

Operation, Management and Development Agreement

Between

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

And

[_____]
(as “Operator”)

For

**Operation, Management and Development of Multimodal Terminal at
Sahibganj, Jharkhand, India**

Dated:

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DRAFT

CONCESSION AGREEMENT

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

BETWEEN:

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

AND

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

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

WHEREAS:

(A) The Concessing Authority is desirous of implementing a Project for multimodal terminal at Sahibganj through private sector participation;

(B) About operation, management and development of multimodal terminal at Sahibganj, the Concessions Authority invited applications from the interested parties in accordance with the Request for Qualification (as defined hereinafter) dated 14 August 2019, to shortlist competent parties that can subsequently bid for the Project;

(C) In response to the invitation referred to in recital 'B' above, the Concessions Authority received applications from various parties including the application dated <Insert date> submitted by the Applicant/Consortium in accordance with the Request for Qualification;

(D) The Concessions Authority, after evaluating all the applications, shortlisted <Insert number> applicants including the Applicant/Consortium and invited proposals from them in accordance with the Request for Proposal dated <insert date> (as defined hereinafter), for implementing the Project;

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

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

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

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

NOW, THIS AGREEMENT WITNESSETH AS FOLLOWS:

ARTICLE 1

1. Definitions and Interpretations

1.1. Definitions

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

“**Additional Cost**” means the additional capital expenditure which the Concessionaire has or would be required to incur and which has arisen as a result of Change in Law.

“**Additional Auditor**” means another firm of chartered accountants duly licensed to practice in India empanelled by CAG, to conduct special audit of the quantity MT of cargo/ TEUs handled and the financial statements, documents and supporting evidences thereto as may be mandated by the Concessing Authority.

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

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

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

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

“**Applicant**” means [●]¹.

“**Appointed Date**” means the date of signing of this Agreement

“**Associate**” means, with respect to any Party and/or with respect to the Applicant and/or with respect to any member of Consortium, any other Person directly or indirectly

¹ Name and address of the applicant to be added here

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

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

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

“**Book value**” means the aggregate written down value as on the date of issue of the Termination Notice in the books of the Concessionaire of (i) the tangible assets (including capital works in progress) forming part of, fixed or attached to the ground, created, installed or provided by the Concessionaire and comprised in Project Facilities and Services, and (ii) the moveable assets including cargo handling equipment belonging to the Concessionaire, in accordance with Indian Accounting Standards using depreciation rates as set forth in the (Indian) Companies Act, 2013, as applicable from time to time.

“**Cargo throughput**” means the volume of cargo handled at the Terminal in the period of one year.

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

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

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

“**Completion Certificate**” means a certificate obtained from the Concessions Authority as to completion of construction of Project Facilities and Services in accordance with the provisions of this Agreement not later than 24 months from the date of commencement of the Expansion Phase of the terminal in the Concession Period.

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

“**Concessionaire DPR**” means the designs and drawings, and other technical information submitted by the Concessionaire from time to time and reviewed by the Concessions Authority in accordance with the provisions of this Agreement.

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

“**Concessions Authority Event of Default**” shall have the meaning as set out under Article 15.1.2.

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

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

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

“**Construction Standards**” means the construction standards set out in Annexure VIII.

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

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

“**Commercial Operation Date (COD)**” means the date when the Conditions Precedent have either been satisfied or waived by the Party other than the Party responsible for satisfying the same.

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

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

- (a) the principal amount of the debt including any subordinated debt provided by the Senior Lenders under the Financing Documents for financing the Project (“Principal”) but excluding (i) working capital loans; (ii) any part of the principal that had fallen due for repayment 2 (two) years prior to the Transfer Date, if the Transfer Date is related to expiry of the Concession Period or any part of the Principal that had fallen due before the Termination Notice, if the Transfer Date is related to termination prior to the expiry of the Concession Period; and (iii) any debt that has been

rescheduled or refinanced, unless such repayment had been rescheduled or refinancing made with the prior consent of Concessioneing Authority;
and

- (b) all accrued interest, financing fees and charges payable on or in respect of the debt referred to in sub-article (a) above upto the Transfer Date but excluding (i) any interest, fees or charges that had fallen due 1 (one) year prior to the Transfer Date, and (ii) penal interest or charges, payable under the Financing Documents to any Senior Lender.

provided that if all or any part of the Debt Due is convertible into Equity at the option of Senior Lenders and/or the Concessionaire, it shall for the purposes of this Agreement be deemed to be Debt Due even after such conversion and the principal thereof shall be dealt with as if such conversion had not been undertaken;

“**DPR**” means Detailed Project Report which includes the designs and drawings, and other technical information submitted by the Concessionaire from time to time and reviewed by the Concessioneing Authority in accordance with the provisions of this Agreement.

“**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/Terminal’s Assets/Project Facilities and Services.

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

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

“**Equity**” means the paid up share capital of the Concessionaire representing the equity component of the –Total Project Cost, as capitalized in the books of the Concessionaire and duly certified by the Statutory Auditors.

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

“**Equity IRR**” means the internal rate of return on equity investment of the project based on projected/actual cash flows during the Concession Period.

“Escrow Account” means the account used for withdrawals and appropriations during the Concession Period as mentioned under Article 9.3.

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

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

“Exclusivity Period” shall have the meaning ascribed to it in Article 12.2.2

“Expansion Phase” means the period from the Date of start of the Expansion works of the Concession agreement to the Date of start of commercial operations for the Expansion works as specified under Article 6.3.1.

“Expansion Trigger” shall have the meaning assigned in Annexure III on Scope of Work.

“Expert” means any person, body or organization of repute with recognized technical/professional expertise in respect of any field, matter or subject relevant, including the relevant subject-matter expert(s), financial expert(s), industry expert(s) and technical expert(s), for the purpose of this Agreement.

“Expert Committee” means the committee set up for dispute resolution in accordance with Annexure VII hereto.

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

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

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

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

“Financing Plan” means the base case financial model adopted by Concessionaire with the approval of the Senior Lenders and approved by the Concessions Authority in accordance with Article 3.1.2 (a), setting forth the capital and operating cost of the Project and revenues therefrom on the basis of which financial viability of the Project has been determined by the

Senior lenders, and includes a detailed description of the assumptions and parameters used for making calculation and projections therein including inter alia the Estimated Project Cost, and Royalty payable to the Concessioneing Authority annual estimated revenue, equity contribution, cargo handling projections estimated by Concessionaire, discounted net present value of the cash flows, Equity IRR, debt equity ratio and debt service coverage ratio

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

“GoI” means the Government of India.

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

“Government Authority” means 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 Concessionaire, the Terminal’s Assets, the Project Facilities and Services or any portion thereof, but shall not include the Concessioneing Authority.

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

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

“Insurance Cover” shall have the meaning ascribed to it in Article 12.1.3 (b).

“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.

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

“Material Adverse Effect” means material adverse effect 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 Agreement and which act or event causes a material financial burden or loss to either Party.

“Minimum Guaranteed Cargo” shall have the meaning ascribed to it in Article 7.1.13.

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

“Non-riverine cargo” means cargo other than Riverine Cargo.

“Notional Royalty” means Royalty calculated as product of actual waterfront volume for the respective quarter and Royalty (per MT) agreed upon in this contract. This will be applicable to calculate penalties during moratorium period.

“OMD” means the Operation, Management and Development agreement granted by the Concessions Authority to the Concessionaire in accordance with the provisions of Article 2.1 of this Agreement for implementing the Project and providing Project Facilities and Services.

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

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

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

“Performance Standards” means the minimum standards of performance set out in Annexure IV with regards the Project Facilities and Services.

“Performance Guarantee” shall mean the bank guarantee’s procured by the Concessionaire for the benefit of the Concessions Authority guaranteeing the performance of the obligations of the Concessionaire hereunder in the manner specified in Article 4.

“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 14.1.1.

“**Project**” means the design, finance, construction, operation, maintenance, and marketing and providing of the Project Facilities and Services at Multimodal Terminal at Sahibganj, Jharkhand, India; in accordance with the provisions of this Agreement.

“**Project Capacity**” means the capacity of the Project Facilities and Services to handle 9.50 mmtpa.

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

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

“**Project Site**” means the area demarcated in Annexure I including the waterfront (which shall include adjacent channel stretch of 1,005 meters on both sides of terminal from center point as defined in Article 12.2.2), existing berth, land together with buildings, structures if any and easement rights thereto that may be given to the Concessionaire and all other assets comprised therein on which the Concessionaire is authorized to develop and operate the Project Facilities and Services as set forth in this Agreement.

“**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 Concessioning Authority to the applicants qualified pursuant to the Request for Qualification and includes any addendum / clarification issued in respect thereof by the Concessioning Authority.

“**Request for Qualification**” or “**RFQ**” means the Request for Qualification dated 08 June 2018 issued by the Concessioning Authority inviting applications in accordance therewith for qualifying the competent applicants that can subsequently bid for the Project, and includes any addendum / clarification issued in respect thereof by the Concessioning Authority.

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

“**Riverine cargo**” means cargo transported to and/or from the Terminal through waterways.

For the avoidance of doubt, it is clarified that in the event cargo imported into the Terminal has been processed and exported, such cargo shall be treated as Riverine Cargo in the event either the import or export is through waterways.

“**Royalty**” means the share payable by the Concessionaire to the Concessioneing Authority, pursuant to Article 9.1.1 hereof.

“**Safety Standards**” means the minimum standards of safety set out in the Annexure VIII with regards the Project/Project Facilities and Services.

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

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

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

“**Special Audit**” means an audit of the quantity of cargo handled as MT and the financial statements, documents and supporting evidences thereto as may be mandated by the Concessioneing Authority and report to the Concessioneing Authority such information as may be desired by the Concessioneing Authority for any period.

“**Statutory Auditors**” means a firm of chartered accountants appointed in terms of Section 139 of the Companies Act, 2013 and acting as the statutory auditors of the Concessionaire. Appointment of Statutory Auditors shall be as per Annexure XX.

“**Stressed Project**” means the PPP reaching a situation in which either Party is unable to perform/discharge its obligations under this Agreement due to reasons beyond its control or due to certain unanticipated conditions.

“**Subordinated Debt**” means the aggregate of the following sums expressed in Indian Rupees as the case may be, outstanding as on the Transfer Date:

- (a) the principal amount of debt provided by Senior Lenders for meeting the Total Project Cost and subordinated to the financial assistance provided by the Senior Lenders; and
- (b) all accrued interest on the debt referred to in Sub-clause (a) above but restricted to the lesser of actual interest rate and a rate equal to 5% (five per cent) above the Bank Rate in case of loans expressed in Indian Rupees and lesser of the actual interest rate and six-month LIBOR (London Inter Bank Offer Rate) plus 2% (two per cent) in case of loans expressed in foreign currency, but does not include any interest that had fallen due one year prior to the Transfer Date;

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

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

“Ten Year G Sec” means the 10 Year G Sec rate published by Reserve Bank of India prevailing as on the date of a payment due from which the computation of interest is required to be made under the Agreement.

“Terminal’s Assets” means the assets set out in Annexure II, belonging to the Concessing Authority.

“Termination Notice” means a notice for termination of this Agreement issued pursuant to Article 16.1 hereof.

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

“Tests” shall have the meaning assigned to it under Article 6.7.1 hereof.

“Terminal” means multimodal terminal at Sahibganj

“Total Project Cost” means the lowest of -

- (a) The capital cost of the Project for Concessing Authority including capital cost incurred by Concessing Authority for development of initial Terminal infrastructure and railway infrastructure
- (b) The actual capital cost of the Project for Concessing Authority upon completion including capital cost incurred by Concessing Authority for development of initial Terminal infrastructure and railway infrastructure
- (c) A sum of INR 376 crore (INR Three hundred and seventy six crore only) as estimated by the Concessing Authority

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

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

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

1.2. Other References

In this Agreement:

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

“**BS**” means British Standard.

“**CISF**” means Central Industrial Security Force.

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

“**DIN**” means German Industrial Standard.

“**FEM**” means Federation of Equipment Manufacturers.

“**IS**” means Indian Standard.

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

“**IEC**” means International Electro Technical Commission.

“**IWT**” means Inland Waterways Transportation

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

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

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

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

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

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

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

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

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

“**OISD**” means Oil Industry Safety Directorate.

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

1.3. Interpretations

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

In this Agreement unless the context otherwise requires:

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 Agreement 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 “construction” include investigation, design, engineering, procurement, delivery, transportation, installation, processing, fabrication, testing, commissioning and other activities incidental to the construction;

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 Agreement. The Annexures to this Agreement shall form an integral part and parcel of this Agreement and will be in full force and effect as though they were expressly set out in the body of this Agreement;

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

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

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 Agreement shall accrue on a monthly basis and from the respective due dates as provided for in this Agreement; and

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

1.4. Measurements and Arithmetic Conventions

All measurements and calculations shall be in metric system and calculations done to 2 (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 Agreement, the following shall apply:

1.5.1. between two Article of this Agreement, 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 Agreement and any other documents forming part of it, the former shall prevail.

ARTICLE 2

2. Concession Agreement and Terminal Assets

2.1. Concession Agreement

2.1.1. In consideration of the Concessionaire agreeing to pay to the Concessions Authority (a) License Fee and (b) Royalty along with performing its obligations as set out in this Agreement, the Concessions Authority hereby grants to the Concessionaire, an exclusive license for operation, management and development (“OMD”) of the Project Facilities and Services as per Scope of Work defined in Annexure III subject to the provisions of this Agreement.

2.2. Concession Period

2.2.1. The Concession hereby granted is for a period of 30 (thirty) years commencing from the COD during which the Concessionaire is authorized and obliged to implement the Project and to provide Project Facilities and Services as per Scope of work in accordance with the provisions hereof.

Provided that in the event of an early termination of this Agreement by either Party in accordance with the provisions hereof, the Concession Period shall mean and be limited to the period commencing from the COD and ending with the date of termination of this Agreement.

2.3. Acceptance of the Concession

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

2.4. Terminal's Assets

2.4.1. In consideration of the Concessionaire agreeing to perform and discharge its obligations as set forth in this Agreement, the Concessions Authority hereby grants to the Concessionaire, the exclusive right to enter upon, occupy and use the Project Site and Terminal's Assets for the purpose of implementing the Project and provision of Project Facilities and Services pursuant thereto in accordance with this Agreement.

2.4.2. The Concessionaire shall at its costs, charges and expenses make such development and improvements in the Project Site and Terminal's Assets as may be

necessary or appropriate for implementing the Project and providing Project Facilities and Services in accordance with the Agreement, Applicable Laws and Applicable Permits.

2.5. Use of Terminal's Assets

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

2.6. Information about Project Site and Terminal's Assets

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

2.7. Acceptance of the Project Site and Terminal's Assets

2.7.1. The Concessionaire accepts possession of the Project Site and Terminal's Assets on 'as is where is' basis and confirms having:

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

2.8. Peaceful Occupation

2.8.1. The Concessioneing Authority warrants that the Concessionaire shall, subject to complying with the terms and conditions of this Agreement, remain in occupation of the Project Site and Terminal's Assets during the Concession Period. In the event the Concessionaire is obstructed by any Person claiming any right, title or interest in or over the Project Site and Terminal's Assets or any part thereof or in the event of any enforcement action including any attachment, distraint, appointment of receiver or liquidator being initiated by any Person claiming to have charge on the Project Site and Terminal's Assets or any part thereof pursuant to the IWAI Act, the Concessioneing Authority shall, if called upon by the Concessionaire, defend such claims and proceedings.

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ARTICLE 3

3. Conditions Precedent

3.1. Conditions Precedent to be satisfied by the Concessionaire

3.1.1. The Concession 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 Concessionaire) of the constituent documents of the Concessionaire;
- (c) Furnishing of all resolutions adopted by the Board of Directors of the Concessionaire (certified as true copies by a director of the Concessionaire) authorizing the execution, delivery and performance by the Concessionaire, of each of the Bidding Documents;
- (d) Opening the Escrow Account and executing the Escrow Agreement;
- (e) Signing of substitution agreement as per Annexure IX
- (f) Furnishing a certificate from its principal officer/director on the shareholding pattern of the Concessionaire;
- (g) Procuring and furnishing the following confirmations, in original, (from the Applicant/all members in case of a Consortium) that the Concessionaire:
 - (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 Agreement;
 - (iii) is duly organized and validly existing under the laws of jurisdiction of its incorporation, and has requested the Concessions Authority to enter into this Agreement with the Concessionaire and has agreed to and unconditionally accepted the terms and conditions set forth in this Agreement;
- (h) Furnishing to the Concessions Authority a legal opinion from the legal

counsel of the Concessionaire with respect to the Concessions Authority of the Concessionaire to enter into this Agreement and the enforceability hereof.

- (i) Insurance requirement: The Concessionaire 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) loss, damage or destruction of Project Facilities and Services, at replacement value;
 - (iii) comprehensive third party liability insurance including injury or death to personnel of the Concessions Authority and others who may enter the Project Site or the Terminal's Assets;
 - (iv) workmen's compensation insurance;
 - (v) marine cum storage cum erection insurance; and
 - (vi) any other insurance necessary to protect the Concessionaire, its employees and its assets and the Concessions Authority, its employees and agents engaged in or connected to the Project and the Project Site and Terminal's Assets, 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).

3.1.2. The Concessionaire shall satisfy the following conditions precedent no later than 60 days prior to the start of construction works for the Expansion Phase of the Terminal

- (a) Submission to Concessions Authority of its Financing Plan and Financing Documents for the Project and demonstrating Financial Close for verification that there is no violation of the terms and conditions of this Agreement. Concessions Authority, within 30 days, shall notify Concessionaire of violations if any, which shall be promptly addressed by the Concessionaire.
- (b) Obtaining "Applicable Permits" as may be required for commencement of Expansion Phase as set out in Annexure XIII.

It is acknowledged by the Parties the start of construction works for the Expansion Phase of the Terminal shall be deemed to be the date as stated in the DPR submitted by the Concessionaire.

3.2. Conditions Precedent to be satisfied by the Concessing Authority:

3.2.1. Share the clearances required for the Project, as set out in Annexure XIII;

3.2.2. Handing over physical possession of the Project Site and Terminal's Assets, free from all encumbrances, after receipt of performance guarantee from the Concessionaire with the provision that license fee and applicable taxes shall be paid by concessionaire from the date of taking the physical possession.

3.2.3. Completion of construction of approach road from National Highway 80 to the Terminal.

3.2.4. Notification of tariff schedule for charges to be collected and retained by the Concessionaire.

3.3. Other Requirements

3.3.1. The aforesaid Conditions Precedent shall be complied within 90 (Ninety) days of the Appointed Date. For the purpose of compliance of Financial Close obligation, operator shall not be considered at default if the conditions pending for achieving Financial Close are only those which are required to be fulfilled by the Concessing Authority under Article 3.2.

3.3.2. Any of the Conditions Precedent set forth in Articles 3.1 may be waived fully or partially by the Concessing Authority at any time in its sole discretion or the Concessing Authority may grant additional time for compliance with these conditions. The Concessionaire shall ensure compliance within such additional time as may be specified by the Concessing Authority. Any of the Conditions Precedent set forth in Articles 3.2 may be waived fully or partially by the Concessionaire at any time in its sole discretion.

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

in Article 3.3.5 below.

3.3.4. If the Concessing 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 Concessionaire has failed to fulfil the Conditions Precedent under Article 3.1 (and which are within the power of the Concessionaire), the Concessionaire shall be liable to pay liquidated damages in a sum calculated at the rate of 0.1% (zero point one percent) of the Performance Guarantee for each Day's delay until fulfillment of the Conditions Precedent subject to a maximum of 5% (five percent) of the figure mentioned in the Performance Guarantee furnished by the Concessionaire. In such event, having regard to the quantum of damages, the time for the performance shall be deemed to have been extended by the number of days for which the liquidated damages is paid and if, after the extended period the Concessionaire is still not in a position to comply with the Conditions Precedent, then the agreement shall be liable to be terminated as provided for in Article 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 Articles 3, this Agreement shall be liable to be terminated. If such termination is on account of failure of the Concessionaire to comply with Conditions Precedent, the Bid Security shall stand forfeited. If such termination is on account of failure of the Concessing Authority, the Concessing Authority shall be obliged to return the Bid Security/Performance Guarantee. It is clarified that except for the payment as stipulated in the foregoing Article 3.3.3 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

4.1.1. The Concessionaire shall for due performance of its obligations before Expansion Phase provide to Concessions Authority an unconditional and irrevocable bank guarantee, with 15 (fifteen) days of execution of this Agreement, in favour of the Concessions Authority, encashable and enforceable at Noida, Uttar Pradesh, substantially in the form set forth in Annexure XI (the “**Performance Guarantee**”).

