/(1+15%)^2	[X]/(1+15%)^3	[X]/(1+15%)^4	[X]/(1+15%)^5
Sum of the present value (as per Clause 20.5.3(c)(v) above)	Sum [Y1 + Y2 + Y3 + Y4 + Y5]				

In the event, after appropriating the entire balance in the Escrow Account towards the above amounts, there is any shortfall in the recovery of amount towards the recovery of amount identified at Clause 20.5.3(c)**Error! Reference source not found.**, then, the Authority shall be obligated to pay such shortfall amount to the Operator as per the provisions of Clause 20.5.3(a). It is clarified that in case of any shortfall, the Authority shall not be obligated to pay any amount under this Clause 20.5.3(c), other than the amount identified in Clause 20.5.3(c)**Error! Reference**

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(d) *Termination for Operator's Default*

In case of Termination due to the Operator's Default pursuant to Clause 20.3, the Operator shall appropriate the amounts standing in the credit of Escrow Account to the extent of the payments attributable for the part of the O&M Services completed prior to such Termination, as reduced by an amount of Rs. 2,00,00,000/- (Rupees Two Crore). If the amount lying in the Escrow Account on the date of Termination is not sufficient to compensate the Authority of the above said amount of Rs. 2,00,00,000/- (Rupees Two Crore) or any part thereof after meeting other costs as per the terms of the Escrow Account, then, the Operator shall compensate the Authority of any such deficient amount within 30 (thirty) days of the Termination.

(e) *Termination for No-Fault*

Notwithstanding anything contrary contained elsewhere in this Contract, upon Termination of this Contract pursuant to Clause 4.5.51B, Clause 4.5.5, Clause 6.17.7 or Clause 18.9.1, the Operator shall appropriate the amounts standing in the credit of Escrow Account to the following extent:

(i) the payments attributable for the part of the O&M Services completed prior to such Termination;

(ii) the costs reasonably incurred by the Operator for the repatriation of the Operator's Staff and the personnel of its Sub-Contractors' and in the removal of the Operator's equipment from the Terminals;

(iii) any amounts to be paid by the Operator to its Sub-Contractors, in connection with the termination of any contracts with the Sub-Contractors (including any cancellation charges) payable in terms thereof; and

(iv) the cost of satisfying all other obligations, commitments and claims that the Operator may in good faith have undertaken with Third Parties, in connection with this Contract and that are not provided in any of the above.

Provided that any payments to be appropriated by the Operator pursuant to any provision of this Clause 20.5.3 in respect of payments by the Operator to the Sub-Contractor(s) or Third Parties, will be made only upon the Operator submitting documentary evidence to the satisfaction of the Authority, reflecting that any such payments are due and payable by the Operator. *Provided further that*, the Authority shall not be obligated or required to pay any amount to the Operator in any form or manner in case of any shortfall in the recovery of the amounts identified in this Clause 20.5.3 from the Escrow Account, except as otherwise specifically provided in Clause 20.5.3(c).

20.5.4 Transition of O&M Services

(a) If the Authority requires the Operator to continue any part of the O&M Services after the Termination of the Contract for any reason whatsoever, then, the Authority shall pay a reasonable compensation to the Operator for meeting its operating and related expenses for the performance of such continuing O&M Services. It is clarified that, upon Termination, the Operator shall have no right or

interests in the Escrow Account and it shall not be able to withdraw any amount lying therein, except without the prior written approval of the Authority.

(b) Upon the Termination of this Contract for any reason whatsoever, and if so requested by the Authority, the Operator shall continue to perform services in the same scope as the O&M Services herein or any portion thereof, following such Termination until the date of Termination specified in such Termination notice ("**Transition Period**"). During the Transition Period, if requested by the Authority, the Operator shall cooperate with a successor designated by the Authority ("**Successor Operator**") to the extent necessary to transfer the Operator's obligations under this Contract to the Operator. The terms and conditions of this Contract shall continue in full force and effect during the Transition Period, and the Authority shall continue to compensate the Operator for the O&M Services performed during the Transition Period.

(c) The Operator shall provide the Successor Operator and other representatives of the Authority, full access to the Terminals and all relevant information, data and records relating thereto developed exclusively for performance of the O&M Services and comply with all reasonable requests made by such Persons in connection with preparing for and accomplishing the taking over of the Operator's obligations under this Contract or otherwise. The Authority shall promptly conduct an inventory and audit of all the property and other items furnished to the Operator for the performance of the O&M Services.

(d) Within 15 (fifteen) days of the later of the Termination of this Contract or the expiration of the Transition Period, the Operator shall deliver to (and shall, with effect from Termination, hold in trust for and to the order of) the Authority or (if so required by the Authority by notice to the Operator) to the Successor Operator, all of the books and records, Authority's property, and property leased or licensed to Authority, in its possession or under the Operator's control.

(e) The Operator shall transfer to the Successor Operator, not later than the date of Termination of this Contract or the expiration of the Transition Period, its rights as the Operator under all purchase orders and Sub-Contracts entered into by the Operator along with entire intellectual property rights, non-proprietary drawings, specifications and other documents prepared by it or its Sub-Contractors, concerning the operation and maintenance of the equipment, items and materials required for performance of the O&M Services and O&M Manuals and all other documents, which are required to be prepared and submitted by the Operator as per the terms of this Contract. At all times until such transfer is completed, the Operator shall hold its rights and interests thereunder for the account and to the order of the Authority, Successor Operator or Authority's designate. The Operator shall execute all documents and instruments and take all other actions reasonably necessary or requested by the Authority or the Successor Operator to assign and vest in the Authority, all rights, benefits, interest, and title in connection with such Sub-Contracts.

21. GOVERNING LAW AND JURISDICTION

21.1 *Governing Law*

This Contract will be governed by and interpreted in accordance with laws of India.

21.2 ***Jurisdiction***

Subject to the provisions of Clause 22.2, the courts of New Delhi, shall have exclusive jurisdiction.

22. DISPUTE RESOLUTION

22.1 ***Amicable Settlement***

If any claim, dispute or disagreement of any kind whatsoever arising between the Authority and the Operator, in connection with or arising out of this Contract, including without prejudice to the generality of the foregoing, any question regarding its existence, validity, Termination, or execution and whether before or after the Termination, abandonment or breach of this Contract ("**Dispute**"), then the Parties will seek to resolve the Dispute by mutual consultation, within 21 (twenty one) days of issue of notice by either Party intimating the occurrence of such Dispute. If the Parties fail to resolve the Dispute by mutual consultation within the above period after notice of the Dispute by one Party to the other Party, then, the provisions of Clause 22.2 will apply and the Dispute shall be resolved through arbitration as per the procedure prescribed therein.

22.2 ***Arbitration***

22.2.1 If any Dispute is not resolved by the Parties pursuant to Clause 22.1 within 21 (twenty-one) days of the notice of the Dispute, then either Party may provide notice to the other Party, of its intention to commence arbitration, as hereinafter provided, as to the matter in Dispute, and no arbitration in respect of the said Dispute will be commenced unless such notice is provided.

22.2.2 Any Dispute in respect of which a notice of intention to commence arbitration has been provided will be finally settled by arbitration.

22.2.3 Any Dispute submitted by a Party to arbitration will be heard by an arbitration panel composed of 3 (three) arbitrators, to be constituted in accordance with the provisions of this Clause 22.2.

