

OPERATION AND MANAGEMENT CONTRACT

By and Between

INLAND WATERWAYS AUTHORITY OF INDIA
(as “Authority”)

And

[_____]
(as “Operator”)

Dated: []

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[To be executed on stamp paper]

THIS OPERATION AND MANAGEMENT CONTRACT (“O&M Contract”) is made on this [] day of [], at []:

BY AND BETWEEN:

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

AND

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

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

WHEREAS:

- A. The Authority owns and operates the Varanasi Terminal (*as defined below*) in Uttar Pradesh.
- B. In order to increase the usage of the inland water Terminal and achieve better productivity at the Terminal (*as defined below*), the Authority intends to hand-over the operation, maintenance and management of the Terminal to a competent and qualified Person (*as defined below*) on the basis of the payment of the Royalty (*as defined below*), in the form and manner provided herein.
- C. In this regard, the Authority invited bids through international competitive bidding process by issuing its Request for Proposal No. [] dated [] (“**RFP**”) for the selection of a preferred bidder for the performance of the O&M Services (*as defined below*).
- D. Pursuant to the evaluation of the Bids (*as defined in the RFP*) submitted by the Bidders (*as defined in the RFP*), the Authority selected [] {Sole Selected Bidder/ consortium comprising [] and [] (collectively the “**Consortium**”) with [] as its lead member} as the Selected Bidder (*as defined in the RFP*) for the performance of the O&M Services.
- E. The Authority accordingly issued its Letter of Award No. [] dated [] (“**LOA**”) to the Selected Bidder, requiring the Selected Bidder, *inter alia*, to execute this Contract.
- F. {The Selected Bidder is a limited liability company under the Companies Act, 1956/2013, and has requested the Authority to accept the Selected Bidder as the entity, which shall undertake and perform the obligations and exercise the rights of the Selected Bidder under the LOA, including the obligation to enter into this Contract for undertaking and performing the O&M Services.}

Or

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

Or

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

- G. {By its letter dated [], the Operator, while representing that it has been promoted by the Selected Bidder for the purposes hereof, joined in the request of the Selected Bidder to the Authority, to accept the Operator as the entity which shall undertake and perform the obligations and exercise the rights of the Selected Bidder including the obligation to enter into this Contract pursuant to the LOA. }
- H. The Operator has represented and warranted to the Authority that it, {while assuming the technical and operational capabilities of the Selected Bidder,} is qualified and competent to perform the O&M Services at the Terminal, as per the terms of this Contract.
- I. In view of the aforesaid and based on the representations and warranties provided by the Operator {and the Selected Bidder} and set out in this Contract, the Authority has agreed to the said request of {the Selected Bidder and} the Operator, and has accordingly agreed to enter into this Contract with the Operator for the performance of the O&M Services at the Terminal, subject to and on the terms and conditions set forth hereinafter.

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

1. DEFINITIONS AND INTERPRETATION

1.1 *Definitions*

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

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

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

“**Additional Auditors**” has the meaning specified in Article 14.2.3.

“**Affected Party**” has the meaning specified in Article 18.1.

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

“**Annual Maintenance Program**” means the maintenance program prepared by the Operator, in accordance with Article 6.16.

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

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

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

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

“**Authority’s Manager**” has the meaning specified in Article 5.6.1.

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

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

“**Business Day**” means any day in a week other than a Sunday or a day declared to be public holiday, in the State of Uttar Pradesh in respect of the Varanasi Terminal under the provisions of the Negotiable Instruments Act, 1881.

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

“**Cargo Handled**” includes Riverine and Non-Riverine cargo handled at the Terminal.

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

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

“**Contract**” means this O&M contract entered into between the Authority and the Operator, including the Recitals, the Schedules hereto, as amended, modified or supplemented from time to time in accordance with provisions herein.

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

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

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

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

“**Dispute**” has the meaning specified in Article 22.1.

“**Effective Date**” has the meaning specified in Article 2.1.1.

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

- (a) serious bodily injury to any personnel employed at the Terminal or any other Person at or in the vicinity of the Terminal;
- (b) serious physical damage to the Terminal, including the Terminal or other material or property located at or in the vicinity of the Terminal;

- (c) stoppage of performance of O&M Services or other serious labour disturbance at the Terminal;
- (d) a shutdown or other serious interruption in or interference with the operation or functioning of the facilities at the Terminal, in full or considerable part, or otherwise affecting the Terminal;
- (e) imposition of fines or other penalties or sanctions under any Applicable Law, where such fines, penalties or sanctions under Applicable Law are likely to affect seriously the ability of Authority or the Operator to perform any of its or their obligations under this Contract; or
- (f) an occurrence of any accident materially impacting the environment.

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

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

- (a) labour and working conditions including those for workers engaged through Sub-Contractors;
- (b) pollution, contamination, clean-up, protection and reclamation of the environment;
- (c) health or safety, including, without limitation, the exposure of employees or other Persons to any Hazardous Materials;
- (d) the release or threatened release of any Hazardous Materials;
- (e) management of traffic, security, events linked to life and fire safety, emergency response etc.;
- (f) management of impacts arising on account of land acquisition and related physical as well as economic displacement (if any);
- (g) the management of any Hazardous Materials, including, without limitation, the manufacture, generation, formulation, processing, labelling, distribution, introduction into commerce, registration, use, treatment, handling, storage, disposal of materials, the discharge of chemicals, gases or other substances or materials into the environment, the presence of such materials, chemicals, gases or other substances in or around the Terminal, transportation, reuse, recycling or reclamation of any Hazardous Materials;
- (h) any Applicable Permit issued by a Government Instrumentality with respect to the foregoing; and
- (i) applicable IFC Performance Standards on Environmental and Social Sustainability 2012.

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

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

“Escrow Account” means an account to be opened and maintained in accordance with the provisions of Article 9.1.

“Escrow Agreement” has the meaning specified in Article 9.1.

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

“ESMS” means the environmental and social management system to be developed and maintained by the Operator as indicated in Article 6.15.

“ETA” means expected time of arrival.

“Force Majeure Event” has the meaning specified in Article 18.1.

“Forward Major Maintenance & Improvement Program” means the 1 (one) year rolling program for major maintenance and improvement including maintenance and repair that are required over and above (i) regular operational maintenance and (ii) normal wear and tear, which is prepared by the Operator and submitted to the Authority in accordance with Article 6.17.

“Functional Guarantee” means the performance parameters set out in SCHEDULE 3 (*Functional Guarantees and Damages*).

“Good Industry Practice” means the practices, methods, techniques, designs, standards, as updated from time to time and the exercise of that degree of skill, diligence, efficiency, reliability and prudence that are generally accepted for use in the terminal services industry at the international level, which would reasonably and ordinarily be expected from a skilled, prudent and experienced contractor applying the standards generally adopted by contractors in providing the operation and maintenance services of the Terminal, barges and related facilities and performing O&M Services required to be performed by the Operator in accordance with this Contract and Applicable Laws, in reliable, safe, economical and efficient manner.

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

“Hazardous Materials” means:

- (a) cargo classified as hazardous by International Maritime Organisation;
- (b) any element, compound, substance, preparation, chemical, physio-chemical properties or biological derivative, radiation, noise, vibration, material or combination thereof which by reason of its composition or characteristics is defined in Applicable Law as a hazardous material; or
- (c) any other material which any Government Instrumentality determines from time to time to be harmful, toxic, or dangerous, or otherwise ineligible for handling, storage or disposal by unregulated means or is liable to cause harm to human beings, other living creatures, plant, micro-organism, property or the environment.

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

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

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

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

“**Non-riverine cargo**” means cargo other than Riverine Cargo. Quantity of such cargo will be ascertained as per Goods Receipt document.

“**O&M**” means operations, maintenance and management.

“**O&M Manual**” means the manuals for the O&M of the equipment deployed at the Terminal, which will include any management and administrative policies and O&M procedures required in this Contract or provided by the OEM.

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

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

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

“**Operator's Manager**” has the meaning specified in Article 6.5.

“**Operating Period**” means the period commencing on the Appointed Date and ending on the Termination of the Contract as specified in Article 2.2.

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

as per applicable market rates.

“**Panel of Chartered Accountants**” has the meaning specified in Article 14.2.1.

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

“**Performance Parameters**” shall have meaning specified in Article 16.3.1.

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

“**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 Operator to the Authority, pursuant to Article 8.6 hereof.

“**RFP**” means has the meaning specified in Recital C.

“**Right of Way**” means the constructive possession of the Terminal, together with all way leaves, easements, unrestricted access, waterfront and other rights of way, howsoever described, necessary for the O&M Services at the Terminal in accordance with this Contract;

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

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

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

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

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

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

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

“**Successor Operator**” has the meaning specified in Article 20.5.4(b).

“**Technical Specifications**” means the indicative technical specifications and the requirements

set forth in Schedule 2 (*Technical Specifications*).

“**Terminal**” means the multimodal terminal at Varanasi.

“**Termination**” means expiry or termination of this Contract.

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

“**Transition Period**” has the meaning specified in Article 20.5.4(b).

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

“**Tariff**” means collectively the Statutory Charges, the Service Charges and the Other Charges.

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

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

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

1.2 Interpretation

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

- 1.2.1 Reference to the singular will include reference to the plural and *vice-versa* and a reference to any gender will include a reference to the other genders, except where the context otherwise requires.
- 1.2.2 The headings and sub-headings in this Contract are included for ease of reference, and will not affect the meaning or the interpretation of this Contract.
- 1.2.3 Unless the context otherwise requires, a reference to any Article, Recital and Schedule will be to the Article, Recital and Schedule of this Contract respectively.
- 1.2.4 The array of the Parties and the recitals will form an integral part of this Contract.
- 1.2.5 The Schedules to this Contract form part of this Contract and will be in full force and effect, and the provisions of this Contract and the Schedules hereto will be interpreted harmoniously, and in case of any discrepancy or ambiguity between the provision contained in the main part of the Contract and the Schedule, the provision contained in the main part of the Contract would prevail over the latter.
- 1.2.6 Reference to any Applicable Law includes a reference to that law or regulation, as from time to time, amended, modified, supplemented, extended or re-enacted.

- 1.2.7 The words “include” or “including” will be deemed to be followed by “without limitation” or “but not limited to” whether or not they are followed by such phrases.
- 1.2.8 In case of any discrepancy between words and figures, the words will prevail over the figures.
- 1.2.9 Whenever provision is made for the giving of notice, approval or consent by any Person, unless otherwise specified, such notice, approval or consent will be in writing and the words “notify” and “approve” will be construed accordingly.
- 1.2.10 Provisions including the word “agree”, “agreed”, “agreement” require the agreement to be recorded in writing.
- 1.2.11 Any reference, at any time, to any agreement, deed, instrument, licence or document of any description shall be construed as reference to that agreement, deed, instrument, licence or other document as amended, varied, supplemented, modified or suspended at the time of such reference.
- 1.2.12 Any reference to the term “development” includes, unless the context otherwise requires, construction, expansion, renovation, refurbishing, augmentation, upgradation and other activities incidental thereto, and “develop” shall be construed accordingly.
- 1.2.13 The words “hereof”, “herein”, “hereto” and “hereunder” and words of similar import, when used in this Contract shall refer to this Contract as a whole and not to any particular provision of this Contract.
- 1.2.14 Wherever provision is made for the giving or issuing of any notice, endorsement, consent, approval, certificate or determination by any Person, unless otherwise specified, such notice, endorsement, consent, approval, certificate or determination shall be in writing and the words “notify”, “endorse”, “approve”, “certify” or “determine” shall be construed accordingly.
- 1.2.15 Where any notice, consent or approval is to be given by the Authority, the notice, consent or approval shall be given on its behalf only by either the Chairman of the Authority or such other Person nominated by the Authority from time to time.
- 1.2.16 Where the last day for performance of an obligation under this Contract falls on a day which is not a Business Day, the latest time for performance shall be extended to noon on the next following Business Day.
- 1.2.17 Any reference to the term “indebtedness” shall be construed so as to include any obligation (whether incurred as principal or surety) for the payment or repayment of money, whether present or future, actual or contingent.
- 1.2.18 References to the “winding-up”, “dissolution”, “insolvency”, or “reorganisation” of a company or corporation shall be construed so as to include any equivalent or analogous proceedings under the law of the jurisdiction in which such company or corporation is incorporated or any jurisdiction in which such company or corporation carries on business including the seeking of liquidation, winding-up, reorganisation, dissolution, arrangement, protection or relief of debtors.
- 1.2.19 Unless otherwise specified herein, all accounting terms used herein will be interpreted, and all financial statements and certificates and reports as to financial matters required to be furnished hereunder will be prepared, in accordance with the applicable Indian Accounting Standards, and all technical terms and statements will be interpreted and applied in accordance with the Good Industry Practices.
- 1.2.20 No specific provision, representation or warranty will limit the applicability of a more general

provision, representation or warranty, and it is the intent of the Parties that, each representation, warranty, covenant, condition and agreement contained in this Contract, will be given full, separate and independent effect and that such provisions are cumulative.

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

1.3 Priority of Documents

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

- (a) this Contract;
- (b) addendums to the bidding documents, or any other document, in relation to the performance of the O&M Services; and
- (c) all other agreements and documents forming part hereof or referred herein.

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

2. EFFECTIVE DATE AND TERM

2.1 Effective Date and Appointed Date

- 2.1.1 This Contract will become effective on the date of signing of this Contract by the Parties, i.e., the date first written hereof (“**Effective Date**”).
- 2.1.2 The obligations of the Operator concerning the performance of the O&M Services shall commence from the Appointed Date, in accordance with the terms of this Contract.

2.2 Operating Period and Extension

- 2.2.1 The Operating Period of this Contract shall commence from the Appointed Date and shall be valid and effective for a period of 2 (two) years from the Appointed Date extendable by 3 (three) years or operationalization of MMLP, whichever is earlier.