4.1.2. The Performance Guarantee shall initially be for a sum of INR 14 crore (INR Fourteen crore only) effective from COD till completion of Expansion Phase. The Concessionaire shall increase the Performance Guarantee by a sum of INR 18.8 crore (INR Eighteen crore and eighty lakh only) within 15 (fifteen) days of approval of DPR for Expansion Phase which will be effective from the approval of DPR for the Expansion Phase of the Terminal till its completion.

4.1.3. Till such time the Concessionaire provides to Concessions Authority the Performance Guarantee pursuant hereto, the Bid Security shall remain in full force and effect. The Performance Guarantee, if in the form of a bank guarantee shall be valid for an initial period of 1 (one) year and shall be renewed 30 (thirty) Days prior to expiry of each year, for an additional term of 1 (one) year.

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

4.1.5. Failure of the Concessionaire to provide and maintain a valid Performance Guarantee and in accordance with this Article shall entitle the Concessions Authority to terminate this Agreement forthwith and also if relevant, to forfeit the Bid Security.

ARTICLE 5

5. Independent Engineer

5.1 The Independent Engineer shall be selected out of the panel prepared for the purpose by the Concessions Authority. The Concessions Authority shall in the procurement documents published by it, set out in reasonable detail the scope of work as indicated in this document and shortlist Persons based on their technical capability. The Concessions Authority shall within 30 (thirty) Days of the date of this Agreement forward to the Concessionaire a list of shortlisted Persons and their profiles.

5.2 Any objection raised by the Concessionaire shall be considered by the Concessions Authority and Persons against whom such objections are raised will at the discretion of the Concessions Authority, which discretion shall be used with the highest degree of prudence and fairness, be disqualified prior to seeking a financial bid.

5.3 If within 15 (fifteen) Days of forwarding the list, the Concessions Authority does not receive any objection from the Concessionaire with reasons therefor, the Concessions Authority shall call for a financial bid from the shortlisted Persons and select the Independent Engineer ordinarily based on the lowest fee quote.

5.4 The Independent Engineer selected pursuant to the aforesaid process shall be appointed within 90 (Ninety) Days of the date of this Agreement. 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 Concessions Authority in respect of its duties and functions set forth in Annexure -V.

5.5 The scope of work of Independent Engineer shall *inter-alia* include work of certification of Performance Parameters as stipulated in this Concession Agreement.

5.6 The costs and expenses of the Independent Engineer for their services shall be borne by the Concessions Authority and Concessionaire, equally.

5.7 If the Concessions Authority either on its own or on a report of the Concessionaire has reason to believe that the Independent Engineer is not discharging its duties in a fair, appropriate and diligent manner, the Concessions Authority may after giving the Independent Engineer due opportunity of being heard, terminate the appointment of the Independent Engineer and appoint another firm in its place in accordance with the preceding Article 5.1 above.

5.8 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.

5.9 The Concessions Authority shall require the Independent Engineer to designate

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

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ARTICLE 6

6. Project Implementation for the Expansion Phase

6.1. Preparation of DPR

6.1.1. The Concessionaire shall at its cost, charges and expenses, prepare the detailed project report (“DPR”) in conformity with the Scope of Work for the Expansion Phase to be completed within 6 (six) months of Expansion Trigger and not later than 7th (seventh) anniversary of COD;

Expansion Trigger shall have meaning as described in Annexure III on Scope of Work.

6.2. Review of the DPR

6.2.1. The Concessionaire shall submit the DPR for review of the Independent Engineer. Simultaneously, the Concessionaire shall also provide the Concessions Authority with the Detailed Technical Report ("DTR"). The DTR shall exclude financial projections and analysis for Expansion Phase.

6.2.2. The Independent Engineer shall review the DPR submitted by the Concessionaire and provide its observations and suggestions on the same including the observations of the Concessions Authority in respect thereof within 60 (sixty) Days from the date of the receipt of such DPR/DTR.

6.2.3. In the event that the Independent Engineer and/or Concessions Authority has observed that the DPR/DTR is not in conformity with the Scope of Work, the Concessionaire shall promptly and without any undue delay revise and resubmit the DPR/DTR or satisfy the Independent Engineer and/or Concessions Authority with regards its compliance within 45 (forty five) Days of receiving observations and suggestions from the Independent Engineer.

6.2.4. . Concessions Authority shall provide a No-Objection Certificate (“NOC”) for Expansion Phase development on basis of DTR submitted by the Concessionaire. If the Independent Engineer and/or Concessions Authority does not make any observations with respect to the DPR/DTR submitted to it by the Concessionaire within 60 (sixty) days of the submission, it shall be deemed that the Independent Engineer/ Concessions Authority has no objections to the DPR/DTR and the Concessionaire is permitted to proceed with the Project according to the DPR/DTR.

6.2.5. The Concessionaire shall not be entitled to any extension of time for completing construction or any other relief on account of delay caused due to providing any clarification or in resubmitting the DPR/DTR. Provided, however, that the Concessions Authority at its sole discretion may suitably extend the Expansion Phase or provide other relief to compensate for any such delay not attributable to the Concessionaire.

6.2.6. The Concessionaire shall not shall not change approved DPR/DTR under this Agreement, without submitting such revised DPR/DTR for the review of the Independent Engineer/Concessions Authority.

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

6.3. Expansion Phase

6.3.1. The Concessionaire shall promptly commence and complete the works, including installation of equipment in accordance with the conditions of Expansion Phase and shall also obtain from the Independent Engineer a certificate as to completion of construction of Project Facilities and Services in accordance with provisions of this Agreement (“**Completion Certificate**”) not later than 24 months from the date of commencement of Expansion Phase of the terminal.

6.4. Obligations of the Concessionaire

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

6.4.1. arrange for, in a timely manner all necessary financial and other resources required for construction and installation of the Project Facilities and Services.

6.4.2. engage professionally competent Persons for project management and construction and ensure that all works are carried out in compliance with the Construction Standards;

6.4.3. give written notice to the Concessions Authority within 7 (seven) Days of any material modification to any of the Financing Documents and/or any Equity Documents and shall simultaneously therewith also furnish copies of such modified documents to the Concessions Authority. Provided no such modification will be made if it in any manner whatsoever has the effect of imposing an additional financial obligation or increasing the financial obligation of the Concessions Authority in addition to that contemplated under the Financing Documents provided on Financial Close, without the prior written consent of the Concessions Authority. For avoidance of doubt any such modifications made without the prior written consent of the Concessions Authority will not be enforceable against the Concessions Authority;

6.4.4. obtain Applicable Permits, comply with Applicable Laws and Applicable Permits and give priority to safety in its construction and planning activities in order to protect life, health, property and environment;

6.4.5. provide to the representatives of the Concessions Authority, at reasonable times

and upon prior intimation, access to the Project Site to review progress in construction and to ascertain compliance with any of the requirements of this Agreement. Provided that non- inspection by the Concessioneing Authority of any works shall not, in relation to such works,

- (a) amount to any consent or approval by the Concessioneing Authority nor shall the same be deemed to be waiver of any of the rights of the Concessioneing Authority under this Agreement; and
- (b) release or discharge the Concessioneire from its obligations or liabilities under this Agreement in respect of such work;

6.4.6. provide monthly reports on the progress of Construction Works or such other relevant information as may be required by the Independent Engineer;

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

6.4.8. to ensure safe and timely construction and completion of Project Facilities and Services, the Concessioneire may, at its cost, interrupt and divert the water or the road traffic or Terminal traffic, adjacent to the Project Site if such interruption and diversion is imperative for efficient progress of Construction Works and conforms to Good Industry Practice. Such interruption and diversion shall be undertaken by the Concessioneire 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 Concessioneire shall, at all times, be responsible for ensuring safe operation of Construction Works and shall remove interruption or diversion within the period specified by the Independent Engineer.

6.5. Obligations of the Concessioneing Authority

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

6.5.1. in matters falling within its authority, grant, Applicable Permits, approvals and consents as may be required by the Concessioneire and, on a best efforts basis, assist the Concessioneire in obtaining all other Applicable Permits as may be required by the Concessioneire;

6.5.2. make available all records of sub-soil investigations carried out on its behalf in the Terminal's Assets, if requested by the Concessioneire. It is clarified that the Concessioneire shall be solely responsible for determining the adequacy or otherwise of such investigations and will not in reliance of such records, be entitled to claim any relief under this Agreement.

6.6. Suspension of Works

6.6.1. Upon recommendation of the Independent Engineer to this effect, the Concessions Authority may by notice require the Concessionaire to suspend forthwith whole or any part of Construction Works if, in the reasonable opinion of the Concessions Authority, such work is not in accordance with Construction Standards and/or Safety Standards.

6.6.2. The Concessionaire shall, pursuant to the notice under foregoing provision suspend Construction Works or any part thereof for such time and in such manner as may be specified by the Concessions Authority and thereupon represent to the Concessions Authority / Independent Engineer, measures to remedy defects notified. The Concessionaire may by notice require the Independent Engineer to inspect such remedial measures forthwith and make a report to the Concessions Authority recommending whether or not the suspension hereunder may be revoked. Any dispute as regards 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.

6.7. Issue of Completion Certificate

6.7.1. At least 60 (sixty) Days prior to the likely completion of Expansion Phase, the Concessionaire shall notify the Independent Engineer of the date when it intends to commence commercial operations. The Independent Engineer shall then proceed to inspect Construction Works with the intention of issuing Completion Certificate and determine and notify to the Concessionaire schedule and manner of tests as are specified in Annexure V that it shall carry out to ensure that the Project meets with the Construction Standards (“Tests”). The date and time of each of the Tests shall be determined by the Independent Engineer in consultation with the Concessionaire, and notified to the Concessions Authority who may designate its representative to witness the Tests. The Concessionaire shall provide such assistance as the Independent Engineer may reasonably require for conducting the Tests. In the event of the Concessionaire and the Independent Engineer failing to mutually agree on the dates for conducting the Tests, the Concessionaire shall fix the dates by not less than 10 (ten) Days’ notice to the Independent Engineer;

6.7.2. Upon completion of each Test, the Independent Engineer shall provide to the Concessionaire and the Concessions Authority copies of all Test data including detailed Test results;

6.7.3. Upon completion of Construction Works and the Independent Engineer determining all the Tests to be successful, it shall forthwith issue to the Concessionaire and the Concessions Authority a Completion Certificate substantially in the form set forth in Annexure XI;

6.7.4. The Independent Engineer may, at request of the Concessionaire, 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 Concessionaire (“**Punch List**”) to be completed by the Concessionaire within a stipulated time. All items in the Punch List shall be completed by the Concessionaire within 90 (ninety) Days of date of issue of the Provisional Certificate or such other extended period that the Concessions Authority may in its sole discretion determine, failing which the Provisional Certificate shall lose its validity and the Concessions Authority shall be entitled to terminate this Agreement;

6.7.5. Without prejudice to the foregoing, if the Concessionaire fails to complete any Construction Works on account of Force Majeure or for reasons solely attributable to the Concessions Authority, the Concessions Authority may, in its discretion, reduce the scope of Project and require the Concessionaire to pay 80% (eighty percent) of the sum saved due to such reduction of scope. Upon such payment to the Concessions Authority, obligations of the Concessionaire in respect of such works shall be deemed to have been fulfilled.

6.8. Change of Scope

6.8.1. The Concessions Authority may, notwithstanding anything to the contrary contained in this Agreement, require the provision of additional works and services which are not included in the scope of the Project as contemplated by this Agreement (“**Change of Scope**”). Provided no such Change of Scope shall be made in the Expansion Phase if it is in the reasonable judgment of the parties hereto likely to delay the Scheduled Project Completion Date. Provided further, cost of implementing a single Change of Scope shall not exceed a sum corresponding to INR 18.8 crore (INR Eighteen crore and eighty lakh only) as per approved DPR and during the Concession Period the cumulative cost of implementing orders pertaining to Change of Scope shall not exceed a sum corresponding to INR 75.2 crore (INR Seventy five crore and twenty lakh only) as per approved DPR. The Change of Scope shall be considered only for development of multimodal transportation projects;

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

6.8.3. Upon receipt of a Change of Scope Notice, the Concessionaire shall, provide to the Concessions 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 Concessionaire for and in respect of such Change of Scope;

6.8.4. Upon receipt of the foregoing information, the Concessions Authority shall, if it decides to proceed with the Change of Scope, convey its agreement or otherwise of the assessment of the Concessionaire. If the Concessionaire does not notify any adverse impact of a Change of Scope notified under the Change of Scope Notice within 30 (thirty) Days of the date thereof and/or the Concessions Authority does not disagree with the cost assessment of the Concessionaire, the Concessions Authority shall issue an order requiring the Concessionaire to proceed with the implementation of such Change of Scope. If an adverse impact is notified by the Concessionaire and/or the Concessions 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 Concessions Authority may issue an order to implement the Change of Scope;

6.8.5. The provisions of this Agreement, insofar as they relate to Construction Works and Tests, shall apply mutatis mutandis to the works undertaken by the Concessionaire in respect of a Change of Scope;

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

6.8.7. Notwithstanding anything to the contrary contained in this Article 6.8, the Concessions Authority may, after giving the Change of Scope Notice to the Concessionaire and considering its reply thereto, decide to seek competitive bids for carrying out the works envisaged in a Change of Scope; provided that the Concessionaire shall have the option of matching the first ranked bid in terms of selection criteria, subject to payment of 2% (two per cent) of bid amount to the Concessions Authority, and thereupon securing the award of such works or services. For the avoidance of doubt, it is agreed that the Concessionaire shall be entitled to exercise such option only if it has participated in the bidding process and its bid does not exceed the first ranked bid by

more than 10% (ten percent) thereof; and

6.8.8. If during the pendency of the Agreement, the Concessionaire determines at any time that a Change of Scope is necessary for providing safer and improved Project Facilities and Services, it shall by notice in writing request the Concessioneing Authority to consider such Change of Scope. The Concessionaire may implement the Project and provide Project Facilities and Services in accordance with the Change of Scope as may be approved in writing by the Concessioneing 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 Concessionaire.

6.9. Liquidated Damages

6.9.1. Subject to any of the provisions of this Agreement providing for extension of time for performance or excuse from performance, as the case may be, of any of the obligations of the Concessionaire under this Agreement, apart from performance standards and damages as mentioned in Annexure IV, the Concessionaire shall pay to the Concessioneing Authority liquidated damages at the rate of 0.1% (zero point one percent) of the 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 Project Completion Date. Provided such liquidated damages shall not in aggregate exceed INR 18.8 crore (INR Eighteen crore and eighty lakh only) 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. The Parties agree that liquidated damages as provided are a genuine pre-estimate of the damages the Concessioneing 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 INR 18.8 crore (INR Eighteen crore and eighty lakh only), the Concessioneing Authority shall be entitled to terminate this Agreement and consequences of termination as laid down in Article 15 shall follow. The Concessioneing 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 Concessionaire

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

7.1.1. Berth and Terminal Operations

The Concessionaire shall:

- (a) Promptly commence Project operations after the COD;
- (b) Make efforts to maximize cargo handled so as to achieve optimal utilization of the Project Facilities and Services;
- (c) Ensure compliance of the Scope of Work;
- (d) Be free to deploy higher capacity equipment/facilities/ technology, etc. and induct new technology and carry out value engineering for improved productivity and/or improved utilization and/or cost saving of Project assets during the concession period;
- (e) Ensure that the Project Facilities and Services shall adhere to the Operations and Maintenance Standards and Safety Standards and there is safe, smooth and uninterrupted flow of traffic 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 Facilities and Services by providing a rapid and effective response and maintaining liaison with emergency services of the Concessioning Authority or other agencies;
- (g) Make available all necessary financial, technical, technological, managerial and other resources for operation, maintenance, repair and replacement of the Project Facilities and Services in a timely manner;
- (h) Ensure maintenance of proper and accurate record/data/accounts relating to operations of the Project Facilities and Services and revenue earned therefrom;
- (i) Obtain, maintain and comply with Applicable Permits and comply with the Applicable Laws including those relating but not limited to Terminal side

safety, health, environment and labour;

- (j) Subject to the provisions of this Agreement, perform, undertake or provide, in connection with the Project, all services which the Concessions 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 Facilities and Services.

7.1.2. Marine and Terminal Services

- (a) Scheduling the entry, berthing and sailing of vessels, pilotage and towage on a non-discriminatory basis subject to priority berthing norms and the sailing schedule
- (b) Concessionaire shall provide pilotage and towage services at the waterfront on the Project Site
- (c) Provide for/put in place arrangements for provision of supporting Project Infrastructure other than those covered under the Concession Agreement
- (d) Provide office space of 560 sq. ft. for the Concessions Authority within the Terminal Administrative Building

7.1.3. Repairs and Maintenance

The Concessionaire shall at its own cost:

- (a) Repair as necessary and maintain Project Facilities and Services or any part thereof in accordance with Scope of Work and for this purpose carry out routine preventive measures and maintenance of Project Facilities and Services
- (b) Maintain the Project Facilities and Services in accordance with the provisions of this Agreement and Good Industry Practice with the objective of providing adequate service standards and ensuring that Project Facilities and Services to be transferred to the Concessions Authority upon expiry of the Concession 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.

7.1.4. Replacement of Equipment

The Concessionaire 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 Project facilities and Services are commensurate with the Scope of Work, at all times during the Concession Period.

7.1.5. Repairs, Replacement or Restoration

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

7.1.6. Removal and/or Replacement of Assets

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

7.1.7. Payments to the Concessions Authority

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

7.1.8. Access for Inspection

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

7.1.9. Reports

The Concessionaire shall provide to the Concessions Authority, Monthly reports on cargo traffic, unit gross output/ discharge rates at berth, Tariff billed and collected in respect of Project Facilities and Services. The Monthly Report shall be submitted within 15 (fifteen) days following the end of each month along with any other information relating to Project Facilities and Services which the Concessions Authority may require from time to time. The

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

7.1.10. Computer System and Network

The Concessionaire shall install, operate and maintain such computer system and network (such as Electronic Data Interchange and Terminal Community System) and follow such protocol as the Concessions Authority may specify from time to time. In addition, the Concessionaire shall install, operate and maintain an automated gate management system to ensure transparent and accurate reporting of total cargo throughput at the entry and exit gate of the terminal. The Concessionaire shall ensure live access of gate management system to the Concessions Authority. The system shall report the entry time, exit time, type of cargo and quantity of cargo carried by the vehicle exiting the terminal;

7.1.11. Security Arrangements

The Concessionaire may make his own arrangements for security of Project Site and Terminal Assets. The Concessionaire shall abide by the security regulations and procedures prescribed by the Concessions Authority or a competent Government Concessions Authority from time to time.

7.1.12. Employment of personnel and manpower training

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

7.1.13. Minimum Guaranteed Cargo

The Concessionaire hereby unconditionally guarantees a minimum annual riverine cargo throughput as per below schedule starting from the 4th (fourth) anniversary of COD. In the event that minimum annual riverine cargo throughput is not met, the Concessionaire shall pay Royalty commensurate with minimum annual riverine cargo as laid out in this Article 7.1.13. The Concessionaire agrees that, except as provided in this Agreement, it shall not be entitled to any relaxation of this guarantee.