22.2.4 The Authority and the Operator will each appoint 1 (one) arbitrator and the said 2 (two) arbitrators will jointly appoint the third arbitrator, who will chair the arbitration panel.

22.2.5 If one Party fails to appoint its arbitrator within 30 (thirty) days after the other Party has named its arbitrator, then, the appointment of such arbitrator shall be governed by the provisions of the Arbitration and Conciliation Act, 1996.

22.2.6 If the 2 (two) arbitrators do not succeed in appointing a third arbitrator within 30 (thirty) days after the latter of the 2 (two) arbitrators has been appointed, the third arbitrator will be appointed as per the provisions of the Arbitration & Conciliation Act, 1996.

22.2.7 If for any reason an arbitrator is unable to perform its function, the mandate of the arbitrator will terminate in accordance with the provisions of Applicable Law.

22.2.8 Arbitration proceedings under this Clause 22.2 will be conducted in accordance with the Arbitration and Conciliation Act, 1996 and rules made thereunder as may be amended, modified, or supplemented from time to time in English language. The seat of the arbitration proceedings shall be New Delhi.

22.2.9 The arbitrators will provide a written and reasoned award. The decision of a majority of the arbitrators (or the third arbitrator chairing the arbitration panel, if there is no such majority) will be final and binding and will be enforceable in any court of competent jurisdiction as decree of the court. The Parties hereby waive any objections to or claims of immunity from such enforcement.

22.3 ***Performance of Obligations***

Notwithstanding the reference of any Dispute to be resolved through arbitration pursuant to this Clause 22, the Parties will continue to perform their respective obligations under this Contract, unless they otherwise agree.

23. MISCELLANEOUS

23.1 ***Notices***

23.1.1 All notices, communication, statement, request or correspondence, reports, certificates or other communication to be provided under this Contract will be in writing in English Language, and will be sent by personal delivery (against receipt), special courier, registered post with acknowledgment due, facsimile or electronic mail to the address of the relevant Party specified below:

<u>If to the Authority</u>:

Designation: [Chairman]
Address: A-13, Sector – 1, Noida – 201 301, Uttar Pradesh
Tel No.: +91 [_____]
E-Mail: [_____]
Facsimile: +91 [_____]

<u>If to the Operator</u>:

Designation: [_____]
Address: [_____]
[_____]
Tel No.: +91 [_____]
E-Mail: [_____]
Facsimile: +91 [_____]

23.1.2 Any notice sent by personal receipt or registered mail or overnight courier shall be deemed to be given, upon written acknowledgement of receipt by an officer or other duly authorized employee, agent or representative of the addressee.

23.1.3 Any notice sent by electronic mail shall be deemed to be received upon receiving a read receipt followed by registered mail or courier.

23.1.4 Any notice sent by facsimile shall be deemed to be delivered upon completion of transmission as long as the sender's facsimile machine creates and the sender retains a transmission report showing successful transmission.

23.1.5 In case the date of receipt not being a Business Day or is received after 1700 hrs on a Business Day, notice will be deemed to have been received on the next Business Day. Either Party may change its address, telephone or facsimile number, electronic mail address and addressee for receipt of such notices by 7 (seven) days' notice to the other

Party.

23.1.6 Notices will be deemed to include any approvals, consents, instructions, letters, claims, promises, communications, orders and certificates to be provided under this Contract.

23.2 *Entire Agreement*

This Contract constitutes the entire agreement between the Parties with respect to the subject matter of Contract and supersedes all communications, negotiations and agreements (whether written or oral) of Parties with respect hereto made prior to the date of Contract.

23.3 *Amendment*

No amendment or other variation of this Contract will be effective unless it is in writing, is dated, expressly refers to this Contract, and is signed by a duly authorized representative of each Party.

23.4 *Independent Operator*

The Operator will be an independent contractor performing this Contract. Subject to the provisions of this Contract, the Operator will be solely responsible for the manner in which this Contract is performed. The Operator's Staff and Sub-Contractors will be under the complete control of the Operator and will not be deemed to be employees of the Authority, and nothing contained in this Contract or in any Sub-Contract awarded by the Operator will be construed to create any contractual relationship between any such employees, representatives or Sub-Contractors and the Authority.

23.5 *Non-Waiver*

23.5.1 Subject to Clause 23.5.3, no relaxation, forbearance, delay or indulgence by either Party in enforcing any of the terms and conditions of this Contract or the granting of time by either Party to the other will prejudice, affect or restrict the rights of that Party under this Contract, nor will any waiver by either Party of any breach of Contract operate as waiver of any subsequent or continuing breach of Contract.

23.5.2 Neither any inspection by the Authority or Authority's Personnel, nor any order, instruction, direction or issue of any certificate by the Authority for payment of money under this Contract nor any exercise by the Authority of the rights of the Operator will operate as a waiver of any provision of this Contract or of any power reserved to the Authority or any right to Damages provided pursuant to this Contract, nor will any waiver of any breach in this Contract be held to be a waiver of any other subsequent breach.

23.5.3 Any waiver of a Party's rights, powers or remedies under this Contract must be in writing, must be dated and signed by an authorized representative of the Party granting such waiver, and must specify the right and the extent to which it is being waived.

23.6 *Assignment*

23.6.1 Assignment by the Operator

Save and except for the purpose of financing its obligations under this Contract, the Operator will not, without the prior consent of the Authority, assign, mortgage or charge to any Third Party, this Contract or any part thereof, or any right, benefit, obligation or interest therein or thereunder.

23.6.2 Assignment by the Authority

The Operator hereby consents to the creation by the Authority, of a security assignment, mortgage or charge of its rights and interests, including any security received under this Contract in favour of any Person as may be informed by the Authority and hereby undertakes to execute upon the request of the Authority such documents as may be required by the Authority to give effect to any such assignment.

23.7 *Severability*

The provisions of this Contract are severable. If any provision or condition of this Contract is prohibited or rendered invalid or unenforceable, such prohibition, invalidity or unenforceability will not affect the validity or enforceability of any other provisions and conditions of this Contract. The Parties agree in such circumstances to negotiate an equitable amendment to the provisions of this Contract to give effect to the original intention of the Parties.

23.8 *No Partnership or Agency*

23.8.1 Nothing in this Contract will constitute or be deemed to constitute any agency, partnership, joint venture, unincorporated association, co-operative entity or other joint relationship between the Authority and the Operator for any purpose.

23.8.2 Nothing in this Contract is intended to confer any rights/remedies under or by reason of this Contract on any Third Party.

23.9 *Language*

This Contract, all correspondences and communications to be provided and all other documentation to be prepared and supplied under and pursuant to this Contract will be written in the English language and this Contract will be construed and interpreted in accordance with that language. If any correspondence or communications are prepared in any language other than the English language, the English translation of such documents, correspondences or communications will prevail in matters of interpretation.

23.10 *Counterparts*

This Contract will be signed in 2 (two) originals and 1 (one) original, and each will be retained by the Authority and the Operator.

23.11 *Survival*

The relevant provisions of Clause 8 (*User Fees and Revenue Share*), Clause 10 (*Securities*), Clause 15 (*Representations and Warranties*), Clause 16 (*Functional Guarantees and Damages*), Clause 17 (*Indemnity),* Clause 20.5 (*Consequences Following Termination*), Clause 21 (*Governing Law and Jurisdiction*), Clause 22 (*Dispute Resolution*) and Clause 23.1 *(Notices)* and Clause 23.8 *(No Partnership or Agency)* will survive Termination of this Contract, if applicable.

