

Operate, Maintain and Manage Contract Agreement

Between

**INLAND WATERWAYS AUTHORITY OF INDIA
(as “Authority”)**

And

[_____]

(as “Contractor”)

For

**Maintenance Dredging for assured Least Available Depth for capacity augmentation
of NW-28 on Operate Maintain and Manage (OMM) Basis**

Dated: [_____]

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CONTRACT

THIS CONTRACT is made at _____ on the _____ day of _____

BETWEEN:

Chairman, Inland Waterways Authority of India, (a body constituted under the provision of the Inland Waterways Authority of India Act, 1985), under the Ministry of Ports, Shipping and Waterways, Government of India and having its Administrative Office at A-13, Sector – 1, Noida – 201301, Uttar Pradesh, hereinafter referred to as “**the Authority**” (which expression shall, unless repugnant to the context or meaning thereof, include its successors and permitted assigns);

AND

_____, a Special Purpose Vehicle (SPV) incorporated under the Companies Act, 2013, and having its registered office at _

_____ hereinafter referred to as “**the Contractor**” (which expression shall, unless repugnant to the context or meaning thereof, include its successors and permitted assigns).

WHEREAS:

(A) The Authority is desirous of capacity augmentation of NW-28 through maintenance dredging of NW-28 for assured Least Available Depth in the notified Navigation Channel on operate, maintain and manage basis;

(B) For the project of maintenance dredging for assured Least Assured Depth in the notified Navigation Channel for capacity augmentation of NW-28 on Operate Maintain and Manage (OMM) Basis, the Authority invited bids from the interested parties in accordance with the Request for Proposal (as defined hereinafter) dated [DD MM YYYY], to shortlist competent parties bid from whom shall be subsequently considered for identifying selected bidder for the Project;

(C) In response to the Request for Proposal, the Authority received proposals from bidders including the one submitted by the Bidder/Consortium;

(D) The Authority, after evaluating all the proposals received by it from qualified bidders, accepted the proposal referred to in recital “(B)” above submitted by the Bidder/Consortium and communicated its acceptance to the Bidder/Consortium vide Letter of Intent for Award of Contract dated [DD MM YYYY].

(E) The Bidder/Consortium has/have incorporated the Contractor as a Special Purpose Vehicle in India, under the Companies Act, 2013 to implement the Project;

(F) Following the issue of the Letter of Intent for Award of Contract, the Authority has agreed to contract to the Contractor to implement the Project on the terms, conditions and covenants hereinafter set forth in this Contract.

NOW, THIS AGREEMENT WITNESSETH AS FOLLOWS:

ARTICLE 1

1. Definitions and Interpretations

1.1. Definitions

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

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

“**Adverse Impact**” shall have the meaning as set forth in Article 13.1.2; (“Affected Party”) shall have the meaning as set forth in Article 14.1;

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

“**Annexure**” means the schedules, supplements or documents, annexed to this Contract.

“**Applicable Laws**” means all laws, brought into force and effect by GOI or any of the state governments, including rules, regulations and notifications made thereunder treaties and

conventions having the force of law, and judgements, decrees, injunctions, writs and orders of any court of record, applicable to this Contract and the exercise, performance and discharge of the respective rights and obligations of the Parties hereunder, as may be in force and effect during the subsistence of this Contract;

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

“Appointed Date” means the date of signing of this Contract

“Authority Event of Default” shall have the meaning as set out under Article 15.2.

“Average Daily Tariff for Waterway Charges” means the amount arrived at by dividing the total Tariff for Waterway Charges collected in the immediately preceding Accounting Year by 365 (three hundred and sixty-five), and increasing the quotient thereof by 3%; provided that the Average Daily Tariff for Waterway Charges for any period prior to completion of the first Accounting Year following COD shall be a simple average of the Tariff for Waterway Charges collected every day during the period between COD and the last day of the month preceding the date on which the event requiring calculation hereof occurred, and in the event that the Tariff for Waterway Charges payable by any segment of vessel has not been realised for any reason, an assessment thereof shall be made by the Independent Engineer to form part of the Average Daily Tariff for Waterway Charges for such period.

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

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

“**Bidder**” means [●]¹.

“**Bid Security**” means the bank guarantee [●] dated [●] furnished by the Bidder/Consortium along with its Bid.

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

“**Change of Scope**” means requisition by the Authority for the provision of additional works and services which are not included in the scope of the Project as per this Contract.

“**Change of Scope Notice**” means a notice issued by Authority specifying in reasonable detail the works and services contemplated thereunder, if the Authority determines that Change of Scope is necessary.

“**Completion Certificate**” shall have meaning assigned to it under Article 6.3.1.

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

“**Conciliation & Settlement Committee**” shall have the meaning assigned to it under Article 13.1.2.

“**Contract**” means this Contract as of date hereof, including Annexures I through XXIII as may be amended, supplemented or modified in accordance with the provisions hereof.

“**Contract Period**” means the period of the OMM specified in Article 2.2 of this Contract.

“**Contractor Event of Default**” shall have the meaning as set out under Article 15.1.1.

“**Conditions Precedent**” shall mean conditions prescribed in Article 3 of this Contract.

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

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

¹ Name and address of the bidder to be added here

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

“**Date of Award (DOA)**” means the date when the Conditions Precedent have either been satisfied and/or waived by the Party other than the Party responsible for satisfying the same.

“**Date of Commercial Operation or Commercial Operations Date (COD)**” means the date on which the Contractor receives the Completion Certificate (shall have meaning assigned to it under Article [6.3.1.](#)) in accordance with the provisions of this Contract.

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

“**DPR**” means Detailed Project Report given in Annexure XXIII of this Contract.

“**Dredging Management Plan**” is in accordance with Annexure III of this Contract.

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

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

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

“**Fee**” means the fee/charges payable by the Authority to the Contractor , pursuant to Article 9.1.1 hereof.

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

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

“**GoI**” means the Government of India.

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

“**Government Authority**” means GoI, any state government or any governmental department, commission, board, body, bureau, agency, authority, instrumentality, administrative body, at central, state, or local level, having jurisdiction over the Contractor, the Project Site /the Scope of Work or any portion thereof, but shall not include the Authority.

“**Handover Date**” means the date of expiry or termination as the case may be, of the Contract Period in accordance with the terms of this Contract.

“**Implementation Phase**” means the period from the Date of Award of Contract to the Date of Commercial Operation

“**Independent Engineer**” means a technical consultancy firm appointed in accordance with Article 5 for supervising and monitoring of compliance by the Contractor as per Scope of Work , more particularly to undertake, perform, carry out the duties, responsibilities, services and activities set forth in Annexure V.

“**Insurance Cover**” shall have the meaning ascribed to it in Article 12.1.3 iii.

“**IWAI Act**” means The Inland Waterways Authority of India Act, 1985 as amended, supplemented, re-enacted or replaced from time to time.

“**LAD**” means Least Available Depth which shall be a minimum depth 5.0 m with respect to Chart Datum, with channel bottom width of 100 m and channel top width of 150 m with due side slopes of 1:5 in the Navigational Channel on National Waterway-28 (NW-28).

“**Maintenance Works**” means any/all works including equipment and things necessary to complete the Project / Services and undertake the Scope of Work in accordance with this Contract.

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

“**Material Adverse Effect**” means material adverse effect of any act or event on the ability of either Party to exercise any of its rights or perform any of its duties 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.

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

“**Navigation Channel**” is the channel of bottom width 100 m with side slope of 1:5 having a depth of 5.0 m with respect to Chart Datum duly notified by the Authority

“**Operations Phase**” means the period from the Commercial Operation Date to the expiry/termination of the Contract Period.

“**O&M Expenses**” means expenses incurred either by the Contractor or the Authority, as the case may be, which shall include but not limited to (a) cost of salaries and other compensation to employees, (b) cost of materials, supplies, utilities and other services, (c) premia for insurance, (d) all taxes, duties, cess and fees due and payable for O&M, (e) all repair, replacement, reconstruction, reinstatement, improvement and maintenance costs, (f) payments required to be made under the Contract in connection with or incidental to O&M, and (g) all other expenditure required to be incurred under Applicable Laws, Applicable Permits or this Contract

“**OMM**” means the operations, maintenance and management of works awarded by the Authority to the Contractor in accordance with the provisions of Article 2.1 of this Contract for implementing the Project and Scope of Work and providing Services.

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

“**Performance Guarantee**” shall mean the e-BG submitted by the Contractor for guaranteeing the performance of the obligations of the Contractor hereunder in the manner specified in Article 4.

“**Performance Standards**” means the minimum standards of performance set out in Annexure IV, set out for the Contractor and the Authority, with regards to the Scope of Work.

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

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

“**Preservation Costs**” shall have the meaning as set forth in Article 6.6.3

“**Price Index**” shall comprise:

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

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

“**Project**” means the maintenance dredging of assured Least Available Depth (LAD) for capacity augmentation of NW-28 on operate maintain and manage (OMM) Basis and providing of the Scope of Work and Services; in accordance with the provisions of this Contract.

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

- (a) rights over the Site in the form of Right of Way or otherwise;
- (b) tangible assets such as civil works and equipment;
- (c) existing utility services situated on the Site including pipelines etc;
- (d) all rights of the Contractor under the Project Contracts;
- (e) insurance proceeds; and
- (f) Applicable Permits and authorizations relating to or in respect of the Project;

“Project Contracts” means collectively this Contract and any other material contract entered into or may hereafter be entered into by the Contractor in connection with the Project and Services.

“Project Site” means the area mentioned in Annexure I.

“Provisional Certificate” shall have the meaning assigned to it under Article 6.7.4.

“Punch List” shall have the meaning assigned to it under Article 6.7.4.

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

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

“Request for Proposal” or **“RFP”** means the Request for Proposal dated [●] issued by the Authority to the bidders and includes any addendum / clarification issued in respect thereof by the Authority.

“Services” means the facilities and services as set out under the Scope of Work, to be provided by the Contractor during the Contract Period, in accordance with this Contract.

“Subcontractor” means a Person² with whom the Contractor has entered into/may enter into a contract relating to the execution of any works and /or operation and maintenance of the Project.

² If requested by the Contractor, to facilitate custom duty exemptions available to the contractors for certain projects, the names of the persons engaged as Contractors may be specified.

“**Scope of Work**” means the minimum requirements as to the operation, maintenance and management and of the Project and provision of Services set out in Annexure III.

“**Statutory Auditors**” means a reputable firm of chartered accountants acting as the statutory auditors of the Contractor under the provisions of the Companies Act, 2013 including any reenactment or amendment thereof, for the time being in force, and appointed in accordance with Article 21.3.2 (a).

“**Tariff for Waterway Charges**” means the applicable rate that may be charged by the Authority for and in respect of providing the Services.

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

“**Termination Notice**” means a notice for termination of this Contract issued pursuant to Article [16.1.1](#) hereof.

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

“**Tests**” or “**Surveys**” shall means geophysical survey, topographic survey and hydrographic survey.

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

“**User**” means a person including any vessel or other person, who uses or intends to use the Project Site or any part thereof, including any or all Project and its services, on payment of

Tariff for Waterway Charges or in accordance with the provisions of this Contract and Applicable Laws.

“**Vessel**” shall have the meaning as elaborated in The Inland Vessels Act, 2021, Merchant Shipping Act, 1958 and Marine Products Export Development Authority Act, 1972.

“**Vessel Traffic**” means the number of Vessels passing through the stretch of NW-28 under the Project Site, wherein each passage includes one up and down movement on the Project Site.

“**Vesting Certificate**” shall have the meaning as set forth in Article 18.5.

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

1.2. Other References

In this Contract:

“**BIS**” means Bureau of Indian Standards.

“**CPI (IW)**” means Consumer Price Index (Industrial Workers)

“**GST**” means Goods and Services Tax

“**IWT**” means Inland Waterways Transportation

“**IS**” means Indian Standard.

“**ISO**” means International Standards Organization.

“**km**” means kilometre, the unit of length.

“**m**” means Metre, the unit of length.

“**mm**” means Millimetre, the unit of length.

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

“**MMTPA**” means million metric tonnes per annum

“**WPI**” means annual Wholesale Price Index published by Reserve Bank of India

1.3. Interpretations

This Contract constitutes the entire understanding between the Parties regarding the Project and supersedes all previous written and/or oral representations and/or arrangements regarding the Project. If there is any aspect of the Project not covered by any of the provisions of this Contract, then and only in that event, reference may be made by the Parties to the bid documents, inter alia including the RFP document, issued by the Authority and also including addendums, clarifications given in writing in the pre-bid meetings and the submissions of the Contractor and the bid submitted by the Contractor but not otherwise. In case of any contradictions in the terms of this Contract and any such other bid documents as referred to above, the terms of this Contract shall prevail.

In this Contract unless the context otherwise requires:

1.3.1. any reference to a statutory provision shall include such provision as is from time to time modified or re-enacted or consolidated so far as such modification or re-enactment or consolidation applies or is capable of applying to any transactions entered into hereunder;

1.3.2. the words importing singular shall include plural and vice versa, and words denoting natural persons shall include partnerships, firms, companies, corporations, joint ventures, trusts, associations, organisations or other entities (whether or not having a separate legal entity);

1.3.3. the table of contents and any headings in this Contract are for ease of reference only and shall not affect its construction or interpretation;

1.3.4. the words “include” and “including” are to be construed without limitation;

1.3.5. references to “maintenance” include investigation, design, engineering, procurement, delivery, transportation, installation, processing, fabrication, testing, commissioning and other activities incidental to the maintenance as per Scope of Work;

1.3.6. any reference to any period of time shall mean a reference to Indian Standard Time;

1.3.7. any reference to Day shall mean a reference to a calendar Day; any reference to month shall mean a reference to a calendar month;

1.3.8. “Recital”, “Articles” and “Annexures” shall refer, except where the context otherwise requires, to Articles of and any Annexure to this Contract. The Annexures to this Contract shall form an integral part and parcel of this Contract and will be in full force and effect as though they were expressly set out in the body of this Contract;

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

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

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

1.3.12. unless otherwise specified, any interest to be calculated and payable under this Contract shall accrue on a monthly basis and from the respective due dates as provided for in this Contract; and

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

1.3.14. time shall be of the essence in the performance of the Parties’ respective

obligations. If any time period specified herein is extended, such extended time shall also be of the essence;

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

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

1.4. Measurements and Arithmetic Conventions

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

1.5. Ambiguities and Discrepancies

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

1.5.1. between two Article of this Contract, the provisions of specific Articles relevant to the issue under consideration shall prevail over those in other Articles;

1.5.2. between any value written in numerals and that in words, the latter shall prevail; and

1.5.3. between the provisions of this Contract and any other documents forming part of it, the former shall prevail.

ARTICLE 2

2. Contract and the Project

2.1. Contract

2.1.1. In consideration of the Contractor agreeing to performing its obligations as set out in this Contract for a consideration of Fee payable by the Authority to the Contractor, the Authority hereby awards to the Contractor, the contract for Maintenance Dredging of assured Least Available Depth for capacity augmentation of NW-28 on operate, maintain and manage basis. (“**OMM**”). The Services shall be as per Scope of Work defined in Annexure III subject to the provisions of this Contract.

2.2. Contract Period

2.2.1. The Contract is for a period of 30 (thirty) years commencing from the Appointed Date during which the Contractor is authorized and obliged to implement the Project and to provide Services as per Scope of Work in accordance with the provisions hereof.

Provided that:

- (a) in the event of the Contract being extended by the Authority beyond the said period of 30 (thirty) years in accordance with the provisions of this Contract, the Contract Period shall include the period by which the Contract is so extended, and
- (b) In the event of an early termination of this Contract by either Party in accordance with the provisions hereof, the Contract Period shall mean and be limited to the period commencing from the COD and ending with the date of termination of this Contract.

The Contractor shall, at any time during the Contract period up till the 28th (twenty eighth) anniversary of COD, intimate the Authority about its interest and request for extending the term of this Contract by a period of 20 (twenty) years.

The Authority may accept the request for extending the term of this Contract subject to the following condition:

- (a) Contractor shall submit a certificate confirming that there has been no material default by the Contractor under this Contract (including compliance of provisions relating to any of the Performance Standards), resulting in accrual of a right in favour of the Authority to identify any such event as Contractor's default.

2.3. Acceptance of the Contract

2.3.1. The Contractor hereby accepts the Contract and agrees to undertake and implement the Project and to provide Services in accordance with the provisions of this Contract. Subject to and in accordance with the provisions of this Contract and Applicable Laws and Applicable Permits, the Contractor shall at its costs, charges, expenses and risk including but not limited to foreign exchange variation risk if any, operate, maintain and manage the Project/ Services.

2.4. Information about Project Site

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

2.5. Acceptance of the Project Site

2.5.1. The Contractor accepts possession of the Project Site is on 'as is where is' basis and confirms having:

- a) inspected the Project Site and its surroundings;

- b) satisfied itself as to the nature of the climatic, hydrological and general physical conditions of the Project Site, the nature of the ground and subsoil, the form and nature of the Project Site, and the nature of the design, work and materials necessary for the performance of its obligations under this Contract; and
- c) obtained for itself all necessary information as to the risks, contingencies and all other circumstances which may influence or affect the Contractor and its rights and obligations under or pursuant to this Contract.