S No	Year after COD	Minimum annual riverine cargo throughput (mmtpa)
1	5 to 7	0.21
2	8 to 10	0.42
3	11 to 13	0.81
4	14 to 16	1.19
5	17 to 19	1.58
6	20 to 22	1.75
7	23 onwards	1.92

7.1.14. Indemnity against claims for loss of goods

- (a) Notwithstanding anything contained in the IWAI Act or any other law for the time being in force, the Concessionaire shall be responsible for addressing any claim, action, suit or proceeding (“**Action**”) by any third party alleging loss, destruction or deterioration of goods of which charge has been taken by the Concessionaire and indemnify, save and hold harmless the Concessioneing Authority, its officers, employees, agents and representatives (“**Indemnitees**”) against all claims, which may be asserted against or suffered and legal fees and costs incurred and which relate to any such goods, provided that notice of the action received by the Indemnitees shall be forwarded to the Concessionaire expeditiously and in any case within 30 (thirty) Days of receipt thereof by any of the Indemnitees.
- (b) Provided further that the Indemnitees shall have the right but not the obligation, to contest, defend and litigate any Action by any third party alleged or asserted against any of such Indemnitees in respect of, resulting from, related to or arising out of any matter for which it is to be indemnified hereunder, and reasonable costs and expenses thereof shall be indemnified by the Concessionaire.
- (c) If the Concessionaire acknowledges in writing its obligation to indemnify the Indemnitees in respect of loss to the full extent, the Concessionaire shall be entitled, at its option, to assume and control the defence of such Action at its expense and through the counsel of its choice; provided it gives prompt notice of its intention to do so to the Indemnitees and reimburses to them for reasonable cost and expenses incurred by them prior to assumption of such defence by the Concessionaire.
- (d) In such case the Indemnitees shall not be entitled to settle or compromise any Action without prior written consent of the Concessionaire, which consent shall not be unreasonably withheld or delayed. This indemnity shall survive the termination of this Agreement.

7.1.15. Maintenance of Complaint Portal

- (a) The Concessionaire shall maintain a “**Complaint Portal**” on its website which shall be available to all users of the Project Facilities and Services who shall be duly informed about availability of provision for lodging of complaints. The Complaint Portal will also be linked to the Concessions Authority website with an alert system for real time access to the complaints.
- (b) Concessionaire shall take action for just and fair redressal of the complaint and submit a reply to the complainant within 30 (thirty) days of the date of receipt of the complaint with a copy to Concessions Authority and maintain a proof of reply.
- (c) If concessionaire fails to address the complaint and the complainant makes a reference to the Concessions Authority, the Concessions Authority may issue directions that shall be binding on the Concessionaire. The Concessions Authority shall be just and fair in issuing such directions.

7.1.16. Operation and maintenance of Utilities

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

7.1.17. Cargo visibility

The Concessionaire shall provide end-to-end visibility of cargo to all users by use of adequate technologies.

7.1.18. Reporting of Performance Standards

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

7.1.19. Compliance with the Environment Management Plan

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

7.1.20. Operation and maintenance of Waste Reception & Treatment Facility

The Concessionaire shall take over operation and maintenance of the Waste Reception & Treatment Facility infrastructure at the Terminal from the Concessions Authority on COD to provide waste reception services to vessels as per Schedule IV of Ministry of Shipping Notification dated 13 July 2016 and the Allahabad High Court judgement on Public Interest Litigation (“**PIL**”) case no. 31229 of 2005.

7.2. Rights of Concessionaire

7.2.1. Preferential and priority berthing

The Concessionaire shall manage and operate Project Facilities and Services on a 'first come - first serve', common-user basis, open to any and all barge operators, importers, exporters, shippers, consignees and receivers; and refrain from indulging in any unfair or discriminatory practice against any user or potential user thereof. However, if there is a requirement to offer preferential or priority berthing to any one or more barge operators or vessel owners/operators to optimize the use of Project Facilities and Services, it shall be done based on volume commitments from the Concessionaire's client.

7.2.2. Liability for shortfall in draft maintenance along NW-1

In the event the Concessionaire observes that draft along NW-1 fall short of the mentioned draft as per Article 7.3.3, the Concessionaire shall calculate the amount of liquidated damages payable by the Concessionaire in accordance with Annexure IV of this Agreement and demand the Concessioneing Authority by a notice in writing to pay the same within 90 (ninety) days. On receipt of demand, the Concessioneing Authority may make a written representation to the Concessionaire which shall be considered by the Concessionaire on merits. The Concessionaire may waive liquidated damages in part or full, if it is satisfied that the Concessioneing Authority has been carrying out its obligations diligently and efficiently and the shortfall to be waived was on account of reasons beyond the control of the Concessioneing Authority.

7.2.3. Refinancing of debts

The Concessionaire in accordance with the provisions of this document and the provisions of the Draft Tripartite Agreement (Annexure XVIII) may issue bonds to refinance the debts raised and utilized by it from Senior Lenders for financing the project for which Concessioneing Authority shall enter into Tripartite Agreement as per the Draft Tripartite Agreement given in Annexure XVIII.

7.2.4. Land-usage for non-operational activities

The Concessionaire may utilize not more than 10 (ten) percent of the land available at Project Site for non-operational activities (including construction activity) subject to prior approval from the Concessioneing Authority. Such land shall be identified and demarcated by the Concessioneing Authority. Usage of such land allocated for non-operational activities shall be allowed only after completion of Expansion Phase development. All such usage shall be in full compliance with:

- (a) The Environmental Impact Assessment Notification of the Ministry of Environment and Forests dated 14 September 2006
- (b) All laws, bylaws, rules and regulations of the local Government.

A negative list of activities prohibited in land allocated for non-operational activities has been given in Annexure XIX of this document.

7.3. Obligations of the Concessioneing Authority

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

7.3.1. Approvals

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

7.3.2. Additional land, utilities and facilities

In the event that land, utilities and facilities are found to be insufficient by the Concessionaire for providing services as per the scope of work, at any time during the Concession Period, the Concessionaire may approach the Concessions Authority for providing additional land, utilities and facilities. The Concessions Authority on being approached by Concessionaire shall consider the same, subject to reasonableness and availability. The Concessions Authority may provide additional land, utilities and facilities if considered necessary. If the Authority is not in a position to provide the same, the Concessionaire shall not be entitled to any relaxation on the grounds that its request for additional land, utilities and services was not accepted by the Concessions Authority.

7.3.3. Maintenance of Least Available Depth

The Concessions Authority shall endeavour to provide the Least Available Depth (“LAD”) along NW-1 as follows:

Section	LAD (m)
Haldia – Barh	3.0
Barh - Ghazipur	2.5
Ghazipur –Varanasi	2.2

The Concessions Authority may arrange for dredging operations, as may be required to ensure the LAD as per this Agreement, with minimum inconvenience to or dislocation of the Project Facilities and Services;

7.3.4. Terminal Community System

The Concessions Authority shall endeavour to develop Terminal Community System not later than 2nd anniversary of COD.

7.4. Rights of Concessions Authority

7.4.1. If in the reasonable opinion of the Concessions Authority, the Concessionaire is in material breach of its obligations under this Agreement for handling of cargo at the berth, the Concessions Authority may, without prejudice to any of its rights under this Agreement including Termination thereof, by notice require the Concessionaire to take reasonable measures for the handling of cargo.

7.4.2. In the event that the Concessionaire, upon receipt of notice above, fails to handle cargo at the berth within a reasonable period, the Concessioneing Authority may take over performance of any or all obligations of the Concessionaire to the extent deemed necessary by it for handling of cargo at the berth; provided that such taking over by the Concessioneing Authority shall be of no greater scope and of no longer duration than is reasonably required.

7.5. Utilities and services

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

- (a) power made available shall be as received by the Concessioneing Authority from Jharkhand Vidyut Vitaran Nigam Limited The take off point for electricity shall be from the sub station;
- (b) The Concessionaire shall, at its cost, and to satisfaction of the Concessioneing Authority, install meters to measure consumption of power and water. The Concessioneing Authority does not warranty reliability, quality and quantity of water and power and shall not be liable in any manner for shortage in or non-supply of these utilities;
- (c) The Concessionaire may, at its cost, make alternate arrangements for power including but not limited to installation of generators, subject to obtaining Applicable Permits, if any.

7.6. Liability for shortfall in performance

7.6.1. In the event the Concessioneing Authority, whether from the review of reports submitted by the Concessionaire or otherwise, observes that Project Facilities and Services fall short of the Performance Standards, the Concessioneing Authority shall issue a demand notice to the Concessionaire seeking liquidated damages. The liquidated damages shall be calculated in accordance with Annexure IV of this Agreement. The liquidated damages shall be payable within 30 (thirty) days of the date of issue of notice. On failure of the Concessionaire to pay the same, Concessioneing Authority shall recover the amount from the Performance Bank Guarantee provided by the Concessionaire.

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

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

7.7. Development of Ro-Ro facility

7.7.1. The Concessions Authority shall complete the development of Ro-Ro terminal at the Terminal latest by 3rd (third) anniversary of COD and handover the same for O&M to the Concessionaire.

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ARTICLE 8

8. Tariff

8.1. Levy and Recovery of Tariff

8.1.1. The Concessionaire shall levy and recover Tariff from the users of the Project Facilities and Services as per Annexure XIV. The tariff document as per Annexure XIV prescribes the maximum tariff that can be levied by the Concessionaire (“Ceiling Tariff”).

8.1.2. The Ceiling Tariff shall be revised every year based on a variation in the Wholesale Price Index (“WPI”). 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.

8.1.3. Tariff shall be determined and regulated as per Section 17 of the Inland Waterways Authority Act, 1985. The Concessionaire shall be entitled to propose the Ceiling Tariff and IWAI shall use best endeavors to get the schedule approved from Ministry of Shipping and Ministry of Law and Justice.

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ARTICLE 9

9. Payments to the Concessioneing Authority

9.1. License fee

9.1.1. The Concessionaire shall, as consideration for the use, in its capacity as a bare licensee of the Project Site and the equipment comprised in the Terminal's Assets, made available in accordance with Clause 2.4, pay to the Concessioneing Authority the sum of Re 1 (Rupee 1 Only) (the "License Fee"). Such amount shall be paid by the Concessionaire in yearly installments. Where the fees is paid on a half yearly/yearly basis, it may also contain an escalation as may be stipulated by the Concessioneing Authority upfront in Bid Documents and periodic review of SOR, if any, will not be applicable.

9.1.2. Any delay in payment of the amount in the preceding Clause 9.1.1 shall entail payment of interest @ 10 Year GSec plus 6% (Six percent) per annum on the amount outstanding.

9.2. Payments of Royalty

9.2.1. The Concessionaire shall pay to the Concessioneing Authority a Royalty equal to INR _____ per MT on Riverine Cargo handled during the previous month ("**Royalty**") commencing from 4th (fourth) anniversary of the COD until Termination. The Concessionaire shall pay to the Concessioneing Authority an amount equivalent to the quoted Royalty plus a premium of 20% (twenty percent) on quoted Royalty for Non-Riverine Cargo handled during the previous month for the period commencing from COD until Termination. All such payments shall be exclusive of applicable taxes which the Concessionaire will pay over and above Royalty payments.

9.2.2. Royalty per MT of cargo will be indexed to 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.

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

9.2.4. Royalty amounts remaining unpaid on respective due dates would carry interest @ 10 year GSec plus 6% (Six percent) per annum from the due date till the date of payment.

9.2.5. The Concessionaire shall submit a Monthly Report to the Concessioneing Authority showing, among other things, calculation of total cargo throughput in metric tons, for all types of cargo including dry-bulk, break-bulk, liquid-bulk, containers, bagged etc., measured through bill of lading or cargo manifest. For the purpose of Royalty calculation, cargo measurement mechanism as given below may be used:

S No	Cargo type	Cargo measurement
1	Container	Gross weight in MT as per bill of lading/cargo manifest
2	Dry bulk	As per bill of lading/cargo manifest in MT

3	Liquid bulk	As per bill of lading/cargo manifest in MT
4	Break bulk	As per bill of lading/cargo manifest in MT
5	Bagged cargo	As per bill of lading/cargo manifest in MT
6	Any other cargo	As per bill of lading/cargo manifest in MT

The decision of the Additional Auditor shall be final in this matter as given in Article 9.3.3.

9.3. Certified accounts

9.3.1. During the subsistence of this Agreement, the Concessionaire shall maintain all documents and supporting evidences for its financial statements including agreements and documents with respect to all capital and debt raised by the Concessionaire, capital expenditure and operational expenses towards the Project; user-wise, vessel-wise information; cargo throughput by category; tariffs charged and the amount of money received. The Concessionaire shall submit to the Concessions Authority a financial statement including quantity (MT) of cargo handled for every 6 (six) monthly period ending 30th September and 31st March every year, duly certified by its Statutory Auditors. The certificate must be furnished within 30 (thirty) Days of the end of each such period.

9.3.2. The Concessions Authority may, at its own cost, appoint a firm of chartered accountants duly licensed to practice in India and empanelled by CAG (“**Additional Auditor**”) to conduct a special audit of the cargo throughput and the financial statements, documents and supporting evidences thereto as may be mandated by the Concessions Authority (“**Special Audit**”).

9.3.3. In the event that the cargo throughput reported by the Additional Auditor is higher than that reported by the Statutory Auditor, the auditors shall meet to resolve such differences and if they are unable to resolve the same, the Concessionaire shall pay Royalty on the cargo throughput reported by the Additional Auditor. The Concessionaire shall also pay interest @ 10 year GSec plus 6% - (Six percent) on the difference in Royalty as per the cargo throughput reported by the Statutory Auditor and the Additional Auditor. Further, the Concessionaire shall reimburse all costs, charges and expenses related to Special Audit. Without prejudice to the aforesaid, if difference between cargo throughput reported by the Additional Auditor and the Statutory Auditor is higher than 5% (five percent), the Concessions Authority shall have the right to require a Special Audit for the entire outstanding tenure of the Concession.

9.4. Escrow account

9.4.1. Withdrawals and appropriations during the Concession Period, at any relevant time, from the Escrow Account shall be in the following order of priority:

- (a) for all taxes due and payable by the Concessionaire;
- (b) towards payment of license fees;

- (c) all construction expenses relating to Project Facilities and Services, subject to limits if any set out under Financing Documents;
- (d) all expenses relating to operation and maintenance of Project Facilities and Services, subject to limits if any set out under Financing Documents;
- (e) towards payment of Royalty and other sums payable to the Concessioneing Authority and liquidated damages, if any;
- (f) towards Concessionaire's debt service obligations under Financing documents;
- (g) towards any reserve requirements in accordance with Financing Documents; and the Concessionaire shall be at liberty to withdraw any sums outstanding in Escrow Account after all the aforesaid payments due in any Quarter have been made and/or adequate reserves have been created in respect thereof for that Quarter. Provided, upon issuance of Termination Notice and/or suspension of the Concessionaire in accordance with provisions of this Agreement, withdrawal from the Escrow Account shall be made only in accordance with written instructions of the Concessioneing Authority and the Senior Lenders.

9.4.2. All amounts standing to the credit of Escrow Account at the end of the Concession Period including amounts credited to the Escrow Account towards compensation payable in accordance with Article 16 shall be appropriated in following order of priority:

- (a) towards taxes and statutory dues payable by the Concessionaire;
- (b) compensation to Senior Lenders in terms of Financing Documents towards discharge of the Concessionaire's liability under such Financing Documents;
- (c) all amounts due to the Concessioneing Authority and amounts payable towards transfer of Project Facilities and Services by the Concessionaire in accordance with this Agreement;

The Concessionaire shall be at liberty to withdraw any sums outstanding in Escrow Account after all the aforesaid payments due have been made and/or adequate reserves have been created in respect thereof to the satisfaction of the Senior Lenders and the Concessioneing Authority.

9.4.3. The Concessionaire agrees and undertakes that it shall deposit into and/or credit the Escrow Account with:

- (a) all monies received in relation to the Project from any source, including the

Senior Lenders;

- (b) all funds received by the Concessionaire from its share-holders, in any manner or form;
- (c) all Fee levied and collected by the Concessionaire;
- (d) any other revenues from or in respect of the Project/Project Facilities and Services accruing to the Concessionaire including termination payments; and
- (e) all proceeds received pursuant to any insurance claims.

For avoidance of doubt, all amounts received by the Concessionaire in respect of the Project/Project Facilities and Services excepting any amounts in respect of cesses and duties collected by it from the users on behalf of the Concessions Authority or such other Concessions Authority in accordance with the Concession Agreement or pursuant to any other instructions in respect thereof shall be deposited in the Escrow Account.

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ARTICLE 10

10. Assets: Ownership and Permitted Charge

10.1. Ownership of Assets

10.1.1. Land and Water Area

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

10.1.2. Assets created or provided by the Concessionaire

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

10.2. Permitted Charge

The Concessionaire shall be entitled to create a charge on its rights, title and interest in the assets referred to in Article 10.1.2 in favour of Senior Lenders for securing the Financial Assistance

provided or agreed to be provided by them under the Financing Documents. Provided, any such charge shall not be effective before Financial Close and shall not continue for a period exceeding the Concession Period.

Provided further, that such charge shall not be for the Project Site nor encumber the Project Site.

Provided further, in the event of termination of this Agreement, the said charge shall stand extinguished upon payment of compensation by the Concessioneing Authority to the Senior Lenders, to the extent they are entitled to receive the same in accordance with the provisions of this Agreement.

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ARTICLE 11

11. Shareholding

11.1. Ownership Structure

11.1.1. The Applicant/Consortium has caused the Concessionaire to be incorporated as a Special Purpose Vehicle (“SPV”) to operate, manage and develop Project/Project Facilities and Services in accordance with this Agreement. The shareholding pattern of the SPV is as follows: [●].

11.2. Shareholding

The Concessionaire shall ensure that the Applicant/ members of the Consortium maintain Management Control at least until completion of Expansion Phase as given in Annexure III on Scope of Work and also maintain their equity holding in the Concessionaire such that²:

11.2.1. Selected Bidder/Consortium Members 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 for purposes of qualifications in response to Request for Qualification shall hold less than 26% (twenty six percent) of such equity until completion of Expansion Phase. At any time, after expiry of the aforesaid equity lock-in period, the lead member can seek Concessioneing Authority’s approval for change in the SPV’s shareholding structure. The Concessioneing 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; and

11.2.2. M/s [●] (“Lead Member”) of the Consortium (original or new as the case may be) legally and beneficially holds at any time at least 51% (fifty one percent) of the Consortium’s holding in paid up equity capital of the Concessionaire.

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

- (a) for reasons of national security; or
- (b) 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

² This provision would be edited depending on whether the bidder is a single applicant or a Consortium. Article 11.2.2 will be omitted in case the bidder is a single Applicant.

undertaking the Project.

11.2.4. Provided, nothing contained in this Article shall preclude or prevent pledge of shares in the Concessionaire in favour of Senior Lenders as security for the Financial Assistance subject to enforcement and consequent Transfer thereof only with prior written consent of the Concessioneing Authority as stated hereinbefore and in accordance with the Financing Documents.

11.3. Constituent documents

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

11.3.2. In particular, the articles of Association and Memorandum of Association of the Concessionaire shall be amended 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 Agreement;

11.3.3. The Concessionaire shall submit amended Articles of Association and Memorandum of Association to the Concessioneing Authority within 30 (thirty) days of the Appointed Date.

11.3.4. Any subsequent change in the Articles of Association or Memorandum of Association shall require prior approval of the Concessioneing 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 Concessionaire

12.1.1. Applicable Permits

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

12.1.2. Taxes & duties

The Concessionaire shall during the Concession 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/ Project Facilities and Services.

12.1.3. Insurance

- (a) Insurance Requirement: The Concessionaire shall, at its cost and expense, purchase and maintain insurances as are prudent, including but not limited to the following:
- (i) Concessionaire's all risk insurance;
 - (ii) loss, damage or destruction of the Project Facilities and Services, at replacement value;
 - (iii) comprehensive third party liability insurance including injury or death to personnel of the Concessions Authority and others who may enter Project Site or Terminal's Assets;
 - (iv) workmen's compensation insurance;
 - (v) marine cum storage cum erection insurance; and
 - (vi) any other insurance that may be necessary to protect the Concessionaire, its employees and its assets and the Concessions Authority, its employees and agents engaged in or connected to the Project and Project Site and Terminal Assets (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 Concessionaire shall insure all insurable Terminal's Assets and Project Facilities and Services 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 Concessionaire shall, from time to time, provide to the Concessioneing Authority copies of all insurance policies (or appropriate endorsements, certifications or other satisfactory evidence of insurance) obtained by the Concessionaire in accordance with this Agreement.
- (d) **Application of Insurance Proceeds:** Subject to provisions of the Financing Documents, all moneys received under insurance policies shall be promptly applied by the Concessionaire towards repair or renovation or restoration or substitution of Terminal's Assets and Project Facilities and Services or any part thereof which may have been damaged or destroyed and in respect of which the claim is lodged. The Concessionaire may designate Senior Lenders as loss payees under the insurance policies or assign the insurance policies in their favour as security for the Financial Assistance. The Concessionaire shall carry out such repair or renovation or restoration or substitution to the extent possible in such manner that the Project Facilities and Services or any part thereof, shall, after such repair or renovation or restoration or substitution be as far as possible in equal or better condition as they were before such damage or destruction, normal wear and tear excepted.
- (e) **Validity of Insurance Cover:** The Concessionaire shall pay premium payable on such insurance policies so as to keep the policies in force and valid throughout the Concession Period and furnish copies of the same to the Concessioneing Authority. Each insurance policy shall provide that the same shall not be cancelled or terminated unless 10 (ten) Days' clear notice of cancellation is provided to Concessioneing Authority in writing. If at any time the Concessionaire fails to purchase and maintain in full force and effect any and all insurances required under this Agreement, the Concessioneing Authority may at its option purchase and maintain such insurance and all sums incurred by the Concessioneing Authority therefor shall be reimbursed with interest @ 10 year GSec plus 6% - (six percent) per annum by the Concessionaire forthwith on demand, failing which the same shall be recovered by the Concessioneing 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 Concessioneing 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.