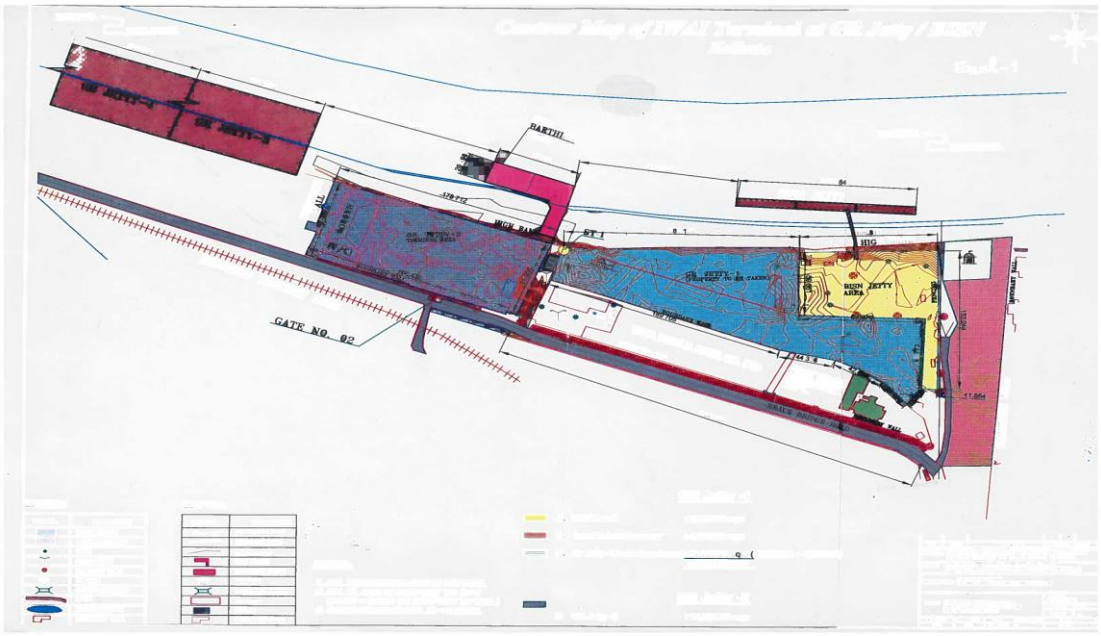
IN WITNESS WHEREOF this Contract has been executed by the duly authorized representatives of the Parties as of the day and year 1st (first) above written on page 1 (one) of this Contract.

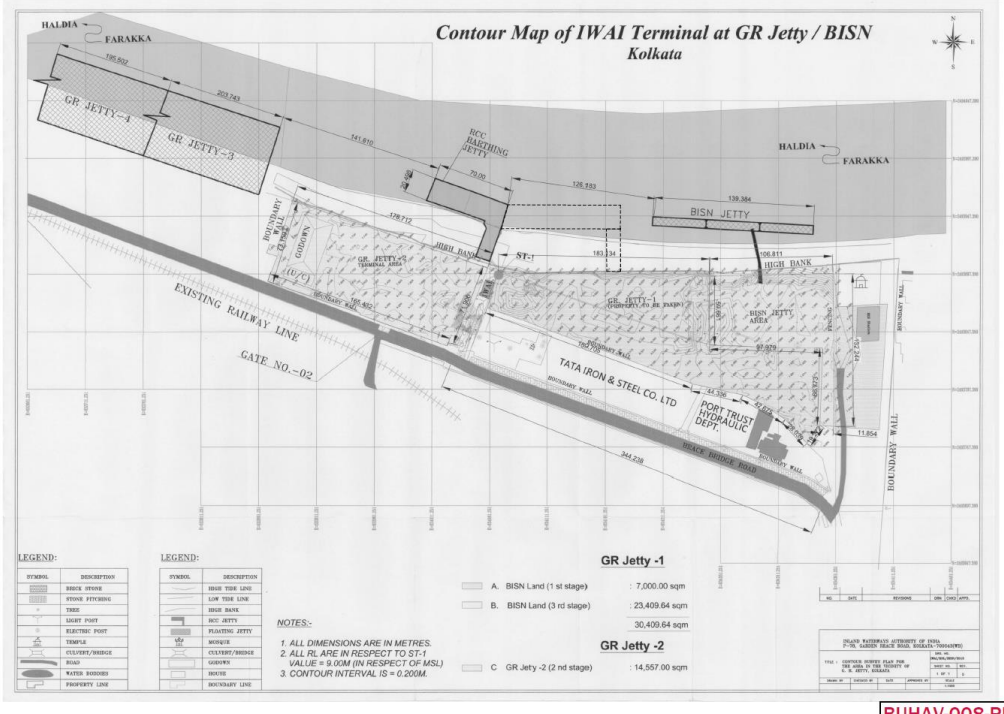
By: [_____]	By: [_____]
Name:	Name:
Title:	Title:
Authorised by [_____]	Authorised by Board Resolution dated [_____]
For and on behalf of the	For and on behalf of the
INLAND WATERWAYS AUTHORITY OF INDIA	**[_____]**

SCHEDULE 1
Details of Terminals

A: Kolkata Terminal

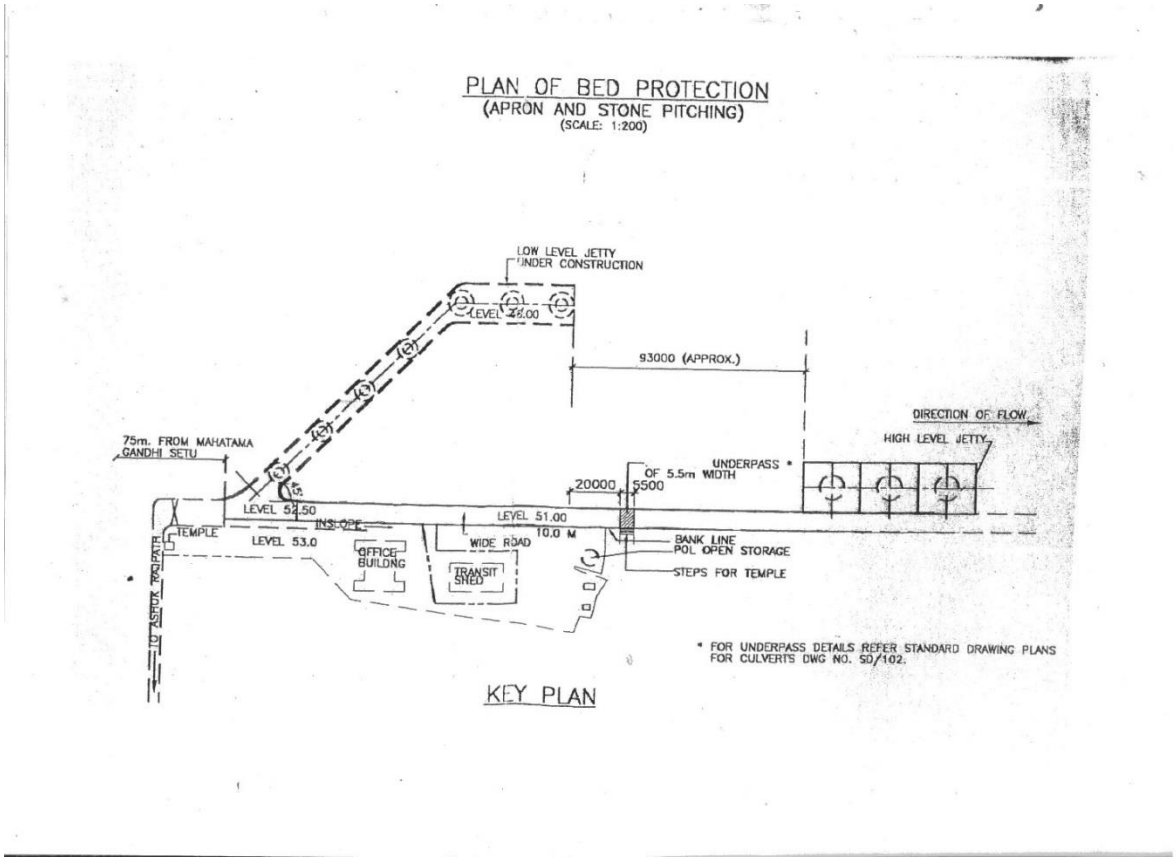
I. GPS-Co-ordinates	**22°32'45"N**
	88°18'12" E