2.6. Access to Project Site

- 2.6.1. The Authority shall provide access to the Project Site, after receipt of the full performance guarantee from the Contractor. The Authority warrants that the Contractor shall, subject to complying with the terms and conditions of this Contract.

ARTICLE 3

3. Conditions Precedent

3.1. Conditions Precedent to be satisfied by the Contractor

3.1.1. The Contract shall be subject to satisfaction or waiver of the following conditions precedent (the “**Conditions Precedent**”)

- a) Furnishing of the Performance Guarantee as stipulated in Article 4 hereof;
- b) Furnishing of copies (certified as true copies by a director of the Contractor) of the constituent documents of the Contractor;
- c) Furnishing of all resolutions adopted by the Board of Directors of the Contractor (certified as true copies by a director of the Contractor) authorizing the execution, delivery and performance by the Contractor, of each of the Bidding Documents;
- d) Furnishing a certificate from its principal officer/director on the shareholding pattern of the Contractor;
- e) Procuring and furnishing the following confirmations, in original, (from the Bidder/all members in case of a Consortium) that the Contractor:
 - (i) shall at all times comply with the provisions of Article 11.2 in respect of its shareholding;
 - (ii) has the financial standing and resources to fund /raise finances for undertaking and implementing the Project in accordance with this Contract;
 - (iii) is duly organized and validly existing under the laws of jurisdiction of its incorporation, and has requested the Authority to enter into this Contract with the Contractor and has agreed to and unconditionally accepted the terms and conditions set forth in this Contract;
- f) Furnishing to the Authority a legal opinion from the legal counsel of the Contractor

with respect to the Authority of the Contractor to enter into this Contract and the enforceability hereof.

- g) Obtaining Applicable Permits as may be required for commencement of the Scope of Work.
- h) Insurance requirement: The Contractor shall, at its cost and expense, purchase and maintain insurances as are prudent, including but not limited to the following:
 - (i) builder's all risk insurance;
 - (ii) comprehensive third-party liability insurance including injury or death to personnel of the Authority and others who may enter the Project Site;
 - (iii) workmen's compensation insurance;
 - (iv) marine cum storage cum erection insurance; and
 - (v) any other insurance necessary to protect the Contractor, its employees and its assets and the Authority, its employees and agents engaged in or connected to the Project and the Project Site, against loss, damage or destruction at replacement value, including all Force Majeure Events that are insurable and not otherwise covered in items (i) to (v).
- i) A joint site inspection related to bathymetric survey of the navigational channel of the site condition shall be carried out by both the Contractor and the Authority and observations and results shall be agreed upon by both the parties.
- j) Performance Guarantee for a sum equivalent to INR 27 Lakhs (INR Twenty seven Lakhs only)

3.2. Conditions Precedent to be satisfied by the Authority:

The following Conditions Precedent shall be satisfied by the Authority:

3.2.1. Share the available clearances required for the Project.

3.2.2. Providing access to the channel for undertaking the dredging works

3.2.3. Notification of Tariff for Waterway Charges schedule for charges and rules for collection of user charges for waterways use by the Authority.

3.3. Other Requirements

3.3.1. The aforesaid Conditions Precedent shall be complied within 90 (Ninety) days of the Appointed Date unless specified otherwise. Each Party shall promptly inform the other Party in writing when the Conditions Precedent for which it is responsible have been satisfied.

3.3.2. Any of the Conditions Precedent set forth in Article 3.1 may be waived fully or partially by the Authority at any time in its sole discretion or the Authority may grant additional time for compliance with these conditions. The Contractor shall ensure compliance within such additional time as may be specified by the Authority. Any of the Conditions Precedent set forth in Articles 3.2 may be waived fully or partially by the Contractor at any time in its sole discretion or the Contractor may grant additional time for compliance with these conditions on the basis of a request from the Authority and the Authority shall be bound to ensure compliance within such additional time as may be specified by the Contractor.

3.3.3. If the Contractor has fulfilled all the Conditions Precedent under Article 3.1 including the furnishing of the Performance Guarantee and has not waived or extended the time under Article 3.3.2 above, and if the Authority has failed to fulfill the Conditions Precedent to be fulfilled by it under Article 3.2 (and which are within the power of the Authority), and the Contractor has not waived or extended the time under Article 3.3.2 above, the Authority shall be liable to pay liquidated damages in a sum calculated at the rate of 0.1% (zero point one percent) of Performance Guarantee, for each Day's delay until fulfilment of the Conditions Precedent subject to a maximum of 5% (five percent) of the figure mentioned in the Performance

Guarantee furnished by the Contractor. In such event, having regard to the quantum of damages, the time for the performance shall be deemed to have been extended by the number of days for which the liquidated damages is paid and if, after the extended period the Authority is still not in a position to comply with the Conditions Precedent, then the Contract shall be liable to be terminated as provided for in Article 3.3.5 below.

3.3.4. If the Authority has fulfilled all the Conditions Precedent under Article 3.2 and has not waived or extended the time under Article 3.3.2 above, and if the Contractor has failed to fulfil the Conditions Precedent under Article 3.1 (and which are within the power of the Contractor), the Contractor shall be liable to pay liquidated damages in a sum calculated at the rate of 0.1% (zero point one percent) of Performance Guarantee, for each Day's delay until fulfillment of the Conditions Precedent subject to a maximum of 5% (five percent) of the figure mentioned in the Performance Guarantee furnished by the Contractor. In such event, having regard to the quantum of damages, the time for the performance shall be deemed to have been extended by the number of days for which the liquidated damages is paid and if, after the extended period the Contractor is still not in a position to comply with the Conditions Precedent, then the Contract shall be liable to be terminated as provided for in Article 3.3.5 below.

3.3.5. In the event that the Conditions Precedents are not complied within the time (including the extended time, if any) in terms of the aforesaid Article 3, this Contract shall be liable to be terminated. If such termination is on account of failure of the Contractor to comply with Conditions Precedent, the Bid Security shall stand forfeited. If such termination is on account of failure of the Authority, the Authority shall be obliged to return the Bid Security/Performance Guarantee. It is clarified that except for the payment as stipulated in the foregoing Article 3.3.3 and 3.3.4 and forfeiture in this Article 3.3.5, each party hereto shall have no claims against the other for costs, damages, compensation or otherwise.

ARTICLE 4

4. Performance Guarantee

4.1. Performance Guarantee

4.1.1. The Contractor shall for due performance of its obligations towards the Project as given in this Contract provide to the Authority an unconditional and irrevocable bank guarantee/e-bank guarantee as per provisions of Article [4.1.2.](#) below, in favour of the Authority, encashable and enforceable at Noida, Uttar Pradesh for an amount equivalent to INR 54 Lakhs (INR Fifty-four Lakhs) (“**Performance Guarantee**”).

4.1.2. The Performance Guarantee is to be submitted in two parts.

- (a) Initially the first part of the Performance Guarantee for a sum equivalent to INR 27 Lakhs (INR Twenty-seven Lakhs only) shall be submitted within 15 (fifteen) days of the Appointed Date.
- (b) The second part of the Performance Guarantee for a sum of INR 27 Lakhs (INR Twenty-seven Lakhs only) shall be a Condition Precedent as per the Article 3.1.1 (j).

4.1.3. After receipt of first part of the Performance Guarantee by the Authority, access to the Project Site may be provided to the Contractor in accordance with the terms of this Contract.

4.1.4. Till such time the Contractor provides to Authority the complete Performance Guarantee pursuant hereto, the Bid Security shall remain in full force and effect. The Performance Guarantee, if in the form of a bank guarantee shall be valid for an initial period of 18 (Eighteen) months and shall be renewed no later than 30 (thirty) Days prior to expiry of each year, for an additional term of 1 (one) year.

4.1.5. The Contractor shall be liable to restore the Performance Guarantee to the full amount in case of part encashment of the same by the Authority. This shall be done within 30 (thirty) Days of any such part encashment.

4.1.6. The Performance Guarantee furnished under this provision shall be valid until completion of Contract.

4.1.7. Failure of the Contractor to provide and maintain a valid Performance Guarantee and/or restore and maintain the Performance Guarantee in accordance with this Article shall entitle the Authority to terminate this Contract forthwith and also if relevant, to forfeit the Bid Security.

4.2. Appropriation of Performance Security

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

4.3. References to Performance Security

4.3.1. References to Performance Security occurring in this Contract for and in respect of any period prior to the delivery of the Performance Security by the Contractor 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 Contractor, and the amount so determined shall be appropriated from the Bid Security or Performance Security, as the case may be.

ARTICLE 5

5. Independent Engineer

- 5.1 Independent Engineer shall be a technical consultancy firm selected in accordance with provisions of the Model Request for Proposals for Selection of Technical Consultants, issued by the Ministry of Finance, GOI vide OM 24(23)/PF-II/2008 dated May 21, 2009, or any substitute thereof. If any panel of such firms is prepared by Indian Ports Association for the purpose, then Independent Engineer shall be selected out of that panel. The Authority shall complete the selection process within a period of 2 months of the date of this Contract. The Authority shall in the procurement documents published by it, set out in reasonable detail the scope of work as indicated in Annexure V..
- 5.2 Deleted
- 5.3 Deleted
- 5.4 The Independent Engineer selected pursuant to the aforesaid process shall be appointed for a period commencing from the Date of Award of Concession to [the date of expiry of 6 (six) months from the COD]. The Independent Engineer shall discharge its duties and functions substantially in accordance with the terms of reference set forth in Annexure V. The Independent Engineer shall submit regular periodic reports (at least once every month) to the Authority in respect of its duties and functions set forth in Annexure V.
- 5.5 On expiry or termination of the aforesaid appointment, the Authority shall appoint an Independent Engineer for a further term of 3 (three) years in accordance with the provisions of Annexure -V, and such procedure shall be repeated after expiry of each appointment.
- 5.6 The scope of work of Independent Engineer shall *inter-alia* include work of certification of Performance Parameters as stipulated in this Contract.
- 5.7 The scope of work of Independent Engineer shall *inter-alia* include work of validating

insufficient LAD as stipulated in this Contract, validating occasions of unsuccessful vessel passage due to physical obstruction in vessel passage including but not limited to insufficient LAD and certify the amounts payable to the Contractor based on the monthly statements. The Independent Engineer shall validate/ certify that unsuccessful passage is not due to Contractor default subject to the following conditions:

- (a) Contractor has taken an informed decision about the size of the vessel and volume of cargo that can pass through the waterway by checking the LAD information updated weekly by the Authority on their website or any other source of information used in the future.
- (b) Contractor has adhered to the waterway channel as declared by the Authority in their navigational charts updated periodically.

- 5.8 The costs and expenses of the Independent Engineer for their services shall be borne by the Authority and Contractor, equally.
- 5.9 If the Authority either on its own or on a report of the Contractor has reason to believe that the Independent Engineer is not discharging its duties in a fair, appropriate and diligent manner, the Authority may after giving the Independent Engineer due opportunity of being heard, terminate the appointment of the Independent Engineer/ Independent Engineer and appoint another firm in its place in accordance with the preceding Article 5.1 above.
- 5.10 If either Party disputes any advice, instruction or decision of the Independent Engineer, the dispute shall be resolved in accordance with the dispute resolution procedure set out in Article 19.
- 5.11 The Authority shall require the Independent Engineer to designate and notify to the Authority and the Contractor up to 2 (two) persons employed in its firm to sign for and on behalf of the Independent Engineer, and any communication or document required to be signed by the Independent Engineer shall be valid and effective only if signed by any of the designated persons; provided that the Independent Engineer may,

by notice in writing, substitute any of the designated persons by any of its employees.

- 5.12 In the event that the Authority has not appointed an Independent Engineer, or the Independent Engineer so appointed has relinquished its functions or defaulted in discharge thereof, the Authority may, in the interim, designate and authorise any person for a maximum duration of 60 days to discharge the functions of the Independent Engineer in accordance with the provisions of this Contract, save and except that such person shall not exercise any functions relating to review, comment, approval or inspection as specified in this Contract for and in respect of the Independent Engineer, and such functions shall be discharged as and when an Independent Engineer is appointed in accordance with the provisions of this Contract. Provided, however, that nothing contained in this Article 5.11 shall in any manner restrict the rights of the Authority to enforce compliance of the provisions of this Contract.

ARTICLE 6

6. Project Implementation

6.1. Preparation of DPR

6.1.1. The Contractor shall at its cost, charges and expenses, prepare the detailed project report (the “**DPR**”) in conformity with the Scope of Work.

6.2. Review of DPR

6.2.1. The Contractor shall submit the DPR including the Dredging Management Plan for review of the Independent Engineer within 90 (ninety) days of Appointed Date.

6.2.2. The Independent Engineer shall review the DPR submitted by the Contractor and provide its observations and suggestions on the same including the observations of the Authority in respect thereof within 15 (fifteen) Days from the date of the receipt of such DPR.

6.2.3. In the event that the Independent Engineer and/or Authority has observed that the DPR is not in conformity with the Scope of Work, the Contractor shall promptly and without any undue delay revise and resubmit the DPR or satisfy the Independent Engineer and/or Authority with regards its compliance within 7 (seven) Days of receiving observations and suggestions from the Independent Engineer.

6.2.4. If the Independent Engineer does not make any observation/comments with respect to the DPR submitted to it by the Contractor within 21 (twenty one) Days of the submission, it shall be deemed that the Independent Engineer has no suggestions to make with respect to the DPR and the Contractor shall be entitled to proceed with the Project accordingly.

6.2.5. The Contractor shall not be entitled to any extension of time for completing implementation or any other relief on account of delay caused due to providing any clarification or in resubmitting the DPR. Provided, however, that the Authority at its sole discretion may suitably extend such time period or provide relief (excluding any

liquidated damages or financial compensation paid by the Authority to the Contractor) to compensate for any such delay not attributable to the Contractor.

6.2.6. The Contractor shall not change approved DPR under this Contract, without submitting such revised DPR for the review of the Independent Engineer/ Authority.

6.2.7. Notwithstanding the review by the Independent Engineer, the Contractor shall be responsible for any defect and/or deficiency in the DPR relating to the Project or any part thereof, and accordingly, the Contractor shall at all times remain responsible for its obligations under this Contract.

6.2.8. Within 90 (ninety) days of COD, the Contractor shall furnish to the Authority and the Independent Engineer a complete set of final survey charts as proof of satisfying the requirement of assured LAD for the entire stretch of the Project Site, in 2 (two) hard copies of and in its editable digital format or in such other medium and manner as may be acceptable to the Authority, reflecting the Project as actually designed, engineered and implemented, including a final survey illustrating the assured LAD along the Project and surrounding area, forming part of Project.

6.3. **Implementation Phase**

6.3.1. The Contractor shall promptly commence and complete the works, in accordance with the requirements of the Scope of Work and shall also obtain from the Independent Engineer a certificate for completion of assured LAD for the entire stretch of the Project Site and the shifting of the existing pipelines as per the Scope of Work in accordance with provisions of this Contract (“Completion Certificate”) not later than 18 months from the DOA (**“Scheduled Completion Date”**)

6.3.2. During the Implementation Phase, the Independent Engineer shall inspect the Maintenance Works and shall require the Contractor to carry out or cause to be carried out Tests. The remedial measures required to be taken by the Contractor, in case of any defects or deficiencies in the works, shall be as set out in Annexure V.

6.4. **Obligations of the Contractor**

Without prejudice to the generality of Article 6.3 and in addition to any of its other obligations under this Contract, during the Implementation Phase, the Contractor shall:

6.4.1. arrange for, in a timely manner all necessary financial and other resources required for undertaking the Scope of Work Services.

6.4.2. engage professionally competent Persons for project management and dredging and ensure that all works are carried out in compliance with the standards given in this Contract.

6.4.3. obtain Applicable Permits, comply with Applicable Laws and Applicable Permits and give priority to safety in its maintenance dredging and planning activities in order to protect life, health, property and environment.

6.4.4. provide to the representatives of the Authority, at reasonable times and upon prior intimation, access to the Project Site to review progress in maintenance dredging and to ascertain compliance with any of the requirements of this Contract. Provided that non- inspection by the Authority of any works shall not, in relation to such works,

(i) amount to any consent or approval by the Authority nor shall the same be deemed to be waiver of any of the rights of the Authority under this Contract; and

(ii) release or discharge the Contractor from its obligations or liabilities under this Contract in respect of such work;

6.4.5. provide monthly reports on the progress of Maintenance Works as per Scope of Work or such other relevant information as may be required by the Independent Engineer.

6.4.6. promptly carry out at its cost such further works as may be necessary to remove any defects or deficiencies observed by the Independent Engineer and ensure timely completion of Scope of Work in all respects; and

6.4.7. to ensure safe and timely completion of Scope of Work, the Contractor may, at its

cost, interrupt and divert the water traffic, adjacent to the Project Site if such interruption and diversion is imperative for efficient progress of Maintenance Works as per Scope of Work and conforms to Good Industry Practice. Such interruption and diversion shall be undertaken by the Contractor only with prior written approval of the Independent Engineer which approval shall not be unreasonably withheld. For avoidance of doubt, it is agreed that the Contractor shall, at all times, be responsible for ensuring safe Maintenance Works as per Scope of Work and shall remove interruption or diversion within the period specified by the Independent Engineer.