Provided that:

- (a) In the event of the Operatorship being extended by the Authority beyond the said period of 2 (two) years in accordance with the provisions of this Contract, the Operating Period shall include the period by which the Operatorship is so extended, and
- (b) In the event of an early termination of this Agreement by either Party in accordance with the provisions hereof, the Operating Period shall mean and be limited to the period commencing from the Appointed Date and ending with the date of termination of this Agreement

The Operator shall at any time after completion of 18 months and before completion of 23 months from the Appointed Date, intimate the Authority about its interest and request for extending the term of this Agreement by a period not exceeding 3 (three) years.

The Authority may accept the request for extending the term of this Agreement subject to the following conditions:

- a) Cumulative actual cargo throughput handled at the Terminal up till the end of 18th month from appointed date exceeds 88,200 MT.
- b) Operator shall submit a certificate confirming that there has been no material default by the Operator under this Contract (including compliance of provisions relating to any of the Performance Standards), resulting in accrual of a right in favour of the Authority to identify any such event as Operator’s default
- 2.2.2 Unless extended or terminated as per Article 2.2.1, the Contract shall expire on the 2nd (second) anniversary of the Appointed Date and the Authority or its nominee shall acquire all of the rights, title and interests in and to the Terminal in the manner set forth in Article 20.5.2.

3. SCOPE OF O&M SERVICES

3.1 *Scope*

The Operator shall perform the operation, management and maintenance services of the Terminal and passenger pontoon jetty in a manner such that the Functional Guarantees are achieved and maintained at all times, in accordance with the provisions of this Agreement, applicable laws and applicable permits. The consideration for the performance of the O&M Services is the right of levying, collecting and appropriating the Service Charges and Other Charges as the case may be, in the form and manner agreed in this Contract.

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

3.2 *Standards for Performance of Obligations*

- 3.2.1 The Operator will operate and maintain the Terminal and perform the O&M Services, with an objective to increase the efficiency and minimize the overall operations and maintenance costs while meeting the Functional Guarantees, in accordance with the express or implied standards and requirements of this Contract including without limitation, the following:
- (a) O&M Manual and Technical Specifications;
 - (b) Annual Maintenance Program and the policies, procedures and other plans established pursuant to this Contract;
 - (c) Good Industry Practice;
 - (d) All relevant Applicable Permits, from time to time in force, irrespective of whether such Applicable Permits are obtained by or are in the name of the Authority;
 - (e) In a manner consistent with insurance policies maintained either on behalf of the Operator or the Authority in relation to any portion or all of the Terminal and so as not to vitiate or annul any cover afforded by such a policy of insurance;
 - (f) The standard operating procedure prepared by the Operator;
 - (g) All Environmental Standards; and
 - (h) All safety standards as per OHSAS 18001 or any other equivalent or higher standard.
- 3.2.2 The Operator will be solely responsible for all means, methods, techniques, sequences, procedures, efficiency and adequacy of its planning, environment and safety programmes in connection with the performance of its obligations under this Contract. The Operator agrees to take full responsibility for the adequacy, stability and safety of all operations and co-ordination with its Sub-Contractors.
- 3.2.3 The Operator will be solely responsible for and will be liable towards the costs for any repairs and/or replacements caused due to any improper use at the Terminal by it and/or for non-compliance with the standards of performance set out in Article 3.2.
- 3.2.4 In the event that the Operator determines in its reasonable judgment that a conflict or inconsistency exists amongst the performance standards and requirements described in this Article 3.2 or elsewhere in this Contract, the Operator will notify the Authority in writing as soon as practicable of such conflict or inconsistency and follow the more stringent, restrictive or onerous of the standards or requirements for the Operator's performance of the O&M Services. The Operator will act in accordance with such recommendation unless the Operator is instructed to the contrary by the Authority.

4. CONDITIONS PRECEDENT AND APPOINTED DATE

4.1 *Conditions Precedent*

- 4.1.1 Save and except as expressly provided in Article 1, Article 4, Article 5, Article 6, Article 8, Article 9, Article 11, Article 15, Article 17, Article 18, Article 20, Article 21, Article 22 and Article 23, or unless the context otherwise requires, the respective rights and obligation of the Parties under this Contract shall be subject to the satisfaction in full of the conditions precedent specified in this Article 4.1 (“Conditions Precedent”). Provided however that a Party may grant waiver from satisfaction of any Condition Precedent by the other Party in accordance with the provisions of Article 4.1.2 or Article 4.1.3, as the case may be, and to the extent of such waiver, that Condition Precedent shall be deemed to be fulfilled for the purposes of this Article 4.1.1.
- 4.1.2 The Operator may, upon providing the Contract Performance Security to the Authority, by notice require the Authority to satisfy any or all of the Conditions Precedent set forth in this Article 4.1.2 by the time the Operator is required to achieve the Appointed Date, *provided that* such time period shall not be less than 30 (thirty) days from the date of notice to the Authority, and the Conditions Precedent required to be satisfied by the Authority shall be deemed to have been fulfilled when the Authority shall have:
- (a) notified the amended Fee Regulations, enabling the Operator to levy, collect and appropriate the Service Charges as per the terms contained herein;
 - (b) procure the Applicable Permits set forth in SCHEDULE 5 (*Government Applicable Permits*) as are required for undertaking the development activities at the Terminal and required to be obtained prior to the Appointed Date by the Authority only.
- 4.1.3 Except as may have been specifically otherwise provided in this Contract, the Conditions Precedent required to be satisfied by the Operator within a period of 60 (sixty) days from the Effective Date, shall be deemed to have been fulfilled, when the Operator shall, subject to the satisfaction of the Authority, have:
- (a) provided Contract Performance Security to the Authority;
 - (b) opened an Escrow Account with the Escrow Bank and executed an Escrow Agreement in such regard along with the Authority in the form and manner provided in SCHEDULE 7 (*Format of Escrow Agreement*), providing for the deposit of the entire revenue generated by way of levying and collection of the Service Charges and Other Charges at the Terminal due to the performance of the O&M Services and withdrawal of amounts therefrom.
- Provided that upon request in writing by the Operator, the Authority may, in its discretion, waive any (fully or partially) of the Conditions Precedent set forth in this Article 4.1.3 for the purposes of the achievement of the Appointed Date. The Authority may, in its sole discretion, grant any waiver hereunder with such conditions as it may deem fit.
- 4.1.4 Each Party shall make all reasonable endeavours to satisfy the Conditions Precedent within the time stipulated and shall provide the other Party with such reasonable cooperation as may be required to assist that Party in satisfying the Conditions Precedent for which that Party is responsible.
- 4.1.5 On satisfaction of the obligations by the Parties as stated in Article 4.1.2 and 4.1.3, the Parties shall jointly fulfil the obligations stated in Article 11.3.1 (*Procurement of Terminal*).
- 4.1.6 The Parties shall notify each other in writing on the progress made in satisfying the Conditions Precedent. Each Party shall promptly inform the other Party when any Condition Precedent for

which it is responsible has been satisfied.

4.2 Damages for delay by the Operator

4.2.1 In the event that:

- (a) the Operator does not procure fulfilment or waiver of any or all of the Conditions Precedent set forth in Article 4.1.3 within the period specified in that Article, and
- (b) the delay has not occurred as a result of failure to fulfil the obligations by the Authority under Article 4.1.2 or other breach of this Contract by the Authority or due to Force Majeure;

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

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

4.3 Damages for delay by the Authority

4.3.1 In the event that:

- (a) the Authority does not procure fulfilment or waiver of any or all of the Conditions Precedent set forth in Article 4.1.2 within the period specified in that Article, and
- (b) the delay has not occurred as a result of failure to fulfil the obligations by the Operator under Article 4.1.3 or other breach of this Contract by the Operator or due to Force Majeure;

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

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

4.4 Deemed Termination upon Delay

4.4.1 Without prejudice to the provisions of Article 4.2 and 4.3, and subject to the provisions of Article 10.2 and Article 10.3, the Parties expressly agree that in the event the Appointed Date does not occur, for any reason whatsoever, before the expiry of 240 (two hundred forty) days after the

Effective Date or any extended period, as per the terms of this Contract or as otherwise agreed between the Parties, all rights, privileges, claims and entitlements of the Operator under or arising out of this Contract shall be deemed to have been waived by, and to have ceased with the concurrence of the Operator, and the Contract shall be deemed to have been terminated by mutual agreement of the Parties. Provided, however, that in the event the delay in occurrence of the Appointed Date is for reasons attributable to the Operator, then, notwithstanding the provisions of Article 4.2 above, the Contract Performance Security of the Operator shall be encashed and appropriated by the Authority as Damages thereof.

4.4.2 Upon such Termination:

- (a) The Operator shall discharge all liabilities, if any created, in any form whatsoever, within 60 (sixty) days of such Termination
- (b) Where the Operator is a special purpose vehicle, the Selected Bidder, or in the case of a Consortium, each member of the Consortium, shall transfer its entire shareholding in the Operator to the Authority or any of its nominees, at its own cost, within 90 (ninety) days of the Termination, and each of them shall take all such actions and proceedings, as may be required under the Applicable Laws, to complete such transfer.
- (c) Where the Operator is a special purpose vehicle, the Selected Bidder, or in the case of a Consortium, each member of the Consortium, shall cause all the Directors on the Board of the Operator, except as may be appointed by the Authority or its nominees, to resign from the Board within 90 (ninety) days of the Termination, and each of such resigning Directors shall take all actions and proceedings, as may be required under the Applicable Laws, to complete such process.

5. RESPONSIBILITIES AND RIGHTS OF THE AUTHORITY

5.1 *Statutory Obligations of the Authority*

- 5.1.1 The terms of this Contract shall not derogate from the statutory obligations of the Authority under Applicable Laws but shall only supplement such obligations and shall be performed by the Authority so as not to be inconsistent with its statutory obligations.
- 5.1.2 The rights and obligations under this Contract are recognized and performed only in conformity with Applicable Laws and no right under this Contract becomes enforceable and no obligation requires performance if such right or obligation violates any Applicable Laws.

5.2 *Obligations of the Authority under the Contract*

- 5.2.1 The Authority shall, at its own cost and expense, undertake, comply with and perform all its obligations set out in this Contract or arising hereunder.
- 5.2.2 In addition to any other obligation appearing in any other provision of this Contract, the Authority agrees to provide support to the Operator and undertakes to observe, comply with and perform, subject to and in accordance with the provisions of this Contract and Applicable Laws and Good Industry Practices, the following:

- (a) upon written request from the Operator and subject to the Operator complying with Applicable Laws, procure the Government Applicable Permits for the (i) operation, maintenance and management of Varanasi MMT, and (ii) activities as per Forward Major Maintenance & Improvement Program provided in Article 6.17, required from any Government Instrumentality for the performance of the O&M Services, at the cost and expense of the Authority and maintain the same throughout the Operating Period;
- (b) upon written request from the Operator and subject to the provisions of Article 6.17 and Operator complying with Applicable Laws and the terms of this Contract, repair, maintain, undertake and complete the development of the infrastructural facilities at the Terminal;
- (c) O&M Services for the activities provided in Article 16.3.1;
- (d) shall endeavor to provide navigable fairway on designated channel of NW-1.

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

- (e) upon written request from the Operator and subject to the Operator complying with Applicable Laws, provide reasonable support and assistance to the Operator to procure the Applicable Permits required from any Government Instrumentality for the performance of the O&M Services;
- (f) upon written request from the Operator, provide reasonable assistance to the Operator in obtaining access to all necessary infrastructure facilities and utilities, including water and electricity at rates and on terms no less favourable to the Operator than those generally available to similar utility customers receiving substantially equivalent services;
- (g) procuring that no barriers are erected or placed on or about the Terminal by any Government Instrumentality or Persons claiming through or under it, except for reasons

of safety requirements, Emergency Event, national security, or law and order;

- (h) subject to and in accordance with Applicable Laws and the Applicable Permits, grant to the Operator, the authority to regulate Users at the Terminal for and on behalf of the Authority;
- (i) assisting the Operator in procuring assistance from relevant Government Instrumentality for removal of trespassers and security on or at the Terminal;
- (j) doing or omitting to do any act, deed or thing which may in any manner be violative of any of the provisions of this Contract;
- (k) providing the Operator, its authorized personnel and its Sub-Contractors, access to the Terminal, at all reasonable times, so far it is necessary to perform the O&M Services in accordance with the terms of this Contract, subject to security and safety requirements;
- (l) providing such cooperation and information to the Operator to facilitate it, in liaisoning with the Government Instrumentality and public as the Authority may determine to be necessary or appropriate under the circumstances on matters that are related to or will affect the provision of O&M Services in this Contract;
- (m) providing all relevant technical, operational and other information in Authority's possession regarding the Terminal that are required for the achievement of the Functional Guarantees and all other applicable data;
- (n) nominating a Person as the 'Authority's Manager' to co-ordinate with the Operator on all matters and appointing qualified personnel to represent the Authority in all matters related to the obligations of the Authority under this Contract;
- (o) notifying the Operator within 72 (seventy-two) hours of it becoming aware of any events within the exclusive knowledge of the Authority that may have a Material Adverse Effect on the performance of the O&M Services; and
- (p) any information requested by the Operator required for the performance of the O&M Services.