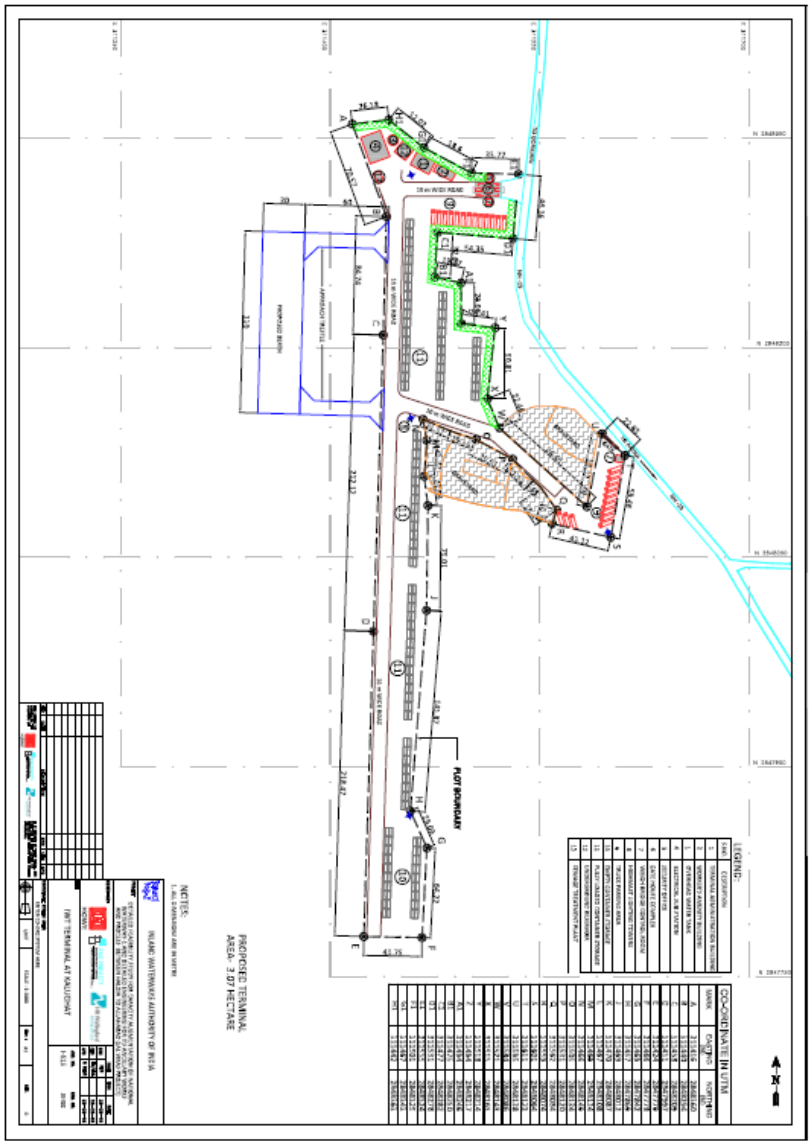
B: <u>Gaighat Termainl</u>

I. GPS-Co-ordinates		**25°36'48" N**
		85°12'11" E



C: <u>Kalughat Termainl</u>

The approximate location parameters and the tentative layout of the Kalughat Terminal are as follows:



For the avoidance of doubt, it is hereby clarified that the location parameters and the layout of the Kalughat Terminal provided above are for proximate identification and understanding of the terminal.

SCHEDULE 2
Technical Specifications

The below mentioned list of equipment is indicative:

Terminal	Equipment	Parameter	Minimum Requirement	Remarks
Terminal in Garden Reach, Kolkata	At least 1 Nos. Mobile Harbour Crane	Safe Working Load	36 tons at 17 m outreach	
		Operating Cycles	30 cycles per operating hour	
		Minimum Design Discharge rate	500 ton/hour	For bulk handling
		Average Design Discharge rate	350 tons/hour	For bulk handling
	At least 1 Nos. Reachstackers	Lifting Capacity	45 tons	
		Stacking Height	4 containers	
Terminal in Gaighat, Patna	At least 1 Nos. Mobile Harbour Crane	Safe Working Load	27 tons (under spreader) at 17m outreach	Mobile capacity to travel from High to Low jetty and vice-versa
		Operating Cycles	30 cycles per operating hour	
		Minimum Design Discharge rate	500 ton/hour	For bulk handling
		Average Design Discharge rate	350 tons/hour	For bulk handling
	At least 1 Nos. Reachstackers	Lifting Capacity	45 tons	Compact Version
		Stacking Height	4 containers	

SCHEDULE 3
Functional Guarantees and Damages

Operator must ensure that the organisational set-up and the equipment is geared to be able to comply and meet the requested performance levels.

Key Performance Indicator	Threshold	Measurement	Liquidated Damages by Operator to Authority	Period of Applicability
Equipment Reliability	Greater than 95% (Threshold Equipment Reliability = 95%)	• Frequency: Quarterly • Actual Equipment Reliability = (1 – [Breakdown Hours / Effective Working Hours]) X 100 Wherein: **Breakdown Hours** means "Time that equipment was not available during required operation in the preceding quarter" **Effective Working Hours** means "Time of effective use of equipment in the preceding quarter"	(Threshold Equipment Reliability - Actual Equipment Reliability) X Effective Working Hours X 1/100 X hourly Berthing Charges as prescribed in the Fee Regulations	Applicable starting from the year after the 5th (fifth) anniversary of taking-over of the relevant Terminals till the end of the Contract
Average Container Moves	Greater than 15 Containers per hour (Threshold Average Container Moves = 15 Containers per hour)	• Frequency: Quarterly • Relevant for Cranes only • Actual Average Container Moves = Effective Working Hours divided by Containers Handled Wherein	(Threshold Average Container Moves - Actual Average Container Moves) X Effective Working Hours X hourly Berthing Charges as prescribed in the Fee Regulations	Applicable starting from the year after the 5th (fifth) anniversary of taking-over of the relevant Terminals till the end of the Contract