6.5. Obligations of the Authority

In addition to any of its other obligations under this Contract, the Authority shall:

- 6.5.1. in matters falling within its authority, grant, Applicable Permits, approvals and consents as may be required by the Contractor and, on a best-efforts basis, assist the Contractor in obtaining all other Applicable Permits as may be required by the Contractor;
- 6.5.2. make available all records of sub-soil investigations carried out on its behalf in the Project Site, if requested by the Contractor. It is clarified that the Contractor shall be solely responsible for determining the adequacy or otherwise of such investigations and will not in reliance of such records, be entitled to claim any relief under this Contract.
- 6.5.3. notify the navigation channel based on joint survey undertaken by the Authority and the Contractor upon completion of the implementation phase or as deemed necessary by the Authority.

6.6. Suspension of Works

- 6.6.1. Upon recommendation of the Independent Engineer to this effect, the Authority may by notice require the Contractor to suspend forthwith whole or any part of Maintenance Works if, in the reasonable opinion of the Authority, such work threatens the safety of the Users or any other person on or about the Project. Provided

however, that in case of an Emergency, the Authority may suo moto issue the notice referred to hereinabove.

6.6.2. The Contractor shall, pursuant to the notice under foregoing provision suspend Maintenance Works or any part thereof for such time and in such manner as may be specified by the Authority and thereupon represent to the Authority / Independent Engineer, measures to remedy defects notified. The Contractor may by notice require the Independent Engineer to inspect such remedial measures forthwith and make a report to the Authority recommending whether or not the suspension hereunder may be revoked. Any dispute as regards suspension of works or remedial measures proposed, if not resolved within 30 (thirty) Days of the suspension or proposal of the remedial measures respectively, shall be submitted for dispute resolution in accordance with Article 21 hereof.

6.6.3. Subject to the provisions of Article 6.6, all reasonable costs incurred for maintaining and protecting the Maintenance Works or part thereof during the period of suspension (the "Preservation Costs") shall be borne by the Contractor; provided that if the suspension has occurred as a result of any breach of this Contract by the Authority, the Preservation Costs shall be borne by the Authority.

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

6.7. Issue of Completion Certificate

6.7.1. At least 60 (sixty) Days prior to the likely completion of implementation Phase, the Contractor shall notify the Independent Engineer of the date when it intends to

commence commercial operations. The Independent Engineer shall then proceed to inspect works undertaken under Project with the intention of issuing Completion Certificate and determine and notify to the Contractor schedule and manner of tests as are specified in Annexure V that it shall carry out to ensure that the Project meets with the standards. The date and time of each of the Tests shall be determined by the Independent Engineer in consultation with the Contractor, and notified to the Authority who may designate its representative to witness the Tests. The Contractor shall provide such assistance as the Independent Engineer may reasonably require for conducting the Tests. In the event of the Contractor and the Independent Engineer failing to mutually agree on the dates for conducting the Tests, the Contractor shall fix the dates by not less than 10 (ten) Days' notice to the Independent Engineer;

6.7.2. All Tests shall be conducted at the cost and expense of the Contractor. The Independent Engineer shall observe, monitor and review the results of the Tests to determine compliance of the Project with specifications and standards and if it is reasonably anticipated or determined by the Independent Engineer during the course of any Test that the performance of the Project or any part thereof does not meet the specifications and standards, it shall have the right to suspend or delay such Test and require the Contractor to remedy and rectify the defects or deficiencies. Upon completion of each Test, the Independent Engineer shall provide to the Contractor and the Authority copies of all Test data including detailed Test results. For the avoidance of doubt, it is expressly agreed that the Independent Engineer may require the Contractor to carry out or caused to be carried out additional Tests, in accordance with Good Industry Practice, for determining the compliance of the Project with specifications and standards.

6.7.3. Upon completion of Implementation Phase and the Independent Engineer determining all the Tests to be successful, it shall forthwith issue to the Contractor and the Authority a Completion Certificate substantially in the form set forth in Annexure X;

6.7.4. The Independent Engineer may, at request of the Contractor, issue a provisional

certificate of completion substantially in the form set forth in Annexure XI (“**Provisional Certificate**”) if the Tests are successful and the Project can be safely and reliably placed in commercial operation though certain works or things forming part thereof are outstanding and not yet complete. The Provisional Certificate shall have appended thereto a list of outstanding items signed jointly by the Independent Engineer and the Contractor (“**Punch List**”) to be completed by the Contractor within a stipulated time. Upon completion of all Punch List items, the Independent Engineer shall conduct tests, if required and issue the Completion Certificate. All items in the Punch List shall be completed by the Contractor within 90 (ninety) Days of date of issue of the Provisional Certificate or such other extended period that the Authority may in its sole discretion determine, failing which the Provisional Certificate shall lose its validity and the Authority shall be entitled to terminate this Contract;

6.7.5. Without prejudice to the foregoing, if the Contractor fails to complete any Maintenance Works on account of Force Majeure or for reasons solely attributable to the Authority, the Authority may, in its discretion, reduce the scope of Project and require the Total Project Cost will be reduced to the same extent. Upon such reduction of Total Project Cost, obligations of the Contractor in respect of such works shall be deemed to have been fulfilled.

6.8. Change of Scope

6.8.1. The Authority may, notwithstanding anything to the contrary contained in this Contract, require the provision of additional works and services which are not included in the scope of the Project as contemplated by this Contract (“**Change of Scope**”). Provided no such Change of Scope shall be made in the Implementation Phase if it is in the reasonable judgment of the parties hereto likely to delay the Scheduled Completion Date. Provided further, cost of implementing a single Change of Scope shall not exceed a sum corresponding to INR _____ crore (INR _____ only as per approved DPR and during the Contract Period the cumulative cost of implementing orders pertaining to Change of Scope shall not exceed a sum corresponding to INR _____ crore (INR _____ only)**Error! Reference**

source not found. The Change of Scope shall be considered only for Maintenance Works;

6.8.2. If the Authority determines that a Change of Scope is necessary, it shall issue to the Contractor a notice specifying in reasonable detail the works and services contemplated thereunder (“**Change of Scope Notice**”);

6.8.3. Upon receipt of a Change of Scope Notice, the Contractor shall, provide to the Authority, the following:

a) adverse impact, if any, which the Change of Scope is likely to have on the Project;
and

b) cost to be incurred by the Contractor for and in respect of such Change of Scope;

6.8.4. Upon receipt of the foregoing information, the Authority shall, if it decides to proceed with the Change of Scope, convey its agreement or otherwise of the assessment of the Contractor. If the Contractor does not notify any adverse impact of a Change of Scope notified under the Change of Scope Notice within 30 (thirty) Days of the date thereof and/or the Authority does not disagree with the cost assessment of the Contractor, the Authority shall issue an order requiring the Contractor to proceed with the implementation of such Change of Scope. If an adverse impact is notified by the Contractor and/or the Authority disagrees with the cost assessment, the Parties shall in good faith modify the Change of Scope envisaged so as to remove the adverse impact/agree to the cost implication for carrying out the Change of Scope within a period of 30 (thirty) Days of notification of the adverse impact/cost. In the event that the Parties are unable to mutually agree to a Change of Scope and/or the cost of implementing the same, they may seek intervention of an Independent Engineer to resolve the differences and upon the final determination of the desired Change of Scope and its cost implication, the Authority may issue an order to implement the Change of Scope;

6.8.5. The provisions of this Contract, insofar as they relate to Scope of Work, shall apply mutatis mutandis to the works undertaken by the Contractor in respect of a Change of

Scope;

6.8.6. Within 7 (seven) days of an order for Change of Scope being issued, the Authority shall make an advance payment to the Contractor of a sum equal to 20% (twenty per cent) of the cost of Change of Scope as agreed hereunder. The Contractor shall, after commencement of work, present to the Authority bills for payment in respect of the works in progress or completed works, as the case may be, supported by such documentation as is reasonably sufficient for the Authority to determine the accuracy thereof. Within 30 (thirty) days of receipt of such bills, the Authority shall disburse to the Contractor after deducting Pro-rata advance payment, such amounts as are certified by the Statutory Auditors as being expended by the Contractor for and in respect of implementing Scope of Work or procuring equipment following an order for a Change of Scope;

6.8.7. Notwithstanding anything to the contrary contained in this Article 6.8, the Authority may, after giving the Change of Scope Notice to the Contractor and considering its reply thereto, decide to seek competitive bids for carrying out the works envisaged in a Change of Scope; provided that the Contractor shall have the option of matching the first ranked bid in terms of selection criteria, subject to payment of 2% (two per cent) of bid amount to the Authority, and thereupon securing the award of such works or services. For the avoidance of doubt, it is agreed that the Contractor shall be entitled to exercise such option only if it has participated in the bidding process and its bid does not exceed the first ranked bid by more than 10% (ten percent) thereof. It is also agreed that the Contractor shall provide access, assistance and cooperation to the person who undertakes the works or services hereunder. For the avoidance of doubt, the Authority acknowledges and agrees that it shall not undertake any works or services under this Article 6.8.7 if such works or services cause a Material Adverse Effect on the Contractor

6.8.8. If during the pendency of the Contract, the Contractor determines at any time that a Change of Scope is necessary for providing safer and improved Scope of Work and Services, it shall by notice in writing request the Authority to consider such Change

of Scope. The Authority shall respond within 45 (forty-five) days of receipt of such notice, either accepting such Change of Scope with modifications, if any, or inform the Contractor in writing of its reasons for not accepting such Change of Scope. The Contractor may implement the Project and provide Services in accordance with the Change of Scope as may be approved in writing by the Authority and all provisions of this Article 6 for Project Implementation shall mutatis mutandis apply. Provided, it is clarified that the provisions contained in Article 6.8.6 and 6.8.7 shall not apply to a Change of Scope required by the Contractor.

6.9. Liquidated Damages

6.9.1. Subject to any of the provisions of this Contract providing for extension of time for performance or excuse from performance, as the case may be, of any of the obligations of the Contractor under this Contract and delays for reasons not attributable to the Authority, apart from performance standards and damages as mentioned in Annexure IV, the Contractor shall pay to the Authority liquidated damages at the rate of 0.1% (zero point one percent) of Performance Guarantee for every day of delay in fulfilling specified obligations on or before a Milestone Date including a delay in obtaining the Completion Certificate or the Provisional Certificate on or before the Scheduled Completion Date. Provided such liquidated damages shall not in aggregate exceed 5% (five percent) of the figure mentioned in the Performance Guarantee and unless the delay is in obtaining of the Completion Certificate or the Provisional Certificate, shall not be payable for less than 15 (fifteen) days of delay from a Milestone Date, in fulfilling a specified obligation. Provided further that in the event COD is achieved on or before the Scheduled Completion Date, the damages paid under this Article 6.9 shall be refunded by the Authority to the Contractor, but without any interest thereon. The Parties agree that liquidated damages as provided are a genuine pre-estimate of the damages the Authority is likely to suffer and are not by way of a penalty. In case the aggregate delay exceeds 180 (one hundred and eighty) days or the aggregate liquidated damages paid and/or payable under this provision exceeds specified limit of 5% (five percent), the Authority shall be entitled to terminate this Contract and consequences of termination as laid down in Article 15 shall follow. The Authority

may, at its discretion recover any amounts with respect to liquidated damages from the Performance Guarantee.

ARTICLE 7

7. Operations and Maintenance

7.1. Obligations of the Contractor

In addition to any of its other obligations under this Contract, the Contractor shall manage, operate, maintain, and manage the Scope of Work, entirely at its cost, charges, expenses and risk in accordance with the provisions of this Contract. The Contractor's obligations under this Article shall include, but not be limited to the following:

7.1.1. Maintenance Dredging for assured Least Available Depth

The Contractor shall:

- a) Promptly commence Project after the COD;
- b) Ensure compliance of Scope of Work
- c) Be free to deploy higher capacity equipment/facilities/ technology, etc. and induct new technology and carry out value engineering for improved productivity and/or improved utilization and/or cost saving of Project during the Contract Period;
- d) Any new IWT related infrastructure such as terminals, dredging works, traffic management system etc. on the NW-28 will be undertaken within the purview of the IWAI Act 1985 including any amendments thereof.
- e) Ensure that the Scope of Work shall adhere to the applicable standards and safety standards and there is safe, smooth and uninterrupted flow of traffic under normal operating conditions.
- f) Minimize disruption to traffic in the event of accidents or other incidents affecting the safety and use of the Project Site by providing a rapid and effective response and maintaining liaison with emergency services of the Authority or other agencies;
- g) Make available all necessary financial, technical, technological, managerial and other

resources for operation, maintenance and management as per the Scope of Work in a timely manner;

- h) Ensure maintenance of proper and accurate record/data/accounts relating to operations, maintenance and management as per the Scope of Work and revenue earned therefrom;
- i) Obtain, maintain and comply with Applicable Permits and comply with the Applicable Laws including those relating but not limited to the Project site safety, health, environment and labour;
- j) Subject to the provisions of this Contract, perform, undertake or provide, in connection with the Project, all services which the Authority is authorized to perform, undertake or provide under provisions of the IWAI Act; and
- k) Prevent, with assistance of concerned law enforcement agencies, any encroachment or unauthorized use of the Project Site.

7.1.2. Repairs and Maintenance

The Contractor shall at its own cost:

- a) Repair as necessary and maintain as per the Scope of Work or any part thereof in accordance with Scope of Work and for this purpose carry out routine preventive measures and maintenance as per Scope of Work
- b) Maintain as per the Scope of Work in accordance with the provisions of this Contract and Good Industry Practice with the objective of providing adequate service standards and ensuring that Project Site to be handed over to the Authority upon expiry of the Contract Period are in good condition, except for normal and reasonable wear and tear.
- c) Ensure that maintenance Performance Standards as specified in Annexure IV are met.

7.1.3. Replacement of Equipment

The Contractor shall at its cost, plan for replacement of equipment well ahead of time when the utility thereof is reasonably expected to expire and replace the equipment in

accordance with Good Industry Practice so as to ensure that the quality of Scope of Work commensurate with the Scope of Work, at all time during the Contract Period.

7.1.4. Payments to the Authority

The Contractor shall ensure any payments, if any, to the Authority as per the Contract.

7.1.5. Access for Inspection

The Authority, Authority's Personnel and their respective agents will at all times have access to the Project, technical documents, materials, records and accounts relating to such operations for the purpose of inspection and review, consistent with relevant safety procedures. The Contractor shall be obliged to extend all co-operation to Independent Engineer for purposes of verifying that Scope of Work in compliance with Performance Standards and adhere to applicable standards and safety standards. Such verification shall be made annually. Additionally, the Contractor shall upon prior intimation by the Authority provide authorized representatives of the Authority access to Project Site for inspection and review of works and also to ascertain compliance with the requirements under this Contract. Without prejudice to generality of this provision, it is agreed that the Contractor shall in particular extend all co-operation and information required by subject matter Experts appointed by the Authority for conducting a safety audit and verifying that Scope of Work are in strict compliance with safety standards.

7.1.6. Reports

The Contractor shall provide to the Authority, Monthly reports on Vessel Traffic, Fee billed and collected in respect of Project. The Monthly Report shall be submitted within 15 (fifteen) days following the end of each month along with any other information relating to Project which the Authority may require from time to time. The Contractor shall provide reports in prescribed formats and in such electronic form so as to provide online access to the Authority and its representatives.

7.1.7. Computer System and Network

The Contractor shall also integrate the computer system and network with a system(s) specified by the Authority. Contractor shall be responsible and bear all costs associated to

develop the hardware and software components of the computer system and network and integrate the computer system and network with system(s) specified by the Authority. The Authority shall be responsible to provide APIs of system(s) which shall be integrated with computer system and network developed by Contractor.

7.1.8. Security Arrangements

The Contractor may make his own arrangements for security of its equipment / machinery and its assets. The Contractor shall abide by the security regulations and procedures prescribed by the Authority or a competent Government Authority from time to time.

7.1.9. Employment of personnel and manpower training

- a) The Contractor shall employ qualified and skilled personnel required to undertake the Scope of Work. The terms of employment may be as deemed fit by the Contractor and the Contractor shall comply with all Applicable Laws and bear all costs in this regard. Without prejudice to the generality of this provision, all requisite approvals for employment of personnel of foreign origin or nationality shall be obtained by the Contractor prior to engaging such personnel. Failure to obtain approval will not amount to a Force Majeure Event. All employees shall always remain the Contractor's responsibility.
- b) The Contractor shall adhere to all labour law compliances. The Contractor shall also ensure that adequate training is provided to the employees for skill development relevant to industry that would benefit the Project and enable knowledge transfer.

7.1.10. Maintenance of Complaint Portal

- a) The Contractor shall maintain a “**Complaint Portal**” on its website which shall be available to all users of the Project Site who shall be duly informed about availability of provision for lodging of complaints. The Complaint Portal will also be linked to the Authority website with an alert system for real time access to the complaints.
- b) Contractor shall take action for just and fair redressal of the complaint and submit a reply to the complainant within 30 (thirty) days of the date of receipt of the complaint with a

copy to Authority and maintain a proof of reply.

- c) If Contractor fails to address the complaint and the complainant makes a reference to the Authority, the Authority may issue directions that shall be binding on the Contractor. The Authority shall be just and fair in issuing such directions.