5.3 Retained Powers

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

5.4 Obligations relating to Reserved Services

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

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

5.5 *Authority's Manager*

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

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

6. RESPONSIBILITIES AND RIGHTS OF THE OPERATOR

6.1 General

- 6.1.1 The Operator will provide and make available as necessary, all such labour, professional, supervisory and managerial personnel as well as equipment as are required to perform its obligations under this Contract to achieve and maintain the Functional Guarantees and in compliance with Applicable Laws and Good Industry Practices.
- 6.1.2 To provide the O&M Service, the Operator is free to use refurbished, hired and/or leased equipment, provided that the Functional Guarantees are complied with by the Operator and the O&M Services are provided in accordance with the Applicable Law and Good Industry Practice.
- 6.1.3 Subject to approval of the Authority, the Operator may develop or alter any building or structure at the Terminal for the purpose of providing the O&M Services including, if any, required under the Forward Major Maintenance & Repair Program.
- 6.1.4 All such Persons employed by the Operator will perform their duties at the directions and under the supervision and responsibility of the Operator. The Operator will be responsible to the Authority for all the acts and omissions of such personnel in course of providing the O&M Services.
- 6.1.5 Notwithstanding any provision in this Contract to the contrary, unless otherwise approved in writing by the Authority, the Operator will not:
- (a) sell, lease, pledge, mortgage, encumber, convey, license, exchange or make any other transfer or disposition of any property or assets (including the land at the Terminal) of the Authority;
 - (b) amend, terminate, modify or supplement any documents on behalf of or in the name of the Authority;
 - (c) settle, compromise, assign, pledge, transfer, release or consent to the compromise, assignment, pledge, transfer or release of, any claim, suit, debt, demand or judgment against or due by, the Authority or the Operator, or submit any such claim, dispute or controversy to arbitration or judicial process, or stipulate in respect thereof to a judgment, or consent to the same; or
 - (d) engage in any other transaction on behalf of the Authority not permitted under this Contract.

6.2 Procurement

- 6.2.1 The Operator will be responsible for procurement of goods, items, equipment, services, materials, etc. which are required for the performance of the O&M Services to meet the Functional Guarantees. Such procurement by the Operator will be done taking into account quality and safety standards prescribed in accordance with Applicable Laws and Good Industry Practices.
- 6.2.2 Save and except the Government Applicable Permits, the Operator is responsible for obtaining all other Applicable Permits required for providing the O&M Services.
- 6.2.3 The Operator will take good and reasonable care of all goods, items, equipment, services, materials, etc. so procured and will use or store the same at the Terminal in a prudent manner as per Good Industry Practices, in the performance of the O&M Services so as to ensure there is no disruption or stoppage in the discharge of the O&M Services.

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

6.3 *Operator's Staff*

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

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

6.3.3 All personnel, employees, labour (skilled, semi-skilled and unskilled), Sub-Contractors, and their respective employees, contractors (of the Sub-Contractors), officers, licensees, invitees, agents and representatives engaged in the performance of the Operator's obligations under this Contract and who are assigned at the Terminal and any other personnel notified to the Authority by the Operator as the personnel acting for or on behalf of the Operator will be the employees of the Operator ("**Operator's Staff**"). The working hours, rates of remuneration, and all other matters relating to their employment, subject to requirement of Applicable Law, will be determined solely by the Operator, the Operator will be responsible for all the acts and omissions of the Operator's Staff in the course of providing the O&M Services, including non-fulfilment of obligations, negligence, Wilful Misconduct and violation of the terms and conditions of this Contract.

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

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

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

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

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

6.4 *Compliance of Labour Laws*

- 6.4.1 This Contract does not and will not be construed to create any employer-employee or principal-agent relationship between the Authority and the Operator/ Operator's Staff in the performance of the O&M Services.
- 6.4.2 The Operator, *inter-alia*, agrees that the O&M Services will be rendered in strict compliance with the provisions of all the Applicable Laws and the Applicable Permits. The Operator will make statutory payments/ remittances, applicable tax deductions as are required to be made under labour related and Applicable Laws.
- 6.4.3 The Authority reserves the right to recover from the Operator any amounts towards discharge of any claim or statutory obligations arising out of the breach of any of the labour laws or other Applicable Laws by the Operator or Sub-Contractors, without prejudice to any of its rights and other remedies herein stated or available under other Applicable Laws.
- 6.4.4 The contract labour, if any, engaged by the Operator, will be at its own risk and cost. The contract labour employed to perform the O&M Services will be paid by the Operator, the wages in conformity with the applicable wages notified by the respective Government Instrumentality from time to time. The Operator will be solely responsible for payment of all wages, salaries and any expenses of the personnel employed including, without limitation, all amounts payable towards employee's insurance, provident fund, pension, or employment compensation, or any other payment to be made under the Applicable Law, and/or otherwise to the professionals, technicians or workmen employed and/or contracted in relation to the provision of O&M Services under this Contract. The Operator will ensure that the labour and working conditions of contract labour meets the requirements as required under the Environmental Standards.
- 6.4.5 The Operator will, in a timely manner, obtain and/or maintain the licenses, registrations, employment records, registers, certificates and other records and file returns as are required under Applicable Laws and furnish proof of the same to the Authority on demand. The Operator will obtain requisite registrations, statutory permissions, licenses, Applicable Permits from concerned authorities and furnish proof of the same to the Authority on demand. The Operator will have the absolute control and/ or supervision on its employees/ staff/ contract labour. The Authority will not be liable for any dispute, which may arise between the Operator and the Operator's Staff. The Operator will itself regulate the engagement of its workers and their working conditions, providing statutory benefits, uniform, food in accordance with Applicable Law.
- 6.4.6 The Operator will be solely responsible for:
- (a) all acts and/or omissions by the workmen, technicians, labour, contractors and other personnel engaged in the performance of the O&M Services;
 - (b) health, safety and security of the workmen, technicians, labour, contractors and other personnel engaged in the performance of the O&M Services; and
 - (c) ensuring the compliance of oversight procedures with all Applicable Laws.
- 6.4.7 The Operator will maintain proper books of accounts, registers, records, bills, invoices, receipts, vouchers etc. in respect of the compliance of labour related Applicable Laws and will regularly cause proper entries to be made therein and of all other particulars and matters necessary thereto and furnish a certification of compliance thereof to the Authority. The Operator will make available such information and documents as may be required by the authorised representatives of the Authority for verification.

6.5 Operator's Manager

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

6.6 Safety Regulations

- 6.6.1 The Operator shall comply with the provisions of this Contract, Applicable Laws and Applicable Permits and conform to Good Industry Practices for securing the safety of the Users, goods, materials, equipment and other Persons on or about the Terminal.
- 6.6.2 The Operator shall ensure safe and healthy living and working conditions for labourers/ workers including labourers/ workers engaged through contract labour suppliers.
- 6.6.3 The Operator will be solely responsible for all acts and/or omissions by the Operator's Staff engaged for the performance of the O&M Services.
- 6.6.4 No part of the O&M Services will be carried out by any Person on behalf of the Operator under the Contract who does not have valid Applicable Permits. No work, which may cause fire hazards will be carried out in the prescribed areas unless Applicable Permits for the same are obtained and necessary precautions are taken to avoid any risk of fire hazards.
- 6.6.5 The Operator will take necessary measures to protect the Terminal and all Persons from Accidents and occupational diseases.
- 6.6.6 In the event of any Accident or dangerous occurrence or any damage to the Terminal, occurring on account of any reason whatsoever, the Operator will immediately send a notice of the same to the Authority.
- 6.6.7 The Operator will promptly, in case of the occurrence of any Emergency Event, mobilize all resources to the said emergency and will co-ordinate with the Authority in this regard.
- 6.6.8 The Operator and the Operator's Staff will follow all safety rules while working so as to ensure that there will not occur any Accident due to non-observance of the safety conditions mentioned herein and those informed by the Authority from time to time.

6.7 Emergency Events

- 6.7.1 The Operator agrees that if during the Operating Period, any portion of the Terminal is rendered unsafe on account of any Emergency Event, the Operator will restrict the performance of its obligations, to such portion of the Terminal which is safe and not effected by the said contingency. The Operator will not be responsible for the maintenance of the Functional Guarantees for such portions of the Terminal, which have been affected by any Emergency Event, as long as the said Emergency Event has not occurred due to any act or omission of the Operator or its negligence or Wilful Misconduct, or any breach of the provisions of this Contract.
- 6.7.2 Notwithstanding anything to the contrary herein, but subject to this Article 6.7, the Operator may take any operating action as it deems to be necessary in accordance with Good Industry Practices and being guided by the relevant provisions of the WBG EHS Guidelines in the case of an Emergency Event to mitigate the effects thereof or where the Operator considers immediate action to safeguard lives or property.

- 6.7.3 The Operator shall develop and implement, in line with Environmental Standards, an emergency preparedness and response plan to deal with emergency scenarios while clearly defining roles and responsibilities in case of any Emergency Event. Upon the occurrence of an Emergency Event, the Operator will forthwith notify the Authority of the same and the actions taken. Following such notification, the Parties will discuss without delay, the further actions which should be taken to mitigate the effects of the Emergency Event.
- 6.7.4 If the Authority considers that any Emergency Event has occurred, the Authority may give notice (which may be oral notice with subsequent written notice) to the Operator specifying the nature of the Emergency Event, which it has identified and the manner in which it requests such Emergency Event to be rectified. The Operator will take all actions to mitigate the effects of such Emergency Event with due diligence. If the Operator fails to comply with such notice promptly, the Authority will be entitled to procure by itself or through any Third Party, such actions, as may be necessary, to remedy such breach by the Operator.
- 6.7.5 The Operator shall make the necessary arrangements at the Terminal available, for meeting exigencies of the Emergency Events, as per the instructions of the Authority.

6.8 O&M Services

- 6.8.1 The Operator shall provide O&M Services to the extent and on the terms of its obligations provided herein either directly or through its Sub-Contractors.
- 6.8.2 Subject to and in accordance with the provisions of this Contract, the Operator shall be entitled to demand, collect, recover Tariff from the Users liable for payment of the Tariff in accordance with the terms of this Contract.
- 6.8.3 While performing the O&M Services, the Operator shall provide Equal Access to all the Users.

6.9 Obligations relating to Change in Ownership

- 6.9.1 The Operator shall not undertake or permit any Change in Ownership, except with the prior written approval of the Authority.
- 6.9.2 Notwithstanding anything to the contrary contained in this Contract, the Operator agrees and acknowledges that:

- (a) all acquisitions of Equity by an acquirer, either by itself or with any Person acting in concert, directly or indirectly, including by transfer of the direct or indirect legal or beneficial ownership or control of any Equity, in aggregate of 20% (twenty percent) or more of the total Equity of the Operator; or
- (b) acquisition of any control directly or indirectly of the Board of Directors of the Operator by any Person either by itself or together with any person acting in concert with it,

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

For the purposes of this Article 6.9.2:

- (i) the expression “acquirer”, “control” and “person acting in concert” has the meaning ascribed thereto in the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeover) Regulations, 2011 or any statutory re-enactment thereof as in force as on the date of acquisition of Equity, or the control of the Board of Directors, as the case may be, of the Operator;
- (ii) the indirect transfer or control of legal or beneficial ownership of Equity shall mean transfer of the direct or indirect beneficial ownership or control of any company or companies whether in India or abroad which results in the acquirer acquiring control over the shares or voting rights of shares of the Operator; and
- (iii) power to appoint, whether by contract or by virtue of control or acquisition of shares of any company holding directly or through one or more companies (whether situated in India or abroad) the Equity of the Operator, not less than half of the directors on the Board of Directors of the Operator or of any company, directly or indirectly whether situated in India or abroad, having ultimate control of 20% (twenty percent) or more of the Equity of the Operator shall constitute acquisition of control, directly or indirectly, of the Board of Directors of the Operator.

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

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

- (a) the lead member, being the technical partner and whose technical capacity has been evaluated for the purpose of its selection, shall hold at least 51% (fifty-one percent) of the Equity of the Operator; and
- (b) each member of the Selected Bidder, whose financial capacity has been evaluated, shall individually hold at least 26% (twenty-six percent) or more of the Equity of the Operator;

till the 1st (first) anniversary of the Appointed Date.

6.10 Obligations relating to Employment of Foreign Personnel and Security Clearance

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

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

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

6.11 Security

- 6.11.1 The Operator shall be responsible for the maintenance of all perimeter fencing around the Terminal and providing the general security within therein, in order to maintain the proper and orderly conduct of its business and the general security.
- 6.11.2 The Authority shall be entitled to deploy its own security services or of any Designated GOI Agency, as it wishes throughout the Terminal for reasons of national security, which includes the security of the Terminal, or to perform its statutory obligations or to protect the health or safety of Persons or to safeguard the environment or to prevent damage to or loss of property in the exercise of its statutory obligations, if the Authority, acting reasonably, considers such urgent actions are required to be taken, in which case, the Authority shall bear its own costs in taking such actions and the Operator shall not be entitled to any compensation for any disruption of its operations or loss or damage resulting from the Authority's actions other than those resulting from its wilful or negligent acts or omissions.
- 6.11.3 The Authority and/or the Designated GOI Agency shall be entitled to inspect and search all vehicles and other modes of transportation including ships, barges and vessels entering the Terminal or departing therefrom and similarly to search or question any Person entering the Terminal or departing therefrom.
- 6.11.4 The Authority shall not be under any obligation to provide any security or related services within the Terminal, but the Authority may at its complete discretion provide any such services if requested by the Operator on such charges and terms as may be determined by the Authority. However, the Authority shall not levy any charges on the Operator for the exercise of its rights under Article 6.11.2 and Article 6.11.3.
- 6.11.5 The Parties acknowledge that security requirements within the Terminal may change from time to time and that representatives of the Parties will meet periodically to review security procedures. The Parties agree to establish, review and implement procedures as may be required from time to time.
- 6.11.6 The deployment of security and standards with respect to operating practices of security personnel shall comply with the relevant provisions of Environmental Standards.