12.1.4. Indemnification

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

12.1.5. Assignability

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

Provided the Concessionaire may assign its rights, interests and benefits under this Agreement to Senior Lenders as security for Financial Assistance. Provided further nothing contained in this Article shall:

- (a) absolve the Concessionaire from its responsibilities to perform/discharge any of its obligations under and in accordance with the provisions of this Agreement; and
- (b) authorize or be deemed to authorize the Senior Lenders to operate the Project Facilities and Services themselves and any such assignment to operate shall be in terms of the Substitution Agreement.

12.1.6. Engagement of Contractors

The Concessionaire shall engage the Management Contractor and execute the Management Contract, thereby entrusting the Management Contractor with the responsibilities of operating and managing the Project Facilities and Services in the manner envisaged under the Request for Proposal. A copy of the Management Contract shall be provided to the Concessions Authority and the same shall not be amended, substituted or revoked without prior written consent of the Concessions Authority.

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

Provided that:

- (a) the Concessionaire shall at all times be solely responsible for all its obligations under this Agreement notwithstanding any such engagement and anything contained in any Project Contracts or any other agreement, and no default under any Project Contract or agreement shall excuse the Concessionaire from its obligations or liability hereunder and the Concessionaire shall at all times be solely responsible for non-performance or for any defect, deficiency or delay in construction and erection and/or installation of structures/equipment or any part thereof and for the operation and maintenance of Project/Project Facilities and Services in accordance with provisions of this Agreement;
- (b) the Concessionaire should have obtained, if required, security clearance for the Contractor the Concessionaire intends to engage;
- (c) the Concessionaire shall ensure that Project Contracts contain provisions that entitle the Concessions Authority to step into such contract in its sole discretion in substitution of the Concessionaire in the event of termination or suspension of this Agreement; and
- (d) 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 Concessions Authority.

12.1.7. Condition Survey

- (a) The Concessionaire agrees that at least 6 (six) Months prior to expiry by efflux of time of the Concession Period, it shall, cause to be conducted at its cost by an industry Expert appointed by Parties by mutual consent, a condition survey and an inventory of entire Project Facilities and Services. If, as a result of such survey, the industry Expert shall observe

that the Terminal's Assets and/or Project Facilities and Services or any part thereof have/has not been operated and maintained in accordance with requirements therefor under this Agreement (normal wear and tear excepted) the Concessionaire shall, at its cost and expenses, take all necessary steps to put the same in good working condition well before the Transfer Date. In the event the Concessionaire fails to comply with this provision, the Concessions Authority may itself cause the condition survey and inventory of the Terminal's Assets and Project Facilities and Services to be conducted and remove any defect or deficiency. The Concessions Authority shall be promptly reimbursed by the Concessionaire for costs incurred in conducting such survey and preparation of inventory as also in putting Project Facilities and Services in a good working condition.

- (b) The Concessionaire shall as security for performance of its obligation in preceding sub-Article (a), submit to the Concessions Authority a guarantee issued by a scheduled bank in India for a sum of INR 18.8 crore (INR Eighteen crore and eighty lakh only), 2 (two) years prior to the expiry of the Concession Period. In the event of Concessionaire's failure to provide such guarantee, the same shall be deemed to be a Concessionaire Event of Default and the Concessions Authority shall accordingly be entitled to terminate this Agreement in accordance with Article 15. This shall be over and above the Performance Guarantee submitted in accordance with Article 4.

12.2. Of the Concessions Authority

12.2.1. Assistance in obtaining approvals, permits and licenses

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

12.2.2. Competing facilities

The Concessions Authority shall not operationalize any additional terminal to handle riverine cargo at riverfront within a radial distance of 50 km from the Terminal reference point until 15th anniversary of COD (the "Exclusivity Period"). The terminal reference point shall be the center point with co-ordinates 25°15'04.1"N 87°42'08.9"E. Expansion phase of the Project shall not be considered as a competing facility.

For avoidance of doubt, it is clarified that floating jetties and Ro-Ro jetties shall not be considered as competing facilities for the Terminal.

12.2.3. General rights of inspection and verification

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

12.3. Of the Concessioneing Authority and the Concessionaire

12.3.1. Monitoring Arrangement

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

12.3.2. Compliance with Laws and Regulations

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

12.3.3. Rights to Documents

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

document, may be executed within 30 (thirty) Days' of notice by the Concessionaire to the Concessing Authority of Senior Lenders' readiness to execute the same.

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ARTICLE 13

13. Change in Law

13.1. Change in law

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

13.1.1. adoption, promulgation, modification, reinterpretation or repeal after the date of this Agreement by any Government Authority of any statute, rule, ordinance, regulation or order, treaty, convention, directive, guideline, policy having force of law; or

13.1.2. the imposition by any Government Authority of any material condition (other than a condition which has been imposed as a consequence of a violation by the Concessionaire of any Applicable Permit) in connection with the issuance, renewal or modification of any Applicable Permits after the date of this Agreement which renders the performance by the Concessionaire of any of the terms of this Agreement impossible or unviable; or

13.1.3. Any Applicable Permit previously granted, ceasing to remain in full force and effect for reasons other than breach/violation by or the negligence of the Concessionaire or if granted for a limited period, being renewed on terms different from those previously stipulated.

13.1.4. Any imposition of new Taxes except a new Direct Tax (both State and Central), duties, cess and the like and/or the increase in Taxes except in Direct Taxes (both State and Central), duties, cess and the like effected from time to time by any Government Authority, and/or imposition of standards and conditions of operations, maintenance and safety arising out of a new or revised Environmental Law; and/or imposition of standards and terms of employment and working conditions of Labourers and Workmen; and/or any rules or regulations stipulated by IWAI Act or other regulatory authority having jurisdiction over the Project in respect of standards of service. A change in the interpretation or application of any Indian Law by the judgement of a court of record which has become final and binding in place of such interpretation or application of law by a court of record prior to the bid due date

13.2. The Concessionaire’s Remedy

13.2.1. In the event of Change in Law the Concessionaire may propose to the Concessions Authority modifications to the relevant terms of this Agreement which are reasonable and intended to mitigate the effect of the Change in Law. Thereupon, the Parties shall, in good faith, negotiate and agree upon suitable changes in the terms of this Agreement including extension of the Concession Period, so as to place the Concessionaire in substantially the same legal and financial position as it were prior to such Change in Law. i.e Protecting Project IRR as per Financing Plan. Provided however, that if the resultant Material Adverse Effect is such that this Agreement is frustrated or is rendered illegal or impossible of performance, the Change in Law shall be deemed to be a Political Event, whereupon the provisions with respect thereto shall apply.

13.2.2. In the alternative to the aforesaid, subject to the Concessionaire taking necessary measures to mitigate the impact or the likely impact of Change in Law on the Project, if as a direct consequence of a Change in Law, the Concessionaire is obliged to incur Additional Cost in any accounting year, any such Additional Cost above a sum INR 18.8 crore (INR Eighteen crore and eighty lakh only) may at the option of the Concessioneing Authority be borne by the Concessioneing Authority. It is clarified that Additional Cost upto INR 18.8 crore (INR Eighteen crore and eighty lakh only) in any accounting year shall be borne by the Concessionaire;

13.2.3. Upon occurrence of a Change in Law, the Concessionaire shall notify the Concessioneing Authority, of the following:

- (a) the particulars, nature and the impact of Change in Law on the Project;
- (b) in sufficient detail, the estimate of the Additional Cost likely to be incurred by the Concessionaire on account of the Change in Law; and
- (c) the measures, which the Concessionaire has taken or proposes to take to mitigate the impact of Change in Law, including in particular, minimising the Additional Cost.

13.2.4. Upon receipt of the notice of Change in Law issued by the Concessionaire pursuant to the preceding sub-article 13.2.3, the Concessioneing Authority and the Concessionaire shall hold discussions and take all such steps as may be necessary including determination/certification by a financial Expert, appointed by the Parties by mutual consent, of the Additional Cost and to determine the quantum of the Additional Cost to be incurred.

13.2.5. If it is determined that the only material impact of a Change in Law is Additional Cost and the Concessioneing Authority opts to compensate the same in accordance with the preceding sub-article (b), the Concessionaire shall not be entitled to any other remedy nor shall seek any alterations to the Agreement and the Concessioneing Authority shall, within 30 (thirty) Days from the date of determination of quantum of Additional Cost to be borne by the Concessioneing Authority in accordance with sub-article (b) above, compensate the Concessionaire in either of the following ways:

- (a) by lump-sum reimbursement of such Additional Cost to the Concessionaire;
- (b) reimbursement of the such Additional Cost to the Concessionaire, in not exceeding four half yearly installments, subject to payment of interest at 10 Year GSEC + 6% - (Six percent) on the amount the payment of which is deferred.

13.2.6. Notwithstanding the aforesaid, if in terms of Good Industry Practice, the event constituting a Change in Law could be insured, the Concessionaire shall not be entitled to

any remedy under this Article 13.2;

13.2.7. If as a result of Change in Law, the Concessionaire incurs a reduction in costs or other financial gain or benefit in connection with its development or operation of the Project, the aggregate financial effect of which exceeds INR 18.8 crore (INR Eighteen crore and eighty lakh only) in any Financial Year, the Concessionaire shall notify the Concessioneing Authority and pay to the Concessioneing Authority an amount that would put the Concessionaire in the same financial position it would have occupied had there been no such Change in Law resulting in such cost reduction, increase in return or other financial gain or benefit as aforesaid. Without prejudice to the aforesaid, the Concessioneing Authority may, by notice in writing require the Concessionaire to pay an amount that would put the Concessionaire in the same financial position it would have occupied had there been no such Change in Law resulting in such cost reduction, increase in return or other gain or benefit.

13.2.8. The Concessionaire shall make payment of such compensation within sixty (60) Days of the said financial benefit. If the Concessionaire shall dispute the quantum of such compensation claim of the Concessioneing Authority, the same shall be finally settled in accordance with the dispute resolution mechanism contained in Article 19 herein.

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ARTICLE 14

14. Force Majeure

14.1. Force Majeure Event

14.1.1. As used in this Agreement, Force Majeure Event means the occurrence of any of the Non- Political Events, the Political Events or the Other Events in India, set out in Articles 14.2, 14.3 and 14.4 respectively including the impact/consequence thereof which:

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

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 Concessionaire or the Contractor or any of the employees or agents of the Concessionaire or the Contractor);
- (b) strikes or boycotts (other than those involving the Concessionaire, Contractors or their respective employees/representatives, or attributable to any act or omission of any of them), and not being an Other Event set forth in Article 14.4, labour disruptions or any other industrial disturbances not arising on account of the acts or omissions of the Concessionaire or the Contractor;
- (c) any failure or delay of a Contractor caused by any of the Non-Political Events, for which no offsetting compensation is payable to the Concessionaire or on behalf of the Contractor;
- (d) the discovery of geological conditions, toxic contamination or

archeological remains on the 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 Material Adverse Effect;
- (b) action of a Government Authority having Material Adverse Effect including but not limited to:
 - (i) acts of expropriation, compulsory acquisition or takeover by any Government Authority of the Project/Project Facilities and Services or any part thereof or of the Concessionaire's or the Contractor's rights under any of the Project Contracts, and
 - (ii) any unlawful, unauthorized or without jurisdiction refusal to issue or to renew or the revocation of any Applicable Permits, in each case, for reasons other than the Concessionaire's or the Contractor's breach or failure in complying with the Scope of Work , Applicable Laws, Applicable Permits, any judgment or order of a Governmental Agency of any contract by which the Concessionaire or the Contractor as the case may be is bound;
 - (iii) early termination of this Agreement by the Concessioneing 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 Concessionaire 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 Agreement for a continuous period of not less than 7 (seven) Days from the date of its occurrence, shall constitute the Other Event:

- (a) an act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo, riot, insurrection, terrorist or military action, civil commotion or politically motivated sabotage;

- (b) industry wide or State wide strikes or industrial action;
- (c) any civil commotion, boycott or political agitation which prevents collection of Fee by the Concessionaire;
- (d) any judgment or order of a court of competent jurisdiction or statutory authority in India made against the Concessionaire or the Contractor in any proceedings which is non-collusive and duly prosecuted by the Concessionaire; and any judgment or order of a court of competent jurisdiction or statutory authority in India made against the Concessionaire or the Contractor in any proceedings which is non-collusive and duly prosecuted by the Concessionaire other than relating to proceedings
 - (i) pursuant to failure of the Concessionaire to comply with any Applicable Law or Applicable Permit, or
 - (ii) on account of breach of any Applicable Law or Applicable Permit or of any contract, or
 - (iii) enforcement of this Agreement or
 - (iv) with respect to exercise of any of its rights under this Agreement by the Concessioning Authority; or
- (e) any event or circumstance of a nature analogous to any of the foregoing.
- (f) Insufficient LAD on NW-1 for a period of 7 (seven) Days or more as communicated by the Authority through a public notification.

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 Agreement.

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 Agreement;
- (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(b) 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 14.7; or
- (b) termination of this Agreement 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 Agreement. The Affected Party shall also make efforts to resume performance of its obligations under this Agreement as soon as possible and upon resumption shall notify the other Party of the same in writing. The other Party shall afford all reasonable assistance to the Affected Party in this regard.

14.8. Performance Excused

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

14.9. Costs, Revised Timetable

14.9.1. Costs

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

14.9.2. Extension of time/period

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

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

ARTICLE 15

15. Events of Default

15.1. Events of Default

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

15.1.1. The Concessionaire Event of Default

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

- (a) Concessionaire's failure to perform or discharge any of its obligations in accordance with the provisions of this Agreement;
- (b) Construction at the Project Site is abandoned for a more than 90 (ninety) Days during the Construction Phase;
- (c) 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 Date of Commercial Operations is delayed for more than 180 (one hundred and eighty) Days from the Scheduled Project Completion Date;
- (d) Delay in payment of Royalty for 2 (two) consecutive Months or more than (5) (five) times in the aggregate during the Concession Period;
- (e) Concessionaire's failure to perform or discharge any of its obligations under any other Project Contract, which has or is likely to affect the Project/the Project Facilities and Services, materially;
- (f) Concessionaire fails to achieve Minimum Guaranteed Cargo for a consecutive period of 3 (three) years. Provided, the Concessionaire shall not be deemed to be in default if such non achievement is due to a substantial change in economic policies including the policy regarding import/export of a particular commodity as a result of which the throughput could not be achieved;
- (g) Any representation made or warranties given by the Concessionaire under this Agreement is found to be false or misleading;
- (h) The Concessionaire passing a resolution for voluntary winding up;

- (i) Appointment of a provisional liquidator, administrator, trustee or receiver of the whole or substantially whole of the undertaking of the Concessionaire by a court of competent jurisdiction in proceedings for winding up or any other legal proceedings;
- (j) Occurrence of default under the Financing Documents pursuant to which the Senior Lenders exercise their rights to substitute the Concessionaire in accordance with the provisions of the Substitution Agreement;
- (k) Levy of an execution or distraint on the Concessionaire's assets which has or is likely to have Material Adverse Effect and/or affect the Project/Project Facilities and Services, materially and such execution or distraint remaining in force for a period exceeding 90 (ninety) Days;
- (l) The Performance Guarantee is not maintained in terms of the provisions hereof;
- (m) The Concessionaire abandons or expresses its intention to revoke/terminate this Agreement without being entitled to do so as is expressly provided in the Agreement;
- (n) A change in shareholding such that the beneficial interest of the Applicant/Consortium in the Concessionaire reduces below the limits set in Article 11.2 and/or Management Control of the Concessionaire has occurred in contravention of the provisions of Article 11 hereof;
- (o) Amalgamation of the Concessionaire with any other company or reconstruction or transfer of the whole or part of the Concessionaire's undertaking [other than transfer of assets in the ordinary course of business] in contravention with the provisions of Article 11 hereof; and
- (p) The Concessionaire engaging or knowingly allowing any of its employees, agents, Contractor or representative to engage in any activity prohibited under this Agreement and/or by law or which constitutes a breach of the Agreement or breach of or an offence under any law, in the course of any activity undertaken pursuant to this Agreement.

15.1.2. The Concessions Authority Event of Default

- (a) The Concessions Authority's failure to perform or discharge its obligations in accordance with the provisions of this Agreement unless such failure has occurred as a consequence of any Concessionaire Event of Default or a Force Majeure Event.
- (b) Any representation made or warranties given by the Concessions Authority under this Agreement is found to be false or misleading.

- (c) Appointment of a provisional liquidator, administrator or receiver of the whole or part of the Terminal's Assets in any legal proceedings initiated against the Concessioneing Authority (unless such proceedings are initiated as a consequence of any Concessioneire Event of Default).
- (d) Levy of an execution or destraint on the Terminal's Assets in any proceedings against the Concessioneing Authority (unless such proceedings are initiated as a consequence of any Concessioneire Event of Default) which has or is likely to have Material Adverse Effect and such execution or destraint remaining in force for a period exceeding 90 (ninety) Days.

15.2. Parties Rights

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

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

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

15.3. Consultation Notice

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 and the Senior Lenders to consider possible measures of curing or otherwise dealing with the underlying Event of Default ("**Consultation Notice**").

15.4. Remedial Process

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

15.4.1. the change of management or control/ownership of the Concessioneire;

15.4.2. the replacement of the Concessionaire by a new operator (“**Selectee**”) proposed by the Senior Lenders (in terms of the Substitution Agreement), and the specific terms and conditions of such replacement which shall include :

- (a) the criteria for selection of the Selectee;
- (b) the transfer of rights and obligations of the Concessionaire surviving under this Agreement to the Selectee;
- (c) handing over/ transfer of the Project Site, the Terminal’s Assets and the Project Facilities and Services to the Selectee;
- (d) acceptance by the Selectee of the outstanding obligations of the Concessionaire under the Financing Documents and preserving Senior Lenders’ charge on the Concessionaire’s assets;
- (e) acceptance by the Selectee of any amounts due to the Concessioneing Authority from the Concessionaire under this Agreement; and
- (f) payment of consideration for the Concessionaire’s assets comprised in the Project Facilities and Services and the manner of appropriation thereof.

15.5. Obligations during Remedial Period

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

15.6. Revocation of Consultation Notice

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

15.7. Termination due to Events of Default

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

15.8. Concessioneing Authority’s Rights of Step-in

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

- (a) re-enter upon and take possession and control of Project Site/Project Facilities and Services forthwith;
- (b) prohibit the Concessionaire and any Person claiming through or under the Concessionaire from entering upon/dealing with the Project Facilities and Services;
- (c) step in and succeed upon election by Concessions Authority without the necessity of any further action by the Concessionaire, to the interests of the Concessionaire under such of the Project Contracts as the Concessions Authority may in its discretion deem appropriate with effect from the date of communication of such election to the counter party to the relative Project Contracts.

15.8.2. Provided, that in such circumstances, the Concessions Authority shall assume the obligations of the Concessionaire with respect to the Senior Lenders during such Remedial Period out of the current revenues. Provided further, the Concessionaire acknowledges that any payments made by the Concessions Authority during the Remedial Period shall be adjusted against compensation payable by the Concessions Authority to the Concessionaire in terms of the provisions of this Agreement.