Key Performance Indicator	Threshold	Measurement	Liquidated Damages by Operator to Authority	Period of Applicability
		Effective Working Hours means "The summation of the total time of effective use of the crane under consideration in the preceding quarter" **Containers Handled** means "The total number of containers handled by the Operator in the preceding Quarter"		
Average Discharge Rate	Greater than 300 Tons/Hour (Threshold Average Discharge Rate = 300 Tons/Hour)	• Frequency: Quarterly • Measures discharge flow from hold to storage place. • Actual Average Discharge Rate = Effective Working Hours divided by Cargo Handled Wherein **Effective Working Hours** means "The summation of the total time of effective use of bulk cargo handling equipment in the preceding quarter" **Cargo Handled** means "The total cargo handled	(Threshold Average Discharge Rate - Actual Average Discharge Rate) X Effective Working Hours X hourly Berthing Charges as prescribed in the Fee Regulations	Applicable starting from the year after the 5th (fifth) anniversary of taking-over of the relevant Terminals till the end of the Contract

Key Performance Indicator	Threshold	Measurement	Liquidated Damages by Operator to Authority	Period of Applicability
		by the Operator in the preceding Quarter in Tons"		
Minimum Guaranteed Tonnage	Greater than or equal to 210,000 tons in the year following the 4th Anniversary of the Appointed Date. In the subsequent years, the threshold shall increase by the annual real Gross Domestic Product (GDP) growth rate of the Republic of India. (Threshold Guaranteed Tonnage = 210,000 tons in the year following the 4th Anniversary of the Appointed Date. In the subsequent years, the threshold shall increase by the annual real Gross Domestic Product (GDP) growth rate of the Republic of India.)	• Frequency: Annual • Cargo Handled means "The total cargo handled by the Operator, all the Terminals combined, in the preceding Accounting Year. In case of containers, the conversion factor to be used is 15 tons per TEU"	(Threshold Guaranteed Tonnage – Actual Tonnage) X 1/15 X 2238 X Revenue Share	Applicable starting in the year following the 4th Anniversary of the Appointed Date till the end of the Contract.

All damages mentioned above shall be greater than 0 (Zero)

SCHEDULE 4
Reporting Requirements

The Operator shall submit the periodic structured reports, with due self–certification, of the items and information required to be disclosed by it as per the terms of the Contract.

1. Quarterly Reporting

The Monthly Statement shall include the following:

(a) *Financial Reporting*

- Revenues
  - Statutory Fees
  - Service fees
  - Other revenues

  Revenue calculation must be provided for the relevant period in sufficient detail to verify accuracy and coherence with Operational reporting and Tariff schedules.

- Costs
  - Costs incurred for maintenance of
    - Authority's Infrastructure
    - Authority's Equipment

  Cost reporting must be provided for the relevant period in sufficient detail to verify accuracy and coherence with Operational reporting and budget)

(b) *Operational Reporting*

- Throughput (in TEU and or Tons) landside and waterside
  - Landside
  - Riverside
  - Specific IWT Throughput
  - Status of Functional Guarantees as stipulated in Schedule 3

  Throughput reporting must be provided for the relevant period in sufficient detail and coherent structure to ensure performance-follow-up versus planned and versus KPI thresholds.

  Reporting should also contain description of the cargo (commodity + specific detail), packing unit type (such as containers, bundles and pieces), Number of units, Tons (Gross, Net), Volumes (where relevant) in order to match operational reporting and tariff schedules

- Stock reporting
  - TEU on site (as on the end of the reporting period)
  - Tons on site (as on the end of the reporting period)

- Damages
  - Incident reporting of previous period

  Damage reporting should be provided, describing the incident itself, which

caused the damage, including the financial damage estimate, and measures taken to avoid repetition.

- Accidents
  - Incident reporting of previous period

  Accident reporting should be provided, describing the incident itself, and measures taken to avoid repetition.

- Status of Functional Guarantees as stipulated in Schedule 3
  - Calculation of Liquidate Damages payable by the Operator to the Authority for non-adherence to the Functional Guarantees stipulated in Schedule 3.

2. Annual Reporting

Annual reporting to summarize all monthly and quarterly reporting.

SCHEDULE 5
Government Applicable Permits

The Applicable Permits to be obtained by the Authority are as under:

1. Approval under Section 13 of the IWAI Act, for the execution and delivery of this Contract;

2. Environmental Clearance in accordance with the provisions of Environment Impact Assessment Notification, 2006, for each of the Terminals;

3. Approval from Central Empowered Committee constituted by the Supreme Court in respect of Kalughat Terminal, in accordance with the provisions of Wildlife Protection Act-1972, for each of the Terminals;

4. Forest Clearance in accordance with the provisions of the Forest (Conservation) Act, 1980, as applicable;

5. Building permits from the Patna Municipal Corporation under the provisions of Bihar Building Bye-Laws, 2014, in respect of construction activities at Gaighat Terminal and Kalughat Terminal;

6. No-objection certificate in respect of the building from the Bihar Fire Service Directorate under the Bihar Fire Service Act, 2014;

7. Building permits under from the Municipal Commissioner under the West Bengal Town and Country (Planning and Development) Act, 1979 and Kolkata Municipal Corporation Building Rules, 2009;

8. License from the Collector of Stamp Revenue under the West Bengal Fire Services Act, 1950 for establishing Warehouse at Kolkata Terminal;

9. Clearance under CRZ Notification, 2011 (superseding CRZ Notification, 1991).

SCHEDULE 6
Format of Contract Performance Security

[To be executed on stamp paper of an appropriate value]

To,

Inland Waterways Authority of India,
Head office at A-13, Sector – 1,
Noida – 201 301, Uttar Pradesh

Sub: Terminal Services Contract dated March [_____], 2016 ("Contract").

Whereas:

A. [_____] ("**Operator**") and Inland Waterways Authority of India ("**Authority**") have entered into a Terminal Services Contract on [_____] ("**Contract**"), whereby the Operator has agreed to perform the O&M Services (*as defined in the Contract*), in accordance with the terms and conditions specified in the Contract.

B. The Contract requires the Operator to furnish a Contract Performance Security to the Authority for a sum of Rs. 90,00,000/- (Rupees Ninety Lakh) ("**Guaranteed Amount**") as a security for due and faithful performance of its obligations, under and in accordance with the Contract ("**Bank Guarantee**").

C. We, [_____] through our Branch at [_____] ("**Bank**") have agreed to furnish this Bank Guarantee by way of Contract Performance Security.

NOW, THEREFORE, the Bank hereby, unconditionally, and irrevocably, guarantees and affirms as follows:

1. Unless otherwise defined herein, the capitalized terms used herein will mean to have the same meaning as ascribed to such term under the Contract.

2. The Bank hereby unconditionally and irrevocably agrees and undertakes to pay to the Authority, upon its mere first written demand, and without any demur, reservation, recourse, contest or protest and without any reference to the Operator, such sum or sums upto an aggregate sum of the Guaranteed Amount as the Authority will claim, without the Authority being required to prove or to show grounds or reasons for its demand and/or for the sum specified therein.

3. A letter from the Authority merely raising a demand without any specific reference to any provision of the Contract, shall be conclusive, final and binding on the Bank and the Bank shall not be entitled to question or go into the validity, propriety, reasonableness of the demand made by the Authority.