6.12 Access to Terminal

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

6.13 Access for Users to the Terminal

- 6.13.1 The Operator shall regulate the vessels, cargoes and other vehicular traffic within the Terminal in accordance with Applicable Laws and subject to the supervision and control of the Designated GOI Agencies or a substitute thereof, empowered in this behalf under the Applicable Laws.
- 6.13.2 The Parties acknowledge that rules for allocation of individual berths within the Terminal may be made by the Operator in accordance with Applicable Laws and Applicable Permits, such that it:
- (a) prescribes the time and manner in which vessels shall enter and leave the Terminal(s);
 - (b) allocates priorities to vessels and dealing with all matters concerning the allocation of

berths, the timing and manner in which vessels enter/ exit the Terminal; and

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

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

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

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

6.14 Environmental Hazards and Marine Pollution

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

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

6.15 Environmental and Social Management System (ESMS)

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

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

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

6.16 Annual Maintenance Program

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

- (a) a list and technical details of the equipment procured by it and deployed at the Terminal for performing the O&M Services and their operating status and capabilities;
- (b) expected operations, repairs, capital improvements, teardowns and maintenance plans and other maintenance services;
- (c) control strategy and a description of material Sub-Contracts entered or proposed to be entered into by the Operator;
- (d) the Operator's recommendation on any matters affecting the O&M Services such as capital improvement or capital expenditure together with reasons thereof;
- (e) maintenance and administration of support facilities;
- (f) a description of any change in law notified by the Operator affecting the performance of the O&M Services together with a breakdown of the incremental costs associated therewith;
- (g) the Operator's environmental plan describing the actions necessary to ensure that the performance of the O&M Services at the Terminal comply with all Applicable Laws and Applicable Permits;
- (h) status of compliance of Functional Guarantees;
- (i) data regarding other work proposed to be undertaken by the Operator;
- (j) time-table of the proposed number of hours of routine maintenance and overhaul schedules; and
- (k) the timing of such maintenance and the dates and times of shut down or partial closure and reductions of output predicted to occur as a result of implementation of such maintenance program.

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

6.17 Forward Major Maintenance & Improvement Program

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

- (a) for the Authority's assets at the Terminal; and
- (b) any likely expenses to be made by way of major repair of the existing infrastructure facilities

in the forthcoming 1 (one) Accounting Years or in the period remaining prior to the termination of the contract such that the Functional Guarantees of the Operator are not affected.

6.17.2 Such details shall also include:

- (a) expected operations, repairs and major maintenance plans including those required to be undertaken by the Authority;
- (b) indicative budgetary requirements for major repair of the existing infrastructure of the Authority at the Terminal(s); and
- (c) data regarding other work proposed to be undertaken by the Authority or Operator, as the case may be.

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

6.17.4 If the Forward Major Maintenance & Improvement Program requires upto Rs. 1,00,00,000/- (INR One Crore) for the forthcoming period of 1 (one) years, then, the same shall be undertaken and performed by the Operator at its own cost and risk.

6.17.5 Expenditure relating to renovation, upgradation, capital improvements, teardowns and replacements the Authority shall be required to undertake such work and pay for the expenses.

6.17.6 If the repair, renovation, upgradation or major maintenance of the existing infrastructure at the Terminal are required to be undertaken by the Authority as per Article 6.17.5 above, then the Authority shall indicate its willingness to undertake the same within 3 (three) months of receiving the Forward Major Maintenance & Improvement Program

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

6.17.8 If:

- (a) the Authority refuses to undertake any such activity which is required to be undertaken by it as per Article 6.17.5 above; or
- (b) the Authority does not respond to the Operator within the time period provided in Article 6.17.5;

then the Operator shall have the right to either (i) subject to the approval of the Authority, undertake the activities required of the Authority under Article 6.17.5 at its own cost and continue providing the O&M Services in accordance with this Contract, or (ii) continue the O&M Services in accordance with this Contract without undertaking the activities required of the Authority under Article 6.17.5, in which case the Operator will be excused from meeting the Functional Guarantees to the extent affected by activities required under Article 6.17.5, or (iii) terminate the Contract by giving a notice of not less than 12 (twelve) months. If the Operator

gives Termination notice to the Authority, then during the Termination notice period, the Operator shall continue to provide the O&M Services and shall have the right to collect the Tariff in accordance with this Contract.

6.18 *Branding of Terminal*

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

7. DISCLAIMER

7.1 *Disclaimer*

- 7.1.1 The Operator acknowledges on its behalf and on behalf of the Selected Bidder, that prior to the execution of this Contract, the Selected Bidder and the Operator has, after a complete and careful examination, made an independent evaluation of the RFP, scope of O&M Services, Technical Specifications, Terminal, requirements of the Applicable Permits for effectuating its rights under this Contract, existing structures, local conditions, dredging facilities, physical qualities of ground, subsoil and geology, contingencies, climatic, hydrological, natural conditions, weather, flood levels, natural drainage, environmental aspects, availability of local labour, materials and their rates traffic volumes, and all information provided by the Authority or obtained, procured or gathered otherwise, and has determined to its satisfaction the accuracy or otherwise thereof and the nature and extent of difficulties, risks and hazards as are likely to arise or may be faced by it in the course of performance of its obligations hereunder. The Authority makes no representation whatsoever, express, implicit or otherwise, regarding the accuracy, adequacy, correctness, reliability and/or completeness of any assessment, assumption, statement or information provided by it herein or under the Applicable Laws and the Operator confirms on its behalf and on behalf of the Selected Bidder that it shall have no claim whatsoever against the Authority in this regard.
- 7.1.2 The Operator acknowledges and hereby accepts on its behalf and, where the Operator is a special purpose vehicle, on behalf of the Selected Bidder, the risk of inadequacy, mistake or error in or relating to any of the matters set forth in Article 7.1.1 above and hereby acknowledges and agrees that the Authority shall not be liable for the same in any manner whatsoever to the Operator, the Selected Bidder and its Affiliates or any Person claiming through or under any of them.
- 7.1.3 The Parties agree that any mistake or error in or relating to any of the matters set forth in Article 7.1.1 above shall not vitiate this Contract or render it voidable.
- 7.1.4 In the event that either Party becomes aware of any mistake or error relating to any of the matters set forth in Article 7.1.1 above, that Party shall immediately notify the other Party, specifying the mistake or error, provided, however, that a failure on part of the Authority to give any notice pursuant to this Article 7.1.4 shall not prejudice the disclaimer of the Authority contained in Article 7.1.1 and shall not in any manner shift to the Authority any risks assumed by the Operator pursuant to this Contract.
- 7.1.5 Except as otherwise provided in this Contract, all risks relating to the performance of the O&M Services shall be borne by the Operator and the Authority shall not be liable in any manner for such risks or the consequences thereof.

7.2 *Information*

- 7.2.1 The Operator will be responsible for obtaining all information required for the performance of its obligations under this Contract.
- 7.2.2 The Operator has clarified and carefully examined all the documents, data and such other matters as may be necessary or desirable for performing its obligations under this Contract, to its entire satisfaction. Further, the Operator will not be permitted to raise any claims/ Disputes against the Authority and the Authority will not be liable for the same in any manner whatsoever. The Operator will indemnify and hold the Authority harmless of any type of injury or death of any of the Operator's Staff and/or any damage or loss of any property of the Operator due to the above.
- 7.2.3 The Operator also confirms that it has full knowledge of the various Applicable Laws, Applicable Permits and their implications on this Contract. The Operator will not be permitted

to raise any claim/ Dispute against the Authority and the Authority will not be liable for the same in any manner whatsoever for the ignorance of such laws or rules or policies. The Operator will also keep himself up-to-date for various new policies applicable specifically to the inland waterway sector and changes/amendments in such policies.

- 7.2.4 The Operator confirms that it has full knowledge of the rules and regulations under the Applicable Laws for grant of work permit visas and the absence of grant or refusal of any work permit visas will not excuse the Operator for its failure to perform its obligations under this Contract.

8. TARIFF AND ROYALTY

8.1 *Tariff*

On and from the Appointed Date and till the end of the Operating Period, the Operator shall have the sole and exclusive right to demand and collect Tariff from the Users subject to and in accordance with this Contract, *provided that* the Operator may levy, collect and appropriate the Service Charges and Other Charges at such rates as it may determine, by public notice to the Users.

- 8.1.1 The Operator acknowledges and agrees that upon payment of Tariff, any User shall be entitled to have Equal Access to the Terminal and can avail the O&M Services. The Operator shall not place, or cause to be placed, any restriction on such use, except to the extent specified in any Applicable Laws, Applicable Permits or the provisions of this Contract.
- 8.1.2 The Operator acknowledges and agrees that any User, who is exempted from the payment of the Tariff as per the Applicable Laws and the Applicable Permits, shall be entitled to have the access and the use of the Terminal, without any restrictions except to the extent specified in any Applicable Laws, Applicable Permits or the provisions of this Contract. In addition, the Operator may issue passes to its own employees and the employees of contractors, Sub-Contractors, agents and other Persons for free entry into the Terminal, subject to Applicable Laws, Applicable Permits and the provisions of this Contract.
- 8.1.3 The Operator shall not give any preferential treatment to its Affiliates in any form whatsoever including in terms of the levying and collection of the Tariff and shall treat the Affiliates at par with other Users.
- 8.1.4 The Statutory Charges shall belong to the Authority and the Operator shall collect the same on behalf of the Authority. With effect from the Appointed Date, the Operator shall remit the Statutory Charges collected by it in full to the Authority without any deductions or withholding in any manner whatsoever, no later than 3 (three) Business Days from the close of each day. The Authority hereby authorises the Operator to collect the Statutory Charges on its behalf. The Parties further agree that failure by the Operator to collect or deposit the Statutory Charges would be a material breach of its obligations under the Contract, and the Authority shall have right to recover any such uncollected or non-deposited Statutory Charges from the Operator, without prejudice to its rights and remedies under Article 20.3.1.

8.2 *Levy and Recovery*

- 8.2.1 The Operator shall levy and recover Tariff from the users of the Project Facilities and Services as per Schedule 8 to this Contract. The tariff document placed in SCHEDULE 8 to this contract prescribes the maximum tariff that can be levied by the Operator (“**Ceiling Tariff**”)
- 8.2.2 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.
- 8.2.3 The revised Ceiling Tariff shall be regulated as per Section 17 of the Inland Waterways Authority Act, 1985

8.3 *Penalty for Evasion of Tariff*

Except as otherwise provided in this Contract, if any User uses the Terminal or any part thereof, without payment of the due Tariff, the Operator shall, subject to Applicable Laws and Applicable Permits, be entitled to determine and collect from such Person, the Tariff due and up to 5 (five) times the amount thereof towards Damages for attempt to make unauthorised use of the Terminal or any facility thereof.

8.4 Revision of Fee

The Operator may, in its discretion, revise the Service Charges and Other Charges from time to time in the form and manner as it may deem fit to suitably reflect variation in the market condition.

8.5 Display of Tariff

- 8.5.1 The Operator shall on its website and its office, maintain and provide the applicable rates of the Tariff for information of the Users.
- 8.5.2 The Operator shall not revise, display or collect any amount in excess of the rates of Tariff except as may be otherwise authorized by IWAI Act.
- 8.5.3 Any discount or reduction that the Operator in its discretion decides to offer on the Service Charges or Other Charges, shall be uniformly applicable to all the Users on Equal Access basis. The Operator may offer a discount, if any, on prescribed rates. However, the discount has to be from the revenue earned by the Operator only and the royalty payable to the Authority shall not get affected due to such discounts.

8.6 Royalty

- 8.6.1 The Operator shall be responsible for the payment of a Royalty equal to INR _____ per MT to the Authority on Cargo Handled¹ during the previous month.
- 8.6.2 For Non-Riverine Cargo, such payments shall commence from 2nd month (pertaining to previous month) after Appointed Date until Termination.
- 8.6.3 For Riverine Cargo, Operator would not be liable to pay Royalty on Riverine Cargo handled at the Terminal up to the 2nd Anniversary of Appointed Date. However, if during the 2nd year of the O&M contract, actual Riverine Cargo throughput handled at the Terminal was less than the corresponding Minimum Guaranteed Cargo (MGC) slab as specified in Article 8.6.6., Operator shall pay the Authority a Royalty commensurate to the difference between Minimum Guaranteed Cargo and actual Riverine Cargo throughput handled at the Terminal during the 2nd year of the O&M contract.

For instance, the MGC slab for the 2nd year of the O&M contract is 0.09 MMTPA and if actual Riverine Cargo throughput handled during the 2nd year was 0.12 MMTPA, then Operator would not be liable to pay any royalty on Riverine Cargo handled at the Terminal to the Authority during the 2nd year of the operating period. If, on the other hand, the actual Riverine Cargo handled was 0.05 MMTPA, the Operator would be required to pay royalty on Riverine Cargo handled commensurate to 0.04 MMTPA (difference of 0.09 MMTPA and 0.05 MMTPA) to the Authority.

Royalty payment on Riverine Cargo handled at the Terminal shall commence from 2nd month (pertaining to previous month) after 2nd anniversary from Appointed Date until Termination if the initial Operating Period of 2 (two) years is extended for an additional 3 (three) years.

- 8.6.4 If the operating period is extended for another 3(three) years, Operator shall pay a royalty on Cargo Handled to the Authority in line with the following:
 - (a) Operator shall receive 20% discount on riverine cargo handled in 3rd year of O&M contract if actual riverine cargo throughput during 2nd year exceeded Minimum Guaranteed Cargo

¹ Cargo handled shall include both riverine and non-riverine cargo

slab of 2nd year

- (b) Operator shall receive 20% discount on riverine cargo handled in 4th year of O&M contract if actual riverine cargo throughput during 3rd year exceeded Minimum Guaranteed Cargo slab of 3rd year
- (c) Operator shall receive 20% discount on riverine cargo handled in 5th year of O&M contract if actual riverine cargo throughput during 4th year exceeded Minimum Guaranteed Cargo slab of 4th year

8.6.5 The Royalty under the provisions of this Article 8.6 shall be due and payable within 3 (three) Business Days of the close of each calendar month for the previous month. The accounts of the Operator shall be reconciled: (a) within 30 (thirty) Business Days of the end of each quarter of an Accounting Year, and (b) on annual basis as per Article 14.1.2, to ascertain the total Service Charges and Other Charges levied and collected by the Operator during such period, and the Royalty payable on the same. The Operator shall provide 'open book' access to the representatives of the Authority for such reconciliation purposes. Any adjustment (either additional payment or reduction) that may be required on the basis of such reconciliation, shall be made in the immediately following monthly payment of the Royalty.