7.1.11. Operation and maintenance of Utilities

The operation and maintenance of Project utilities and related services shall be the responsibility of the Contractor.

7.1.12. Reporting of Performance Standards

The Contractor shall report the Performance Standards to the Authority on a quarterly basis.

7.1.13. Compliance with the Environment Management Plan

The Contractor shall fully comply with the Environment Management Plan (“EMP”) provided by the Authority during all times. Detailed provisions of the EMP are given in Annexure XIV of this document.

7.2. Obligations of the Authority

In addition to any of its other obligations in this Contract, the Authority shall arrange for, or provide the following:

7.2.1. Approvals

The Authority shall promptly grant approvals sought by the Contractor as required under this Contract subject to the Contractor having complied with all Applicable Laws and requirements.

7.2.2. Payments to the Contractor

The Authority shall ensure any payments to the Contractor as per Article 9.

7.3. Rights of the Authority

7.3.1. If in the reasonable opinion of the Authority, the Contractor is in material breach of its obligations under this Contract for maintenance of the assured LAD at the Project, the Authority may, without prejudice to any of its rights under this Contract including Termination thereof, by notice require the Contractor to take reasonable measures for undertaking Maintenance Works.

7.3.2. In the event that the Contractor, upon receipt of notice above, fails to maintain the assured LAD at the Project within a reasonable period, the Authority may take over performance of any or all obligations of the Contractor to the extent deemed necessary by it for maintaining the LAD at the Project, at the risk and cost of the Contractor and to recover any costs and expenses incurred by the Authority in discharge of its obligations hereunder from the Contractor; provided that such taking over by the Authority shall be of no greater scope and of no longer duration than is reasonably required.

7.3.3. the Authority has the right, to recover the costs specified in Article 7.3 directly from the Contractor as if such costs were O&M Expenses

7.4. Liability for shortfall in performance

7.4.1. In the event the Authority, whether from the review of reports submitted by the Contractor or otherwise, observes that Scope of Work falls short of the Performance Standards, the Authority shall issue a demand notice to the Contractor seeking liquidated damages. The liquidated damages shall be calculated in accordance with Annexure IV of this Contract. The liquidated damages shall be payable within 30 (thirty) days of the date of issue of notice. On failure of the Contractor to pay the same, Authority shall recover the amount from the Performance Bank Guarantee provided by the Contractor.

7.4.2. Provided that, within 15 (fifteen) days of receipt of demand notice, the Contractor may make a written representation to the Authority which shall be considered by the Authority on merits. The Authority may waive the liquidated damages in part or full, if it is satisfied

that the Contractor has been carrying out its obligations diligently and efficiently and that the performance shortfall to be waived was on account of reasons beyond the control of the Contractor.

7.4.3. It is clarified that this provision does not prejudice the rights of the Authority upon a Contractor Event of Default as set out in Article 15 including the Authority's right to terminate this Contract which shall remain unaffected.

ARTICLE 8

8. Tariff for Waterway Charges

8.1. Levy and Recovery of Tariff for Waterway Charges

- 8.1.1. The Authority shall be entitled to levy and recover Tariff for Waterway Charges from the Users of the stretch of the NW-28 under the Project as per the Tariff for Waterway Charges set by the Authority as per Article 8.1.2.
- 8.1.2. The Authority shall fix the Tariff for Waterway Charges, payable by the Users of the waterway, based on market conditions and on such other conditions, if any, as may be notified and made applicable by a competent authority.
- 8.1.3. The Tariff for Waterway Charges shall be collected at the respective designated ports and the Users have to deposit the charges notified by the Authority. After receipt of the port dues clearance certificate, the User will be allowed to use the waterway. In case the User fails to deposit the Tariff for Waterway Charges, such User will be deemed as an unauthorized user and will not be allowed to use the waterway until and unless these outstanding payments are made / dues cleared by the User.

ARTICLE 9

9. Payments to the Contractor

9.1. Payments of Fee

9.1.1. The Authority shall make monthly payments to the Contractor for a Fee equal to INR _____ per DWT for the monthly Vessel Traffic, on the stretch of the NW-28 under the Project, during the previous month (“Fee”) (Fee = INR__ per DWT multiplied by monthly DWT of Vessel Traffic in the respective month). Such payments shall commence from 1st day of the 2nd (second) month (pertaining to previous month) after COD until Termination or until the event of Suspension of Works as per Article [6.6](#). All such payments shall be exclusive of applicable taxes which the Contractor will pay over and above Fee payments.

9.1.2. In case any discount or incentives are mandated by Government Authorities to be applicable on certain vessel types, the Fee payments for such vessel types shall be subjected to same level of discounts.

9.1.3. Fee per DWT of the vessel will be indexed as per the variations in the Wholesale Price Index (WPI) annually. Such revision shall be based on indexation against 60% (sixty percent) of the variation in the WPI for a relevant year beginning 1st January and ending 31st December.

9.1.4. The Contractor shall submit to the Authority monthly statements of the Fee payable by the Authority for the respective month along with the details of calculation of total Vessel Traffic in DWT, for all types of vessels, measured through vessel registration certificate. The Independent Engineer on behalf of the Authority shall check the details given in the Contractor’s monthly statement and within 14 days certify the amounts to be paid to the Contractor after taking into account any credit or debit for the month in question in respect of materials for the Scope of works.

9.1.5. Fee for each month shall be paid on or before the 7th (seventh) day of the following month.

9.1.6. The Contractor shall submit a Monthly Report by 7th (seventh) of every month to the

Authority showing, among other things, calculation of total Vessel Traffic in DWT, for all types of vessels, measured through vessel registration certificate.

9.1.7. The Contactor shall, prior to the COD, open and establish a bank account designated (**“Designated Account”**) for the receipt of the Fee and inform the Authority of the details of the same.

9.1.8. Liability of payment of fee by the Authority to the Contractor as per Article [9.1.1](#) will be limited to the collection of Tariff for Waterway Charges collected by the Authority on the Project site.

9.2. Certified Accounts

9.2.1. During the subsistence of this Contract the Contractor shall maintain all documents and supporting evidences for its financial statements including agreements and documents with respect to all capital and debt raised by the Contractor, capital expenditure and operational expenses towards the Project; Fee charged and the amount of money received. The Contractor shall submit to the Authority a financial statement including quantity (DWT) of Vessel Traffic on the Project Site for every 6 (six) monthly period ending 30th September and 31st March every year, duly certified by its Statutory Auditors. The certificate must be furnished within 90 (ninety) Days of the end of each such period.

ARTICLE 10

10. Assets: Ownership and Permitted Charge

10.1. General

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

10.2. Permitted assignment and charges

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

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

ARTICLE 11

11. Shareholding

11.1. Ownership Structure

11.1.1. The Bidder/Consortium has caused the Contractor to be incorporated as a Special Purpose Vehicle (“SPV”) to operate, maintain and manage the Project/ Scope of Work in accordance with this Contract. The shareholding pattern of the SPV is as follows:
[•].

11.2. Shareholding

The Contractor shall ensure that the Bidder/ members of the Consortium maintain Management Control at least until expiry of 7 (seven) years after COD³ and also maintain their equity holding in the Contractor such that⁴:

11.2.1. Lead Consortium Member hold not less than 51% (fifty one percent) of its issued and paid-up equity and that no member of Consortium whose technical and financial capacity was evaluated in response to Request for Proposal shall hold less than 26% (twenty six percent) of such equity until expiry of 7 (seven) years after COD⁵. At any time, after expiry of the aforesaid equity lock-in period, the lead member can seek Authority’s approval for change in the SPV’s shareholding structure. The Authority may, at its sole discretion, consider and approve it subject to the condition that the SPV, after the proposed change in shareholding structure, would not violate the eligibility criteria as prescribed in RFP for the Project. Moreover, the Lead Consortium Member may reduce its share of paid-up equity to less than 51% (fifty one percent) after the expiry of 7 (seven) years after COD provided the Lead Consortium Member retains the highest share of paid-up equity vis-à-vis the other consortium members and the Lead Consortium Member’s share of paid-up equity shall never fall below 26% of such equity;

³ Shareholder lock in period considered is equivalent to moratorium period plus one year.

⁴ This provision would be edited depending on whether the bidder is a single bidder or a Consortium. Article 11.2.2 will be omitted in case the bidder is a single Bidder.

⁵ Shareholder lock in period considered is equivalent to moratorium period plus one year.

11.2.2. Deleted

11.2.3. Any Transfer of shareholding in the Contractor and/or direct or indirect change in the Management Control of the Contractor, including by way of a restructuring or amalgamation, shall only be with the prior written approval of the Authority which consent shall not be withheld except:

- (i) for reasons of national security; or
- (ii) if the Person proposed for assuming such Management Control would by virtue of the restrictions imposed under the Applicable Law or the conditions of bidding (including restrictions to avoid anti-competitive and monopolistic practice) and/or public policy be disqualified from undertaking the Project.
- (iii) if in the reasonable view of the Authority such change is likely to cause material adverse impact on the Contractor and/ or the Project.

11.2.4. Provided, nothing contained in this Article shall preclude or prevent pledge of shares in the Contractor in favour of its lenders as security for the financial assistance subject to enforcement and consequent Transfer thereof only with prior written consent of the Authority as stated hereinbefore.

11.3. **Constituent documents**

11.3.1. The Contractor shall ensure that its Articles of Association adequately reflect aforesaid and relevant commitments, obligations and responsibilities of the Contractor.

11.3.2. In particular, the Articles of Association and Memorandum of Association of the Contractor shall amended and submit to the Authority, within 3 (three) months of the Appointed Date, to include terms and conditions regarding composition and changes of shareholding structure and management stipulated in this Contract;

11.3.3. Any subsequent change in the Articles of Association or Memorandum of Association shall require prior approval of the Authority and the Articles of Association and Memorandum of Association shall include a specific provision to this

effect.

ARTICLE 12

12. General Rights, Duties and Obligations

12.1. Of the Contractor

12.1.1. Applicable Permits

The Contractor shall at all times during the Contract Period maintain and comply with the Applicable Permits.

12.1.2. Taxes & duties

The Contractor shall during the Contract Period pay in a timely manner all taxes, duties, levies and charges including but not limited to income tax and goods and services tax that may be levied, claimed or demanded from time to time by any Government Authority including any increase therein effected from time to time from any Government Authority, in respect of Project/ Scope of Work.

12.1.3. Insurance

a) Insurance Requirement:

- i. The Contractor shall effect and maintain at its own cost, during the Contract Period, such insurances for such maximum sums as may be required under this Contract and Applicable Laws, and such insurances as may be necessary or prudent in accordance with Good Industry Practice. The Contractor shall also effect and maintain such insurances as may be necessary for mitigating the risks that may devolve on the Authority as a consequence of any act or omission of the Contractor. The Contractor shall procure that in each insurance policy, the Authority shall be a co-insured.. For the avoidance of doubt, the Parties agree that the level of insurance to be maintained by the Contractor shall be determined on the same principles as applicable for determining the level of insurance . The Contractor shall purchase and maintain insurances as are prudent, including but not limited to the following:

- ii. Contractor's all risk insurance;
 - iii. loss, damage or destruction of at the Project, at replacement value;
 - iv. comprehensive third party liability insurance including injury or death to personnel of the Authority and others who may enter Project Site;
 - v. workmen's compensation insurance;
 - vi. marine cum storage cum erection insurance; and
 - vii. any other insurance that may be necessary to protect the Contractor, its employees and its assets and the Authority, its employees and agents engaged in or connected to the Project and Project Site (against loss, damage or destruction at replacement value including all Force Majeure Events that are insurable and not otherwise covered in items (i) to (v)).
- b) Insurance Cover & Insurance Companies: The Contractor shall insure all insurable assets under the Project and all insurable risks associated with Project to the extent advisable in accordance with Good Industry Practice ("Insurance Cover"). Insurance of IWAI assets to be taken with zero deductible franchise to ensure maximum proceeds.
- c) Evidence of Insurance Cover: The Contractor shall, from time to time, provide to the Authority copies of all insurance policies (or appropriate endorsements, certifications or other satisfactory evidence of insurance) obtained by the Contractor in accordance with this Contract.
- d) Application of Insurance Proceeds: All moneys received under insurance policies shall be promptly applied by the Contractor towards operation and maintenance of the Project or any part thereof which may have been damaged or destroyed and in respect of which the claim is lodged. The Contractor may designate its lenders as loss payees under the insurance policies or assign the insurance policies in their favour as security for the financial assistance.
- e) Validity of Insurance Cover: The Contractor shall pay premium payable on such insurance policies so as to keep the policies in force and valid throughout the Contract

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

- f) Waiver of Subrogation: All insurance policies procured in terms of provisions hereof shall include a waiver of any right of subrogation of insurers thereunder against, inter alia, the Authority and its assigns and successors and their respective subsidiaries, Associates, employees and of any right of the insurers of any set-off or counterclaim or any other deduction, whether by attachment or otherwise, in respect of any liability of any such person insured under any such policy or in any way connected with any loss, liability or obligation covered by such policies of insurance.
- g) Contractor's waiver: The Contractor hereby further releases, assigns and waives any and all rights of subrogation or recovery against, inter alia, the Authority and its assigns, undertakings and their subsidiaries, affiliates, employees, successors, insurers and underwriters, which the Contractor may otherwise have or acquire in or from or in any way connected with any loss, liability or obligation covered by policies of insurance maintained or required to be maintained by the Contractor pursuant to this Contract (other than third party liability insurance policies) or because of deductible clauses in or inadequacy of limits of any such policies of insurance.

12.1.4. Indemnification

- a) The Contractor shall, indemnify , defend, save and hold harmless, the Authority, and its officials, servants, agents, Government Instrumentalities, Designated GOI Agencies and Authority owned and/or controlled entities/enterprises, (the

“Government Indemnified Persons”) against any and all suits, proceedings, actions, demands and claims from third parties for any loss, damage, cost, and expense of whatever kind and nature, whether arising out of any breach by the Contractor of any of its obligations under this Contract or any related agreement or on account of any defect or deficiency in the provision of services by the Contractor to the Authority or any User or from any negligence of the Contractor under contract or tort, or on any other ground whatsoever, except to the extent that any such suits, proceedings, actions, demands and claims have arisen due to any negligent act or omission, or breach or default of this Contract on the part of the Government Indemnified Persons.

- b) The Authority shall indemnify, defend, save and hold harmless the Contractor against any and all suits, proceedings, actions, demands and claims from third parties for any loss, damage, cost and expense of whatever kind and nature arising out of (a) defect in title and/or the rights of the Authority in the land comprised in the Site, and/or (b) breach by the Authority of any of its obligations under this Contract or any related agreement, which materially and adversely affect the performance by the Contractor of its obligations under this Contract, save and except that where any such claim, suit, proceeding, action, and/or demand has arisen due to a negligent act or omission, or breach of any of its obligations under any provision of this Contract or any related agreement and/or breach of its statutory duty on the part of the Contractor, its subsidiaries, assigns, affiliates, contractors, servants or agents, the same shall be the liability of the Contractor

12.1.5. Engagement of Subcontractors

The Contractor may engage any Person possessing requisite skill, expertise and capability of designing, engineering, procurement and development of civil/ mechanical/electrical engineering structures/equipment, and/or operation and maintenance for the Scope of Work.

Provided that:

- a) the Contractor shall at all times be solely responsible for all its obligations under this Contract notwithstanding any such engagement and anything contained in any other agreement, and no default under any agreement shall excuse the

Contractor from its obligations or liability hereunder and the Contractor shall at all times be solely responsible for non-performance or for any defect, deficiency or delay in development and erection and/or installation of structures/equipment or any part thereof under the Scope of Work in accordance with provisions of this Contract;

- b) The Authority, shall on request of the Contractor, assist in obtaining, security clearance, if required, for the Subcontractor that the Contractor intends to engage;
- c) any contract that it enters with an Associate in respect of the Project shall be on arms-length basis and shall require a written approval from the Authority.

12.1.6. Condition Survey

- a) The Contractor agrees that at least 6 (six) Months prior to expiry by efflux of time of the Contract Period, it shall, cause to be conducted at its cost by an Independent Engineer, a condition survey and an inventory of entire Project Site. If, as a result of such survey, the expert shall observe that the Project Site or any part thereof have/has not been operated and maintained in accordance with requirements and Performance Standards therefor under this Contract (normal wear and tear excepted) the Contractor shall, at its cost and expenses, take all necessary steps to put the same in good working condition well before the Handover Date. In the event the Contractor fails to comply with this provision, the Authority may itself cause the condition survey of the Project Site to be conducted and remove any defect or deficiency. The Authority shall be promptly reimbursed by the Contractor for costs incurred in conducting such survey and preparation of inventory as also in putting Project Site in a good working condition.
- b) Compliance to environmental sustainability measures as set out in Annexure XXII

12.1.7. Conditional Right of First Refusal

- a) The Contractor shall have the Conditional Right of First Refusal (“**CROFR**”) for any

separate bid process for works related to maintenance dredging on the National Waterway-28 (“**Additional Dredging**”) during the course of this Contract.