4. The Bank further agrees that the Authority shall be the sole judge as to whether the Operator was required to pay any amounts to the Authority under the Contract or not and its decision shall be final, and binding on the Bank, notwithstanding any difference between the Authority and the Operator, or any dispute between them pending before any court, tribunal, arbitrators or any other authority or body, or by the discharge of the Operator for any reason whatsoever.

5. All payments to be made by the Bank under this Bank Guarantee shall be made without

set-off or counter claim and shall be made without any deduction whatsoever.

6. In order to give effect to this Bank Guarantee, the Authority shall be entitled to act as if the Bank were the principal debtor and any change in control, change in constitution, amalgamation, merger, reorganization, liquidation, bankruptcy, dissolution, demerger, or winding up or other change in the constitution of the Operator and/or the Bank shall not in any way or manner affect the liability or obligation of the Bank under this Bank Guarantee.

7. It shall not be necessary, and the Bank hereby waives any necessity, for the Authority to proceed or raise any claim or demand against the Operator before presenting to the Bank its demand under this Bank Guarantee.

8. The Authority shall have the liberty, without affecting in any manner the liability of the Bank under this Bank Guarantee, to vary at any time, the terms and conditions of the Contract or to extend the time or period for the compliance with, fulfilment and/or performance of all or any of the obligations of the Operator contained in the Contract or to postpone for any time, and from time to time, any of the rights and powers exercisable by the Authority against the Operator, and either to enforce or forbear from enforcing any of the terms and conditions contained in the Contract and/or the rights or remedies available to the Authority, and the Bank shall not be released from its liability and obligation under these presents by any exercise by the Authority of the liberty with reference to the matters aforesaid or by reason of time being given to the Operator or any other forbearance, indulgence, act or omission on the part of the Authority or of any other matter or thing whatsoever which under any Law relating to sureties and guarantors would but for this provision have the effect of releasing the Bank from its liability and obligation under this Bank Guarantee and the Bank hereby waives all of its rights under any such law.

9. Neither the Bank nor the Operator shall be entitled to assign its rights and/or obligations hereunder to any other Person.

10. This Bank Guarantee is in addition to and not in substitution of any other guarantee or security now or which may hereafter be held by the Authority in respect of or relating to the Contract or for the fulfilment, compliance and/or performance of all or any of the obligations of the Operator under the Contract.

11. Notwithstanding anything contained hereinbefore, the liability of the Bank under this Bank Guarantee is restricted to the Guaranteed Amount and this Bank Guarantee will remain in force for the period specified in Para 12 below and unless a demand or claim in writing is made by the Authority on the Bank under this Bank Guarantee, not later than 3 (three) months from the date of expiry of this Bank Guarantee, all rights of the Authority under this Bank Guarantee shall be forfeited and the Bank shall be relieved from its liabilities hereunder.

12. The Bank Guarantee shall remain in full force and effect upto [_____] which period may be extended for a further period as may be required under the Contract, with a claim period upto 3 (three) months beyond its validity, for the purposes of this Bank Guarantee. After the expiry of the period agreed in the Contract and upon request made by the Operator for release of the Bank Guarantee along with the particulars required hereunder, the Authority shall release the Bank Guarantee, in accordance with the terms of the Contract.

13. The Bank undertakes not to revoke or modify this Bank Guarantee during its currency,

except with the previous express consent of the Authority in writing, and declares and warrants that it has the power to issue this Bank Guarantee and the undersigned has full powers to do so on behalf of the Bank.

14. The Bank hereby waives all its rights of suretyship which are inconsistent with any of the provisions hereof and the Bank will have no right of subrogation against the Operator unless all the dues of the Authority under the Guarantee are fully paid to it.

15. The Bank agrees that any notice under or pursuant to this Bank Guarantee can be served upon it at its any of the branch offices at Mumbai by registered post with acknowledgment due or e-mail or facsimile and shall be deemed to have been served on the date of receipt of acknowledgment or the date of transmission provided that a confirmation of receipt is obtained within 2 (two) days after the transmission but before 5 PM. If the acknowledgment/ confirmation is received at any time after 5 PM, the same shall be deemed to have been received on the following day. Any notice delivered personally (against receipt) shall be deemed to have been delivered on the date of the dispatch and receipt by the addressee.

16. Notwithstanding anything to the contrary mentioned herein and without prejudice to the Authority's other rights under Law or otherwise, the Authority shall be entitled to charge or receive interest from the Bank at the rate of 18% (eighteen percent) per annum at the quarterly rest basis, if the Bank fails to pay the Guaranteed Amount or any amount, as per the demand raised by the Authority by the date notified by the Authority, and the Bank shall be bound to make such payment of interest in addition to the said Guaranteed Amount to the Authority.

17. Furthermore, in the case of refusal or failure of the Bank to pay the Guaranteed Amount to the Authority upon demand, and the default persisting for more than 10 (ten) days, the Authority shall be entitled to recover from the Bank, court fees, legal expenses and other consequential expenses which the Authority may be put to as a result of the Authority having to enforce this guarantee upon the Bank.

18. All the aforesaid payment shall be made at or paid to the Authority at its New Delhi Office and the courts in New Delhi alone will have jurisdiction to entertain all claims arising on or relating to such guarantee as is provided herein to the Authority.

19. This Bank Guarantee shall come into force with immediate effect.

20. In view of the above, it is hereby confirmed that:

    (a) The Bank's liability under this Bank Guarantee shall not exceed the Guaranteed Amount, i.e., an amount of Rs. 90,00,000/- (Rupees Ninety Lakh).

    (b) This Bank Guarantee is valid up to [_____], with a claim period of 3 (three) months after such expiry.

    (c) The Bank shall be liable to pay any amount under this Bank Guarantee or part thereof upon the receipt of a written claim or demand from the Authority under this Bank Guarantee on or before the end of 3 (three) months from the expiry of the validity of this Bank Guarantee, i.e., by [_____].

Signed and sealed this [_____] day of [_____], 20[___] at [_____].

SIGNED, SEALED AND DELIVERED

For and on behalf of
the BANK by:

(Signature)
(Name)
(Designation)
(Code Number)
(Address)

NOTES:

i. The Bank Guarantee should contain the name, designation and code number of the officer(s) signing the Bank Guarantee.

ii. The address, telephone number and other details of the Head Office of the Bank as well as of issuing Branch should be mentioned on the covering letter of issuing Branch.

SCHEDULE 7
Format of Escrow Agreement

[To be executed on stamp paper of an appropriate value]

THIS ESCROW AGREEMENT ("**Agreement**") is entered into at [_____] on this the [_____] day of [_____], 20[__]

BY AND AMONGST:

[_____], a company incorporated under the provisions of the [Companies Act, 2013], having corporate identity number [_____] and its registered office at [_____] (hereinafter referred to as the "**Operator**", which expression shall, unless repugnant to the context or meaning thereof, include its successors, permitted assigns and substitutes).

AND

[_____] (insert name and particulars of the Escrow Bank), having its registered office at [_____] and amongst other places a branch office at [_____] (hereinafter referred to as the "**Escrow Bank**" which expression shall, unless repugnant to the context or meaning thereof, include its successors and assigns);

AND

INLAND WATERWAYS AUTHORITY OF INDIA, a statutory body established by the Government of India under the provisions of Inland Waterways Authority of India Act, 1985, having its head office at A-13, Sector -1, Noida – 201 301, Uttar Pradesh, represented by its [Chairman] (hereinafter referred to as the "**Authority**", which expression shall, unless repugnant to the context or meaning thereof, include its successors and assigns).