8.6.6 The Operator shall endeavor to achieve a Minimum Guaranteed Cargo throughput as per below schedule:

S No	Year	Recommended Minimum Riverine Cargo- measured annually (mmtpa)
1	2	0.09
2	3	0.18
3	4	0.26
4	5	0.35

For avoidance of doubt, it is clarified that MGC slabs may be pro-rated based on LAD availability.

9. ESCROW ARRANGEMENT

9.1 Escrow Account

The nature and scope of the opening and maintaining an Escrow Account are fully described in the agreement (“**Escrow Agreement**”) to be entered into amongst the Operator, the Authority and the Escrow Bank, which shall be substantially in the form set forth in SCHEDULE 7 (*Format of Escrow Agreement*).

9.2 Deposits into Escrow Account

9.2.1 The Operator shall deposit or cause to be deposited all inflows and receipts (including all taxes) arising due to the performance of the O&M Services or any right granted to it pursuant to this Contract but at all times excluding the Statutory Charges, the proceeds of any refundable payment deposits, capital receipts and insurance claims, into the Escrow Account.

9.2.2 Any amounts payable to the Operator pursuant to the Termination of this Contract shall be paid through the Escrow Account and such amount shall be subject to the terms of this Contract and the Escrow Agreement.

9.3 Withdrawals

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

- (a) taxes to the relevant Government Instrumentality;
- (b) Royalty due and payable to the Authority, less any Damages payable by the Authority to the Operator, which has not been disputed/ contested by the Authority for a period of 3 (three) months from the date of receipt of any such claim from the Operator, and if any such claim has been disputed/ contested by the Authority, then, upon the completion of such adjudication proceedings;
- (c) all payments and/ or Damages payable to the Authority, which has not been disputed/ contested by the Operator for a period of 3 (three) months from the date of receipt of any such claim from the Authority, and if any such claim has been disputed/ contested by the Operator, then, upon the completion of such adjudication proceedings; and
- (d) balance, if any, in accordance with the instructions of the Operator.

9.3.2 Notwithstanding anything contrary contained elsewhere in this Contract, the withdrawal of any amount from the Escrow Account shall be regulated in accordance with the provisions of the Escrow Agreement. The Escrow Bank will not release or allow withdrawals from the Escrow Account of any amount, except in the manner as provided in the Escrow Agreement.

10. SECURITIES

10.1 Issuance of Securities

The Operator will obtain (at its cost) and provide the securities specified in this Article 10, for proper performance of its obligations under this Contract, in favour of the Authority.

10.2 Contract Performance Security

10.2.1 The Operator shall, for the performance of its obligations hereunder in respect of the O&M Services, provide to the Authority, no later than 60 (sixty) days from the Effective Date, an irrevocable and unconditional guarantee from a Bank for a sum equivalent to INR 49.95 lakhs (INR Forty nine lakhs and ninety five thousand only) in the form set forth in SCHEDULE 6 (*Format of Contract Performance Security*) ("**Contract Performance Security**"), with a validity upto 1 (one) year from the Appointed Date and shall be renewed not less than 1 (one) month prior to expiry of its validity period, for an additional term of 1 (one) year.

10.2.2 Until such time the Contract Performance Security is provided by the Operator pursuant hereto and the same comes into effect, the Bid Security shall remain in force and effect, and upon such provision of the Contract Performance Security pursuant hereto, the Authority shall release the Bid Security to the Operator.

10.2.3 Notwithstanding anything to the contrary contained in this Contract, in the event Contract Performance Security is not provided by the Operator within a period of 60 (sixty) days from the Effective Date, the Authority may encash the Bid Security and appropriate the proceeds thereof as Damages, and thereupon all rights, privileges, claims and entitlements of the Operator under or arising out of this Contract shall be deemed to have been waived by, and to have ceased with the concurrence of the Operator, and this Contract shall be deemed to have been terminated by mutual agreement of the Parties.

10.3 Invocation

10.3.1 The Operator acknowledges and agrees that the Contract Performance Security (and shall include Bid Security until its replacement) will be held by the Authority as security for the satisfactory completion of the obligations of the Operator including the fulfilment of the Conditions Precedent by the Operator and to ensure that the Functional Guarantees are maintained at all times in accordance with this Contract, and recovery of any amounts due to the Authority from the Operator. Any right of the Authority under the Contract Performance Security are without prejudice to its other rights and remedies hereunder or in Applicable Laws.

10.3.2 The Authority will have the unconditional option under the Contract Performance Security to invoke and encash the same and will be entitled to recover from such Contract Performance Security, Damages and any other amounts which may become due to the Authority from the Operator.

10.3.3 In the event of encashment of the Contract Performance Security by the Authority, the Authority would intimate the Operator of the reasons/ circumstances for the encashment within 15 (fifteen) Business Days after encashment of the same. Failure to replenish the Contract Performance Security within 3 (three) days of its invocation, shall entitle the Authority to terminate this Contract in accordance with Article 20.3 (*Termination for Operator's Default*).

10.4 References to Contract Performance Security

References to Contract Performance Security occurring in this Contract for and in respect of any period prior to the delivery of the Contract Performance Security by the Operator to the Authority, or in respect of any period subsequent to the expiry or release thereof, as the case may be, shall be construed solely for the purposes of calculating the amount of Damages payable

by the Operator, and the amount so determined may be appropriated from the Bid Security or Contract Performance Security, as the case may be or available as on such date.

11. THE TERMINAL AND RIGHT OF WAY

11.1 *The Terminal*

The site of the Varanasi Terminal described in Schedule 1 (*Details of Terminal*) in respect of which the Right of Way shall be provided and granted by the Authority to the Operator as a licensee under and in accordance with this Contract.

11.2 *Licence, Access and Right of Way*

11.2.1 The Authority hereby grants to the Operator access to the Terminal for carrying out any surveys, investigations and tests that the Operator may deem necessary during the period between the Effective Date and the Appointed Date. It being expressly agreed and understood that the Authority shall have no liability whatsoever in respect of survey, investigations and tests carried out or work undertaken by the Operator on or about the Terminal pursuant hereto in the event of Termination or otherwise.

11.2.2 In consideration of the payment of the Royalty, this Contract and the covenants and warranties on the part of the Operator contained herein, the Authority hereby grants to the Operator, commencing from the Appointed Date and upto the date of Termination, leave and licence rights in respect of all the land (along with any buildings, constructions or immovable assets, if any, thereon) forming part of the Terminal which is described, delineated and shown in Schedule 1 (*Details of Terminal*), on an “as is where is” basis, free of any encumbrances, to operate and maintain the Terminal, together with all and singular rights, liberties, privileges, easements and appurtenances whatsoever, hereditaments or premises or any part thereof belonging to or in any way appurtenant thereto or enjoyed therewith, for the duration of the Operating Period and, for the purposes permitted under this Contract, and for no other purpose whatsoever, in accordance with the terms and conditions set forth herein.

11.2.3 The licence, access and Right of Way granted by this Contract to the Operator in respect of land and water channels shall always be subject to existing rights of way and the Operator shall perform its obligations in a manner that the existing land and water channels or an alternative thereof are open to traffic at all times during the Operation Period.

11.2.4 The licence granted hereunder shall terminate automatically and forthwith, without the need for any action to be taken by the Authority to terminate the licence, upon the Termination of this Contract for any reason whatsoever. The Parties expressly agree that notwithstanding any temporary or permanent structures erected on the Terminal by the Operator or its sub-licensees, the licence in respect of the Terminal shall automatically terminate, without any further act of the Parties, upon Termination of this Contract.

11.2.5 The Operator hereby appoints the Authority (acting directly or through a nominee) to be its true and lawful attorney, to execute and sign in the name of the Operator a transfer or surrender of the licence granted hereunder at any time after the Termination, a sufficient proof of which will be the declaration of any duly authorised officer of the Authority, and the Operator consents to it being registered for this purpose.

11.2.6 It is expressly agreed that trees in the Terminal are property of the Authority except that the Operator shall be entitled to exercise usufructuary rights thereon during the Operating Period.

11.3 *Procurement of the Terminal*

11.3.1 Pursuant to the satisfaction of the obligations as per Article 4.1.2 and 4.1.3, the Authority’s Manager and the Operator shall, at any mutually agreed date and time, which shall be within 30 (thirty) days of such completion, jointly inspect the Varanasi Terminal and prepare a memorandum containing an inventory at the Terminal including the vacant and unencumbered land, buildings, structures, road works, quay wall, cargo handling equipment, other equipment,

trees and any other immovable property on or attached to the Terminal. Signing of the memorandum, in 2 (two) originals, by the authorised representatives of the Parties shall be deemed to constitute a valid licence, Right of Way and handover of the Varanasi Terminal to the Operator for the O&M Services to be provided by the Operator during the Operating Period under and in accordance with the provisions of this Contract and for no other purpose whatsoever.

11.3.2 On and after signing the memorandum referred to in Article 11.3.1, the Operator shall maintain a round-the-clock vigil of the Terminal and shall protect the Terminal by ensuring and procuring that no occupations, encroachments or encumbrances thereon takes place, and in the event of any occupations, encroachments or encumbrances on any part thereof, the Operator shall report such the same forthwith to the Authority and undertake its removal at its cost and expenses.

11.3.3 The Operator shall further neither create or permit any of its Sub-Contractor or other Person claiming through or under the Operator to place or create any occupations, encroachments or encumbrances or security interest over all or any part of the Terminal or on any rights of the Operator therein or under this Contract, save and except as otherwise expressly set forth in this Contract.

11.4 *Terminal to be free from Encumbrances*

Subject to the provisions of Article 11.3, the Terminal shall be made available by the Authority to the Operator pursuant hereto free from all encumbrances and occupations and without the Operator being required to make any payment to the Authority on account of any costs, compensation, expenses and charges for the acquisition and use of such Terminal for the duration of the Operating Period, except insofar as otherwise expressly provided in this Contract. The existing rights of way, easements, privileges, liberties and appurtenances to the Terminal shall not be deemed to be encumbrances. It is further agreed that the Operator accepts and undertakes to bear any and all risks arising out of the inadequacy or physical condition of the Terminal.

11.5 *Special/ temporary Right of Way*

The Operator shall bear all costs and charges for any special or temporary right of way required by it in connection with access to the Terminal. The Operator shall obtain at its cost such facilities on or outside the Terminal as may be required by it for the purposes of the O&M Services and the performance of its obligations under this Contract. The Authority agrees that it shall endeavor to provide such temporary facilities to the Operator on best effort basis and subject to payment of such charges as it may reasonably specify.

11.6 *Access to the Authority*

The license to the Terminal and Right of Way granted to the Operator herein shall always be subject to the right of access of the Authority, its lessor, its employees, agents and representatives for inspection, viewing and exercise of their rights and performance of their obligations under this Contract or as per the requirements of the Applicable Laws and Applicable Permits.

11.7 *Geological and Archaeological Finds*

The mining, geological or archaeological rights do not form part of the licence granted to the Operator under this Contract and the Operator hereby acknowledges that it shall not have any rights or interest in the underlying minerals, fossils, antiquities, structures or other remnants or things either of particular geological or archaeological interest and that such rights, interest and property on or under the Terminal shall vest in and belong to the Authority or the concerned Government Instrumentality. The Operator shall take all reasonable precautions to prevent its workmen or any other Person from removing or damaging such interest or property and shall inform the Authority forthwith of the discovery thereof and comply with such instructions as the Authority or the concerned Government Instrumentality may reasonably give for the

removal of such property. Any reasonable expenses incurred by the Operator hereunder shall be reimbursed by the Authority.

12. SUB-CONTRACTORS

12.1 Sub-Contracting

The Operator may sub-contract any of its obligations to a Sub-Contractor. Any sub-contracting in terms of this Article 12 will not relieve or discharge the Operator from any of its liabilities or obligations under this Contract and the Operator will be responsible for the acts, defaults and neglects of all Sub-Contractors and its agents, servants or workmen, or any of them, as fully, as if they were the acts, defaults or neglects of the Operator under the terms of this Contract and the Authority will not be liable on account of the same. No act or omission on the part of any of the Sub-Contractors will allow the Operator to claim an increase in the Tariff, or any other dispensation pursuant to this Contract.

12.2 Sub-Contractors

12.2.1 If the Operator enters into any arrangement in accordance with Article 12, the Operator will ensure that (unless agreed by the Authority in writing), in respect of each material contract or Sub-Contract entered into in connection with the performance of the O&M Services that the contract or Sub-Contract can be freely assigned at the Authority's discretion to the Authority or any of its nominees in the event of Termination of this Contract or any change of control of the Operator without requiring consent from the contractors or Sub-Contractors.

12.2.2 Any arrangement entered into by the Operator in terms of Article 12, will not relieve or discharge the Operator from any of its liabilities or obligations under this Contract and the Operator will be responsible for the acts, defaults and neglects of all such Sub-Contractors and its agents, servants or workmen, or any of them, as fully, as if they were the acts, defaults or neglects of the Operator under the terms of this Contract.

12.3 Form of Sub-Contracts

12.3.1 The Operator will ensure that all contracts with its Sub-Contractors are made in writing. The Operator agrees that the contracts entered into with its Sub-Contractors will be consistent with this Contract and it being expressly agreed and understood that the Authority will have no liability whatsoever towards the Operator's Sub-Contractors.