- b) In case the SPV participates in the bid for Additional Dredging and is not the successful bidder, but its bid is within the range of 10 (ten) percent of the highest ranked bidder, the SPV can enforce the CROFR by matching the highest ranked bid. This shall be subject to the condition that the SPV must satisfy the eligibility criteria as may be specified in the bid documents for the separate bid for the proposed tender; and has satisfactory performance without any material default under the Contract at the time of exercising the CROFR. A material default is one that entitles the Contractor to suspend its obligations and/ or terminate the Contract.

12.2. Of the Authority

12.2.1. Assistance in obtaining approvals, permits and licenses.

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

12.2.2. General rights of inspection and verification

The Authority may during pendency of the Contract itself or by appointment of a subject matter Experts verify performance of obligations of the Contractor as set out in this Contract.

12.3. Of the Authority and the Contractor

12.3.1. Monitoring Arrangement

The parties shall furnish to each other periodical status reports relating to key milestones and obligations as per Annexure IX “Monitoring Arrangement.”

12.3.2. Compliance with Laws and Regulations

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

12.3.3. Rights to Documents

- (i) Authority's Documents: Documents and computer programs or copies thereof, if any, provided by the Authority to the Contractor, shall always remain property of the Authority. Such documents, computer programs and/or copies shall not be used by the Contractor for purposes other than for the Project. Such documents, computer programs and/or copies thereof shall, unless otherwise agreed upon by the Authority, be returned by the Contractor to the Authority on Handover Date.
- (ii) Contractor's Documents: Documents and computer programs provided by the Contractor, or which are developed (and owned by the Contractor) for operation and/or management of Project / Scope of Work shall be handed over by the Contractor to the Authority free of cost on the Handover Date.
- (iii) Confidentiality: All confidential information and documents (whether financial, technical or otherwise provided by either Party to the other shall not, unless compelled by law or the process of a Government Authority, be disclosed to any Person without the consent of the other Party with the exception of providing such information to legal advisors/auditors of the concerned party on a need-to-know basis. This covenant shall survive the Contract Period.
- (iv) Obligation to Cooperate: The Parties shall mutually cooperate with each other in order to achieve the objectives of this Contract.

12.3.4. Undertaking Additional Dredging works

- (i) The Authority shall have the right to undertake Additional Dredging works on NW-28 after a period of 7 (seven) years from COD. In such case, the Authority shall follow its procurement process for selection of the agency to undertake this Additional Dredging.
- (ii) The Contractor shall have the CROFR for the Additional Dredging works as per

Article 12.1.7. This Contract shall stand terminated upon the award of Additional Dredging works to its successful bidders.

- (iii) The compensation payable to the Contractor in such an event shall be in respect of Project Assets which are constructed, acquired or installed by the Contractor for the purposes of the Project and are on the books of accounts of the Contractor, shall be limited to the Adjusted Depreciated Value thereof. This payment in shall be payable to the Contractor for upfront capital expenditure incurred by the Contractor to enable Maintenance Dredging on the Project Site which was incurred with the approval of the Authority.

12.4. Assistance of Expert

12.4.1. The Parties, may, in circumstances mentioned in this Contract and other appropriate circumstances seek help of an Expert on case-to-case basis. The Parties shall ensure that the Expert proposed to be appointed is independent and has no conflict of interest and possesses the skill and experience to resolve the issue at hand. The cost of the service of the Expert shall be shared equally.

12.4.2. The Authority shall propose the name of three Experts proposed to be appointed and the Contractor shall be required to choose one of them no later than 30 (thirty) days from date of proposal by Authority to act as Expert for the issue at hand.

12.4.3. The Expert shall be expected to resolve the issues referred to him expeditiously and the Parties shall ensure that all necessary and reasonable assistance is provided to the Expert.

ARTICLE 13

13.Change in Law

13.1. Change in law

13.1.1. “**Change in Law**” means any of the occurrence of any of the following after the Bid Date and having Adverse Impact as per the provisions of the Article 13.1.2:

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

13.1.2. The Remedy

- (a) If as a result of Change in Law, the Contractor suffers decrease in Vessel Traffic and reduction in revenue or an increase in costs or other financial burden, the aggregate financial effect of which results in either (a) reduction by more than 25% of EBITDA in the affected financial year as compared to the average EBITDA of the previous three financial years or from COD till occurrence of Change in Law in case the Project is operational for less than three years from COD and this is enduring in nature due to the effect of Change in Law or (b) an increase in the capital expenditure by more than 20% of the estimations before the occurrence of such Change in Law provided that such an increase in capital expenditure has been certified by the the Independent Engineer, or (c) during implementation phase, the purpose for which the Project is being undertaken becomes non permissible or unviable due to Change in Law (hereby (a), (b), (c) known

as “**Adverse Impact**”), the Contractor may so notify the Authority. Upon such notification, the Authority and the Contractor shall meet, as soon as reasonably practicable but no later than 30 (thirty) days from the date of notice and set up a Conciliation & Settlement Committee (“**Committee**”);

- (b) The Committee referred above shall conduct its proceedings in accordance with the provisions of Article 19 as if it is an arbitration proceeding under that Article, save and except as provided in this Article 13.1.2;
- (c) The Committee referred to in this Article 13.1.2 shall conduct preliminary proceedings to satisfy itself that -
 - (i) A Change in Law has occurred, and this has an Adverse Impact on an enduring basis; and
 - (ii) the Change in Law or its effects have not been caused by any Party by any act or omission or negligence on its part, and if the Committee is satisfied that each of the conditions specified hereinabove is fulfilled, it shall issue an order to this effect and conduct further proceedings under this Article 13.1.2.
- (d) Upon completion of the proceedings referred to in this Article 13.1.2, the Committee may by a reasoned order make recommendations and setting out the terms of reference which shall be:
 - (i) based on a fair and transparent justification;
 - (ii) no greater in scope than is necessary for mitigating the effects of the Change in Law so as to place the Contractor in the same financial position as it would have enjoyed had there been no such Change in Law resulting in reduction in EBIDTA or increase in capital expenditure as described in Article 13.1.2 (i);
 - (iii) of no greater duration than is necessary for mitigating the effects of the Change in Law; and

- (iv) quantified and restricted in terms of relief or remedy and may include extension of Contract Period, as the case may be, subject to such extension in the Contract Period is limited to a maximum of 10 (ten) years, or any other remedy as it deem appropriate but shall not include any recommendation of any financial compensation by the Authority to the Contractor.
- (v) Within 15 (fifteen) days of receiving the order and terms of reference referred to in Article 13.1.2.
- (e) the Parties shall meet and make efforts in good faith to accept, in whole or in part, the relief or remedy recommended by the Committee for mitigating the effects of the Change in Law and to procure implementation of the Project in accordance with the provisions of this Contract. In pursuance hereof, the Parties may enter into a Memorandum of Understanding (the “MoU”) setting forth the agreement reached hereunder, and the terms of such MoU shall have force and effect as if they form part of this Contract.
- (f) Provided that if no agreement is reached within 90 (ninety) days of the aforesaid notice, the Parties may resolve this matter as per the provisions of Article 19. For the avoidance of doubt, it is agreed that this Article 13.1.2 shall be restricted to changes in law directly affecting the Contractor’s costs or EBITDA or capital expenditure of performing its obligations under this Contract.

ARTICLE 14

14. Force Majeure

14.1. Force Majeure Event

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

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

14.2. Non-Political Events

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

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

disruptions or any other industrial disturbances not arising on account of the acts or omissions of the Contractor or the Contractor;

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

14.3. **Political Events**

14.3.1. Any of the following events shall constitute Political Event:

- a) Change in Law for which no relief is provided under the provisions of Article 13, resulting in Adverse Impact;
- b) action of a Government Authority having Material Adverse Effect including but not limited to:
 - (i) acts of expropriation, compulsory acquisition or takeover by any Government Authority of the Project or any part thereof or of the Contractor's or the Contractor's rights under any of the Project Contracts, and
 - (ii) any unlawful, unauthorized or without jurisdiction refusal to issue or to renew or the revocation of any Applicable Permits, in each case, for reasons other than the Contractor's or the Contractor's breach or failure in complying with the Scope of Work, Applicable Laws, Applicable Permits, any judgment or order of a Governmental Agency of any contract by which the Contractor or the Contractor as the case may be is

bound;

- (iii) early termination of this Contract by the Authority for reasons of national emergency, national security or the public interest;
- (iv) any failure or delay of the Contractor caused by any of the aforementioned Political Events, for which no offsetting compensation is payable to the Contractor by or on behalf of the Contractor; or
- (v) any event or circumstance of a nature analogous to any of the foregoing.

14.4. Other Events

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

- a) an act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo, riot, insurrection, terrorist or military action, civil commotion or politically motivated sabotage;
- b) industry wide or State wide strikes or industrial action;
- c) any civil commotion, boycott or political agitation which prevents collection of Fee by the Contractor;
- d) any judgment or order of a court of competent jurisdiction or statutory authority in India made against the Contractor in any proceedings which is non-collusive and duly prosecuted by the Contractor; and any judgment or order of a court of competent jurisdiction or statutory authority in India made against the Contractor in any proceedings which is non-collusive and duly prosecuted by the Contractor other than relating to proceedings
 - (i) pursuant to failure of the Contractor to comply with any Applicable Law or Applicable Permit, or

- (ii) on account of breach of any Applicable Law or Applicable Permit or of any contract, or
 - (iii) enforcement of this Contract or
 - (iv) with respect to exercise of any of its rights under this Contract by the Authority; or
- e) any judgment or order of a court of competent jurisdiction or statutory authority in India made against the Project or the Authority in any proceedings which is non-collusive and duly prosecuted by the Authority; and any judgment or order of a court of competent jurisdiction or statutory authority in India made against the Project or the Authority in any proceedings which is non-collusive and duly prosecuted by the Authority, which impacts the Contractor's ability to undertake the Scope of Work as per provisions of this contract, other than relating to proceedings
 - (i) pursuant to failure of the Contractor to comply with any Applicable Law or Applicable Permit, or
 - (ii) on account of breach of any Applicable Law or Applicable Permit or of any contract, or
 - (iii) enforcement of this Contract or
 - (iv) with respect to exercise of any of its rights under this Contract by the Authority; or
- f) any event or circumstance of a nature analogous to any of the foregoing.

14.5. **Notice of Force Majeure Event**

14.5.1. The Affected Party shall give written notice to the other Party in writing of the occurrence of any of the Force Majeure Event (the “**Notice**”) as soon as the same arises or as soon as reasonably practicable and in any event within 7 (seven) Days after the Affected Party knew, or ought reasonably to have known, of its occurrence and the adverse effect it has or is likely to have on the performance of its obligations

under this Contract.

14.5.2. The Notice shall inter-alia include full particulars of:

- a) the nature, time of occurrence and extent of the Force Majeure Event with evidence in respect thereof;
- b) the duration or estimated duration and the effect or probable effect which such Force Majeure Event has or will have on the Affected Party's ability to perform its obligations or any of them under this Contract;
- c) the measures which the Affected Party has taken or proposes to take, to alleviate the impact of the Force Majeure Event or to mitigate the damage; and
- d) any other relevant information.

14.5.3. So long as the Affected Party continues to claim to be affected by a Force Majeure Event, it shall provide the other Party with periodic (fortnightly/monthly) written reports containing the information called for by Article 14.5.2 and such other information as the other Party may reasonably request.

14.6. Period of Force Majeure

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

- a) expiry of the period during which the Affected Party is excused from performance of its obligations in accordance with Article 14.8; or
- b) termination of this Contract pursuant to Article 14.10 hereof.

14.7. Resumption of Performance

14.7.1. During the period of Force Majeure, the Affected Party shall in consultation with

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

14.8. Performance Excused

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

14.9. Costs, Revised Timetable

14.9.1. Costs

- a) Upon occurrence of any Force Majeure Event, the Parties shall bear their respective costs and no Party shall be required to pay to the other Party any costs thereof.
- b) Save and except as expressly provided in this Article 14.9.1, neither Party shall be liable in any manner whatsoever to the other Party in respect of any loss, damage, cost, expense, claims, demands and proceedings relating to or arising out of occurrence or existence of any Force Majeure Event or exercise of any right pursuant hereto.

14.9.2. Extension of time/period

- (a) Upon the occurrence of any Force Majeure Event prior to the Commercial Operation Date, the period set forth in Article 3.3.1 for fulfilment of Conditions Precedent shall be

extended by a period equal in length to the duration of the Force Majeure Event.

- (b) At any time after the Commercial Operation Date, if any Force Majeure Event occurs:
- (i) before COD, the Contract Period and the dates set forth in the Project Completion Schedule shall be extended by a period equal in length to the duration for which such Force Majeure Event subsists; or
 - (ii) after COD, whereupon the Authority is unable to collect Tariff for Waterway Charges despite making best efforts thereof during the subsistence of such Force Majeure Event, the Contract Period shall be extended by a period, equal in length to the period during which the Authority was prevented from collection of Tariff for Waterway Charges on account thereof; provided that in the event of reduction in collection of Tariff for Waterway Charges on account of partial inability or suspension, as the case may be, which causes the daily collection to decline below 90% of the Average Daily Tariff for Waterway Charges, the Authority shall extend the Contract Period in proportion to the loss of Tariff for Waterway Charges on a daily basis. For the avoidance of doubt, loss of 25% in collection of Tariff for Waterway Charges as compared to the Average Daily Tariff for Waterway Charges for 4 (four) days shall entitle the Contractor to extension of 1 (one) day in the Contract Period.

14.10. Termination due to Force Majeure Event

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

ARTICLE 15

15.Events of Default

15.1. Events of Default

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

15.1.1. The Contractor Event of Default

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

- (i) Contractor's failure to perform or discharge any of its obligations in accordance with the provisions of this Contract;
- (ii) Maintenance Works at the Project Site is abandoned for a more than 90 (ninety) Days period during the Implementation Phase;
- (iii) Delay of more than 180 (one hundred and eighty) Days from any Milestone Date in achieving any of the performance obligations set forth for the relevant Milestone Date or the COD is delayed for more than 180 (one hundred and eighty) Days from the Scheduled Completion Date;
- (iv) Contractor's failure to perform or discharge any of its obligations under any other Contract, which has or is likely to affect the Project/the Scope of Work, materially;
- (v) Any representation made or warranties given by the Contractor under this Contract is found to be false or misleading;
- (vi) The Contractor passing a resolution for voluntary winding up;
- (vii) Appointment of a provisional liquidator, administrator, trustee or receiver of the whole or substantially whole of the undertaking of the Contractor by a court of competent jurisdiction in proceedings for winding up or any other legal

proceedings;

- (viii) Levy of an execution or restraint on the Contractor's assets which has or is likely to have Material Adverse Effect and/or affect the Project/Scope of Work, materially and such execution or restraint remaining in force for a period exceeding 90 (ninety) Days;
- (ix) The Performance Guarantee is not maintained in terms of the provisions hereof;
- (x) The Contractor abandons or expresses its intention to revoke/terminate this Contract without being entitled to do so as is expressly provided in the Contract;
- (xi) A change in shareholding such that the beneficial interest of the Bidder/Consortium in the Contractor reduces below the limits set in Article 11.2 and/or Management Control of the Contractor has occurred in contravention of the provisions of Article 11 hereof;
- (xii) Amalgamation of the Contractor with any other company or reconstruction or transfer of the whole or part of the Contractor's undertaking [other than transfer of assets in the ordinary course of business] in contravention with the provisions of Article 11 hereof; and
- (xiii) The Contractor engaging or knowingly allowing any of its employees, agents, Contractor or representative to engage in any activity prohibited under this Contract and/or by law or which constitutes a breach of the Contract or breach of or an offence under any law, in the course of any activity undertaken pursuant to this Contract.

15.1.2. The Authority Event of Default

- (i) The Authority's failure to perform or discharge its obligations in accordance with the provisions of this Contract unless such failure has occurred as a consequence of any Contractor Event of Default or a Force Majeure Event.

- (ii) Any representation made or warranties given by the Authority under this Contract is found to be false or misleading.
- (iii) Delay of more than 15 days in payment of Fee for three (three) consecutive Months during the Contract Period.
- (iv) Levy of an execution or restraint on the Project in any proceedings against the Authority (unless such proceedings are initiated as a consequence of any Contractor Event of Default) which has or is likely to have Material Adverse Effect and such execution or restraint remaining in force for a period exceeding 90 (ninety) Days.

15.2. **Parties Rights**

15.2.1. Upon the occurrence of a Contractor Event of Default, the Authority shall without prejudice to any other rights and remedies available to it under this Contract be entitled to terminate this Contract.

15.2.2. Upon the occurrence of a Authority Event of Default, the Contractor shall without prejudice to any other rights and remedies available to it under this Contract be entitled to terminate this Contract.

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

15.3. **Consultation Notice**

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

15.4. Remedial Process

15.4.1. Following the issue of Consultation Notice by either Party, within a period not exceeding 90 (ninety) Days or such extended period as the Parties may agree (“**Remedial Period**”) the Parties shall, endeavour to arrive at an agreement as to the manner of rectifying or remedying the underlying Event of Default.

15.5. Obligations during Remedial Period

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

15.6. Revocation of Consultation Notice

15.6.1. If during the Remedial Period the underlying Event of Default is cured or waived or the Parties, the Consultation Notice shall be withdrawn in writing by the Party who has issued the same.