As the context may require, the Operator, the Escrow Bank and the Authority will hereinafter be referred to individually as a "**Party**" and collectively as the "**Parties**".

WHEREAS:

A. The Authority has entered into a Terminal Services Contract dated [_____] with the Operator ("**Contract**") for the performance of the O&M Services (*as defined in the Contract*) at the Terminals, in accordance with the terms and conditions as set forth in the Contract.

B. The Contract requires the Operator to establish an Escrow Account, *inter alia*, on the terms and conditions stated therein.

C. Accordingly, the Parties are entering into this Agreement setting forth the terms and conditions for the opening of the Escrow Account (*as defined below*) with the Escrow Bank and operation of the same.

NOW THEREFORE, in consideration of the foregoing and the respective covenants and agreements set forth in this Agreement, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound hereby, the Parties agree 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.

"**Contract**" means the Terminal Services Contract referred to in Recital A above, and shall include any amendments made thereto in accordance with the provisions therein.

"**Cure Period**" means the period specified in this Agreement for curing any breach or default of any provision of this Agreement by the Operator, and shall commence from the date on which a notice is delivered by the Authority to the Operator asking the latter to cure the breach or default specified in such notice.

"**Escrow Account**" means an escrow account established in terms of and under this Agreement.

"**Payment Date**" means, in relation to any payment specified in Clause 4.1, the date(s) specified for such payment.

1.2 Interpretation

1.2.1 The words and expressions beginning with capital letters and defined in this Agreement has the meaning ascribed thereto herein, and the capital words and expressions used in this Agreement and not defined herein but defined in the Contract shall, unless repugnant to the context, have the meaning ascribed thereto in the Contract.

1.2.2 References to Clauses are, unless stated otherwise, references to Clauses of this Agreement.

1.2.3 The rules of interpretation stated in Clause 1.2 and Clause 1.3 of the Contract shall apply *mutatis mutandis*, to this Agreement.

2. ESCROW ACCOUNT

2.1 Escrow Bank to act as Trustee

2.1.1 The Operator hereby appoints the Escrow Bank to act as trustee for the Authority and the Operator 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 Operator 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 Authority and the Operator, and applied in accordance with the terms of this Agreement. No Person other than the Authority and the Operator 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 Operator or the 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 Authority and the Operator 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 the Contract, and in any case prior to the Appointed Date, the Operator 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 Escrow Bank and the Operator shall agree on the detailed mandates, terms and conditions, and operating procedures for the Escrow Account, but in the event of any conflict or inconsistency between this Agreement and such mandates, terms and conditions, or procedures, this Agreement shall prevail.

2.4 Escrow Bank's Fee

The Escrow Bank shall be entitled to receive its fee and expenses in an amount, and at such times, as may be agreed between the Escrow Bank and the Operator.

2.5 Rights of the Parties

Save and except as otherwise provided in the Contract, the rights of the Authority and the Operator in the monies held in the Escrow Account are set forth in their entirety in this Agreement and the Authority and the Operator shall have no other rights against or to the monies in the Escrow Account.

3. DEPOSITS INTO ESCROW ACCOUNT

3.1 Deposits by the Operator

3.1.1 The Operator agrees and undertakes that it shall deposit or cause to be deposited all inflows and receipts arising due to the performance of the O&M Services or any right granted to it pursuant to this Contract, into the Escrow Account:

(a) all monies received in relation to the Terminals due to performance of the O&M Services or otherwise including but not limited to Service Charges and Other Charges, amounts received from shareholders or any other Person or otherwise, *provided however that,* the Statutory Charges collected by the Operator or the proceeds of any refundable payment deposits, capital receipts and insurance claims shall not be required to be deposited in the Escrow Account and further,

the Statutory Charges shall be directly deposited in the account instructed by the Authority from time to time;

(b) all other revenues from or in respect of the performance of the O&M Services, including the proceeds of any rentals, etc.; and

(c) all payments by the Authority, after deduction of any outstanding Revenue Share.

3.1.2 The Operator may, at any time, make deposits of its other funds into the Escrow Account, *provided that* the provisions of this Agreement shall apply to such deposits.

3.2 Intentionally Left Blank

3.3 Interest on Deposits

The Escrow Bank agrees and undertakes that all interest accruing on the balances of the Escrow Account shall be credited to the Escrow Account, provided that the Escrow Bank shall be entitled to appropriate therefrom the fee and expenses due to it from the Operator in relation to the Escrow Account and credit the balance remaining to the Escrow Account.

4. WITHDRAWALS FROM ESCROW ACCOUNT

4.1 Withdrawals

4.1.1 At the beginning of every month, the Operator by written instructions, determine that the Escrow Bank shall withdraw amounts from the Escrow Account and appropriate them in the following order for making due payments, and if such payments are not due in any month, then retain such monies and pay out therefrom on the Payment Date(s):

(a) Revenue Share due and payable to the Authority, less any Damages payable by the Authority to the Operator, which has not been disputed/ contested by the Authority for a period of 3 (three) months from the date of receipt of any such claim from the Operator, and if any such claim has been disputed/ contested by the Authority, then, upon the completion of such adjudication proceedings;

(b) all payments and/ or the Damages payable to the Authority, which has not been disputed/ contested by the Operator for a period of 3 (three) months from the date of receipt of any such claim from the Authority, and if any such claim has been disputed/ contested by the Operator, then, upon the completion of such adjudication proceedings; and

(c) balance, if any, in accordance with the instructions of the Operator.

4.1.2 No later than 60 (sixty) days prior to the commencement of each Accounting Year, the Operator shall provide to the Escrow Bank, with prior written approval of the Authority, details of the amounts likely to be required for each of the payment obligations set forth in this Clause 4.1, provided that such amounts may be subsequently modified, with prior written approval of the Authority, if fresh information received during the course of the Accounting Year makes such modification necessary.

4.2 Withdrawals upon Termination

Upon Termination of the Contract, 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) outstanding Revenue Share;

(b) all payments and/ or Damages payable to the Authority;

(c) statutory payments, all taxes due and payable by the Operator for and in respect of the performance of the O&M Services at the Terminals;

(d) incurred or accrued expenses for the performance of the O&M Services;

(e) any other payments required to be made under the Contract; and

(f) balance, if any, in accordance with the instructions of the Operator.

4.3 Application of Insufficient Funds

Funds in the Escrow Account shall be applied in the serial order of priority, set forth in Clause 4.1 and Clause 4.2, as the case may be. If the funds available are not sufficient to meet all the requirements, the Escrow Bank shall apply such funds in the serial order of priority until exhaustion thereof.

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

Atleast 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 Operator as to the relevant Payment Dates), the Escrow Bank shall notify the Authority 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 Operator upon a certificate signed by or on behalf of the Operator;

(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 Authority of any notice or document received by it in its capacity, as the Escrow Bank from the

Operator, or any other Person hereunder or in connection herewith; and

(d) shall, within 5 (five) Business Days after receipt, deliver a copy to the Operator of any notice or document received by it from the Authority 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. 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, if any 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 Operator ("**Escrow Default**"), unless such event of default has occurred as a result of Force Majeure or any act or omission of the Authority:

(a) the Operator commits breach of this Agreement by failing to deposit any receipts into the Escrow Account, as provided herein, and fails to cure such breach by depositing the same into the Escrow Account within a Cure Period of 5 (five) Business Days;

(b) the Operator causes the Escrow Bank to transfer funds to any account of the Operator in breach of the terms of this Agreement and fails to cure such breach by depositing the relevant funds into the Escrow Account in which such transfer should have been made, within a Cure Period of 5 (five) Business Days; or

(c) the Operator commits or causes any other breach of the provisions of this Agreement and fails to cure the same within a Cure Period of 5 (five) Business Days.