ARTICLE 16

16. Termination of Concession Agreement

16.1. Termination Procedure

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

16.2. Obligations during Termination Period

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 Agreement which are capable of being performed with the object, as far as possible, of ensuring continued availability of the Project Facilities and Services to the users, failing which the Party in breach shall compensate the other Party for any loss or damage occasioned or suffered on account of the underlying failure/breach.

16.3. Requisition

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

- (a) except in cases where no Financial Close has been achieved, the particulars of Debt Due supported by Senior Lenders’ certificate;
- (b) data or records including test certificates, survey reports, inspection reports, records of maintenance, statutory certificates issued for operation and establishment of the project facilities and services and regarding the operation and maintenance of the Project Facilities and Services;
- (c) specifications regarding the Concessionaire’s assets comprised in the

Project Facilities and Services; and

- (d) any other information or records [to be specified by Concessioneing Authority at its discretion] regarding Concessionaire, its business, the Project/Project Facilities and Services, assets and liabilities.

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

16.4. Condition Survey

16.4.1. The Concessionaire agrees that on the service of a Termination Notice or at least 6 (six) months prior to the expiry of the Concession Period, as the case may be, it shall conduct or cause to be conducted under the Concessioneing Authority's supervision, a condition survey of the Project Facilities and Services including the Project Site and/or the Terminal's Assets to ascertain the condition thereof, verifying compliance with the Concessionaire's obligations under this Concession Agreement and to prepare an inventory of the assets comprised in the Project Facilities and Services. During this period, the designated key personnel of the Concessioneing Authority shall be associated with the operations of the Project Facilities and Services (except when the same is impossible due to a Force Majeure Event) in order to facilitate smooth takeover of the same by the Concessioneing Authority on the Transfer Date.

16.4.2. If, as a result of the condition survey, the Concessioneing Authority shall observe/notice that the Project Site and/or the Terminal's Assets and/or the Project Facilities and Services or any part thereof have/has not been operated and maintained in accordance with the requirements therefor under this Concession Agreement (normal wear and tear excepted) the Concessionaire shall, at its cost and expenses, take all necessary steps to put the same in good working conditions well before the Transfer Date.

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

16.5. Consequences of Termination

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

- (a) the Concessionaire shall transfer all the assets and rights upon expiry of the Concession Period by efflux of time or termination of the Agreement due to a Force Majeure Event or on account of an Event of Default in accordance with Article 18;

- (b) the Concessions Authority shall be entitled to encash any subsisting bank guarantee(s) provided by the Concessionaire against any amounts owing to the Concessions Authority by the Concessionaire.

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

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ARTICLE 17

17. Compensation

17.1. Compensation

17.1.1. Termination due to Force Majeure Event

- (a) If the termination is due to a Non Political Event, compensation payable to the Concessionaire shall be the lower of the Book Value or the Debt Due LESS any amount due to the Concessioneing Authority by the Concessionaire under this Agreement LESS all insurance claims received or admitted.
- (b) If the termination is due to an Other Event compensation payable to the Concessionaire shall be the higher of the Book Value or the Debt Due LESS any amount due to the Concessioneing Authority by the Concessionaire under this Agreement LESS all insurance claims received or admitted. Provided, the Book Value or the Debt Due, as the case may be shall not exceed the –Total Project Cost.
- (c) If termination is due to a Political Event, compensation payable to the Concessionaire shall be the same as that stipulated for termination due to a Concessioneing Authority Event of Default under Article.

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

17.1.2. Termination due to Concessionaire Event of Default

If the termination is after the Date of Commercial Operation, due to a Concessionaire Event of Default, the compensation payable by the Concessioneing Authority to the Concessionaire shall be the lowest of:

- (a) the Book Value;
- (b) 90% (ninety percent) of Debt Due;
- (c) the –Total Project Cost;

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

17.1.3. Termination due to Concessioneing Authority Event of Default

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

- (a) Debt Due plus
- (b) 150% (one hundred and fifty percent) Equity.

17.2. No Compensation on Expiry of Concession Period

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

17.3. Transfer Fee and Charges

17.3.1. 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 Concession Agreement shall be borne by:

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

17.4. Payment of Compensation to Senior Lenders

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

Concessions Authority's obligation regarding payment of compensation to the Concessionaire under this Concession Agreement.

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

17.4.3. Provided further, if there are no amounts outstanding under the Financing Documents and a certificate to that effect issued by the Senior Lenders is furnished by the Concessionaire to the Concessions Authority, the compensation shall be paid by the Concessions Authority to the Concessionaire directly.

17.5. Delayed Payment of Compensation

17.5.1. If for any reasons, other than those attributable to the Concessionaire, the Concessions Authority fails to pay the compensation on the Transfer Date, the Concessions Authority shall be liable to pay interest @ 10 year GSEC plus 6% (six percent) per annum thereon from the Transfer Date till payment thereof. Provided, nothing contained in this Article shall be deemed to authorise any delay in payment of compensation in accordance with this Concession Agreement.

17.6. Delayed Transfer of Assets

17.6.1. If for any reasons other than those attributable to the Concessions Authority the Concessionaire fails to transfer assets, rights and contracts on the Transfer Date in accordance with Article 16.5 read with Article 18, there shall be no suspension of the operation and maintenance of the Project Facilities and Services and the Concessionaire shall, as a trustee of the Concessions Authority,

- (a) continue to operate and maintain the Project Facilities and Services or such of them, as directed by Concessions Authority until completion of the relative transfer formalities and
- (b) account for and pay to the Concessions Authority the Project Revenue minus operating costs and statutory dues, from such operations. In the event of failure to do so, the Concessionaire shall be liable to pay to the Concessions Authority, for every Day of delay, liquidated damages computed at the rate of the average daily profits earned during the 3 (three) years immediately preceding the Transfer Date. Parties confirm that this is a true and correct estimate of damages and not in the nature of a penalty. Provided nothing contained in this Article 17.6 shall be deemed or construed to authorise delay in completion of formalities of transfer of assets, rights and contracts by the Concessionaire to the Concessions Authority in accordance with the requirements thereof under this

Concession Agreement.

17.6.2. In case the transfer of assets by the Concessionaire to the Concessions Authority is delayed for reasons attributable to the Concessions Authority, the Concessionaire shall nonetheless continue to operate the Project Facilities and Services but as agent of the Concessions Authority. Provided however, the Concessionaire shall be liable to pay Royalty in accordance with Article 9.2.1.

17.7. Remedies Cumulative

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

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ARTICLE 18

18. Transfer on expiry of Concession Period

18.1. General Scope of Transfer/Payment

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

18.2. Concessionaire's Obligations

The Concessionaire shall;

18.2.1. hand over peaceful possession of the Project Site, Terminal's Assets, the Project and the Project Facilities and Services free of Encumbrance;

18.2.2. transfer all its rights, titles and interests in the assets comprised in the Project Facilities and Services which are required to be transferred to the Concessions Authority in accordance with this Concession Agreement and execute such deeds and documents as may be necessary for the purpose and complete all legal or other formalities required in this regard;

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

18.2.4. transfer technology and up-to-date know-how relating to operation and maintenance of the Terminal's Assets and/or the Project Facilities and Services;

18.2.5. transfer or cause to be transferred to the Concessions Authority any Project Contracts which are:

- (a) valid and subsisting;
- (b) capable of being transferred to the Concessions Authority; and
- (c) those the Concessions Authority has chosen to take over, and cancel or cause to be cancelled such Project Contracts not transferred to the Concessions Authority. For this purpose, the Concessionaire shall ensure that all Project Contracts are assignable in favor of the Concessions Authority without any further action on part of the respective counterparties. The Concessionaire shall entirely at its cost, terminate all such Project Contracts which are not transferred/assigned and/or are not required to be transferred/assigned to the Concessions Authority.

Authority;

18.2.6. at its cost, transfer to the Concessions Authority all such Applicable Permits which the Concessions Authority may require and which can be legally transferred. Provided if the termination is on account of Concessions Authority Event of Default the cost of such transfer shall be borne/ reimbursed by the Concessions Authority;

18.2.7. at its cost, remove within 90 (ninety) days from expiry of the Concession Period, from the Project Site/Terminal's Assets, any moveable assets that are not taken over by or not to be transferred to the Concessions Authority in terms of the provisions of this Concession Agreement.

18.3. Concessions Authority's Obligations

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

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

18.4. Risk

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

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 Concessioneing Authority and the Concessionaire 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 Agreement, whether before or after the termination of this Agreement, then the Parties shall meet together promptly, at the request of any Party, in an effort to resolve such dispute, difference or claim by discussion between them.

19.2. Assistance of Expert

19.2.1. The parties, may, in appropriate cases agree to refer the matter to a legal Expert appointed by them with mutual consent. The cost of obtaining the service of the legal Expert shall be shared equally.

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 Concessioneing 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.

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 Agreement without prejudice to a final adjustment in accordance with such award.

ARTICLE 20

20. Representations and warranties

20.1. Representations and warranties of the Concessionaire

The Concessionaire represents and warrants to the Concessioneing 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 Agreement 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 Agreement;

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

20.1.4. this Agreement constitutes the legal, valid and binding obligation of the Concessionaire, 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 Agreement;

20.1.6. it has the financial standing and capacity to undertake the Project in accordance with the terms of this Agreement;

20.1.7. the execution, delivery and performance of this Agreement will not conflict with, result in the breach of, constitute a default under, or accelerate performance required by any of the terms of its memorandum of association and articles of association or any Applicable Laws or any covenant, contract, agreement, arrangement, understanding, decree or order to which it is a party or by which it or any of its properties or assets is bound or affected;

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 Agreement and no fact or circumstance exists which may give rise to such proceedings that would adversely affect the performance of its obligations under this Agreement;

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 Agreement;

20.1.10. all its rights and interests in the Project/Project Facilities and Services shall pass to and vest in the Concessions Authority on the Transfer Date free and clear of all liens, claims and Encumbrances, without any further act or deed on its part or that of the Concessions Authority, and that none of the Project Terminal Assets shall be acquired by it, subject to any agreement under which a security interest or other lien or Encumbrance is retained by any person, save and except as expressly provided in this Agreement;

20.1.11. no representation or warranty by it contained herein or in any other document furnished by it to the Concessions 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 Concession or entering into this Agreement or for influencing or attempting to influence any officer or employee of the Concessions Authority in connection therewith;

20.1.13. agrees that the execution, delivery and performance by it of this Agreement and all other agreements, contracts, documents and writings relating to this Agreement constitute private and commercial acts and not public or governmental acts; and

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 Concessions Authority

The Concessions Authority represents and warrants to the Concessionaire 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 Agreement;

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

20.2.4. this Agreement constitutes the legal, valid and binding obligation of the Concessions 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 Agreement.

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 Agreement.

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ARTICLE 21

21. Miscellaneous provisions

21.1. Amendments

21.1.1. No amendment or waiver of any provision of this Agreement, 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 Agreement 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. Survival of Obligations

21.3.1. 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 Agreement during the Concession Period as the case may be as a result of any act, omission, deed, matter or thing done or omitted to be done by either Party before the expiry of the Concession Period by efflux of time or otherwise in accordance with the provisions of this Agreement shall survive the expiry of the Concession Period/ termination of this Agreement.

21.4. Articles to survive Termination

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

21.5. Joint Responsibility

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

21.6. Several Obligations

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

21.7. Severability

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

21.8. Waiver; remedies

21.8.1. 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.

21.9. Severance of terms

21.9.1. If any provisions of this Agreement 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 Agreement which shall continue in full force and effect and shall not be affected by such void.

21.10. Language

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

21.11. Confidentiality

21.11.1. 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 Agreement) 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 transfer 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 Agreement.
- (b) Already in the possession of the receiving party before it was received from any other party in connection with this Agreement 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.

21.12. 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 Concessioneing Authority:

CHAIRMAN

Fax No: Email:

The Concessionaire:

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.

21.13. Waiver

21.13.1. 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 21.7 of this Agreement. A waiver by any Party of any term or condition or breach thereof in a given case shall not be deemed or construed as a general waiver of such term or condition or the breach in the future or waiver of any other terms or conditions or breach of this Agreement.

21.14. Unclaimed cargo

21.14.1. The Concessionaire shall dispose-off unclaimed cargo in accordance with Applicable Law.

21.15. Amendments, Modifications or Alterations.

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

21.16. Governing Law

21.16.1. This Agreement shall be governed by and construed in accordance with

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

21.17. Entire Agreement

This Agreement 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 Agreement unless specifically retained in this Agreement and the Annexures, by reference or otherwise, are abrogated and withdrawn.

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

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

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

22. Annexures

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23. Annexure I: Project site

Please refer to the attached CAD drawing for Project site's details including Terminal and Ro-Ro terminal.

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24. Annexure II: Terminal's assets

The following is the list of costs of Terminal's assets to be handed over to the Concessionaire.

S. No.	Item	Revised Estimate (INR crore)
1.	Site grading	36.26
2.	Dredging	6.67
3.	Berthing structures and approach trestles	86.33
4.	Stone pitching works	15.13
5.	Ramps and retaining walls	15.57
6.	Stockyard development	1.31
7.	Buildings with rain water harvesting system	5.94
8.	Storage shed	3.49
9.	Electrical works	11.67
10.	Equipment	31.87
11.	Conveyor system with fixed hopper	25.94
12.	Road weigh bridge	0.27
13.	Internal roads and vehicle parking area	10.81
14.	Water supply works	0.91
15.	Storm water drainage works	3.82
16.	Sewerage system	0.41
17.	Fire-fighting system	1.44
18.	Dust suppression system	1.68
19.	Communication and IT	4.72
20.	Navigational aids	0.71
21.	Environment Management Plan (EMP)	0.09
22.	Taxes	15.27
TOTAL		280.31

List of immovable and essential movable contracted assets

S No	Particulars	Contracted assets	
		Immovable contracted assets	Essential movable contracted assets
1	Jetty structures	✓	
2	Stone pitching works	✓	
3	Buildings with rain water harvesting system	✓	
4	Electrical works	✓	
5	Mobile harbor cranes		✓
6	Front end loader		✓
7	Conveyor system with fixed hopper	✓	
8	Road weigh bridge	✓	
9	Internal roads and vehicle parking area	✓	
10	Sewerage system	✓	
11	Water supply works	✓	
12	Storm water drainage works	✓	
13	Fire-fighting system	✓	
14	Dust-suppression system	✓	
15	Communication and IT system	✓	
16	Navigational aids	✓	

25. Annexure III: Scope of Work

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

1. Operation and maintenance of the terminal’s assets as mentioned in Annexure II handed over to the Concessionaire by the Concessions Authority in accordance with the provisions of this Agreement, applicable laws and applicable permits.
2. Operation and maintenance of the proposed Ro-Ro terminal at the Terminal in accordance with the provisions of this Agreement, applicable laws and applicable permits;
3. The Concessionaire shall be strictly restricted from handling Ro-Ro cargo or from operating any other Ro-Ro facility in vicinity of the Terminal after the development of Ro-Ro terminals at the Terminal has been completed by IWAI.
4. Performance and fulfilment of all other obligations of the Concessionaire and matters incidental thereto or necessary for the performance of any or all of the obligations of the Concessionaire under this Agreement, in accordance with the provisions of this Agreement, applicable laws and applicable permits.

Expansion Phase

The Concessionaire shall:

1. initiate Expansion Phase on achieving capacity utilization of 1.818 mmtpa (i.e. 60% of 3.03 mmtpa) for 2 (two) consecutive years (the “**Expansion Trigger**”), such that cumulative terminal capacity of 5.48 mmtpa is developed latest by 10th (tenth) anniversary of COD;
2. prepare and submit to the Concessions Authority the master plan and DPR for Expansion Phase within 6 (six) months of Expansion Trigger and not later than 7th (seventh) anniversary of COD;
3. design, development, construction, operation and management of the Terminal to a capacity of 5.48 mmtpa at completion of Expansion Phase satisfying standards set forth in Annexure VIII, and in accordance with the applicable laws and applicable permits;
4. commence further expansion activities beyond 5.48mmtpa when Terminal utilization reaches at least 80% of 5.48 mmtpa (4.38 mmtpa) for 2 (two) consecutive years. Further expansion beyond 5.48 mmtpa shall be completed within 3 (three) years of initiation, preferably as per DPR;
5. mandatorily include the following facilities in Expansion Phase

Table 1: List of mandatory facilities for Expansion Phase

S No	Description
1	Berth
2	Internal roads

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26. Annexure IV: Performance Standards and damages

The following are the performance standards for the Concession agreement for the Terminal

S No	Key Performance Indicator	Threshold	Measurement
1	Equipment reliability (maintenance)	Greater than 95%	<ul style="list-style-type: none"> • Frequency: Quarterly • Actual Equipment reliability = $(1 - [\text{Downtime hours} / \text{Total deployed hours}]) \times 100$ <p>Wherein:</p> <p>Downtime hours is the actual number of hours during which the equipment was not running due to failure of the equipment</p> <p>Total deployed hours is the total number of hours for which an equipment is given to the operations team</p>
2	Equipment availability (maintenance)	Greater than 90%	<ul style="list-style-type: none"> • Frequency: Quarterly • Actual equipment availability = $(1 - ((\text{Planned maintenance hours} + \text{downtime hours}) / \text{total deployed hours})) \times 100$ <p>Wherein:</p> <p>Planned maintenance hours is the actual number of preventive maintenance hours during which the equipment was not running</p> <p>Downtime hours is the actual number of hours during which the equipment was not running due to failure of the equipment</p> <p>Total deployed hours is the total number of hours for which an equipment is given to the operations team</p>
3	Average container moves (operational)	Greater than 10 containers per hour	<ul style="list-style-type: none"> • Frequency: Quarterly • Relevant for Cranes only • Actual average container moves = $\text{Number of container moves} / \text{effective crane working hours}$ <p>Wherein:</p>

S No	Key Performance Indicator	Threshold	Measurement
			<p>Container moves means the total number of container moves made by the crane</p> <p>Effective crane working hours means the time for which the crane was deployed measured by the HMR (Hour meter reading) device on the crane</p>
4	Average handling rate (operational)	Greater than 150 Tons/Hour	<ul style="list-style-type: none"> • Frequency: Quarterly • Actual average handling rate = Cargo handled /effective crane working hours <p>Wherein:</p> <p>Cargo handled means the total amount of bulk, break-bulk and liquid cargo in metric tonnes handled by the crane</p> <p>Effective crane working hours means the time for which the crane was deployed measured by the HMR (hour meter reading) device on the crane</p>
5	Average turnaround time of trucks (operational)	Less than 120 minutes	<ul style="list-style-type: none"> • Frequency: Quarterly • Actual average turnaround of trucks = $\Sigma(\text{Gate out time} - \text{Gate in time}) / \text{total number of trucks}$ <p>Wherein:</p> <p>Gate-in time means time at which the driver enters terminal gate</p> <p>Gate-out time means time of reception of documentation which would allow the truck to exit the terminal</p>

Performance evaluation and calculation of liquidated damages

Performance evaluation shall be made on a quarterly review of the reports furnished by the Concessionaire and/or the records of the Concessionaire and/or by an enquiry by the Concessioning Authority.

The Concessionaire shall be liable to pay liquidated damages determined as per the following:

- (i) at the rate of 5% (five per cent) of the Royalty of the respective quarter for shortfall upto 10% (ten per cent) in the average performance
- (ii) at the rate of 12.5% (twelve point five per cent) of the Royalty of the respective quarter for shortfall between 10% (ten per cent) and 20% (twenty per cent) in the average performance
- (iii) at the rate of 22.5% (twenty two point five per cent) of the Royalty of the respective quarter for shortfall between 20% (twenty per cent) and 30% (thirty per cent) in the average performance
- (iv) at the rate of 35% (thirty five per cent) of the Royalty of the respective quarter for shortfall between 30% (thirty per cent) and 40% (forty per cent) in the average performance
- (v) at the rate of 50% (fifty per cent) of the Royalty of the respective quarter for shortfall between 40% (forty per cent) and 50% (fifty per cent) in the average performance which shall be assessed in the manner as described below.

Each Performance Standard is calculated as an average in the manner indicated above. The actual average performance vis-à-vis a standard will be evaluated against the prescribed standard. The shortfall will be computed as a percentage of the prescribed standard. The shortfall in respect of each performance standard will have a weightage assigned to it.