15.7. Termination due to Events of Default

15.7.1. If before the expiry of the Remedial Period, the underlying Event of Default is neither cured nor waived nor the Parties, the Party who has issued the Consultation Notice shall have the right to terminate this Contract, in which event, the provisions of Article 16 and 17 shall, to the extent expressly made applicable, apply.

15.8. Authority’s Rights of Step-in

15.8.1. Upon a Termination Notice being issued due to a Contractor Event of Default, the Authority may, at its discretion:

- a) re-enter upon and take possession and control of Project Site forthwith;
- b) prohibit the Contractor and any Person claiming through or under the Contractor from entering upon/dealing with the Project;

ARTICLE 16

16. Termination of the Contract

16.1. Termination Procedure

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

16.2. Obligations during Termination Period

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

16.3. Condition Survey

16.3.1. The Contractor agrees that on the service of a Termination Notice or at least 6 (six) months prior to the expiry of the Contract Period, as the case may be, it shall conduct or cause to be conducted under the Authority’s supervision, a condition survey of the Project Site to ascertain the condition thereof, verifying compliance with the Contractor’s obligations under this Contract. During this period, the designated key personnel of the Authority shall be associated with the Scope of Work (except when the same is impossible due to a Force Majeure Event) in order to facilitate smooth takeover of the same by the Authority on the Handover Date.

16.3.2. If, as a result of the condition survey, the Authority shall observe/notice that the

Project Site a or any part thereof have/has not been operated and maintained in accordance with the requirements therefor under this the Contractor shall, at its cost and expenses, take all necessary steps to put the same in good working conditions well before the Handover Date.

16.3.3. In the event the Contractor fails to comply with the provisions of this Contract, the Authority may itself cause the condition survey of the Project Site to be conducted. The Authority shall be compensated by the Contractor for any costs incurred in conducting such survey and preparation of inventory as also in putting the Project Site in good working condition.

16.4. Consequences of Termination

16.4.1. Without prejudice to any other consequences or requirements under this Contract or under any law:

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

ARTICLE 17

17.Compensation

17.1. Transfer Fee and Charges

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

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

17.2. No Compensation on Expiry of Contract Period

17.2.1. In the event of expiry of Contract by efflux of time (the Contract having run its full course), the Contractor shall hand over/ transfer peaceful possession of the Project Site including Project Assets and the Project Facilities and Services free of cost and Encumbrance.

17.3. Remedies Cumulative

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

ARTICLE 18

18. Handover on expiry of Contract Period

18.1. General Scope of Handover

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

18.2. Contractor's Obligations

The Contractor shall;

18.2.1. hand over peaceful possession of the Project Site and the Project free of Encumbrance;

18.2.2. hand over to the Authority all documents including as built drawings, manuals and records relating to operation and maintenance of the Project;

18.2.3. transfer technology and up-to-date know-how relating to operation and maintenance of the Project;

18.2.4. at its cost, transfer to the Authority all such Applicable Permits which the Authority may require and which can be legally transferred.;

18.2.5. be permitted to remove moveable assets procured by the Contractor without any consideration or payment.

For avoidance of doubt it is clarified that moveable assets shall refer to those moveable assets procured by the Contractor for the undertaking the Scope of Work as per this Contract;

18.2.6. at its cost, remove within 90 (ninety) days from expiry of the Contract Period, from the Project Site, any moveable assets in terms of the provisions of this Contract.

18.3. Authority's Obligations

18.3.1. Except in the event of expiry of the Contract by efflux of time, the Authority shall pay Termination Payment payable to the Contractor in accordance with Article 17.1 of this Contract, to the Contractor, or deposit the same in the Designated Account, as the case may be. The Contractor confirms that upon such payment being made, the Authority shall stand duly discharged of its obligations regarding payment of compensation under this Contract and the charge, if any, created by the Contractor in favour of its lenders on any of the assets shall stand satisfied and all such assets shall on and from the Handover Date be free from such charge.

18.3.2. The Contractor further confirms that payment of compensation by Authority in accordance with this Article [18.3](#) shall be a valid discharge to the Authority in respect of Authority's obligation regarding payment of compensation to the Contractor under this Contract.

18.4. Risk

18.4.1. Until handover in accordance with this Article 18, the Project shall remain at the sole risk of the Contractor except for any loss or damage caused to or suffered by the Contractor due to any act or omission or negligence on the part of the Authority under this Contract.

18.5. Vesting Certificate

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

any rights by the Authority or its nominee on, or in respect of, the Project on the footing that all obligations under Article 18.2 have been complied with by the Contractor.

ARTICLE 19

19. Dispute resolution

19.1. Amicable settlement

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

19.2. Conciliation

19.2.1. In case any dispute is not resolved amicably as provided in Article 19.1, the Contractor may agree to refer the matter to conciliation & settlement Committee established by the Authority as per provisions contained in Part-III of the Arbitration & Conciliation (Amendment) Act, 2015 (the “**Conciliation & Settlement Committee**”). The standard operating procedures for conciliation and settlement of disputes through the conciliatory process and the constitution of the committee shall be contained in the policy guidelines issued by the Authority on the subject, which shall be in alignment with the provisions contained in Sections 63 and 64 of the Arbitration & Conciliation (Amendment) Act, 2015. In case the recommendations/decision of the committee is not acceptable to the Contractor, it shall be free to refer the dispute to arbitration in accordance with the provisions of Article 19.2 or 19.3.

19.3. Arbitration

19.3.1. Arbitration

Failing amicable settlement and/or settlement with the assistance of legal expert appointed by the parties by mutual consent, the dispute or differences or claims as the case may be, shall be finally settled by binding arbitration under the Arbitration and

Conciliation Act, 1996. Unless the parties mutually agree otherwise, within 30 (thirty) days of invocation of the arbitration as mentioned below, the rules of arbitration prescribed by the International Centre for Alternative Dispute Resolution, New Delhi shall apply to the arbitration. The arbitration shall be by a panel of three arbitrators, one to be appointed by each party and the third, who shall act as presiding arbitrator, to be appointed by the two arbitrators appointed by the parties. The arbitration shall be invoked by one party issuing to the other a notice in writing invoking the arbitration and appointing an arbitrator. Upon receipt of the notice, the other party shall appoint the second arbitrator. The two arbitrators so appointed shall appoint the third arbitrator who shall act as the 'Presiding Arbitrator'. If the other Party fails to appoint a second arbitrator within 30 (thirty) days from the receipt of the request to do so, then the arbitrator so appointed by the first party shall adjudicate the disputes as 'Sole Arbitrator'.

19.3.2. Place of arbitration

The place of arbitration shall be the headquarters of the Authority in India.

19.3.3. English language

The request for arbitration, the answer to the request, the terms of reference, any written submissions, any orders and rulings shall be in English and, if oral hearings take place, English shall be the language to be used in the hearings.

19.3.4. Procedure

The procedure to be followed within the arbitration, including appointment of arbitrator/arbitral tribunal, the rules of evidence which are to apply shall be in accordance with the Arbitration and Conciliation Act, 1996.

19.3.5. Enforcement of award

Any decision or award resulting from arbitration shall be final and binding upon the parties. The parties hereto agree that the arbitral award may be enforced against the parties to the arbitration proceeding or their assets wherever they may be found and that

a judgment upon the arbitral award may be entered in any court having jurisdiction thereof.

19.3.6. Fees and expenses

The fees and expenses of the arbitrators and all other expenses of the arbitration shall be initially borne and paid equally by respective parties subject to determination by the arbitrators. The arbitrators may provide in the arbitral award for the reimbursement to the successful party of its costs and expenses in bringing or defending the arbitration claim, including legal fees and expenses incurred by the party. The fee of arbitration shall be determined according to the Arbitration and Conciliation Act, 1996.

19.3.7. Performance during arbitration

Pending the submission of and/or decision on a dispute, difference or claim or until the arbitral award is published, the Parties shall continue to perform all of their obligations under this Contract without prejudice to a final adjustment in accordance with such award.

ARTICLE 20

20. Representations and warranties

20.1. Representations and warranties of the Contractor

The Contractor represents and warrants to the Authority that:

- 20.1.1. it is duly organised, validly existing and in good standing under the laws of India and hereby expressly and irrevocably waives any immunity in any jurisdiction in respect of this Contract or matters arising thereunder including any obligation, liability or responsibility hereunder;
- 20.1.2. it has full power and authority to execute, deliver and perform its obligations under this Contract;
- 20.1.3. it has taken all necessary action to authorise the execution, delivery and performance of this Contract;
- 20.1.4. this Contract constitutes the legal, valid and binding obligation of the Contractor, enforceable against it in accordance with the terms hereof;
- 20.1.5. there are no actions, suits or proceedings pending or to its best knowledge, threatened against or affecting it before any court, administrative body or arbitral tribunal which might materially and adversely affect its ability to meet or perform any of its obligations under this Contract;
- 20.1.6. it has the financial standing and capacity to undertake the Project in accordance with the terms of this Contract;
- 20.1.7. 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 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;

- 20.1.8. it has no knowledge of any violation or default with respect to any order, writ, injunction or decree of any court or any legally binding order of any Government Authority which may result in any Material Adverse Effect on its ability to perform its obligations under this 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;
- 20.1.9. 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;
- 20.1.10. all its rights and interests in the Project shall pass to and vest in the Authority on the Handover Date free and clear of all liens, claims and Encumbrances, without any further act or deed on its part or that of the Authority, and that none of the assets of the Project shall be acquired by it, subject to any agreement under which a security interest or other lien or Encumbrance is retained by any person, save and except as expressly provided in this Contract;
- 20.1.11. no representation or warranty by it contained herein or in any other document furnished by it to the Authority including the Bid or to any Government Authority in relation to Applicable Permits contains or will contain any untrue or misleading statement of material fact or omits or will omit to state a material fact necessary to make such representation or warranty not misleading;
- 20.1.12. 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 in connection therewith;
- 20.1.13. agrees that the execution, delivery and performance by it of this Contract and all other agreements, contracts, documents and writings relating to this Contract constitute private and commercial acts and not public or governmental acts; and

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

20.2. **Representations and warranties of the Authority**

The Authority represents and warrants to the Contractor that:

20.2.1. it is duly organised, validly existing and in good standing under the laws of India;

20.2.2. it has full power and authority to execute, deliver and perform its obligations under this Contract;

20.2.3. it has taken all necessary action to authorise the execution, delivery and performance of this Contract;

20.2.4. this Contract constitutes the legal, valid and binding obligation of the Authority, enforceable against it in accordance with the terms hereof; and

20.2.5. there are no actions, suits or proceedings pending or to its best knowledge, threatened against or affecting it before any court, administrative body or arbitral tribunal which might materially and adversely affect its ability to meet or perform any of its obligations under this Contract.

20.3. **Disclosure**

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

ARTICLE 21

21. Miscellaneous provisions

21.1. Amendments

21.1.1. No amendment or waiver of any provision of this Contract, nor consent to any departure by any of the parties therefrom, shall in any event be effective unless the same shall be in writing and signed by the parties hereto and then such waiver or consent shall be effective only in the specific instance and for the specified purpose for which given.

21.2. Agreement to override other Agreements.

21.2.1. This Contract supersedes all previous agreements or arrangements between parties, including any memoranda of understanding entered into in respect of the contents hereof and represents the entire understanding between the parties in relation thereto.

21.3. Accounts and Audit

21.3.1. Audited Accounts

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

same shall be rectified and such rectified account shall form the basis of payments by either Party under this Contract.

- (b) The Contractor 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, giving summarised information on the vessel types handled and liable for payment of Tariff therefore, and any other information, in the manner and form prescribed by the Securities and Exchange Board of India for publication of quarterly result by the Companies listed on a stock exchange.
- (c) On or before the 30th day of June each year, the Contractor shall provide to the Authority, for the preceding Accounting Year, a statement duly audited by its Statutory Auditors giving summarised information on (a) the Vessel Traffic on the Project Site therefore, (b) Fee received, and other revenues derived from the Project and any other assets associated with the Project and earned directly by the Contractor (c) such other information as the Authority may reasonably require

21.3.2. Appointment of Auditors

- (a) The Contractor shall appoint, and have during the subsistence of up to the expiry of the Contract period from the Appointed Date 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”), such list to be prepared substantially in accordance with the criteria set forth in Annexure [XXI](#). All fees and expenses of the Statutory Auditors shall be borne by the Contractor.
- (b) The Contractor may terminate the appointment of its Statutory Auditors after a notice of 45 (forty-five) days to the Authority, subject to the replacement Statutory Auditors being appointed from the Panel of Chartered Accountants.
- (c) Notwithstanding anything to the contrary contained in this Contract, the Authority shall have the right, but not the obligation, to appoint at its cost from time to time and at any time, another firm (the “Additional Auditors”) from the Panel of Chartered Accountants to audit and verify all those matters, expenses, costs, realisations and things which the Statutory Auditors are required to do, undertake or certify pursuant to this Contract.
- (d) The Authority shall have the right, but not the obligation, to appoint at its cost, for

the duration of the Implementation Phase, another firm (the “Concurrent Auditors”) from the Panel of Chartered Accountants to undertake concurrent audit of the Contractor’s accounts.

21.3.3. Certification of Claims by Statutory Auditors

Any claim or document provided by the Contractor 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. For the avoidance of doubt, such certification shall not be required for exchange of information in the normal course of business.

21.3.4. Set-off

In the event any amount is due and payable by the Authority to the Contractor, it may set-off any sums payable to it by the Contractor and pay the balance remaining. Any exercise by the Authority of its rights under this Article 21.3.4 shall be without prejudice to any other rights or remedies available to it under this Contract or otherwise.

21.3.5. Dispute Resolution

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

21.4. **Compensation for Breach of the Contract**

21.4.1. Compensation for Default by the Contractor Subject to the provisions of Article 21.4.4, in the event of the Contractor being in material breach or default of this Contract, it shall pay to the Authority by way of compensation, all direct costs suffered or incurred by the Authority as a consequence of such material breach or default, within 30 (thirty) days of receipt of the demand supported by necessary documentation thereof; provided that no compensation shall be payable under this Article 21.4.1 for any material breach or default in respect of which damages are expressly specified and payable under this Contract or for any consequential losses

incurred by the Authority

21.4.2. Extension of Contract Period

Subject to the provisions of Article 21.4.4, in the event that a material breach or default of this Contract due to the Authority's event of default that causes delay in achieving COD, as the case may be, the Authority shall, extend the Contract Period, such extension in the Contract Period shall be considered and determined by the Authority at such time. The decision of the Authority in this matter shall be final and binding.

21.4.3. Compensation to be in addition.

Compensation payable under this Article 21.4 shall be in addition to, and without prejudice to, the other rights and remedies of the Parties under this Contract including termination thereof.

21.4.4. Mitigation of costs and damage

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

21.5. **Survival of Obligations**

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

21.6. **Articles to survive Termination.**

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

Parties.

21.7. Joint Responsibility

21.7.1. In the event that any damage is caused partly due to the negligence or default or omission on the part of the Authority and partly due to the negligence or default or omission on the part of the Contractor, each Party shall be liable to the other Party only in the proportion to its respective degree of negligence or default or omission, as the case may be.

21.8. Several Obligations

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

21.9. Severability

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

21.10. Waiver; remedies

21.10.1. No failure on the part of any party to exercise, and no delay in exercising any right, power or privilege hereunder shall operate as a waiver thereof or a consent thereto; nor shall any single or partial exercise of any such right, power or privilege preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The remedies herein provided are the cumulative and not exclusive of any

remedies provided by applicable law.

21.11. Severance of terms

21.11.1. If any provisions of this Contract are declared to be invalid, unenforceable or illegal, by any competent arbitral tribunal or court, such invalidity, un-enforceability or illegality shall not prejudice or affect the remaining provisions of this Contract which shall continue in full force and effect and shall not be affected by such void.

21.12. Language

21.12.1. All notices, certificates, correspondence or other communications under or in connection with this Contract, and Project contracts, if any, or the Project shall be in English.

21.13. Confidentiality

21.13.1. No Party shall, without the prior written consent of the other Parties, at any time divulge or disclose or suffer or permit its servants or agents to divulge or disclose to any person or use for any purpose unconnected with the Project any information which is, by its nature or it marked “proprietary material”, concerning the other (including any information concerning the contents of this Contract) except to their respective officers, directors, employers, agents, representatives and professional advisors or as may be required by any law, rule, regulation or any judicial process for period of five years after the Handover date; provided, however, that any Party, with the written consent of the other Parties, may issue press releases containing non-sensitive information in relation to the progress of the Project. This article shall not apply to information:

- a) Already in the public domain, otherwise than by breach of this Contract.
- b) Already in the possession of the receiving party before it was received from any other party in connection with this Contract and which was not obtained under any obligation of confidentiality; or

- c) Obtained from a third party who is free to divulge the same and which was not obtained under any obligation of confidentiality.
- d) Disclosure to lenders under terms of confidentiality.

21.14. Notices

Any notice to be given thereunder shall be in writing and shall either be delivered personally or sent by registered post, telex, facsimile transmission, electronic mail or other means of telecommunication in permanent written form. The addresses and numbers for service of notice shall be given to the Parties at their respective addresses set forth below:

The Authority:

CHAIRMAN

Fax No: Email:

The Contractor:

The MANAGING DIRECTOR

_____Ltd

Fax No.