12.3.2 Each instrument evidencing any contract with its Sub-Contractors will provide for step- in rights to the Authority in case of Termination of this Contract in form and substance satisfactory to the Authority.

12.4 Copies of Sub-Contracts

The Operator will provide to the Authority copies of the executed Sub-Contracts along with all schedules, annexure, exhibits and other relevant details, with its Sub-Contractors.

12.5 Sub-Contracts with Affiliates

12.5.1 If the Operator enters into a Sub-Contract with an Affiliate, such transaction shall be on an arm's length basis and in compliance with the provisions of the Companies Act, 2013. The Operator shall inform the Authority and disclose details of such Sub-Contract no later than 90 (ninety) days from entering into any such related party transaction or a Sub-Contract.

12.5.2 Notwithstanding anything to the contrary, the Operator agrees that in respect of any transactions with Affiliates, no shareholder of the Operator, and/or key managerial Person that has an interest in the Sub-Contract, shall be involved in the design of the contract, or the contracting process or decision-making.

12.6 Authority's Rights

The Operator warrants that no arrangement, agreement or understanding with any Sub-Contractor will directly or indirectly interfere with, restrict or impede the Authority in the exercise of any right or remedy under this Contract.

12.7 Evidence of Payment

- 12.7.1 The Operator will promptly pay all amounts due to any Sub-Contractor. The Operator will, by an appropriate agreement with each Sub-Contractor, require each Sub-Contractor to make payments to its sub-contractors, if any, in a timely manner. The Authority will have no obligation to pay or to verify the payment of any monies to any Sub-Contractor. However, the Authority may, at its discretion, verify the payments made by the Operator to the Sub-Contractors.
- 12.7.2 The Operator will provide to the Authority, documentary evidence that the Operator has made or caused to be made all payments due to its Sub-Contractors.

13. INSURANCE

13.1 Obligation to Maintain Insurance

13.1.1 The Operator will, from the Appointed Date, at its cost and expense, obtain and maintain in effect, or cause to be obtained and maintained in effect, till the expiry of the Operating Period, the comprehensive insurance policies in respect of the following:

- (a) bodily injury or death caused due to the performance of the O&M Services and other Third Party including contract labours/ workers' liabilities on account of obstruction, loss of amenity, trespass or nuisance;
- (b) claims for damage or destruction to Third Party property, caused due to the performance of the O&M Services;
- (c) liability on account of causing pollution due to performance of the O&M Services;
- (d) loss or damage to the items and equipment used by the Operator, the Operator's Staff or its Sub-Contractors (whether owned or hired by them), excluding the Terminal; and
- (e) adequate professional indemnity insurance for any and all claims, liability, action, demand, judgment, loss, damage, costs and expenses (including legal fees) that may be sustained by the Authority arising out of the acts, omissions, negligence or Wilful Misconduct with respect to their professional obligations.

13.1.2 The insurance cover to be obtained by any Party pursuant to this Contract shall sufficiently protect its interests in accordance with Applicable Laws and Applicable Permits.

13.1.3 The Operator or its Sub-Contractors will comply with all warranties and conditions stipulated by the insurers in the insurance policies.

13.1.4 The Operator will conform to the conditions of all insurances and all reasonable requirements of insurers in connection with the raising and/or preparing and/or following claims process and/or any other requirement for settlement of claims, the recovery of losses and the preventive measures.

13.1.5 The Operator will not take or omit to take any step, the taking or omission of which may result in jeopardizing or reducing claim under any insurance policy. If any claim under any insurance policy is reduced or jeopardized as a result of the Operator not following the terms and conditions or warranties of the insurance policy, then, the Operator will, at its cost and expense, pay any and all deductible amounts relating to such insurance claim.

13.1.6 To the extent that such disclosure is within its control, the Operator will ensure that full disclosure of the following is made to those insurers providing insurance coverage which is required to be taken out and maintained by the Operator pursuant to this Contract:

- (a) all information which the insurers specifically request for in writing to the Operator to be disclosed;
- (b) all information which is of a type which the insurance advisor in relation to the relevant policy advises in writing to the Operator should be disclosed to insurers;
- (c) details of any significant problems with respect to the performance of the O&M Services; and
- (d) any information which the Operator, acting in accordance with Good Industry Practice, should reasonably consider to be significant.

13.2 Insurance of Authority

Save and except as provided in Article 13.1 above, the Authority shall be required to maintain all other insurance required at the Terminal.

13.3 Insurance Certificates

The Operator will deliver to the Authority, certificates of insurance taken by it (along with copies of the insurance policies), within 30 (thirty) days of the Appointed Date, evidencing that the required policies are in full force and effect. The Operator will ensure that the said certificates provide, that a minimum of a 90 (ninety) days' notice will be provided to the Authority by the insurers, prior to lapse, cancellation of or material modification to the respective policy.

13.4 Sub-Contractor's Insurance

The Operator will ensure that, where applicable, its Sub-Contractor(s) will obtain and maintain in effect adequate insurance policies for their personnel and vehicles and for work executed by them under the Contract, unless such Sub-Contractors are covered by the policies obtained by the Operator, pursuant to Article 13.1.

13.5 Failure to Obtain and/or Maintain Insurance

If the Operator fails to obtain and/or maintain in effect the insurance policies referred to in Article 13.1, the Authority may obtain and maintain the same, from time to time. The Operator shall be liable to make payment of all such amounts in the form and manner as may be demanded by the Authority. Any such unpaid amount may be recovered by the Authority as a debt due from the Operator.

13.6 Deductibles

All excesses (deductibles), exclusions or limitations and expenses relating to any claims, legal and other expenses applying under the insurance policies obtained by the Operator (in so far as they concern risks for which it is responsible under the terms of this Contract) will be to the account of the Operator.

14. AUDIT, INFORMATION, REPORTS AND INSPECTION

14.1 Audited Accounts

- 14.1.1 The Operator shall maintain books of accounts recording all its receipts (including all the revenues derived/ collected by it from or on account of the Tariff collected by it), income, expenditure, payments, assets and liabilities, in accordance with this Contract, Good Industry Practice, Applicable Laws and Applicable Permits. The Operator shall provide 2 (two) copies of its audited balance sheet, cash flow statement and profit and loss account, along with a report thereon by its Statutory Auditors, within 180 (one hundred eighty) days of the close of each Accounting Year, to which they pertain. The Authority has the right, either through itself or through any of its authorised representative, to inspect the records of the Operator during office hours and require copies of relevant extracts of books of accounts, duly certified by the Statutory Auditors, and in the event of any discrepancy or error being found, the same shall be rectified and such rectified account shall form the basis of payments by either Party under this Contract.
- 14.1.2 Additionally, the Operator shall, on or before the 31st (thirty-first) day of May of each Accounting Year, provide to the Authority, for the preceding Accounting Year, a statement duly audited by its Statutory Auditors giving summarised information on:
- (a) the traffic count for each category of Users using the Terminal or any facility therein and liable for payment of Tariff therefore;
 - (b) the Tariff charged and received, and all other revenues derived from the Terminal due to the performance of the O&M Services; and
 - (c) such other information as the Authority may reasonably require.
- 14.1.3 The Operator shall, within 30 (thirty) days of the close of each quarter of an Accounting Year, furnish to the Authority its unaudited financial results in respect of the preceding quarter, in the manner and form prescribed by the Securities and Exchange Board of India for publication of quarterly results by the companies listed on a stock exchange.

14.2 Appointment of Auditors

- 14.2.1 The Operator shall appoint, and have during the subsistence of this Contract as its Statutory Auditors, a firm chosen by it from the mutually agreed list of 5 (five) reputable firms of chartered accountants (“**Panel of Chartered Accountants**”) identified by the Authority. All fees and expenses of the Statutory Auditors shall be borne by the Operator.
- 14.2.2 The Operator may terminate the appointment of its Statutory Auditors in accordance with the provisions of the Companies Act, 2013, subject to the replacement Statutory Auditors being appointed from the Panel of Chartered Accountants.
- 14.2.3 Notwithstanding anything to the contrary contained in this Contract, the Authority has the right, but not the obligation, to appoint at its cost from time to time and at any time, another firm (“**Additional Auditors**”) from the Panel of Chartered Accountants to audit and verify all those matters, expenses, costs, realisations and things which the Statutory Auditors are required to do, undertake or certify pursuant to this Contract.
- 14.2.4 Further, the Operator shall change the Statutory Auditor from time to time to comply with the provisions of the Companies Act, 2013 and any rules and regulations framed

thereunder.

14.3 Certification of claims by Statutory Auditors

Any claim or document provided by the Operator to the Authority in connection with or relating to receipts, income, payments, costs, expenses, accounts or audit, and any matter incidental thereto shall be valid and effective only if certified by its Statutory Auditors. Such certification shall not be required for exchange of information in the normal course of business.

14.4 Reports

14.4.1 The Operator will provide to the Authority with both physical and electronic copies of such reports as are required by the Authority on a quarterly basis, and more particularly as stated in Schedule 4 (*Reporting Requirements*) and will comply with all reporting requirements prescribed by Applicable Laws or set out in the O&M Manuals and any Applicable Permits. In addition, the Operator will submit the following information to the Authority:

- (a) any litigation or material claims, disputes or actions, threatened or filed, concerning the performance of O&M Services to be performed hereunder;
- (b) any refusal or threatened refusal to grant, renew or extend or any action pending or threatened that might affect the granting, renewal or extension of any Applicable Permits;
- (c) any dispute with any Government Instrumentality;
- (d) all penalties imposed or notice of violation issued by any Government Instrumentality; and
- (e) any environment, safety and labour related matters or compliances associated with the performance of the O&M Services.

14.4.2 The Authority may from time to time specify any changes to be made to any of the formats for any report or plan required hereunder. The relevant revised format will then be adopted by the Operator with effect from the date of the agreed revision. The revised format will be applied in relation to the first period to which such report or plan corresponds to, commencing after the receipt of the Authority's notice specifying such changes.

14.4.3 The Authority will have the right to review and provide its comments on the reports submitted to it under this Article 14.4 which will be binding on the Operator and conduct technical audits as may be required. This review by the Authority will not be construed by the Operator, as limiting any of its responsibilities and liabilities for mistakes and deviations from the requirements, specified under the Functional Guarantees and other terms of this Contract.

14.5 Books and Records

14.5.1 The Operator will in accordance with Good Industry Practice maintain complete, accurate and up-to-date records as may be required under Applicable Laws, including records of

the time spent by the Operator's Staff in performance of the obligations under this Contract and the O&M Services performed by the Operator.

14.5.2 The Operator will ensure that such books and records are maintained in English language and are separate and independent from its own books and records. The Operator will retain all such books and records for the Operating Period and thereafter for a minimum period of 2 (two) years, or for a longer period, if required, under Applicable Laws in accordance with and subject to the provisions of this Contract.

14.5.3 The Operator will regularly provide access at all reasonable times to the entire physical and electronic copies of such books and records to the Authority, within 30 (thirty) days from the end of each month, in relation to the books and records maintained for the immediately preceding previous month.

14.6 Inspection

14.6.1 The Authority, Authority's Personnel and their respective agents will at all times have access to the Terminal, technical documents, materials, records and accounts relating to such operations for the purpose of inspection and review, consistent with relevant safety procedures. The Authority may from time to time designate any Person to visit and inspect the Terminal, to verify and discuss the O&M Services being performed by the Operator under this Contract, with its officers and the Operator's Staff.

14.6.2 During any inspection, the Authority will comply with all of the Operator's safety and security procedures. The Authority will conduct such inspection and reviews in such a manner so as not to interfere unreasonably with the Operator's activities. The Operator will cooperate with the Authority in allowing the access.

14.7 Hand Over of Information, Reports and Records

At the end of the Operating Period, the Operator will hand over all the information, reports, updated books and records as it may have been received or prepared or arranged in respect of the performance of O&M Services to the Authority.

14.8 Dispute Resolution

In the event of there being any difference between the findings of the Authority and the Statutory Auditor, or the findings of the Additional Auditor and the Statutory Auditor, then, the concerned Persons shall meet to resolve the differences and if they are unable to resolve the same, then the Dispute shall be deemed to have arisen between the Parties and such Dispute shall be resolved by the Parties by recourse to the dispute resolution procedure as per Article 22.