The overall shortfall in average performance shall be assessed as the aggregate of the weighted shortfalls in respect of each of the Performance Standards. The following weights would be applied:

KPI	Equipment reliability (v)	Equipment availability (w)	Truck turnaround time (x)	Average container moves (y)	Average handling rate (z)
Weight	20%	20%	10%	25%	25%

Based on the above table, the overall shortfall in average performance will be $(0.2v + 0.2w + 0.1x + 0.25y + 0.25z)$ %.

The maximum Royalty charged as damages would be limited to 50% (fifty per cent) in the respective quarter.

No liquidated damages shall be paid before 1st anniversary of COD. After 1st anniversary and before 4th anniversary of the COD, liquidated damages shall be calculated on basis on Notional Royalty of the respective quarter.

If Performance Standards for KPIs are not met by operator for 4 (four) consecutive quarters, the Concessing Authority will initiate a performance assessment to identify improvement areas. The Concessionaire 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 Concessing 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 Concessing Authority.

Calculation of penalty in case of shortfall in LAD maintenance

The Concessing Authority will pay penalty to the Concessionaire in event of LAD shortfall discovered by unsuccessful passage of vessel through waterway. Concessionaire will immediately communicate such instance to IWAI. IWAI will be then have 48 (forty eight) hours to rectify the shortfall in LAD to ensure passage of vessel. Penalty will be paid only if there is LAD shortfall for a period greater than an initial duration of 48 hours. Penalty will be paid only for period exceeding 48 hours and not for the initial duration of 48 hours.

The Concessing Authority will pay penalty commensurate to loss of productivity induced by vessel delay caused by LAD shortfall. Penalty payable will be calculated on basis of performance shortfall induced in operational KPIs for the Concessionaire. The induced performance shortfall for the Concessionaire will be used to calculate a notional penalty per day which would have been paid by the Concessionaire if there was equal operational performance shortfall only for the duration when LAD was not available beyond 48 hours. Notional penalty will be calculated on pro rata basis as stated above in this Annexure.

The notional penalty amount arrived at as stated above will be paid by Concessing Authority to the Concessionaire as compensation for LAD shortfall for a period exceeding 48 hours. The same has been illustrated with an example below.

If a 1,500 ton vessel carrying bulk cargo is unable to pass through waterway due to LAD shortfall for a duration of 72 hours, the Concessing Authority will pay penalty for loss of operational performance for the period of 24 hours, which is the period exceeding initial duration of 48 hours. Assuming that the quarterly royalty to be paid is INR 1,00,00,000, the following steps will be taken to calculate penalty.

Calculation of induced performance shortfall

Assuming that the vessel has bulk cargo for which threshold average handling rate has been defined as 150 tons per hour for the Concessionaire. Accordingly it would have taken 10 (ten) hours to unload cargo. Due to vessel delay the time for unloading cargo will increase by 24 (twenty four) hours and total actual time for unloading cargo will be 34 hours.

Therefore, actual average handling rate for the vessel = $1500 / 34 = 44.12$ tons per hour

Induced performance shortfall for average handling rate = $(150 - 44.12)/150 = 70.59\%$

Assuming other KPIs remain unaffected, average induced performance shortfall = $0.25 \times 70.59 = 17.65\%$

Calculation of notional penalty corresponding to induced performance shortfall

Notional penalty per quarter for average induced performance shortfall of 17.65% = 12.5% of quarterly royalty as per bands stipulated in case of non-adherence to KPIs by Concessionaire.

Therefore, notional penalty per quarter = 12.5% of 1,00,00,000 = 12,50,000

Notional penalty per day of average induced performance shortfall of 17.65% = $12,50,000 / 90 = 13,888.89$

As per above example used only for illustrative purpose, the Concessioneing Authority will pay penalty of INR 13,888.89 to the Concessionaire for a 24 hour period of delay in vessel passage due to LAD shortfall.

Before 4th anniversary of the COD, the Concessioneing Authority shall not be liable to pay any penalty for shortfall in LAD.

No penalty will be paid every year between March 11 and May 10, during which, according to the Indo-Bangladesh Ganges Water Sharing Treaty of 1996, both India and Bangladesh shall receive guaranteed 35,000 cusecs of water in alternate three 10-day periods.

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27. Annexure V: Terms of Reference for Independent Engineer

1. Role and functions of the Independent Engineer

The Independent Engineer is expected to play a positive and independent role in discharging its functions, thereby facilitating the smooth implementation of the project. The role and functions of the Independent Engineer shall include the following:

- (i) review of the DPR;
- (ii) review, inspection and monitoring of Construction Works;
- (iii) conducting tests on completion of construction and issuing Completion/ Provisional Certificate;
- (iv) determining, as required under the Agreement, the costs of any works or services and/or their reasonableness;
- (v) determining, as required under the Agreement, the period or any extension thereof, for performing any duty or obligation;
- (vi) assisting the parties in resolution of disputes as regards the designs & drawings; and
- (vii) undertaking all other duties and functions as envisaged under the Agreement.

2. Review of DPR

- (i) The Independent Engineer shall undertake a detailed review of the DPR to be furnished by the Concessionaire along with supporting data, including, if relevant the geo-technical and hydrological investigations, characteristics of materials from borrow areas and quarry sites, topographical surveys and traffic surveys. The Independent Engineer shall complete such review and send its comments in accordance with the Agreement. In particular, such comments shall specify the conformity or otherwise of such DPR with the Scope of Work, Construction Standards and Safety Standards.
- (ii) The Independent Engineer shall review the detailed design, construction methodology, quality assurance procedures and the procurement, engineering and construction time schedule sent to it by the Concessionaire and furnish its comments. The Independent Engineer shall take into account comments and suggestions of the Concessioning Authority, if any while furnishing the comments.
- (iii) The Independent Engineer shall review the monthly progress reports as regards the Construction Works.
- (iv) The Independent Engineer shall inspect the Construction Works once every Month, preferably after receipt of the monthly progress report from the Concessionaire, but before the 20th (twentieth) Day of each month in any case, and make out a report of such inspection (“**Inspection Report**”) setting forth an overview of the status, progress, quality

and safety of construction, including the work methodology adopted, the materials used and their sources, and conformity of Construction Works with the Construction Standards and Safety Standards. In a separate section of the Inspection Report, the Independent Engineer shall describe in reasonable detail the lapses, defects or deficiencies observed by it in the Construction Works.

(v) The Independent Engineer may inspect the Construction Works more than once in a month if any lapses, defects or deficiencies require such inspections

(vi) For determining that the Construction Works conform to Construction Standards, the Independent Engineer shall require the Concessionaire to carry out, or cause to be carried out, tests on a sample basis, to be specified by the Independent Engineer in accordance with Good Industry Practice for quality assurance. The Independent Engineer shall issue necessary directions to the Concessionaire for ensuring that the tests are conducted in a fair and efficient manner, and shall monitor and review the results thereof.

(vii) The tests shall be undertaken on a random sample basis and shall be in addition to, and independent of, the tests that may be carried out by the Concessionaire for its own quality assurance in accordance with Good Industry Practice.

(viii) In the event that the Concessionaire carries out any remedial works for removal or rectification of any defects or deficiencies, the Independent Engineer shall require the Concessionaire to carry out, or cause to be carried out, tests to determine that such remedial works have brought the Construction Works into conformity with the Construction Standards.

(ix) In the event that the Concessionaire fails to adhere to the Project Schedule and complete the Construction Works on the specified Milestone Dates, the Independent Engineer shall undertake a review of the progress of construction and identify potential delays, if any. If the Independent Engineer shall determine that completion of the Project is not feasible within the time specified in the Agreement, it shall require the Concessionaire to indicate within 15 (fifteen) days the steps proposed to be taken to expedite progress, and the period within which the Project shall be completed. Upon receipt of a report from the Concessionaire, the Independent Engineer shall review the same and send its comments to the Concessioning Authority and the Concessionaire forthwith.

(x) If at any time during the Construction Period, the Independent Engineer determines that it is not safe to carry on Construction Works for any reason whatsoever including if the Concessionaire has not made adequate arrangements for the safety of workers or other third parties or that any work is being carried out in a manner that threatens such safety, it shall make a recommendation to the Concessioning Authority forthwith, identifying the whole or part of the Construction Works that should be suspended for ensuring safety in respect thereof.

(xi) Upon remedial measures being taken by the Concessionaire for securing the safety of suspended works, the Independent Engineer shall inspect the safety measures for adequacy and recommend whether or not such suspension may be revoked by the Concessioning Authority.

(xii) If suspension of Construction Works is for reasons not attributable to the Concessionaire, the Independent Engineer shall determine the extension of time for completion, to which the Concessionaire is reasonably entitled, and shall notify the Concessing Authority and the Concessionaire of the same.

(xiii) 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, in accordance with the provisions of the Agreement.

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28. Annexure VI: ESCROW Agreement

THIS ESCROW AGREEMENT is entered into on this the [●] Day of [●] 20[●].

By and Amongst:

1. [●], a company incorporated under the provisions of the Companies Act, 2013 and having its registered office at [●] (hereinafter referred to as the “Concessionaire” which expression shall, unless repugnant to the context or meaning thereof, include its successors, permitted assigns and substitutes);
2. [● (name and particulars of Senior Lenders' Representative)] and having its registered office at [●] acting for and on behalf of the Senior Lenders as their duly authorised agent with regard to matters arising out of or in relation to this Agreement (hereinafter referred to as the “Senior Lenders' Representative” which expression shall, unless repugnant to the context or meaning thereof, include its successors and substitutes);
3. [● (name and particulars of the Escrow Bank)] and having its registered office at [●] (hereinafter referred to as the “Escrow Bank” which expression shall, unless repugnant to the context or meaning thereof, include its successors and substitutes); and
4. **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 “**Concessions Authority**”, which expression shall, unless repugnant to the context or meaning thereof, include its successors and assigns).

WHEREAS:

- (i) The Concessions Authority has entered into a Concession Agreement dated [●] with the Concessionaire (the “**Concession Agreement**”) for undertaking the Project (as defined in the Concession Agreement) on OMD basis. The Senior Lenders have agreed to finance the Project in accordance with the terms and conditions set forth in the Financing Documents.
- (ii) The Concession Agreement requires the Concessionaire to establish an Escrow Account, inter alia, on the terms and conditions stated therein.

NOW IT IS HEREBY AGREED as follows:

1. Definitions and Interpretations

1.1 Definitions

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

“**Agreement**” means this Escrow Agreement and any amendment thereto made in accordance with the provisions contained herein;

“**Budget**” means the budget for construction/implementation expenses relating to the Project/Project Facilities and Services and operation and maintenance Expenses submitted by the Concessionaire in accordance with the provisions contained herein;

“**Concession Agreement**” means the Concession Agreement referred to in Recital (i) above and shall include any amendments made thereto in accordance with the provisions contained in this behalf therein;

“**Escrow Account**” means an escrow account established in terms of and under this Agreement, and shall include any sub accounts thereof;

“**Escrow Default**” shall have the meaning ascribed thereto in Article 6.1;

“**Senior Lenders' Representative**” means the person referred to as the Senior Lenders' Representative in the foregoing Recitals;

“**Parties**” means the parties to this Agreement collectively and “**Party**” shall mean any of the Parties to this Agreement individually;

“**Payment Date**” means, in relation to any payment specified in Article 4.1, the date(s) dates specified for such payment; and

“**Quarter**” means, any three month period from 1st April to 30th June, 1st July to 30th September, 1st October to 31st December or 1st January to 31st March.

1.2 Interpretation

1.2.1 References to Senior Lenders' Representative shall, unless repugnant to the context or meaning thereof, mean references to the Senior Lenders' Representative, acting for and on behalf of Senior Lenders.

1.2.2 The words and expressions beginning with capital letters and defined in this Agreement shall have the meaning ascribed thereto herein, and the words and expressions used in this Agreement and not defined herein but defined in the Concession Agreement shall, unless repugnant to the context, have the meaning ascribed thereto in the Concession Agreement.

1.2.3 References to Articles are, unless stated otherwise, references to Articles of this Agreement.

1.2.4 The rules of interpretation stated in Articles 1.3, 1.4 and 1.5 of the Concession Agreement shall apply, mutatis mutandis, to this Agreement.

2. Escrow Account

2.1 Escrow Bank to act as trustee

2.1.1 The Concessionaire hereby settles in trust with the Escrow Bank a sum of INR 100 (Rupees Hundred Only) appoints the Escrow Bank to act as trustee for the Concessioneing Authority, the Senior Lenders, the Senior Lenders' Representative and the Concessionaire in connection herewith and authorises the Escrow Bank to exercise such rights, powers, authorities and discretion as are specifically delegated to the Escrow Bank by the terms hereof together with all such rights, powers, authorities and discretion as are reasonably incidental hereto, and the Escrow Bank accepts such appointment pursuant to the terms hereof.

2.1.2 The Concessionaire hereby declares that all rights, title and interest in and to the Escrow Account shall be vested in the Escrow Bank and held in trust for the Concessioneing Authority, the Senior Lenders, the Senior Lenders' Representative and the Concessionaire, and applied in accordance with the terms of this Agreement. No person other than the Concessioneing Authority, the Senior Lenders/Senior Lenders' Representative and the Concessionaire shall have any rights hereunder as the beneficiaries of, or as third party beneficiaries under this Agreement.

2.2 Acceptance of Escrow Bank

The Escrow Bank hereby agrees to act as such and to accept all payments and other amounts to be delivered to and held by the Escrow Bank pursuant to the provisions of this Agreement. The Escrow Bank shall hold and safeguard the Escrow Account during the term of this Agreement and shall treat the amount in the Escrow Account as monies deposited by the Concessionaire, Senior Lenders or the Concessioneing Authority with the Escrow Bank. In performing its functions and duties under this Agreement, the Escrow Bank shall act in trust for the benefit of, and as agent for, the Concessioneing Authority, the Senior Lenders' Representative and the Concessionaire or their nominees, successors or assigns, in accordance with the provisions of this Agreement.

2.3 Establishment and operation of Escrow Account

2.3.1 Within 30 (thirty) Days from the date of this Agreement, and in any case prior to the Date of Award of Concession, the Concessionaire shall open and establish the Escrow Account with the [(name of Branch)] Branch of the Escrow Bank. The Escrow Account shall be denominated in Rupees.

2.3.2 The Escrow Bank shall maintain the Escrow Account in accordance with the terms of this Agreement and its usual practices and applicable regulations, and pay the maximum rate of interest payable to similar customers on the balance in the said account from time to time.

2.3.3 The Concessionaire shall submit to the Escrow Bank a Budget within 7 (seven) Days of the commencement of each Financial Year. Till the pendency of the financing Documents, such Budget shall be approved by the Senior Lenders/Senior Lenders Representative and thereafter by the Concessioning Authority.

2.3.4 The Escrow Bank and the Concessionaire shall, after consultation with the Senior Lenders' Representative, agree on the detailed mandates, terms and conditions, and operating procedures for the Escrow Account, but in the event of any conflict or inconsistency between this Agreement and such mandates, terms and conditions, or procedures, this Agreement shall prevail.

2.4 Escrow Bank's fee

The Escrow Bank shall be entitled to receive its fee and expenses in an amount, and at such times, as may be agreed between the Escrow Bank and the Concessionaire. For the avoidance of doubt, such fee and expenses shall form part of the operating and maintaining expenses and shall be appropriated from the Escrow Account in accordance with Article 4.1.1 (c).

2.5 Rights of the parties

The rights of the Concessioning Authority, the Senior Lenders (through the Senior Lenders' Representative) and the Concessionaire in the monies held in the Escrow Account are set forth in their entirety in this Agreement and the Concessioning Authority, the Senior Lenders' and the Concessionaire shall have no other rights against or to the monies in the Escrow Account.

2.6 Substitution of the Concessionaire

The Parties hereto acknowledge and agree that upon substitution of the Concessionaire with the Selectee, pursuant to the Substitution Agreement, it shall be deemed for the purposes of this Agreement that the Selectee is a Party hereto and the Selectee shall accordingly be deemed to have succeeded to the rights and obligations of the Concessionaire under this Agreement on and with effect from the date of substitution of the Concessionaire with the Selectee.

3. Deposits into Escrow Account

3.1 Deposits by the Concessionaire

3.1.1 The Concessionaire agrees and undertakes that it shall deposit into and/or credit the Escrow Account with:

- (a) all monies received in relation to the Project from any source, including the Senior Lenders;
- (b) all funds received by the Concessionaire from its share-holders, in any manner or form;
- (c) all Fee levied and collected by the Concessionaire;
- (d) any other revenues from or in respect of the Project/Project Facilities and Services accruing to the Concessionaire including termination payments; and
- (e) all proceeds received pursuant to any insurance claims.

For avoidance of doubt, all amounts received by the Concessionaire in respect of the Project/Project Facilities and Services excepting any amounts in respect of cesses and duties collected by it from the users on behalf of the Concessions Authority or such other Concessions Authority in accordance with the Concession Agreement or pursuant to any other instructions in respect thereof shall be deposited in the Escrow Account.

4. Withdrawals from Escrow Account

4.1 Withdrawals during Concession Period

4.1.1 At the beginning of every month, or at such shorter intervals as the Senior Lenders' Representative and the Concessionaire may by written instructions determine, the Escrow Bank shall withdraw amounts from the Escrow Account and appropriate them in the following order by depositing such amounts in the relevant Sub-Accounts for making due payments in a month :

- (a) all taxes due and payable by the Concessionaire;
- (b) towards License Fee;
- (c) all construction/implementation expenses relating to the Project/Project Facilities and Services, in accordance with the Budget and subject to limits if any set out under the Financing Documents;
- (d) all expenses relating to operations and management of the Project/Project Facilities and Services, in accordance with the Budget and subject to limits if any set out under the Financing Documents;
- (e) towards Royalty and other sums payable to the Concessions Authority and liquidated damages, if any;

- (f) towards its debt service obligations under the Financing Documents;
- (g) towards any reserve requirements in accordance with the Financing Documents;

and the Concessionaire shall be at liberty to withdraw any sums outstanding in the escrow account after all the aforesaid payments due in any Quarter have been made and/or adequate reserves have been created in respect thereof for that Quarter.

4.1.2 Not later than 60 (sixty) Days prior to the commencement of each Accounting Year, the Concessionaire shall provide to the Escrow Bank, with prior written approval of the Senior Lenders' Representative, details of the amounts likely to be required for each of the payment obligations set forth in this Article 4.1; provided that such amounts may be subsequently modified, with prior written approval of the Senior Lenders' Representative, if fresh information received during the course of the year makes such modification necessary.

4.2 Withdrawals upon end of Concession Period

4.2.1 All amounts standing to the credit of the Escrow Account at the end of the Concession Period including amounts credited to the Escrow Account towards compensation payable in accordance with Article 16 of the Concession Agreement shall be appropriated in the following order of priority:

- (a) towards taxes and statutory dues payable by the Concessionaire;
- (b) compensation to Senior Lenders in terms of the Financing Documents towards discharge of the Concessionaire's liability under such Financing Documents;
- (c) all amounts due to the Concessioning Authority and amounts payable towards transfer of the Project Facilities and Services by the Concessionaire in accordance with this Agreement;

and the Concessionaire shall be at liberty to withdraw any sums outstanding in the Escrow Account after all the aforesaid payments due have been made and/or adequate reserves have been created in respect thereof to the satisfaction of the Senior Lenders and the Concessioning Authority and the Escrow Agent has received a confirmation of final settlement by the Senior Lenders and/or Concessioning Authority.

4.3 Application of insurance proceeds

Notwithstanding anything in this Agreement, the proceeds from all insurance claims, except life and injury, shall be deposited into and/or credited to the Escrow Account and utilised for any necessary repair, reconstruction, reinstatement, replacement, improvement, delivery or installation of the Project/Project facilities and Services, and the balance remaining, if any, shall be applied in accordance with the provisions contained in this behalf in the Financing Documents.

4.4 Withdrawals during Suspension

Notwithstanding anything to the contrary contained in this Agreement, in case the Escrow Bank receives a notice in writing from the Concessioneing Authority that the rights of the Concessionaire are suspended in accordance with the Concession Agreement or a Termination Notice is issued, the Escrow Bank shall until such notice is withdrawn, act only on the instructions of the Concessioneing Authority.