Email:

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

21.15. Waiver

21.15.1. No waiver of any term or condition or of the breach thereof by any Party shall be valid unless expressed in writing and signed by such Party and communicated by such Party to the other Party in accordance with the provisions of Article 21.10 of this Contract. A waiver by any Party of any term or condition or breach thereof in a given case shall not be deemed or construed as a general waiver of such term or condition or the breach in the future or waiver of any other terms or conditions or breach of this Contract.

21.16. DELETED

21.17. Amendments, Modifications or Alterations.

21.17.1. All additional amendments, modifications and variations to this Contract shall be effectual and binding only if in writing and signed by the duly authorized representatives of the Parties.

21.18. Governing Law

21.18.1. This Contract shall be governed by and construed in accordance with the laws of the Republic of India and courts having territorial jurisdiction over the Project shall have jurisdiction over all matters relating to or arising out of this Contract.

21.19. Entire Contract

This Contract and the Annexures together constitute a complete and exclusive statement of the terms of the agreement between the Parties. All prior written or oral understandings, offers or other communications of every kind pertaining to this Contract unless specifically retained in this Contract and the Annexures, by reference or otherwise, are abrogated and withdrawn.

IN WITNESS WHEREOF, the Parties, intending to be legally bound, have caused this Contract on the dates indicated next to their signatures below:

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

Signed and Delivered by the Contractor by the hand of its authorized representative Mr. _____ pursuant to Resolution dated _____ of its Board of Directors

Annexures

Annexure I: Project site

1. **Project Site shall be:** From Ch. 0.0 km to Ch. 21.0 km for National Waterway-28 (NW-28)
From Ch. 0.0 km at Arabian Sea at Dabhol Lat 17°34'51"N, Lon 73°09'18"E to Ch. 21.0 k (17°
34' 2.55", 73°28' 54.1164"for National Waterway-28 (NW-28)

Annexure II: DELETED

Annexure III: Scope of Work

The scope of work (“**Scope of Work**”) shall mean and include the following:

- i. The Contractor shall mobilize resources like dredger, equipment, etc. at its cost for maintaining the assured depth of 5 m and channel bottom width of 100 m with a side slope of 1:5 in the entire stretch during the entire contract period of 30 years. In the stretch between from Chainage 0.0 km to 21 Km, may have to be dredged for which the shoal length is about 6300m with an estimated quantity of 3.5Lakhs Cu. M. that may have to be undertaken by mean of appropriate equipment and methodology.
- ii. The Contractor shall provide physical proof of dredging quantity on dredging on the Project Site. The actual quantities dredged during execution of work shall be based on the pre & post dredging surveys to be conducted jointly by IWAI or its nominated representative and the Contractor as given below:
 - Pre & post dredging survey shall be conducted by using automatic hydrographic survey system (AHSS) as per International Hydrographic Organization Standards for Hydrographic Surveys S-44 Edition 6.1.0 Order 1a
 - The equipment, men and machinery for pre & post dredging surveys are to be provided by the Contractor.
- iii. Identify the best course of navigation channel from time to time and remove shoals.
- iv. Dredging is to be carried out with suitable dredgers with optimal capacity. The Contractor shall submit the DPR including the Dredging Management Plan as per provision of the Contract. Dredging Management Plan is to be prepared specifying the dredging equipments, work method and management systems used for accomplishing the job. The scope of work includes dredged locations, dredging tolerances, quantities, etc. The work methodology includes number and type of dredgers intended to be used, dredged methodology, mobilization and demobilization, equipment maintenance, safe implementation of simultaneous operations, environmental management, dredging control, survey method, etc.
- v. Maintenance of a navigation channel of 5.0 m depth (below CD) 100m bottom width with

side slope of 1:5 throughout the stretch.

- vi. The maintenance methodology shall be determined by the Contractor taking into account the nature of the river and other environmental characteristics, including the nature, location and size of shoals, and during the contract period.
- vii. Sufficient number of qualified manpower should be deployed by the Contractor on the dredgers and other equipment and on other works throughout the Contract Period at his cost.
- viii. If the dredger goes out of order, the Contractor shall arrange for suitable replacements.
- ix. The Contractor shall not be eligible for payment of costs involved in shifting the dredger and its accessories from one location to another location within the Project Site on NW-28.
- x. Disposal of dredged materials would be affected into the free stream of the river / on the banks /into the nearby redundant channels at an appropriate distance from the navigation channel or at the designated dredged disposal locations as the case may be. The location for disposal of dredged material shall be in compliance with CRZ authority and as per the locations marked on NHO charts.
- xi. Provide assistance to barge and vessels / crafts movement in the navigation channel during dredging operation. Assistance in this context shall mean - the approaching vessels are to be guided in the dredging operation area by putting navigational buoys etc. In distress, the vessel has to be assisted through a tug etc for safe berthing at appropriate place. Charges for providing these services can be levied for the same, subject to notification by the Authority in consultation with the Contractor and in line with prevailing IWAI regulations.
- xii. To achieve the LAD of 5.0 m and channel bottom width of 100 m, the Contractor shall take into account tolerance of + 5 m from each edge of the channel and tolerance of +30 cm on the depth. There is, however, no restriction on maximum width of the channel which may naturally be available and no additional payments shall be admissible to this effect.
- xiii. The Contractor shall at its risk and cost, make all arrangements for locating the navigable channels, sand chars, snags, etc., by means of regular soundings along the river and change the position of the marks to indicate the navigable channel by the end users during operating

in the Project Site.

- xiv. Normal barge and vessels/crafts movement in the channel shall not be interrupted by the dredging operation.
- xv. The Contractor shall arrange at its own cost the transits, night navigational buoys, lights, mooring etc. as necessary required for dredging and also for safe passage of other vessels in the waterway.
- xvi. The Contractor shall provide the Authority and the Independent Engineer or their representatives boat/ survey launch from shore to dredger and back to shore and movement in the stretch for inspection & supervision.
- xvii. If the Contractor's personnel or any outside labour employed to work during execution of contract, breaks or damages/destroys any vessel, craft, net, fishing stakes etc. building, road, kerb, water pipe, fence, bund, wires, trees, crop, fruit or cultivated ground etc. during the period of agreement, the same shall be made good by the Contractor at his own expenses or in default the Authority may cause the same to be made good by other sources and deduct the expenses from any sums that may be then or at any time thereafter may become due to the Contractor.
- xviii. Any dispute with the local fishermen, for removal of fishing nets, stakes, from the channel to be dredged shall be resolved by the Contractor.
- xix. However, on request the Authority may extend the assistance for solving the issues only through the concerned official / dept. of the state or local bodies.
- xx. In case obstructions like concrete piles, structures of fishing nets, plastic debris, fallen trees, sunken boats etc. are encountered, those will be removed by the Contractor and no extra payment on this account shall be admissible to the Contractor.
- xxi. The Contractor shall adopt adequate precaution and measures such as construction of temporary protection etc. during the dredging operation, to avoid any collapse/ damages to the existing bank. Protection work of the dredged area shall be at its own cost.

- xxii. The Contractor shall forthwith dispatch, raise and remove any plant (floating or otherwise) belonging to him or to any person employed by him which may be sunk in the course of execution and completion of the works or otherwise deal with the same as the Authority or its representative may direct. Until the same shall be raised and removed, the Contractor shall display at night search lights and do all such things for the safe navigation as may be directed by the Authority or its representative. In the event of the Contractor not carrying out the obligations imposed upon him by this clause, the Authority or its representative shall raise and remove the same (without prejudice to the right of the Authority to hold the Contractor liable) and the Contractor shall pay to the Authority all costs incurred in connection therewith. The fact that sunken vessel, craft or plant is insured or has been declared a total loss, shall not absolve the Contractor from his obligation under this clause to raise and remove the same.
- xxiii. During execution of the work if any environmental degradation occurs, consequent on dumping of dredged material or any other reason the same shall be undone or necessary mitigation measures to the satisfaction of Authority or its representative by the Contractor at his cost, without claiming any additional payment from the Authority.
- xxiv. Any changes incurred on testing of the dredged material, testing/ analysing the quality of water for adopting environmental safeguards, minimizing detrimental impacts, enhancing the beneficial aspects of the project and for effective management of the environmental resources affected by the project shall be met by the Contractor. No additional charges on any such account shall be payable by the Authority.

If Performance Standards for KPIs are not met by operator for 4 (four) consecutive quarters, the Authority will initiate a performance assessment to identify improvement areas. The Contractor shall be allowed a time period of 2 (two) consecutive quarters to improve areas of performance shortfall, during which no action will be taken by Authority. If Performance Standards for KPIs are not met even at the end of 6 (six) consecutive quarters, it may be considered as case of contract termination by the Authority.

The Contractor shall ensure the following-

- i. Assured LAD of 5.0 m for the navigation channel of 100 m width throughout the Contract period
- ii. Maintain a survey vessel which has good maneuverability, even at low speeds of 1 to 2 knots.
- iii. During the contract period, if in any stretch of the channel, available depth or bottom width of channel is found to be less than that specified in the scope of work, as determined during the course of weekly joint surveys conducted, deduction shall be made from the penalty has to be levied as following:

S.no	Deductions for the Assured Depth Period of services from the Date of Commencement of Service LAD 5.0 M & CBW 100 M	Deduction to be applied. as percentage of monthly invoice for each non-compliance found in a joint weekly survey during the month
1	On achieving the assured depth of 5.0 m & width of 100 m	Nil
2	On achieving the assured depth of less than 4.7 m & greater than 4.6 m & width of 100 m	50% for each weekly default
3	On achieving the assured depth of less than 4.6 m & greater than 4.5 m & width of 100 m	70% for each weekly default

4	On achieving the assured depth of less 4.5 m & width of 100 m	100% for each weekly default
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The above mentioned Liquidated Damages will not be applicable during monsoon period (as defined by CWC monsoon order) as the hydrographic survey is linked to Chart Datum.

Instance of unsuccessful vessel passage due to physical obstruction

The Contractor may notify the Authority in the event of an unsuccessful vessel passage in the designated fairway channel of NW-28 on account of any physical obstruction to vessel passage including but not limited to shortfall in LAD. The Authority shall undertake necessary interventions including but not limited to dredging/towage works to ensure successful passage of vessel not later than a time period of 72 hours after the verification by Independent Engineer.

Independent Engineer shall validate/ certify that unsuccessful passage is not due to Contractor default subject to the following conditions:

- i. Contractor has taken an informed decision about the size and draft of the vessel and volume of cargo that can pass through National Waterway-28 by duly checking the LAD information updated periodically by the Authority on their website or any other source of information used in the future.
- ii. Contractor has adhered to the National Waterway-28 channel as declared by the Authority in their navigational charts updated periodically.

In case the Authority is unable to provide suitable transit during the defined time period of 72 hours, the Contractor may engage suitable intervention at its own cost after duly informing the Authority. Subsequently, the Contractor may reimburse the expenses incurred from the Authority through written representation.

The Contractor may waive the expenses incurred on its part to undertake suitable interventions in the event of an unsuccessful vessel passage in the designated fairway channel of NW-28 on account of any physical obstruction to vessel passage including but not limited to shortfall in LAD in case the Authority was unable to provide suitable transit within 72 hours, in part or full, if it is satisfied that the Authority has been carrying out its obligations diligently and efficiently and the shortfall was on account of reasons beyond the control of the Authority.

In the event of an unsuccessful vessel passage due to any physical obstruction in vessel passage along the designated fairway channel of NW-28 including but not limited to shortfall in LAD maintenance before 3rd (third) anniversary of COD, the Authority shall not be liable to undertake interventions to ensure successful passage of vessel nor shall be liable to reimburse Contractor to undertake suitable interventions.

Annexure V: Terms of Reference for Independent Engineer

1 Scope

- 1.1 These Terms of Reference for the Independent Engineer (“**TOR**”) are being specified pursuant to the Contract dated (“**Contract**”), which has been entered into between the Authority and . (“**Contractor**”) for the Project at on NW-28 on operate maintain and manage (“**OMM**”) basis, and a copy of which is annexed hereto and marked as Annex-A to form part of this TOR.
- 1.2 This TOR shall apply to implementation, operation and maintenance of the Project.

2 Definitions and Interpretations

- 2.1 The words and expressions beginning with or in capital letters used in this TOR and not defined herein but defined in the Contract shall have, unless repugnant to the context, the meaning respectively assigned to them in the Contract.
- 2.2 References to Articles and Annexures in this TOR shall, except where the context otherwise requires, be deemed to be references to the Articles and Annexures of the Contract, and references to Paragraphs shall be deemed to be references to Paragraphs of this TOR.
- 2.3 The rules of interpretation stated in Articles 1.3, 1.4 and 1.5 of the Contract shall apply, *mutatis mutandis*, to this TOR.

3 Role and functions of the Independent Engineer

- 3.1 The role and functions of the Independent Engineer shall include the following:
 - (i) review of DPR and Documents as set forth in Paragraph 4;
 - (ii) review, inspection and monitoring of Maintenance Works as set forth in Paragraph 5;
 - (iii) conducting tests on completion of maintenance and issuing Completion/ Provisional Certificate as set forth in Paragraph 5;
 - (iv) review, inspection and monitoring of operation and maintenance as set forth in Paragraph 6;

(v) review, inspection and monitoring of Contractor's obligations in Article 18.2 and as set forth in Paragraph 7;

(vi) determining, as required under the Contract, the costs of any works or services and/or their reasonableness;

(vii) assisting the parties in resolution of disputes as set forth in Paragraph 9; and

(viii) undertaking all other duties and functions in accordance with the Contract;

(ix) validating occasions of unsuccessful vessel passage due to insufficient LAD. The Independent engineer shall validate/ certify that unsuccessful passage is not due to Contractor default subject to the following conditions:

(i) Contractor has taken an informed decision about the size of the vessel and volume of cargo that can pass through the waterway by checking the LAD information updated weekly by the Authority on their website or any other source of information used in the future.

(ii) Contractor has adhered to the waterway channel as declared by the Authority in their navigational charts updated periodically.

(x) If required as per the terms of this Contract, the Authority shall request the Independent Engineer to validate the number of days of navigable LAD available in the designated fairway channel out of 330 operational days each year.

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

4 Development Period

4.1 During the Development Period, the Independent Engineer shall undertake a detailed review of the DPR to be furnished by the Contractor along with supporting data, including, the geo-technical and hydrographical investigations, characteristics of materials from borrow areas and quarry sites, topographical surveys and traffic surveys. The Independent Engineer shall complete such review and send its comments/ observations to the Authority and the Contractor

within 15 (fifteen) days of receipt of DPR. In particular, such comments shall specify the conformity or otherwise of such DPR with the Scope of the Project and specifications and standards.

- 4.2 The Independent Engineer shall review any modified DPR or supporting documents sent to it by the Contractor and furnish its comments within 7 (seven) days of receiving such DPR.
- 4.3 The Independent Engineer shall review the DPR in accordance with Annexure XXIII and furnish its comments thereon to the Authority and the Contractor within 7 (seven) days of receiving such DPR.
- 4.4 The Independent Engineer shall review the detailed design, dredging methodology, quality assurance procedures and the procurement, engineering and implementation time schedule sent to it by the Contractor and furnish its comments within 15 (fifteen) days of receipt thereof.

5 Implementation Phase

- 5.1 In respect of the DPR received by the Independent Engineer for its review and comments during the Implementation Phase, the provisions of Paragraph 4 shall apply, *mutatis mutandis*.
- 5.2 The Independent Engineer shall review the monthly progress reports furnished by the Contractor and send its comments thereon to the Authority and the Contractor within 7 (seven) days of receipt of such report.
- 5.3 The Independent Engineer shall inspect the Maintenance Works once every Month, preferably after receipt of the monthly progress report from the Contractor, but before the 20th (twentieth) Day of each month in any case, and make out a report of such inspection (“Inspection Report”) setting forth an overview of the status, progress, quality and safety of dredging, including the work methodology adopted, the materials used and their sources, and conformity of Maintenance Works with the Scope of the Project and the specifications and standards. In a separate section of the Inspection Report, the Independent Engineer shall describe in reasonable detail the lapses, defects or deficiencies observed by it in the maintenance dredging of the Project. The Independent Engineer shall send a copy of its Inspection Report to the Authority and the Contractor within 7 (seven) days of the inspection.