15. REPRESENTATIONS AND WARRANTIES

15.1 *Representations and Warranties of the Operator*

15.1.1 The Operator makes the following representations and warranties to the Authority, each of which is true and correct as on the Effective Date and the Appointed Date, and which representations and warranties will continue to be true and correct throughout the Operating Period:

it is duly organised and validly existing under the laws of India, and has full power and authority to execute and perform its obligations under this Contract and to carry out the transactions contemplated hereby;

- (a) it has taken all necessary corporate and other actions under Applicable Law to authorise the execution, delivery and performance of this Contract and to validly exercise its rights and perform its obligations under this Contract;
- (b) this Contract constitutes its legal, valid and binding obligation, enforceable against it in accordance with the terms hereof, and its obligations under this Contract will be legally valid, binding and enforceable obligations against it in accordance with the terms hereof;
- (c) it is subject to Applicable Laws of India, and hereby expressly and irrevocably waives any immunity in any jurisdiction in respect of this Contract or matters arising hereunder including any obligation, liability or responsibility hereunder or issue of jurisdiction;
- (d) the execution, delivery and performance of this Contract will not conflict with, result in the breach of, constitute a default under, or accelerate performance required by any of the terms of its memorandum of association and articles of association or those of any member of the Selected Bidder or any Applicable Laws or any covenant, contract, agreement, arrangement, understanding, decree or order to which it is a party or by which it or any of its properties or assets is bound or affected;
- (e) this Contract has been duly authorized by the Operator's board of directors, and has been duly executed by its legal representative and constitutes a legal, valid and binding obligation of the Operator, enforceable in accordance with its terms, except to the extent that such enforcement may be limited by any bankruptcy, agreement of creditors, insolvency, moratorium or similar laws affecting generally the enforcement of creditors' rights;
- (f) there are no actions, suits, proceedings, or investigations pending or, to its knowledge, threatened against it or any of its Affiliates at law or in equity before any court or before any other judicial, quasi-judicial or any other authority, the outcome of which may result in the breach of this Contract or which individually or in the aggregate may result in any material impairment of its ability to perform any of its obligations under this Contract;
- (g) it has no knowledge of any violation or default with respect to any order, writ, injunction or decree of any court or Government Instrumentality which may result in any Material Adverse Effect on its ability to perform its obligations under this Contract and no fact or circumstance exists which may give rise to such proceedings that would adversely affect the performance of its obligations under this Contract;
- (h) it and its Sub-Contractors have the requisite skill, experience, expertise, capacity, capability, licenses, permits and authorizations to perform its obligations and to satisfy and fulfil all their respective obligations and responsibilities under this Contract;

- (i) neither it nor its Affiliates, have been convicted by a Court of Law or indicted or adverse orders passed by a regulatory authority which could cast a doubt on its ability to undertake the performance of its obligations or which relates to a grave offence that outrages the moral sense of the community;
- (j) neither it nor its Affiliates, have been charge sheeted by any Government Instrumentality or convicted by any Court of Law, in respect of the matters relating to the security and integrity of India;
- (k) no investigation by a regulatory authority is pending either against it and the Affiliates, or against any of its chief executive officer or any of the directors, managers or employees;
- (l) it is not in default under any mortgage, loan agreement, deed of trust, indenture or other agreement evidencing indebtedness to which it is a party or by which it or its property is bound or affected;
- (m) it has complied with Applicable Laws in all material respects and has not been subject to any fines, penalties, injunctive relief or any other civil or criminal liabilities which in the aggregate have or may have a Material Adverse Effect on its ability to perform its obligations under this Contract;
- (n) it shall at no time undertake or permit any Change in Ownership except with the prior approval of the Authority;
- (o) all its rights and interests in the Terminal shall pass to and vest in the Authority upon Termination, in accordance with Applicable Laws and Applicable Permits, free and clear of all encumbrances, liens or claims without any further act or deed on its part or that of the Authority;
- (p) it or its Affiliates has or have substantial experience in the performance of the services similar to O&M Services and the Operator is fully qualified and has the technical, commercial and legal capacity to perform each and all of its obligations under this Contract;
- (q) it has the full knowledge and awareness of all Applicable Laws, and shall perform the O&M Services:
 - (i) in a manner consistent with the terms of this Contract, as per the Good Industry Practice and Applicable Laws;
 - (ii) using the skill, care and diligence to be expected of appropriately qualified and experienced professional engineers with experience in works of a type, nature and complexity similar to the O&M Services performed in the independent inland waterways industry;
 - (iii) in accordance with good modern operation and maintenance principles and of appropriate grade compatible with the intended purpose;
 - (iv) using only materials and goods which are safe and the standards of all workmanship, manufacture and fabrication have conformed in all respects as approved by the Authority, and will be of such quality as is intended for the purpose for which it is intended; and
 - (v) being suitable for the performance of the O&M Services in accordance with the

requirements necessary to meet the performance parameters set out in Article 16.

- (r) no representation or warranty by it contained herein or in any other document furnished by it to the Authority or to any Government Instrumentality in relation to Applicable Permits contains or will contain any untrue or misleading statement of material fact or omits or will omit to state a material fact necessary to make such representation or warranty not misleading;
- (s) no sums, in cash or kind, have been paid or will be paid, by it or on its behalf, to any Person by way of fees, commission or otherwise for securing the Contract or entering into this Contract or for influencing or attempting to influence any officer or employee of the Authority or any Government Instrumentality, in connection herewith or during the bid process;
- (t) the execution, delivery of and performance by the Operator of its obligations under this Contract are not in violation of, or in conflict with any provision of the Operator's organizational or authorizing documents, and do not constitute a default under any contracts, agreements or other instruments to which the Operator is a party or by which it is bound, and is not in violation of, or in conflict with, any term or provision of any Applicable Law of any Government Instrumentality, or the conditions of any Applicable Permits, where such violation or default would adversely affect the Operator's ability to perform its obligations under this Contract;
- (u) there is no legal action, suit, proceeding, inquiry or investigation against the Operator before or by any Government Instrumentality, of which the Operator has received legal notice or of which it has otherwise become aware, that could be reasonably expected to adversely affect its ability to comply with its obligations under this Contract;
- (v) all undertakings and obligations of the Operator arising from the RFP or otherwise shall be binding on the Operator as if they form part of this Contract; and
- (w) the equipment installed by the Operator at the Terminal for the performance of the O&M Services, shall remain deployed at the Terminal and the Operator shall not be entitled to remove the same unless for the purposes of repair and maintenance or replacement and any such removal shall not be without prior approval of the Authority, which approval shall not be unreasonably withheld by the Authority.

15.1.2 The Operator, for and on behalf of each member of the Selected Bidder (if the Selected Bidder is a Consortium), hereby makes the following representations and warranties to the Authority, each of which is true and correct as on the Effective Date and the Appointed Date, and which representations and warranties will continue to be true and correct throughout the Operating Period:

- (a) the members of the Selected Bidder (including the members thereof, if any) has the financial standing and capacity including but not limited to the conditions required to fulfil the Minimum Eligibility Criteria to undertake the performance of its obligations in accordance with the terms of this Contract;
- (b) the information furnished in the Bid by the members of the Selected Bidder and as updated on or before the date of this Contract is true and accurate in all respects as on the date of this Contract;
- (c) neither the members of the Selected Bidder nor its Affiliates, have been convicted

by a Court of Law or indicted or adverse orders passed by a regulatory authority which could cast a doubt on its ability to undertake the performance of its obligations or which relates to a grave offence that outrages the moral sense of the community;

- (d) neither the members of the Selected Bidder nor its respective Affiliates, have been charge sheeted by any Government Instrumentality or convicted by any Court of Law, in respect of the matters relating to the security and integrity of India;
- (e) no investigation by a regulatory authority is pending either against the any member of the Selected Bidder and its Affiliates, or against any of its chief executive officer or any of the directors, managers or employees;
- (f) the members of the Selected Bidder and its Affiliates have the financial standing and resources to fund the required Equity and to raise the necessary finances for undertaking the performance of its obligations in accordance with this Contract;
- (g) the members of the Selected Bidder are duly organised and validly existing under the laws of the jurisdiction of its incorporation or registration, and has requested the Authority to enter into this Contract with the Operator pursuant to the Letter of Award, and has agreed to and unconditionally accepted the terms and conditions set forth in this Contract; and
- (h) all information provided by the members of the Selected Bidder in response to the RFP or otherwise, is to the best of its knowledge and belief, true and accurate in all material respects.

15.1.3 The Authority acknowledges that it is contracting solely for the O&M Services on the basis of the commitments of the Operator expressly set forth herein.

15.1.4 The Authority shall be entitled to the benefit of any Sub-Contractor or manufacturer warranty that extends beyond the Operating Period, and the Operator shall ensure that such warranties are, where possible, assigned to the Authority, and shall execute any assignments or other documents reasonably necessary to assign to the Authority any such warranties.

15.2 Representations and Warranties of the Authority

The Authority makes the following representations and warranties to the Operator, each of which is true and correct as on the Effective Date and Appointed Date, which representations and warranties will continue to be true and correct throughout the Operating Period:

- (a) it has full power and authority to execute, deliver and perform its obligations under this Contract, to carry out the transactions contemplated herein and that it has taken all actions necessary to execute this Contract, exercise its rights and perform its obligations, under this Contract;
- (b) it has the financial standing and capacity to perform its obligations under this Contract;
- (c) this Contract constitutes a legal, valid and binding obligation enforceable against it in accordance with the terms hereof;

- (d) this Contract has been duly authorized by the Authority's management as per the IWAI Act, and has been duly executed by its legal representative and constitutes a legal, valid and binding obligation of the Authority, enforceable in accordance with its terms except to the extent that such enforcement may be limited by any bankruptcy, agreement of creditors, insolvency, moratorium or similar laws affecting generally the enforcement of creditors' rights;
- (e) the execution and delivery of, and performance by the Authority of its obligations under this Contract are not in violation of, or in conflict with, any provision of the Authority's organizational or authorizing documents, and do not constitute a default under any contracts, agreements or other instruments to which the Authority is a party or by which it is bound, and are not in violation of, or in conflict with, any term or provision of any Applicable Law of any Government Instrumentality, or the conditions of any Applicable Permits, where such violation or default would adversely affect the Authority's ability to perform its obligations under this Contract;
- (f) it has no knowledge of any violation or default with respect to any order, writ, injunction or any decree of any court or any legally binding order of any Government Instrumentality which may result in any Material Adverse Effect on the Authority's ability to perform its obligations under this Contract;
- (g) it has complied with Applicable Laws in all material respects; and
- (h) it has good and valid right to the Terminal, and has power and authority to grant a licence in respect thereto to the Operator.

15.3 Disclosure

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

15.4 Damages for Shortfall in Performance

The Operator will be liable to pay the Damages at the rates set out in Schedule 3 (*Functional Guarantees and Damages*), if the Operator fails to meet the respective Functional Guarantees in the performance of the O&M Services.

16. FUNCTIONAL GUARANTEES AND DAMAGES

16.1 *Functional Guarantees*

- 16.1.1 The Operator shall have procured, mobilized made available, all the necessary manpower, items, goods, materials as may be required for the performance of the O&M Services at the Terminal within 1 (one) year from the Appointed Date in accordance with the provisions of Article 4, until the Termination.
- 16.1.2 The Operator shall accordingly achieve the Functional Guarantees as per the critical performance parameters set out in SCHEDULE 3 (*Functional Guarantees and Damages*).
- 16.1.3 If any default occurs in the achievement or maintenance of the Functional Guarantees, the Operator will be liable to pay Damages as per Article 16.2.

16.2 *Damage for shortfall in performance*

The Operator will be liable to pay the damages at the rates set out in SCHEDULE 3 (Functional Guarantees and Damages), if the Operator fails to meet the respective Functional Guarantees in the performance of the O&M Services.

16.3 *Authority to endeavor to provide navigable fairway*

- 16.3.1 The Authority shall endeavor to maintain the following critical performance parameters (“Performance Parameters”):

S. No.	Performance Parameter	Guarantee
(a)	Navigation Aids	Providing of safe navigation and maintenance of 24*7 and 365 days during the Term, the correct navigation aids, to ensure safe access to the Terminal. This includes buoyed channel, alignments and other navigational aids such as GPS and digital maps.
(b)	Navigable fairway	Providing navigable fairway for Varanasi along the terminal front to ensure access to the terminal front and barge turn radius for 330 days in a year

16.4 **Limits for Damages**

- 16.4.1 The Damages as detailed out in SCHEDULE 3 (Functional Guarantees and Damages) which are payable/ paid by the Operator pursuant to this Article 16 will be capped at Rs. 90,00,000/- (Rupees Ninety Lakh).

16.5 Genuine Pre-estimate

16.5.1 The sums for Damages for shortfall in performance as set out in this Article 16 and SCHEDULE 3 (Functional Guarantees and Damages) represent a genuine pre-estimate of the Damages likely to be suffered by the Authority, if the shortfall in performance described in this Article 16 and SCHEDULE 3 (Functional Guarantees and Damages) occurs. The Parties acknowledge that the losses that will actually be sustained by the Authority are uncertain and impossible to determine with precision. The amounts due under Article 16 as Damages will be payable by the Operator without any requirement of proof of the actual loss or damage caused by such breach. The sums set out in Article 16 seek to limit the potential liability of the Operator and constitute Damages and not a penalty.

16.6 Operator's Obligations

16.6.1 The payment of Damages by the Operator in terms of this Article 16 will not in any way relieve the Operator from any of its duties, obligations and responsibilities under this Contract and will be without prejudice to any other rights available to the Authority under this Contract, Applicable Laws or otherwise.

16.6.2 The Authority reserves the right to carry out audits as to whether the O&M Services are being performed in accordance with the guaranteed performance parameters and Functional Guarantees at any time and the comments provided in the audit report will be binding on the Operator.

16.7 Rights at Law

16.7.1 If this Article 16 (or any part hereof) is found for any reason to be void, invalid or otherwise inoperative so as to disentitle the Authority from claiming Damages, the Authority is entitled to claim Damages in accordance with Applicable Law for the shortfall in performance and non-achievement of the Functional Guarantees.

16.8 Calculation of Damages

16.8.1 Based on the submission of the quarterly reports as per Article 14.4, the Authority shall determine and communicate the Damages payable by the Operator pursuant to this Article 16, within 7 (seven) days of the end of each quarter.

16.8.2 If the Authority determines that the Operator is liable to pay any Damages as per Article 16.8.1 above, then, the Damages will be payable by the Operator within 7 (seven) days of any such communication. If the Operator fails to pay the Damages in the said period, then, the Authority will be entitled to recover such Damages by invoking the Contract Performance Security or the Deemed Performance Security, as the case may be.