6.1.2 The occurrence of an Escrow Default shall be an Operator's event of default under Clause 20.3.2 and the consequences thereof shall be dealt in accordance with the provisions therein.

7. TERMINATION OF ESCROW AGREEMENT

7.1 Duration of the Escrow Agreement

Unless terminated earlier by consent of all the Parties or otherwise in accordance with the provisions of this Agreement, this Agreement shall remain in full force and effect until the Termination of the Contract. Upon the termination of the Contract, the Escrow

Account can be operated by and only in accordance with the instructions of the Authority, as per the Applicable Laws.

7.2 Substitution of Escrow Bank

7.2.1 The Operator may, by not less than 45 (forty-five) days prior notice to the Escrow Bank, the Authority, terminate this Agreement and appoint a new Escrow Bank, *provided that* the new Escrow Bank is acceptable to the Authority and arrangements are made satisfactory to the Authority for transfer of amounts deposited in the Escrow Account, to a new Escrow Account established with the successor Escrow Bank.

7.2.2 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 Operator made on or after the payment by the Operator of all outstanding amounts under the Contract including the payments specified in Clause 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 Operator.

8. INDEMNITY

8.1 General Indemnity

8.1.1 The Operator will indemnify, defend and hold the Authority and Escrow Bank, 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 Operator of any of its obligations under this Agreement or on account of failure of the Operator to comply with Applicable Laws and Applicable Permits.

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

8.1.3 The Escrow Bank will indemnify, defend and hold the Operator 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 Operator's obligations under the Contract, 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.

8.2 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 indemnity under Clause 8.1 or in respect of which it is entitled to reimbursement ("**Indemnified Party**"), it shall notify the other Party responsible for indemnifying such claim hereunder ("**Indemnifying Party**") within 15 (fifteen) days of receipt of the claim, and shall not settle or pay the claim without the prior approval of the Indemnifying Party, which approval shall not be unreasonably withheld or delayed. In the

event that the Indemnifying Party wishes to contest or dispute the claim, it may conduct the proceedings in the name of the Indemnified Party and shall bear all costs involved in contesting the same. The Indemnified Party shall provide all cooperation and assistance in contesting any claim and shall sign all such writings and documents as the Indemnifying Party may reasonably require.

9. GOVERNING LAW AND DISPUTE RESOLUTION

9.1 Governing law and Jurisdiction

This Agreement shall be construed and interpreted in accordance with and governed by the laws of India, and the courts in New Delhi shall have jurisdiction over all matters arising out of or relating to this Agreement.

9.2 Dispute Resolution

9.2.1 If any dispute arises between the Parties, then, either Party may provide notice to the other Party of its intention to commence arbitration, as to the matter in dispute. Any dispute in respect of which a notice of intention to commence arbitration has been provided will be finally settled by arbitration.

9.2.2 Any dispute submitted by a Party to arbitration will be heard by an arbitration panel composed of 3 (three) arbitrators, to be constituted in accordance with the provisions of this Clause 9.2.

9.2.3 Each of the disputing party will appoint 1 (one) arbitrator and the said 2 (two) arbitrators will jointly appoint the third arbitrator, who will chair the arbitration panel. If one Party fails to appoint its arbitrator within 30 (thirty) days after the other Party has named its arbitrator, then, the appointment of such arbitrator shall be governed by the provisions of the Arbitration and Conciliation Act, 1996.

9.2.4 If the 2 (two) arbitrators do not succeed in appointing a third arbitrator within 30 (thirty) days after the latter of the 2 (two) arbitrators has been appointed, the third arbitrator will be appointed as per the provisions of the Arbitration & Conciliation Act, 1996.

9.2.5 If for any reason an arbitrator is unable to perform its function, the mandate of the arbitrator will terminate in accordance with the provisions of Applicable Law.

9.2.6 Arbitration proceedings under this Clause 9.2 will be conducted in accordance with the Arbitration and Conciliation Act, 1996 and rules made thereunder as may be amended, modified, or supplemented from time to time in English language. The seat of the arbitration proceedings shall be New Delhi.

9.2.7 The arbitrators will provide a written and reasoned award. The decision of a majority of the arbitrators (or the third arbitrator chairing the arbitration panel, if there is no such majority) will be final and binding and will be enforceable in any court of competent jurisdiction as decree of the court. The Parties hereby waive any objections to or claims of immunity from such enforcement.

9.2.8 Notwithstanding the reference of any dispute to be resolved through arbitration pursuant to this Clause 9.2, the Parties will continue to perform their respective obligations under this Contract, unless they otherwise agree.

10. MISCELLANEOUS PROVISIONS

10.1 Notices

All notices or other communications to be given or made under this Agreement shall be in writing and shall either be delivered personally or sent by courier or registered post with an additional copy to be sent by facsimile or e-mail. The address for service of each Party, its facsimile number and e-mail address are set out under its name on the signing pages hereto. A notice shall be effective upon actual receipt thereof, save that where it is received after 5.30 PM on a Business Day, or on a day that is not a Business Day, the notice shall be deemed to be received on the first Business Day following the date of actual receipt. Without prejudice to the foregoing, a Party giving or making a notice or communication, by facsimile or e-mail, shall promptly deliver a copy thereof personally, or send it by courier or registered post to the addressee of such notice or communication. It is hereby agreed and acknowledged that any Party, may by notice, change the address to which such notices and communications to it are to be delivered or mailed. Such change shall be effective when all the Parties have notice of it.

10.2 Amendment

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.

10.3 Waiver

10.3.1 Waiver by any Party of a default by another Party in the observance and performance of any provision of or obligations under this Agreement:

(a) shall not operate or be construed as a waiver of any other or subsequent default hereof or of other provisions of or obligations under this Agreement;

(b) shall not be effective unless it is in writing and executed by a duly authorised representative of the Party; and

(c) shall not affect the validity or enforceability of this Agreement in any manner.

10.3.2 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 considered or deemed as waiver of such breach or acceptance of any variation or the relinquishment of any such right hereunder.

10.4 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.

10.5 Survival

10.5.1 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.

10.5.2 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.

10.6 Severability

If for any reason whatsoever, 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.

10.7 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.

10.8 Original Document

This Agreement may be executed in 3 (three) counterparts, each of which when executed and delivered, shall constitute an original of this Agreement.

IN WITNESS WHEREOF this Contract has been executed by the duly authorized representatives of the Parties as of the day and year 1st (first) above written on page 1 (one) of this Contract.

Operator

By: [_____]
Name: [_____]
Title: [_____]
Authorised by [_____]
For and on behalf of the
[_____]

Escrow Bank

By: [_____]
Name: [_____]
Title: [_____]
Authorised by Board Resolution dated [_____]
For and on behalf of the
[_____]

Authority

By: [_____]
Name: [_____]
Title: [_____]
Authorised by [_____]
For and on behalf of the [_____]
INLAND WATERWAYS AUTHORITY OF INDIA