- 5.4 The Independent Engineer may inspect the project more than once in a month if any lapses, defects or deficiencies require such inspections.
- 5.5 For determining that the Maintenance Works conform to specifications and standards, the Independent Engineer shall require the Contractor to carry out, or cause to be carried out, tests on a sample basis, to be specified by the Independent Engineer in accordance with Good Industry Practice for quality assurance. For purposes of this Paragraph 5.5, the tests specified in the relevant Manuals specified by the Authority in relation to structures, buildings and equipment (the “Quality Control Manuals”) or any modification/substitution thereof shall be deemed to be tests conforming to Good Industry Practice for quality assurance. The Independent Engineer shall issue necessary directions to the Contractor for ensuring that the tests are conducted in a fair and efficient manner, and shall monitor and review the results thereof.
- 5.6 The sample size of the tests, to be specified by the Independent Engineer under paragraph 5.5, shall comprise 10% of the quantity or number of tests prescribed for each category or type of tests in the Quality Control Manuals; provided that the Independent Engineer may, for reasons to be recorded in writing, increase the aforesaid sample size by up to 10% for certain categories or types of tests.
- 5.7 The timing of tests referred to in Paragraph 5.5, and the criteria for acceptance/ rejection of their results shall be determined by the Independent Engineer in accordance with the Quality Control Manuals. The tests shall be undertaken on a random sample basis and shall be in addition to, and independent of, the tests that may be carried out by the Contractor for its own quality assurance in accordance with Good Industry Practice.
- 5.8 In the event that the Contractor carries out any remedial works for removal or rectification of any defects or deficiencies, the Independent Engineer shall require the Contractor to carry out, or cause to be carried out, tests to determine that such remedial works have brought the Maintenance Works into conformity with the specifications and standards, and the provisions of this Paragraph 5 shall apply to such tests.
- 5.9 In the event that the Contractor fails to achieve any of the Project Milestones, the Independent

Engineer shall undertake a review of the progress of maintenance dredging works and identify potential delays, if any. If the Independent Engineer shall determine that completion of the Project is not feasible within the time specified in the Contract, it shall require the Contractor to indicate within 15 (fifteen) days the steps proposed to be taken to expedite progress, and the period within which COD shall be achieved. Upon receipt of a report from the Contractor, the Independent Engineer shall review the same and send its comments to the Authority and the Contractor forthwith.

- 5.10 If at any time during the Implementation Phase, the Independent Engineer determines that the Contractor has not made adequate arrangements for the safety of workers and Users in the zone of dredging works or that any work is being carried out in a manner that threatens the safety of the workers and the Users, it shall make a recommendation to the Authority forthwith, identifying the whole or part of the Maintenance Works that should be suspended for ensuring safety in respect thereof.
- 5.11 In the event that the Contractor carries out any remedial measures to secure the safety of suspended works and Users, it may, by notice in writing, require the Independent Engineer to inspect such works, and within 3 (three) days of receiving such notice, the Independent Engineer shall inspect suspended works and make a report to the Authority forthwith, recommending, whether or not such suspension may be revoked by the Authority.
- 5.12 If suspension of Maintenance Works is for reasons not attributable to the Contractor, the Independent Engineer shall determine the extension of dates set forth in the Project Completion Schedule, to which the Contractor is reasonably entitled, and shall notify the Authority and the Contractor of the same.
- 5.13 The Independent Engineer shall carry out, or cause to be carried out, all the Tests specified in the Annexure hereto and issue a Completion Certificate or Provisional Certificate, as the case may be. For carrying out its functions under this Paragraph 5.13 and all matters incidental thereto, the Independent Engineer shall act under and in accordance with the provisions of Article 6.7 and this Annexure V.
- 5.14 Upon reference from the Authority, the Independent Engineer shall make a fair and reasonable

assessment of the costs of providing information, works and services as set forth in Article 6.8 and certify the reasonableness of such costs for payment by the Authority to the Contractor.

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

6 Operation Period

6.1 In respect of the DPR and safety standards received by the Independent Engineer for its review and comments during the Operation Period, the provisions of Paragraph 4 shall apply, *mutatis mutandis*.

6.2 The Independent Engineer shall certify the Fee payable to the Contractor based on the monthly statements submitted by the Contractor to the Authority. Such certifications shall be done within 14 days of receipt of the monthly statement. The Independent Engineer shall review the monthly report on Vessel Traffic, Fee received in respect of Project by the Contractor and send its comments thereon to the Authority and the Contractor within 7 (seven) days of receipt of such report.

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

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

6.5 The Independent Engineer shall in its operation and maintenance inspection report specify the tests, if any, that the Contractor shall carry out, or cause to be carried out, for the purpose of

determining that the Project is in conformity with the maintenance requirements. It shall monitor and review the results of such tests and the remedial measures, if any, taken by the Contractor in this behalf.

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

7 Termination

7.1 At any time, not earlier than 90 (ninety) days prior to termination but not later than 15 (fifteen) days prior to such termination, the Independent Engineer shall, in the presence of a representative of the Contractor, inspect the Project for determining compliance by the Contractor with the requirements set forth in Article 18.2 and, if required, cause tests to be carried out at the Contractor's cost for determining such compliance.

8 Determination of costs and time

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

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

9 Assistance in Dispute resolution

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

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

10 Other duties and functions

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

11 Miscellaneous

- 11.1 The Independent Engineer shall notify its programme of inspection to the Authority and to the Contractor, who may, in their discretion, depute their respective representatives to be present during the inspection.
- 11.2 A copy of all communications, comments, instructions, DPR sent by the Independent Engineer to the Contractor pursuant to this TOR, and a copy of all the test results with comments of the Independent Engineer thereon shall be furnished by the Independent Engineer to the Authority forthwith.
- 11.3 The Independent Engineer shall obtain, and the Contractor shall furnish in 2 (two) copies thereof, all communications and reports required to be submitted, under this Contract, by the Contractor to the Independent Engineer, whereupon the Independent Engineer shall send 1 (one) of the copies to the Authority along with its comments thereon.
- 11.4 The Independent Engineer shall retain at least one copy each of all DPR and Documents received by it, including 'as-built' drawings, and keep them in its safe custody.
- 11.5 Upon completion of its assignment hereunder, the Independent Engineer shall duly classify and list all DPR, Documents, results of tests and other relevant records, and hand them over to the Authority or such other person as the Authority may specify, and obtain written receipt thereof. Two copies of the said documents shall also be furnished in their editable digital format or in such other medium or manner as may be acceptable to the Authority.
- 11.6 Wherever no period has been specified for delivery of services by the Independent Engineer, the Independent Engineer shall act with the efficiency and urgency necessary for discharging its functions in accordance with Good Industry Practice

Annexure VI: DELETED

Annexure VII: DELETED

Annexure VIII: DELETED

Annexure IX: DELETED

Annexure X: Performance Guarantee

(Proforma of Bank Guarantee)

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

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

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

In favour of:

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 “**the Authority**”, which expression shall, unless repugnant to the context or meaning thereof, include, its successors and assigns.

WHEREAS:

- a) The Authority, vide its Request for Proposal dated [●] (“**the RFP**”) invited bidders to implement a project envisaging (more particularly described in Annexure I and hereinafter referred to as “**Project**”);
- b) After evaluation of the bids received in response to the RFP, the Board accepted the bid of the consortium comprising of _____ and (“**the Consortium**”) OR the Board accepted the bid of (“**Bidder**”) and issued the Letter of Intent No (“**LOI**”) _____ dated to the Consortium/Bidder requiring, inter alia, the execution of the Agreement, (“**the Contract**”) the draft whereof was provided in the RFP;
- c) Pursuant to the LOI the Bidder/Consortium has promoted and incorporated a special purpose company (“**the Contractor**”), to enter into the Contract for undertaking, inter alia, the work with respect to the Project referred to in Recital (a) above and to perform and discharge all its obligations thereunder.
- d) In terms of the LOI and the Contract, the Contractor is required to furnish to the Board, a Performance Guarantee being an unconditional and irrevocable Bank Guarantee from a Scheduled Bank for a sum of Rs. [●] (Rupees [●] only) as security for due and punctual performance/discharge of its obligations under the Contract during the Implementation Phase,

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

NOW THEREFORE THIS DEED WITNESSETH AS FOLLOWS:

1. Capitalized terms used herein but not defined shall have the meaning assigned to them respectively in the Contract.
2. The Guarantor hereby irrevocably and unconditionally guarantees the due execution and punctual performance by M/s. (“the Contractor”) of all its obligations under the Contract during the Implementation Phase.
3. The Guarantor shall, without demur or protest, pay to the Board sums not exceeding in aggregate Rs. [●] (Rupees [●] only) within five (5) calendar days of receipt of a written demand therefor from the Board stating that the Contractor has failed to meet its performance obligations under the Contract during the Implementation Phase. The Guarantor shall not go into the veracity of any breach or failure on the part of the Contractor or validity of demand so made by the Board and shall pay the amount specified in the demand notwithstanding any direction to the contrary given or any dispute whatsoever raised by the Contractor or any other Person before any court, tribunal, expert, arbitrator or similar proceedings. The Guarantor’s obligations hereunder shall subsist until all such demands of the Board are duly met and discharged in accordance with the provisions hereof. Any such demand made on the Guarantor by the Board shall be conclusive, absolute and unequivocal as regards the amount due and payable by the Guarantor under this Contract. The Authority shall at all times at its sole discretion have the absolute and unconditional right to call upon the Guarantor to pay the amount under the Guarantee.
4. In order to give effect to this Guarantee, the Board shall be entitled to treat the Guarantor as the principal debtor. The obligations of the Guarantor shall not be affected by any variations in the terms and conditions of the Contract or other documents or by the extension of time for performance granted by the Board or postponement/non- exercise/ delayed exercise of any of its rights by the Board or any indulgence shown by the Board to the Contractor and the Guarantor shall not be relieved from its obligations under this Guarantee on account of any such variation, extension, postponement, non-exercise or delayed exercise by the Board of any of the Board’s rights or any indulgence shown by the Board; provided nothing contained herein shall enlarge the Guarantor’s obligation hereunder.

5. This Guarantee shall be unconditional and irrevocable and shall remain in full force and effect until Scheduled Completion Date and for a period of twelve months thereafter unless discharged/released earlier by the Board in accordance with the provisions of the Contract. The Guarantor's liability in aggregate shall be limited to a sum of INR. [●] (INR [●] only).
6. This Guarantee shall not be affected by any change in the constitution or winding up, insolvency, bankruptcy, dissolution or liquidation of the Contractor/ the Guarantor or any absorption, merger or amalgamation of the Contractor/the Guarantor with any other Person.
7. Any payment made hereunder shall be made free and clear of, and without deduction for or on account of taxes, levies, imposts, duties, charges, fees, deductions, or withholding of any nature whatsoever.
8. The Guarantor hereby irrevocably and unconditionally undertakes, agrees and acknowledges that its obligations as a Guarantor hereunder:
 - a) shall not be affected by the existence of or release or variation of any other guarantee or security for any of the obligations of the Contractor under the Contract;
 - b) shall not be affected by any failure by the Authority to perform any of its obligations under the Contract;
 - c) shall not be affected by any failure or delay in payment of any fee or other amount payable to the Guarantor in respect hereof;
 - d) shall not be affected by any exercise or non-exercise of any right, remedy, power or privilege of any person under or in respect of any payment obligations of the Contractor under the Contract;
 - e) shall not be affected by any failure, omission or delay on the Authority's part to enforce, assert or to exercise any right, power or remedy conferred on the Authority in this Guarantee;
 - f) shall not be affected by any act, omission, matter or thing which, but for this article would reduce, release or prejudice the Guarantor from any of the obligations under this Guarantee or prejudice or diminish the obligations in whole or in part.
9. The obligations, covenants, agreements and duties herein shall not be subject to any counterclaims, cross claims, set offs, deductions, withholdings, diminutions, abatements,

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

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

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

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

SIGNED AND DELIVERED by

_____ Bank by the hand of Mr. _____ its

_____ and authorized official.

Annexure XI: Certificates

Provisional Certificate

1. I, [[●] (Name of the Independent Engineer)], acting as Independent Engineer, under and in accordance with the Agreement dated [●], for the Project on operate, manage and maintain (OMM) basis through [● (Name of Contractor)], hereby certify that the Tests have been undertaken to determine compliance of the Project with the provisions of the Contract.

2. Dredging and pipeline relocation works that were found to be incomplete and/or deficient have been specified in the Punch List appended to the Provisional Certificate, and the Contractor has agreed and accepted that it shall complete and/or rectify all such works in the time and manner set forth in the Contract. [Some of the incomplete works have been delayed as a result of reasons attributable to the Authority or due to Force Majeure and the Provisional Certificate cannot be withheld on this account. Though the remaining incomplete works have been delayed as a result of reasons attributable to the Contractor,] I am satisfied that having regard to the nature and extent of such incomplete works, it would not be prudent to withhold commercial operation of the Project, pending completion thereof.

3. In view of the foregoing, I am satisfied that the Project can be safely and reliably placed in commercial service of the users thereof, and in terms of the Contract, the Project is hereby provisionally declared fit for entry into commercial operation on this the [●] Day of [●] 20[●].

ACCEPTED, SIGNED, SEALED AND
DELIVERED For and on behalf of
CONTRACTOR by:

(Signature)

(Name and Designation)

(Address)

SIGNED, SEALED AND DELIVERED
For and on behalf of INDEPENDENT
ENGINEER by:

(Signature)

(Name and Designation)

(Address)

ACCEPTED, SIGNED AND SEALED
For and on behalf of
AUTHORITY by:

(Signature)

(Name and Designation)

(Address)

Annexure XII: Applicable Permits

The following are the key applicable permits:

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; if applicable
3. Forest Clearance in accordance with the provisions of the Forest (Conservation) Act, 1980; if applicable
4. Consent to Establish in accordance with the provisions of the Water (Prevention and Control of Pollution) Act, 1974;
5. Consent to Operate in accordance with the provisions of the Water (Prevention and Control of Pollution) Act, 1974;
6. Consent to Establish in accordance with the provisions of the Air (Prevention and Control of Pollution) Act, 1981;
7. Consent to Operate in accordance with the provisions of the Air (Prevention and Control of Pollution) Act, 1981;

Annexure XIII: DELETED

Annexure XIV: Environment Management Plan

Annexure XV: DELETED

Annexure XVI: DELETED

Annexure XVII: DELETED

Annexure XVIII: Auditors

1) Appointment of Auditors

(a) The Contractor 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”), such list to be prepared substantially in accordance with the criteria set forth in Annexure XXI. All fees and expenses of the Statutory Auditors shall be borne by the Contractor.

(b) The Contractor 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.

(c) 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.

(d) Further, the Contractor 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.

2) Panel of Chartered Accountants

Pursuant to the provisions of the Contract, the Authority and the Contractor shall prepare a mutually agreed panel of 5 (five) reputable firms of Chartered Accountants having their registered offices in India (“Panel of Chartered Accountants”). The criteria for preparing such Panel and the procedure to be adopted in this behalf shall be as set forth in this Annexure XVIII.

3) Invitation for Empanelment

The Authority shall invite offers from all reputed firms of Chartered Accountants who fulfil the following eligibility criteria, namely:

(a) the firm should have conducted statutory audit of the annual accounts of at least one hundred companies registered under the Companies Act, 2013, including any re-enactment or amendment thereof, of which at least ten should have been public sector undertakings;

(b) the firm should have at least 5 (five) practising Chartered Accountants on its rolls, each with a minimum experience of 10 (ten) years in the profession;

(c) the firm or any of its partners should not have been disqualified or black-listed by the Comptroller and Auditor General of India or the Authority; and

(d) the firm should have an office in the State or in an adjacent State with at least 2 (two) practising Chartered Accountants on its rolls in such State.

Interested firms meeting the eligibility criteria shall be required to submit a statement of their capability, including the bio-data of all the practising Chartered Accountants, on its rolls. In particular, each firm shall be required to furnish year-wise information relating to the names of all the companies with an annual turnover exceeding Rs. 25,00,00,000 (Rupees Twenty Five Crore) whose annual accounts were audited by such firm in any of the preceding 5 (five) Accounting Years.

4) Evaluation and Selection

The information furnished by each firm shall be scrutinised and evaluated by the Authority and 1 (one) point shall be awarded for each annual audit of the companies specified in Paragraph 41.2.1 above. (By way of illustration, a firm which has conducted audit of the annual accounts of any such company for 5 (five) years shall be awarded 5 (five) points).

The Authority shall prepare a list of all the eligible firms along with the points scored by each such firm and 5 (five) firms scoring the highest points shall be identified and included in the draft Panel of Chartered Accountants.

5) Consultation with the Contractor

The Authority shall convey the aforesaid panel of firms to the Contractor for scrutiny and comments, if any. The Contractor shall be entitled to scrutinise the relevant records of the Authority to ascertain whether the selection of firms has been undertaken in accordance with

the prescribed procedure and it shall send its comments, if any, to the Authority within 15 (fifteen) days of receiving the aforesaid panel.

6) Mutually Agreed Panel

The Authority shall, after considering all relevant factors including the comments, if any, of the Contractor, finalise and constitute a panel of 5 (five) firms which shall be deemed to be the mutually agreed Panel of Chartered Accountants.

After completion of every 5 (five) years from the date of preparing the mutually agreed Panel of Chartered Accountants, or such earlier period as may be agreed between the Authority and the Contractor, a new panel shall be prepared in accordance with the provisions of this Annexure XVIII.

Annexure XIX: DELETED

Annexure XX: DELETED

Annexure XXI: DELETED

Annexure XXII: Compliance to environmental sustainability measures

The Authority shall specify environmental sustainability measures relevant/ applicable for the Project.

S. No.	Measures for compliance by Contractor

Annexure XXIII: Detailed Project Report to be prepared by Contractor

[Authority to stipulate the contents of the DPR that the Contractor will be expected to submit for review by the Independent Engineer as per the Scope of Work. The Detailed Project Report (DPR) is to be prepared by the Contractor with the following components-

- Dredging Management Plan;
- Environmental Marine Management Plan;
- Environmental Management Plan;
- Geotechnical survey;
- Bathymetric survey;]