5. Obligations of the Escrow Bank

5.1 Segregation of funds

Monies and other property received by the Escrow Bank under this Agreement shall, until used or applied in accordance with this Agreement, be held by the Escrow Bank in trust for the purposes for which they were received, and shall be segregated from other funds and property of the Escrow Bank.

5.2 Notification of balances

7 (seven) business Days prior to each Payment Date (and for this purpose the Escrow Bank shall be entitled to rely on an affirmation by the Concessionaire and/or the Senior Lenders' Representative as to the relevant Payment Dates), the Escrow Bank shall notify the Senior Lenders' Representative of the balances in the Escrow Account as at the close of business on the immediately preceding business Day.

5.3 Communications and notices

5.3.1 In discharge of its duties and obligations hereunder, the Escrow Bank:

- (a) may, in the absence of bad faith or gross negligence on its part, rely as to any matters of fact which might reasonably be expected to be within the knowledge of the Concessionaire upon a certificate signed by or on behalf of the Concessionaire;
- (b) may, in the absence of bad faith or gross negligence on its part, rely upon the authenticity of any communication or document believed by it to be authentic;
- (c) shall, within 5 (five) business Days after receipt, deliver a copy to the Senior Lenders' Representative of any notice or document received by it in its capacity as the Escrow Bank from the Concessionaire or any other person hereunder or in connection herewith; and
- (d) shall, within 5 (five) business Days after receipt, deliver a copy to the Concessionaire of any notice or document received by it from the Senior Lenders' Representative in connection herewith.

5.4 No set off

The Escrow Bank agrees not to claim or exercise any right of set off, banker's lien or other right or remedy with respect to amounts standing to the credit of the Escrow Account. For the avoidance of doubt, it is hereby acknowledged and agreed by the Escrow Bank that the monies and properties held by the Escrow Bank in the Escrow Account shall not be considered as part of the assets of the Escrow Bank and being trust property, shall in the case of bankruptcy or liquidation of the Escrow Bank, be wholly excluded from the assets of the Escrow Bank in such bankruptcy or liquidation.

5.5 Regulatory approvals

The Escrow Bank shall use its best efforts to procure, and thereafter maintain and comply with, all regulatory approvals required for it to establish and operate the Escrow Account. The Escrow Bank represents and warrants that it is not aware of any reason why such regulatory approvals will not ordinarily be granted to the Escrow Bank.

6 Escrow Default

6.1 Escrow Default

6.1.1 Following events shall constitute an event of default by the Concessionaire (an “**Escrow Default**”) unless such event of default has occurred as a result of Force Majeure or any act or omission of the Concessioning Authority or the Senior Lenders' Representative:

- (a) the Concessionaire commits breach of this Agreement by failing to deposit /cause the deposit of any receipts into the Escrow Account;
- (b) the Concessionaire causes the Escrow Bank to transfer funds to any account of the Concessionaire in breach of the terms of this Agreement;
or
- (c) the Concessionaire commits or causes any other breach of the provisions of this Agreement.

6.1.2 Upon occurrence of an Escrow Default, the consequences thereof shall be dealt with under and in accordance with the provisions of the Concession Agreement.

7. Termination of Escrow Agreement

7.1 Duration of the Escrow Agreement

This Agreement shall remain in full force and effect so long as any sum remains to be advanced or is outstanding from the Concessionaire in respect of the debt, guarantee or financial assistance received by it from the Senior Lenders, or any of its obligations to the Concessioning Authority remain to be discharged, unless terminated earlier by consent of all the Parties or otherwise in accordance with the provisions of this Agreement.

7.2 Substitution of Escrow Bank

The Concessionaire may, by not less than 45 (forty five) Days prior notice to the Escrow Bank, the Concessioneing Authority and the Senior Lenders' Representative, terminate this Agreement and appoint a new Escrow Bank, provided that the new Escrow Bank is acceptable to the Senior Lenders' Representative and arrangements are made satisfactory to the Senior Lenders' Representative for transfer of amounts deposited in the Escrow Account to a new Escrow Account established with the successor Escrow Bank. The termination of this Agreement shall take effect only upon coming into force of an Escrow Agreement with the substitute Escrow Bank.

7.3 Closure of Escrow Account

The Escrow Bank shall, at the request of the Concessionaire and the Senior Lenders' Representative made on or after the payment by the Concessionaire of all outstanding amounts under the Concession Agreement and the Financing Documents including the payments specified in Article 4.2, and upon confirmation' of receipt of such payments, close the Escrow Account and pay any amount standing to the credit thereof to the Concessionaire. Upon closure of the Escrow Account hereunder, the Escrow Agreement shall be deemed to be terminated.

8. Supplementary Escrow Agreement

8.1 Supplementary escrow agreement

The Senior Lenders' Representative and the Concessionaire shall be entitled to enter into a supplementary escrow agreement with the Escrow Bank providing, inter alia, for detailed procedures and documentation for withdrawals from Escrow Account, creation of sub-accounts pursuant to Article 4.1.1 and for matters not covered under this Agreement such as the rights and obligations of Senior Lenders, investment of surplus funds, restrictions on withdrawals by the Concessionaire in the event of breach of Financing Documents, procedures relating to operation of the Escrow Account and withdrawal therefrom, reporting requirements and any matters incidental thereto; provided that such supplementary escrow agreement shall not contain any provision which is inconsistent with this Agreement and in the event of any conflict or inconsistency between provisions of this Agreement and such supplementary escrow agreement, the provisions of this Agreement shall prevail.

9. Indemnity

9.1 General indemnity

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

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

9.1.3 The Escrow Bank will indemnify, defend and hold the Concessionaire harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of failure of the Escrow Bank to fulfill its obligations under this Agreement materially and adversely affecting the performance of the Concessionaire's obligations under the Concession Agreement other than any loss, damage, cost and expense, arising out of acts done in discharge of their lawful functions by the Escrow Bank, its officers, servants and agents.

9.2 Notice and contest of claims

In the event that any Party hereto receives a claim from a third party in respect of which it is entitled to the benefit of an indemnity under Article 9.1 or in respect of which it is entitled to reimbursement (the "Indemnified Party"), it shall notify the other Party responsible for indemnifying such claim hereunder (the "Indemnifying Party") within 15 (fifteen) Days of receipt of the claim and shall not settle or pay the claim without the prior approval of the Indemnifying Party, which approval shall not be unreasonably withheld or delayed. In the event that the Indemnifying Party wishes to contest or dispute the claim, it may conduct the proceedings in the name of the Indemnified Party and shall bear all costs involved in contesting the same. The Indemnified Party shall provide all cooperation and assistance in contesting any claim and shall sign all such writings and documents as the Indemnifying Party may reasonably require.

10. Miscellaneous Provisions

10.1 Governing law and jurisdiction

This Agreement shall be construed and interpreted in accordance with and governed by the laws of India, and the Courts at [●] shall have jurisdiction over all matters arising out of or relating to this Agreement.

10.2 Waiver of sovereign immunity

10.2.1 The Concessing Authority unconditionally and irrevocably:

- (a) agrees that the execution, delivery and performance by it of this Agreement constitute commercial acts done and performed for commercial purpose;

- (b) agrees that, should any proceedings be brought against it or its assets, property or revenues in any jurisdiction in relation to this Agreement or any transaction contemplated by this Agreement, no immunity (whether by reason of sovereignty or otherwise) from such proceedings shall be claimed by or on behalf of the Concessing Authority with respect to its assets;
- (c) waives any right of immunity which it or its assets, property or revenues now has, may acquire in the future or which may be attributed to it in any jurisdiction; and
- (d) consents generally in respect of the enforcement of any judgement or award against it in any such proceedings to the giving of any relief or the issue of any process in any jurisdiction in connection with such proceedings (including the making, enforcement or execution against it or in respect of any assets, property or revenues whatsoever irrespective of their use or intended use of any order or judgement that may be made or given in connection therewith).

10.3 Priority of agreements

In the event of any conflict between the Concession Agreement and this Agreement, the provisions contained in the Concession Agreement shall prevail over this Agreement.

10.4 Alteration of terms

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

10.5 Waiver

10.5.1 Waiver by any Party of a default by another Party in the observance and performance of any provision of or obligations under this Agreement:

- (a) shall not operate or be construed as a waiver of any other or subsequent default hereof
- (b) or of other provisions of or obligations under this Agreement shall not be effective unless it is in writing and executed by a duly authorised representative of the Party; and
- (c) shall not affect the validity or enforceability of this Agreement in any manner.

10.5.2 Neither the failure by any Party to insist on any occasion upon the performance of the terms, conditions and provisions of this Agreement or any obligation thereunder nor time or other indulgence granted by any Party to another Party shall be treated or deemed as

waiver of such breach or acceptance of any variation or the relinquishment of any such right hereunder.

10.6 No third party beneficiaries

This Agreement is solely for the benefit of the Parties and no other person or entity shall have any rights hereunder.

10.7 Survival

10.7.1 Termination of this Agreement:

- (a) shall not relieve the Parties of any obligations hereunder which expressly or by implication survive termination hereof; and
- (b) except as otherwise provided in any provision of this Agreement expressly limiting the liability of either Party, shall not relieve either Party of any obligations or liabilities for loss or damage to the other Party arising out of, or caused by, acts or omissions of such Party prior to the effectiveness of such termination or arising out of such termination.

10.7.2 All obligations surviving the cancellation, expiration or termination of this Agreement shall only survive for a period of 3 (three) years following the date of such termination or expiry of this Agreement.

10.8 Severability

If for any reason whatever any provision of this Agreement is or becomes invalid, illegal or unenforceable or is declared by any court of competent jurisdiction or any other instrumentality to be invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions shall not be affected in any manner, and the Parties will negotiate in good faith with a view to agreeing to one or more provisions which may be substituted for such invalid, unenforceable or illegal provisions, as nearly as is practicable to such invalid, illegal or unenforceable provision. Failure to agree upon any such provisions shall not be subject to dispute resolution under Article 10.1 of this Agreement or otherwise.

10.9 Successors and assigns

This Agreement shall be binding on and shall inure to the benefit of the Parties and their respective successors and permitted assigns.

10.10 Notices

Unless otherwise stated, notices to be given under this Agreement including but not limited to a notice of waiver of any term or related or breach of any term of this Agreement shall be in writing and shall be given by hand delivery, recognized international courier, mail, telex

or facsimile transmission and delivered or transmitted to the Parties at their respective addresses set forth below:

The Concessioneing Authority:

CHAIRMAN

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Fax No:

Email:

The Concessionaire:

The MANAGING DIRECTOR

_____Ltd

Fax No.

Email:

The Senior Lenders/Senior Lenders representative:

_____Ltd

Fax No:

Email:

The Escrow Bank:

_____Ltd

Fax No:

Email:

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

10.11 Language

All notices, certificates, correspondence and proceedings under or in connection with this Agreement shall be in English.

10.12 Authorised representatives

Each of the Parties shall, by notice in writing, designate their respective authorised representatives through whom only all communications shall be made. A Party hereto shall be entitled to remove and/or substitute or make fresh appointment of such authorised representative by similar notice.

10.13 Original Document

This Agreement may be executed in four counterparts, each of which when executed and delivered shall constitute an original of this Agreement.

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

SIGNED, SEALED AND DELIVERED

For and on behalf of CONCESSIONAIRE by: (Signature)

(Name)

(Designation)

(Address) (Fax No.)

SIGNED, SEALED AND DELIVERED

For and on behalf of SENIOR LENDERS by the Senior Lenders' Representative: (Signature)

(Name) (Designation)

(Address) (Fax No.)

SIGNED, SEALED AND DELIVERED For and on behalf of ESCROW BANK by: (Signature)

(Name)

(Designation)
(Address) (Fax No.)

SIGNED, SEALED AND DELIVERED

For and on behalf of Concessioneing Authority by: (Signature) (Name)
(Designation) (Address) (Fax No.) In the presence of:

1.

2.

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29. Annexure VII: Expert Committee

Dispute resolution through the Expert Committee can be resorted to if either of the parties exercises its right for dispute resolution through the Expert Committee as provided for explicitly in this Agreement

- (i) In the event a party issues a notice (Expert Committee Notice) to refer the dispute to the Expert Committee, the parties may finalise a choice of an independent expert in the field of port and harbour engineering and/or financial and cost accounting as the case warrants within one week of such notice, failing which, each party shall appoint such an independent expert within two weeks of the Expert Committee Notice.
- (ii) Such independent experts shall have adequate experience in the design, construction, operation and maintenance of Terminal facilities and/or finances, accounting, costing and valuation practices as the case warrants.
- (iii) The two experts will jointly appoint a third expert with similar experience within one week of their appointment.
- (iv) The party issuing the Expert Committee Notice will provide the Experts with written submission of the nature of the dispute and the claim of the other party along with supporting documents within 1 (one) week of the constitution of the Expert Committee. Within one week of the furnishing of such submission, the other party may choose to provide written submissions defending its position.
- (v) The Expert Committee may call on either party to furnish additional information as deemed necessary to solve the dispute.
- (vi) The Expert Committee shall give the majority decision to both parties within three weeks of the receipt of written submission from the contracting parties.
- (vii) The decision of the Expert Committee shall be final and binding on the contracting parties unless either of the parties issues an Arbitration Notice.
- (viii) The costs of the engagement of the Expert Committees shall be shared equally by the parties.

30. Annexure VIII: Standards

1. Construction Standards

Concessionaire shall ensure compliance with the civil construction standards set out in the DPR given in Annexure XVI.

2. Operations and Maintenance Standards

2.1 Repairs, Maintenance and Replacement

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

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

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

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

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

S No	Standards	Description
1	Maintenance	
1.1	ISO 4308-1-2003	Maintenance of lifting appliances
1.2	ISO 4309-2004	Cranes wire rope care, maintenance and discard
1.3	IS 13367: Part 1 : 1992	Safe use of cranes – Code of Practice Part 1: General
1.4	BS 7121-2-2003	Code of Practice for safe use of cranes, inspection, testing & examination
1.5	BS 7121-4-1997	Code of Practice for safe use of cranes (Lorry Loaders)
1.6	BS 7121-5-2006	Code of Practice for safe use of cranes (Tower Cranes)
2	Painting	
2.1	IS 144 : 1950	Ready mixed paint, brushing, petrol resisting, air-drying, for interior painting of tanks and container, red oxide (colour unspecified)
2.2	IS 145 : 1950	Ready mixed paint, slushing, petrol resisting, air-drying for interior painting of tanks and containers, red oxide (colour unspecified)

2.3	IS 146 : 1950	Specification for ready mixed paint, brushing, petrol resisting, stoving, for interior painting of tanks and containers, red oxide (colour unspecified)
2.4	IS 147 : 1950	Specification for ready mixed paint, brushing, petrol resisting, stoving, for interior painting of tanks and containers, red oxide (colour unspecified)
2.5	IS 164 : 1981	Specification for Ready mixed paint for road marking (first revision)
2.6	IS 1419 : 1989	Antifouling paint, brushing for ship's bottom and hulls- Specification (second revision)
2.7	IS 6714 : 1989	Ready mixed paint, finishing, non-slip, deck – Specification (first revision)
2.8	IS 6948 : 1973	Specification for Ready mixed paint, undercoat, synthetic for ships
2.9	IS 6951 : 1973	Specification for Ready mixed paint, finishing, exterior for ships
2.10	IS 1477 : Part I : 1971	Code of Practice for Painting of Ferrous Metals in Buildings - Part I : Pretreatment
2.11	IS 1477 : Part 2 : 1971	Code of practice for painting of ferrous metals in buildings: Part2 Painting
2.12	IS 9954 : 1981	Pictorial Surface Preparation Standards for Painting of Steel Surfaces

3. Safety Standards

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

- 3.1. Dock Workers (Safety, Health and Welfare) Act, 1986 & Regulations framed thereunder of 1990.
- 3.2. The Manufacture, Storage and Import of Hazardous Chemicals Rules, 1989.
- 3.3. The Petroleum Act, 1934 along with the Petroleum Rules, 2002.
- 3.4. OISD – Guidelines – 156 (Oil Industry Safety Directorate): Fire Protection Facilities for Port Oil Terminals.
- 3.5. The Explosives Act, 1884 along with The Explosive Substance Act, 1983 & The Explosive Rules, 1983
- 3.6. Guidelines by Fire Advisor, CCE & DG FASLI, Government of India
- 3.7. National Fire Codes (National Fire Protection Association – USA)
- 3.8. Drill Manual for the Fire Services of India.
- 3.9. International Safety Guide for Oil Tankers & Terminals.

4. Safety Guidelines

4.1 Safe movement

In the design, construction and operation of the facility, particular care shall be taken to ensure safety of Users. This shall include facilities for safe and efficient evacuation in case of emergency.

4.2 System integrity

In the design of power supply, lighting, signalling, communication and security equipment, particular care shall be taken to minimise the likely incidence of failure.

4.3 Restoration of services

The facility shall be designed such that in the event a fault occurs, a limited service can be provided within a few minutes by isolation of the affected area or equipment, to the extent possible.

4.4 Contingency and safety management

4.4.1 The Concessionaire shall procure and ensure that appropriate contingency arrangements are in place at the Terminal to deal with the following events in accordance with applicable guidelines of IWAI:

- (a) removal of disabled vessel from channel;
- (b) bomb threat to the Terminal, or any acts of terrorism;
- (c) vessel accidents in and around the vicinity of the Terminal;
- (d) non-scheduled vessel forced to berth at the terminal;
- (e) fires at the Terminal;
- (f) natural calamities and disasters;
- (g) strikes at the Terminal;
- (h) unlawful interference with waterway; and
- (i) any other emergency at the Terminal.

4.4.2 The Concessionaire shall procure and ensure that the emergency alarm bells are installed and operated to link the terminal control Facility to the Terminal in charge and to all emergency services located at the Terminal, including but not limited to fire services, medical services, the Security Agency etc.

4.4.3 A safety statement shall be prepared by the Concessionaire once every quarter to bring out clearly the system of management of checks and maintenance tolerances for various assets, and the compliance thereof. The statement shall also bring out the nature and extent of staff training and awareness in dealing with such checks and tolerances. During the Construction Period, two copies

of the statement shall be sent to the Independent Engineer within 15 (fifteen) days of the close of every quarter.

4.5 Safety equipment

The following safety equipment shall be provided at the Terminal:

- (a) Fire extinguishers and fire alarms at appropriate locations on the Terminal;
- (b) Adequate number of stretchers and standard first aid boxes; and
- (c) Such other equipment as may be required in conformity with relevant IWAI guidelines and Good Industry Practice.

4.6 Emergency

A set of emergency procedures shall be formulated to deal with different emergency situations and the operations staff shall be trained to respond appropriately during such emergency through periodic simulated exercises, as laid down in a manual for management of disasters ("**Disaster Management Manual**"), to be prepared and published by the Concessionaire prior to COD. The Concessionaire shall provide 5 (five) copies each of the Disaster Management Manual to the Authority no later than 30 (thirty) days prior to COD.

4.7 Fire safety

4.7.1 The Concessionaire shall conform to the standards specified under safety standard in Annexure VIII.

4.7.2 Emergency exit should be accessible without any obstructions and the exit doors should be kept locked in the ordinary course. The exit doors shall be easy to open from inside the Terminal Building in case of emergency.

4.7.3 Escape routes shall be clearly marked by arrows in the correct direction and no cryptic symbols shall be used. In complying with the provisions of this Clause, the possibility of poor visibility due to smoke shall be duly taken into account. All notices and signages shall be uniform and standardised.

4.7.4 Appropriate categories of rescue and fire-fighting services shall be made available and maintained in accordance with safety standards in Annexure VIII.

31. Annexure IX: Substitution Agreement

THIS SUBSTITUTION AGREEMENT is entered into on this the ----- Day of -----
----- (Month) ---- (Year) at -----.

AMONGST,

INLAND WATERWAYS AUTHORITY OF INDIA, a statutory body established by the Government of India under the provisions of Inland Waterways Authority at the time of Financial Close.

Note: Such format of the Financing Plan shall also identify the respective threshold limit of the above parameters and the basis of further projections and the detailed requirements that would need to be stratified with respect to each line item.

NOW, THEREFORE, THIS AGREEMENT WITNESSETH AS FOLLOWS:

1. Definitions and Interpretations

1.1 Definitions

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

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

“**Financial Assistance**” means the financial assistance set forth in Schedule A hereto, agreed to be provided by the Senior Lenders to the Concessionaire for financing the Project.

“**Financial Default**” means occurrence of a material breach of the terms and conditions of the Financing Documents or a continuous default in servicing debt there under by the Concessionaire for a minimum period of 3 (three) months.

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

“**Residual Concession Period**” means the period which shall be the remainder of the Concession Period computed from the date of issuance of Termination Notice in terms of Article 15.3.5. of the Concession Agreement.

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

“**Suspension Period**” means the Termination Notice period as defined in Article 15.3.7. of the Concession Agreement at the end of which all formalities connected with substitution of the Concessionaire by the Selectee including handing over of Project Site/Project Facilities and

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

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

2. Assignment

2.1 Assignment of rights and title

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

3. Substitution of the Concessionaire

3.1 Rights of substitution

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

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

3.2 Substitution upon occurrence of Financial Default

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

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

3.2.3 At any time after the Senior Lenders/Senior Lenders' Representative has issued a Notice of Financial Default, it may by notice require the Concessioneing Authority to suspend all the rights of the Concessionaire and undertake the operation and maintenance of the Project/Project Facilities and Services, and upon receipt of such notice, the Concessioneing Authority shall suspend the rights of the Concessionaire. Provided, such suspension shall be revoked upon substitution of the Concessionaire by a Selectee, and in the event such substitution is not completed within 180 (one hundred and eighty) days from the date of such suspension, the Concessioneing Authority may terminate the Concession Agreement forthwith by issuing a Termination Notice in accordance with the provisions of the Concession Agreement; provided that upon written request from the Senior Lenders/Senior Lenders' Representative and the Concessionaire, the Concessioneing Authority may

extend the aforesaid period of 180 (one hundred and eighty) days by a period not exceeding 90 (ninety) days.

3.3 Substitution upon occurrence of Concessionaire Default

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

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

3.4 Procedure for substitution

3.4.1 The Concessioneing Authority and the Concessionaire hereby agree that on or after the date of Notice of Financial Default or the date of representation to the Concessioneing Authority under Article 3.2.2, as the case may be, the Senior Lenders/Senior Lenders' Representative may, without prejudice to any of the other rights or remedies of the Senior Lenders, invite, negotiate and procure offers, either by private negotiations or public auction or tenders from potential Selectees for substituting the Concessionaire and taking on the rights and obligations under the Concession Agreement.

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

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

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

3.4.4 If the Concessing Authority has any objection to the transfer of the Concession Agreement in favour of the Selectee in accordance with this Agreement, it shall within 7 (seven) days from the date of proposal made by the Senior Lenders/Senior Lenders' Representative, give a reasoned order after hearing the Senior Lenders/Senior Lenders' Representative. If no such objection is raised by the Concessing Authority, the Selectee shall be deemed to have been accepted. The Concessing Authority thereupon shall novate the Concession Agreement within 7 (seven) days of its acceptance/deemed acceptance of the Selectee; provided that in the event of such objection by the Concessing Authority, the Senior Lenders' Representative may propose another Selectee whereupon the procedure set forth in this Article 3.4 shall be followed for substitution of such Selectee in place of the Concessionaire.

3.5 Selection to be binding

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

4. Transaction Documents

4.1 Substitution of Selectee in Transaction Documents

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

5. Termination of Concession Agreement

5.1 Termination upon occurrence of Financial Default

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

5.2 Termination when no Selectee is selected

In the event that no Selectee acceptable to the Concessing Authority is selected and recommended by the Senior Lenders/Senior Lenders' Representative within the period of 180 (one hundred and eighty) days or any extension thereof as set forth in Article 3.3.2, the Concessing

Authority may terminate the Concession Agreement forthwith in accordance with the provisions thereof.

5.3 Realisation of Debt Due

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

6. Duration of the Agreement

6.1 Agreement duration

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

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

7. Indemnity

7.1 General indemnity

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

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

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

7.2 Notice and contest of claims

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

8. General

8.1 General conditions

8.1.1 The Parties hereto expressly represent and warrant that they are duly empowered to sign and execute this Agreement.

8.1.2 Notices under this Agreement shall be sent to the Addresses first hereinabove mentioned. Any change in the address of any Party shall be duly notified by registered post acknowledgement due and delivered to the other parties.

8.1.3 The expressions “Concessioneing Authority”, the “Concessionaire”, the “Senior Lender” and the “Senior Lenders’ Representative”, “Selectee” herein used shall unless there be anything repugnant to the subject or context include the respective successors and assigns.

8.1.4 This Agreement shall not be affected by reorganisation of any Senior Lender, the Concessionaire or Concessioneing Authority, “Selectee” and the successor in interest of the Senior Lender or Concessioneing Authority shall have the benefit of this Agreement.

8.1.5 Failing amicable settlement and/or settlement with the assistance of Expert, the dispute or differences or claims as the case may be, shall be finally settled by binding arbitration under the Arbitration and Conciliation Act, 1996. The arbitration shall be by a panel of three Arbitrators, one each to be appointed by the Concessioneing Authority and the Senior Lenders/Senior Lender’s Representative and the third to be appointed by the two arbitrators. If any Party entitled to do so, fails to appoint a second Arbitrator within 30 (thirty) days of from the receipt of the request for such appointment, then the single Arbitrator appointed in accordance with this provision shall adjudicate the disputes as Sole Arbitrator.

8.1.6 This Agreement and rights and obligations of the Parties hereunder shall remain in full force and effect pending the Award in any arbitration proceeding hereunder. The courts having territorial jurisdiction over the Project alone shall have jurisdiction over all matters arising out of or relating to the arbitration agreement contained herein or proceedings arising out of or relating to the arbitration proceedings thereunder.

8.1.7 The consultation, recommendation or approval of the Senior Lenders’ Representative under this Agreement shall always be deemed as consultation, recommendation or approval of every concerned Senior Lender and each such Senior Lender shall be bound by the same.

8.1.8 This Agreement shall be in addition to and shall not be in derogation of the terms of the Financing Documents.

8.1.9 The Concessionaire agrees and acknowledges that it shall not be necessary for the Senior Lender(s) or the Senior Lenders' Representative to enforce or exhaust any other remedy available to them before invoking the provisions of this Agreement.

8.1.10 No amendment, variation or modification to this Agreement shall be valid and effectual unless made in writing and executed by the duly authorized representatives of all the Parties hereto.

8.1.11 All stamp duties or other imposts and charges as are applicable on this Agreement or on amendment of the Concession Agreement or execution of fresh Concession Agreement for the purpose of substitution as aforesaid, irrespective of the Senior Lenders making such payment for the time being, shall be borne by and be to the account of the Concessionaire.

8.1.12 The Parties hereby expressly agree that for the purpose of giving full and proper effect to this Agreement, the Concession Agreement and this Agreement shall be read together and construed harmoniously. The terms of this Agreement shall prevail in the event of any inconsistency with the Concession Agreement.

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Schedule A

Particulars of Financial Assistance

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

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

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

Name: Title:

SIGNED AND DELIVERED ON BEHALF OF GOVERNMENT OF INDIA
BY:

Name: Title:

SIGNED AND DELIVERED ON BEHALF OF
----- ON BEHALF OF THE SENIOR LENDERS SETFORTH IN

SCHEDULE BY:

Name:

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32. Annexure X: Monitoring Arrangement

(Name of the Terminal)

Operation Stage Monitoring Report of for the month
ended.....

Compliance of Obligations of the Concessionaire

S No.	Obligations of the Concessionaire	Whether any action required (Yes/ No)	If yes, give details of action taken *
1	Prompt commencement of operations after “Ready for Operation” declaration		
2	Operation of Project Facilities as per “Project Requirement”		
3	Achieving Performance Standards		
4	Compliance of O&M and Safety Standards		
5	Rapid & Effective response in the event of accident/ emergency		
6	Replacement and repair of project facilities in a timely manner		
7	Manage & Operate Project Facilities on “First Come First Served “ basis except for Priority & Preferential berthing as per GOI guidelines		
8	Maintenance of Proper Records relating to Revenue and operation of Project Facilities		
9	Obtaining, Maintenance of Applicable Permits and Compliance of Applicable laws		
10	Prevention of encroachment / unauthorized use of Project Facilities		
11	Repair & Maintain all Project Facilities as per Agreement provisions & Good Industry Practice at all times during the Concession Agreement.		
12	Repair, Replace or Restore the damaged Project Facilities at its own costs.		
13	Obtaining prior written permission of Concessioneing Authority for removal of assets		

14	Replacement of equipments/ assets as per Good Industry Practice		
15	Compliance with Monthly Reporting Requirements		
16	Cooperation to experts appointed by concession authority in access for inspection for safety audit once in a year		
17	Cooperation to Terminal representatives for inspection and review of operations also to compliance with requirements of Agreement		
18	Installation & Operation of specified computer system and Network as specified by Concession Authority		
19	Ensuring the prescribed Security Arrangements conforming to ISPS code		
20	Employment of personnel of foreign origin only after requisite approvals from Government of India		
21	Employ qualified and skilled personnel.		
22	Meeting Minimum Guaranteed Cargo requirements		
23	To recover tariff from users of the project facilities as per Tariff Order Notification and deposit all Tariff in Escrow Account		
24	If requested by CA, collect the cess and charges from the users on behalf of Concessioning Authority		
25	Make timely payments to Concessioning Authority viz. Royalty & Licence fees		
26	To operate Escrow Account as per priority of payments		
27	Meeting any claim/ action/ suit etc. alleging loss/ destruction of goods		
28	Inform Concessioning Authority if any Direct or indirect change of management of concessionaire		
29	Payment of all taxes/ duties/ levies etc., to the Government Authorities		
30	Purchasing and Maintaining of Insurance requirements in accordance with the Agreement and Good Industry Practice		

31	Providing copies of insurance policies to the Terminal		
32	Utilisation of money received under insurance policies as per terms of Agreement		
33	Engagement of Management Contractor as envisaged in RFP		
34	Ensuring conduct of Conditional Survey by an expert appointed by mutual consent and compliance of remedies thereof before expiry of concession period.		
35	Submit bank guarantee two years prior to expiry of concession period for repairs if any for condition survey		
36	Issue of consultation notice and compliance of remedial process in case of Event of Default on the part of Terminal		

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(Name of the Terminal)

**Operation Stage Monitoring Report of for the month
ended.....**

Compliance of Obligations of the Concessioneing Authority

S No.	Obligations of the Concessioneing Authority	Whether any action required (Yes/ No)	If yes, give details of action taken *
1	To get from the concessionaire copies of “as built” design and drawings (for expansion phase) maintenance schedule of equipments etc. as reviewed by Independent Engineer		
2	Release of Performance Security after 6 months from the date of commercial operation		
3	Maintenance of LAD		
4	Grant approvals/ consents sought by the Concessionaire as required under the agreement		
5	Evolve mutually acceptable mechanism for sharing the common costs by existing and future terminal operators		
6	Provide access to all applicable infrastructure facilities and utilities including water, electricity etc.		
8	Review performance standards from the monthly report submitted by concessionaire and take remedial action including recovery of liquidated damages		
9	To operate escrow account as per priority of payments		
10	Whether shareholding requirements are met by lead member/ members of the applicant consortium		
11	Assistance to concessionaire by giving recommendation letter for getting applicable permits		
12	Shall not operationalise competing facility		
13	Issue notice of Force Majeure In the event of occurrence of any Force Majeure event		
14	Extension of time for performing obligations due to occurrence of Force majeure		
15	Compliance of provisions of Article 14 in the event of force majeure continuing beyond 120 days		

16	Payment of compensation in the event of termination due to force majeure event Payment of compensation in the event of termination due to concessionaire event of default Payment of compensation in the event of termination due to Concessioneing Authority event of default		
17	Authorize the concessionaire to collect cesses and charges including infrastructure cess if required and remit the same to Concessioneing Authority if required		
18	Initiate action for amicably resolution of disputes		
19	Any other observation, complaint or suggestion		
20	Payment of Compensation to Senior Lenders		
21	Issue of Consultation Notice and Compliance of remedial process in case of Event of Default on the part of Concessionaire		
22	Informing Senior Lenders of intent of termination by issuing a copy of Termination Notice to them on occurrence of force Majeure/ Event of Default		

Key Performance Indicators (KPI)/Performance Standards

S. No.	Maintenance/ Performance Standards	Indicative norms	Actual during the month	Shortfall, if any	Action taken to remedy shortfall
1	Average container moves				
2	Average handling rate				
3	Average turnaround time of trucks				
4	Equipment reliability				
5	Equipment availability				

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(Name of the Terminal)

Operation Stage Monitoring Report of (Name of the Project) for the month ended.....

I. Basic Data of the project

S No.	Project Parameters	Details
1.	Name of the concessionaire	
2.	Percentage of equity holding in case of consortium	
3.	Payment of Royalty	
4.	Date of Issue of Letter of acceptance by the Concessioneing Authority to concessionaire	
5.	Date of signing of Concession Agreement	
6.	Time duration for fulfilling the condition precedent as per concession agreement (a) By Concessionaire (b) By Concessioneing Authority	
7.	Actual Date of award of concession after fulfilling condition precedent	
8.	Date of starting of commercial operation	
9.	Estimated cost	
10.	Actual Cost	
11.	Capacity	
12.	Project details like length of berth, design vessel size can be handled,	
13.	Present tariff rate	
14.	MGT if any as per concession agreement	
15.	Cargo handled during this month	
16.	Cumulative cargo handled during the financial year	
17.	Any other remarks	

33. Annexure XI: 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 Concessions Authority**”, which expression shall,
unless repugnant to the context or meaning thereof, include, its successors and assigns.

WHEREAS:

- (a) The Concessions Authority, vide its Request for Proposal dated [●] (“the RFP”) invited duly short listed 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 _____ (“**Applicant**”) and issued the Letter of Intent No (“**LOI**”) _____ dated to the Consortium/Applicant requiring, inter alia, the execution of the Concession Agreement, (“the Concession Agreement”) the draft whereof was provided in the RFP;
- (c) Pursuant to the LOI the Applicant/Consortium has promoted and incorporated a special purpose company (“the Concessionaire”), to enter into the Concession Agreement for undertaking, inter alia, the work with respect to the Project referred to in Recital (a) above and to perform and discharge all its obligations thereunder.
- (d) In terms of the LOI and the Concession Agreement, the Concessionaire is required to furnish to the Board, a Performance Guarantee being an unconditional and irrevocable Bank Guarantee from a Scheduled Bank for a sum of Rs. [●] (Rupees [●] only) as security for due and punctual performance/discharge of its obligations under the Concession Agreement during the Expansion Phase,
- (e) At the request of the Concessionaire, and for valid consideration the Guarantor has agreed to provide guarantee, being these presents guaranteeing the due and punctual performance/discharge by the Concessionaire of its obligations under the Concession Agreement during the Expansion Phase.

NOW THEREFORE THIS DEED WITNESSETH AS FOLLOWS:

1. Capitalized terms used herein but not defined shall have the meaning assigned to them respectively in the Concession Agreement.
2. The Guarantor hereby irrevocably and unconditionally guarantees the due execution and punctual performance by M/s. ("the Concessionaire") of all its obligations under the Concession Agreement during the Expansion Phase.
3. The Guarantor shall, without demur or protest, pay to the Board sums not exceeding in aggregate Rs. [●] (Rupees [●] only) within five (5) calendar days of receipt of a written demand therefor from the Board stating that the Concessionaire has failed to meet its performance obligations under the Concession Agreement during the Expansion Phase. The Guarantor shall not go into the veracity of any breach or failure on the part of the Concessionaire or validity of demand so made by the Board and shall pay the amount specified in the demand notwithstanding any direction to the contrary given or any dispute whatsoever raised by the Concessionaire or any other Person before any court, tribunal, expert, arbitrator or similar proceedings. The Guarantor's obligations hereunder shall subsist until all such demands of the Board are duly met and discharged in accordance with the provisions hereof. Any such demand made on the Guarantor by the Board shall be conclusive, absolute and unequivocal as regards the amount due and payable by the Guarantor under this Agreement. The Concessions Authority shall at all times at its sole discretion have the absolute and unconditional right to call upon the Guarantor to pay the amount under the Guarantee.
4. In order to give effect to this Guarantee, the Board shall be entitled to treat the Guarantor as the principal debtor. The obligations of the Guarantor shall not be affected by any variations in the terms and conditions of the Concession Agreement or other documents or by the extension of time for performance granted by the Board or postponement/non-exercise/ delayed exercise of any of its rights by the Board or any indulgence shown by the Board to the Concessionaire and the Guarantor shall not be relieved from its obligations under this Guarantee on account of any such variation, extension, postponement, non-exercise or delayed exercise by the Board of any of the Board's rights or any indulgence shown by the Board; provided nothing contained herein shall enlarge the Guarantor's obligation hereunder.
5. This Guarantee shall be unconditional and irrevocable and shall remain in full force and effect until Scheduled Project Completion Date and for a period of twelve months thereafter unless discharged/released earlier by the Board in accordance with the provisions of the Concession Agreement. The Guarantor's liability in aggregate shall be limited to a sum of Rs. [●] (Rupees [●] only).
6. This Guarantee shall not be affected by any change in the constitution or winding up, insolvency, bankruptcy, dissolution or liquidation of the Concessionaire/ the Guarantor or any absorption, merger or amalgamation of the Concessionaire/the Guarantor with any other Person.
7. Any payment made hereunder shall be made free and clear of, and without deduction for or on account of taxes, levies, imposts, duties, charges, fees, deductions, or withholding of any nature whatsoever.
8. The Guarantor hereby irrevocably and unconditionally undertakes, agrees and acknowledges that its obligations as a Guarantor hereunder:
 - (a) shall not be affected by the existence of or release or variation of any other guarantee or security for any of the obligations of the Concessionaire under the Concession Agreement;

- (b) shall not be affected by any failure by the Concessioneing Authority to perform any of its obligations under the Agreement;
- (c) shall not be affected by any failure or delay in payment of any fee or other amount payable to the Guarantor in respect hereof;
- (d) shall not be affected by any exercise or non-exercise of any right, remedy, power or privilege of any person under or in respect of any payment obligations of the Concessionaire under the Concession Agreement;
- (e) shall not be affected by any failure, omission or delay on the Concessioneing Authority's part to enforce, assert or to exercise any right, power or remedy conferred on the Concessioneing 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, recoupmets, 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 Concessioneing 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.

34. Annexure XII: Certificates

Completion Certificate

1. I, [●] (Name of the Independent Engineer), acting as Independent Engineer, under and in accordance with the Agreement dated [●], for the [●] Project on operation, management and development (OMD) basis, through [(Name of Concessionaire)], hereby certify that the Tests specified in Article [●] and Schedule-[●] of the Agreement have been successfully undertaken to determine compliance of the Project with the provisions of the Agreement, and I am satisfied that the Project can be safely and reliably placed in commercial service of the users thereof.

2. It is certified that, in terms of the aforesaid Agreement, all works forming part of the Project have been completed, and the Project is hereby declared fit for entry into commercial operation on this the [●] Day of [●] 20[●].

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

(Signature) (Name) (Designation) (Address)

Provisional Certificate

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

(Signature)

(Name and Designation)

(Address)

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

(Signature)

(Name and Designation)

(Address)

35. Annexure XIII: 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. Approval from Central Empowered Committee constituted by the Supreme Court in respect of the Terminal, in accordance with the provisions of Wildlife Protection Act-1972;
4. Forest Clearance in accordance with the provisions of the Forest (Conservation) Act, 1980; if applicable
5. Consent to Establish in accordance with the provisions of the Water (Prevention and Control of Pollution) Act, 1974;
6. Consent to Operate in accordance with the provisions of the Water (Prevention and Control of Pollution) Act, 1974;
7. Consent to Establish in accordance with the provisions of the Air (Prevention and Control of Pollution) Act, 1981;
8. Consent to Operate in accordance with the provisions of the Air (Prevention and Control of Pollution) Act, 1981;
9. No-objection certificate in respect of the building from the Uttar Pradesh Fire Service Directorate;
10. Consent to Operate for terminal operation in accordance with the provisions of the Air (Prevention and Control of Pollution) Act, 1981 and Water (Prevention and Control of Pollution) Act, 1974 from State Pollution Control Board.