17. INDEMNITY

17.1 Authority's Indemnity

17.1.1 The Operator will indemnify, defend and hold harmless the Authority and Authority's Personnel from and against any and all claims, liability, action, demand, judgment, loss, damage, costs and expenses (including legal fees) in respect of:

- (a) all and any claims or other lawsuits or proceedings, that may arise on account of breach of any of the labour and other related Applicable Law and/ or that may arise out of breach of any covenants of this Contract including those arising out of any Accident that may occur during or in relation to the O&M Services, as may be proceeded against the Authority, for any reason whatsoever and assume full responsibility for whatsoever including the payment of indemnification, penalties, attorneys' fees, legal costs and other charges, if any;
- (b) damages and losses caused by its negligent or intentional act or omission or any damages and losses caused by the negligent act of the Operator's Staff or any Third Party or Sub-Contractor or agency engaged by the Operator;
- (c) damages and losses resulting from the non-compliance with the obligations established hereunder;
- (d) any environmental damages caused by it and/or its representatives or employees or employees of any Third Party or Sub-Contractor or agency engaged by the Operator;
- (e) breach (either directly by it or through its representatives and/or employees) of any representation and warranty declared herein by it;
- (f) any and all claims, actions, suits, proceedings, taxes, duties, levies, costs, expenses, damages and liabilities, including attorneys' fees, arising out of, connected with, or resulting from or arising in relation to this Contract due to neglect, omission or intentional act of the Operator;
- (g) bodily injury, sickness, disease or death, of any Person whatsoever arising out of or in the course of or by reason of the performance or non-performance of its O&M Services or obligation under this Contract, unless attributable to any negligence, wilful act or breach of this Contract by the Authority, and
- (h) damage to or loss of any property, real or personal, to the extent that such damage or loss:
 - (i) arises out of or in the course of or by reason of the performance or non-performance of the O&M Services or the obligations of the Operator under this Contract and the remedying of any defects; and
 - (ii) is not attributable to any negligence, wilful act or breach of this Contract by the Authority, the Authority's Personnel, their respective agents, or anyone directly or indirectly employed by any of them.

17.1.2 Notwithstanding the above, the Operator will indemnify and hold harmless the Authority, the Authority's Personnel and their respective agents against any loss, damage, caused or suffered by any of them, due to the failure on the part of the Operator to perform any of its obligations under this Contract or due to any act or omission on part of the Operator amounting to negligence or Wilful Misconduct or any losses arising directly from any claims/sanctions/penalties by any Government Instrumentalities, including for any tax related default by the Operator.

The Operator will defend, indemnify and hold harmless the Authority, Authority's Personnel, their respective directors, officers, employees, agents, sub-contractors, suppliers, Affiliates, and other representatives, from and against any and all Environmental Claims arising from the Operator's performance or non-performance of its obligations under this Contract, then, the Operator will reimburse to the Authority, all costs and expenses (including reasonable attorneys' fees and expenses) incurred by the Authority in connection therewith.

- 17.1.3 In the event of Hazardous Materials being released on to or at the Terminal or into the environment or adjacent to the Terminal (including but not limited to air, ground or water contamination) as a result of the Operator's actions, inactions, breach or default, then, the Operator will forthwith at its own expense, take all such steps as may be necessary to remove the Hazardous Materials from the Terminal and fully restore and reinstate the contaminated area and items.

17.2 *Third Party Claims*

The Operator will be liable for and will indemnify and hold Authority harmless from and against any and all claims, liability, action, demand, judgment, loss, damage, costs and expenses (including reasonable legal fees) brought by a Third Party, including any of the Operator's Staff, for loss or damage to property or personal injury or death caused by, resulting from, or incidental to the Operator's performance under this Contract, except when caused by the Authority's negligence or Wilful Misconduct.

17.3 *Proceedings*

- 17.3.1 If any proceedings are brought or any claim from any Third Party is made against the Authority that might subject the Operator to liability under Article 17.2, the Authority will promptly give the Operator a notice thereof and the Operator will at its own expense and in the Authority's name, conduct such proceedings or claim and any negotiations for the settlement of any such proceedings or claim.
- 17.3.2 If the Operator fails to notify the Authority within 7 (seven) days after receipt of such notice or 7 (seven) days prior to the last date of any action required under such notice, whichever is earlier, that it intends to conduct any such proceedings or claim, then the Authority will be free to conduct the same on its own behalf.
- 17.3.3 The Authority will, at the Operator's request, afford all available assistance to the Operator in conducting such proceedings or claim and will be reimbursed by the Operator for all reasonable expenses incurred in doing so.

17.4 *Payment of Indemnities*

Where a Party is entitled to payment from the other Party pursuant to this Article 17, such Party will promptly notify the other Party of the same. The other Party will make payment against the same within 30 (thirty) days from the date of receipt of such notice.

18. FORCE MAJEURE

18.1 *Force Majeure Event*

Neither Party will be liable to the other Party or be deemed to be in breach of this Contract by reason of any delay in performing or observing, or any failure to perform or observe, any of its obligations under this Contract, if the delay or failure was due to any of the events set out in this Article 18.1 which is not within the reasonable control, of the Party affected (“**Affected Party**”), and with the exercise of due diligence, was not reasonably foreseeable and could not reasonably be prevented, avoided or removed by such Affected Party through the exercise of reasonable skill or care, and does not result from the Affected Party's negligence or the negligence of its agents, employees or sub-contractors, which causes the Affected Party to be delayed, in whole or in part (“**Force Majeure Event**”). The following will constitute a Force Majeure Event:

- (a) acts of God, flood, lightning, storm, typhoon, tornado, earthquake, landslide, volcanic activity or other natural disaster;
- (b) ionising radiation or contamination, radioactivity from any nuclear fuel, radioactive toxic explosive;
- (c) any unlawful refusal or unreasonable delay by a Government Instrumentality to grant or renew any Applicable Permits within a reasonable time after application for the same having been duly made;
- (d) fire or explosion, in each case not being due to (i) failure to perform the O&M Services in accordance with this Contract, or (ii) circumstances within the reasonable control of the Affected Party;
- (e) industry wide lawful strike or lockout by Persons other than the Operator's Staff and Sub-Contractor, having a nationwide impact in India or in the State of Uttar Pradesh in respect of the Varanasi Terminal;
- (f) event of war, hostilities (whether war to be declared or not), invasion, act of foreign enemy or revolution;
- (g) if any Government Instrumentality makes any changes to any Applicable Law, due to which the Operator is prohibited from performing its obligations under this Contract;
- (h) acts of expropriation, compulsory acquisition or takeover by Government Instrumentality of the Terminal or any part thereof or of the Operator's rights under Contract;
- (i) any unlawful, unauthorized or without justified refusal to issue or to renew or the revocation of any Applicable Permits for reasons other than Operator's breach or failure in complying with the O&M Services requirements, Applicable Laws or Applicable Permits;
- (j) rebellion, terrorism, revolution, insurrection, military or usurped power, or civil war; or
- (k) discovery of historically significant artefacts at the Terminal.

18.2 *Exclusions*

The Force Majeure Event will not include:

- (a) unavailability, late delivery of equipment or materials from suppliers, sub-suppliers or other vendors (other than late deliveries that are themselves the result of Force Majeure Event), or changes in cost of the plant, machinery, equipment or materials;
- (b) delay in the performance of the Operator, any Sub-Contractor or their agents other than due to any Force Majeure Event;
- (c) non-performance resulting from normal wear and tear typically experienced in materials and equipment in the inland waterways industry;
- (d) weather or ground conditions reasonably expected from the climate in the geographic area of the Terminal or any condition or event arising from the same;
- (e) any default or failure by the Operator (or the Third Party) in any agreement entered into by the Operator with a Third Party;
- (f) any delay by the Operator in any agreement entered into by it with a Third Party, unless such delay is caused by a Force Majeure Event;
- (g) strikes, collective bargaining agreements of the Operator or the Sub-Contractor resulting in a delay or stoppage of the provision of supplies and labour disputes of any kinds;
- (h) economic hardship including any insufficiency of finances or funds or this Contract becoming onerous to perform;
- (i) effect of market conditions on the price or demand of inland waterways;
- (j) malfunctioning, breakdown, destruction or non-availability of any material or tools employed by or on behalf of the Operator unless, such is caused by a Force Majeure Event;
- (k) increased costs of materials and labour; or
- (l) non-performance caused by, or connected with, the Affected Party's:
 - (i) negligent or intentional acts, errors or omissions;
 - (ii) failure to comply with Applicable Law; or
 - (iii) breach of, or default under this Contract.

18.3 Provide Notice

If the Affected Party is prevented, hindered or delayed from or in performing any of its obligations under this Contract by a Force Majeure Event, then, it will as soon as reasonably practicable notify the other Party of the occurrence of such event and the circumstances thereof including the obligations, the performance of which could be delayed or prevented thereby, but no later than 30 (thirty) days after the occurrence of the Force Majeure Event. If the Force Majeure Event results in break-down of communications, rendering it unreasonable to give notice within the applicable time limit, then, the Affected Party will give such notice as soon as reasonably practicable after reinstatement of communications, but no later than 30 (thirty) day after such reinstatement. It is hereby clarified that if the Affected Party fails to provide the notice within the time specified in this Article 18.3, the relief on account of the occurrence of the Force Majeure Event will be available to the Affected Party only from the date on which the Affected Party actually notifies the other Party. Provided that, in no event, the occurrence and

continuance of any Force Majeure Event will not excuse the Operator from paying the Royalty as per the terms of this Contract.

18.4 *Provide Report*

18.4.1 Promptly after issuance of a notice, but in any event not later than 90 (ninety) days after such notice, pursuant to Article 18.3, the Affected Party will provide the other Party with a full report about the Force Majeure Event, including particulars of the event or circumstance, the effects of the Force Majeure Event, a general description of the obligations it is likely to affect, an estimate of its likely duration and a statement of the steps and time believed necessary to remedy and/or overcome any resultant failure to fulfil the obligations excused by such Force Majeure Event.

18.4.2 The Affected Party will provide to the other Party further information described in this Article 18.4, provided that such updates are, in any event, provided at least bi-weekly.

18.5 *Provide Access*

The Affected Party will forthwith, where practicable, provide or procure the other Party access to the scene of the event which gave rise to the Force Majeure Event for inspection, provided that the expense and risk of such access and inspection will always be that of the requesting Party.

18.6 *Endeavour to Mitigate*

18.6.1 The Affected Party will use all reasonable endeavours to mitigate the effect of the Force Majeure Event on its performance of this Contract and to fulfil its obligations under this Contract, but without prejudice to the respective Party's right to terminate this Contract under Article 18.9.1.

18.6.2 If the Operator is the Affected Party, it will use all means and best endeavours to ensure that the loss caused by the Force Majeure Event is minimized as far as possible.

18.6.3 Further, for all matters affected by a Force Majeure Event, the Parties will consult with each other, as soon as reasonably practicable and in any event no later than 90 (ninety) days from the receipt of the notice of the occurrence of such Force Majeure Event, with a view to ending the effect of the Force Majeure Event.

18.7 *Non-Performance by the Affected Party*

18.7.1 Delay or non-performance by the Affected Party will not:

- (a) constitute a default or breach of this Contract; or
 - (b) give rise to any claim for damages or additional cost or expense occasioned thereby,
- if and to the extent that such delay or non-performance is caused by the occurrence of a Force Majeure Event.

18.7.2 In relation to any obligations affected by a Force Majeure Event, each Party will exercise its rights under this Contract in good faith and will act in accordance with Good Industry Practice.

18.8 *Resume Performance*

18.8.1 The Parties will as soon as possible, from the occurrence of the Force Majeure Event,

resume normal performance of this Contract. During the period prior to resumption of normal performance of this Contract, the Parties will continue to act in accordance with Good Industry Practice and perform their obligations under this Contract to the extent not prevented by such Force Majeure Event.

- 18.8.2 Immediately upon cessation of the Force Majeure Event or the effects of such Force Majeure Event, the Affected Party will intimate the other Party of the same and will thereafter recommence the performance of its obligations under this Contract.

18.9 *Extended Force Majeure*

- 18.9.1 If the performance of this Contract is substantially prevented, hindered or delayed for a consecutive period of more than 90 (ninety) days or an aggregate period of more than 180 (one hundred eighty) days, on account of one or more Force Majeure Events during the Operating Period, the Parties will meet and attempt to develop a mutually satisfactory plan. *Provided that* upon the failure of the Parties to arrive at such a mutually satisfactory plan in relation to such Force Majeure Event within 60 (sixty) days of starting negotiation, either Party may terminate this Contract by giving a written notice to the other Party.

- 18.9.2 In the event of Termination pursuant to Article 18.9.1, the Authority will be liable to make payment to the Operator in accordance with Article 20.5.3(e). *Provided that*, prior to the date of applicability of this provision, if there has been a deviation in relation to the performance of the O&M Services, not previously approved by the Authority, the Operator will be liable to pay compensation to the Authority.

18.10 *Applicability*

The applicability of this Article 18 should be construed in a fair/reasonable manner and either Party will not take any pretext on account of terms/conditions of this provision to avoid performance of their respective obligations.

18.11 *Compensation*

Save and except as provided in Article 18.9.2, neither Party will be entitled for any compensation from the other Party on account of occurrence of a Force Majeure Event.

19. TAXES AND DUTIES

19.1 Taxes and Duties

- 19.1.1 The Operator will bear and pay all taxes, duties, levies and charges, assessed on the Operator, its Sub-Contractors or their respective employees, by all Government Instrumentalities in connection with the performance of the O&M Services.
- 19.1.2 The Operator would adopt appropriate measures and strategies to obtain an efficient tax structure for the performance of O&M Services to the extent possible. The Authority reserves the right to suggest certain changes in the transaction structure at a later date to obtain an efficient tax structure. Any such changes would be agreed mutually between the Parties.
- 19.1.3 Without limiting the generality of Article 17, the Operator shall fully indemnify, hold harmless and defend the Authority and the Authority Indemnified Persons from and against any and all loss and/or damages arising out of or with respect to payment of taxes required to be made by the Operator in respect of the income or other taxes of the Operator's contractors, suppliers and representatives.

19.2 Change in Taxes

- 19.2.1 If rates of any taxes, applicable to the income of the Operator, its Sub-Contractors (or their contractors) or their employees are increased, or a new tax is introduced, or an existing tax ceases to have effect, then the same will be to the account of the Operator and the Authority will not be liable for the same.
- 19.2.2 The Operator will not be required to pass on to the Authority any benefits of exemption, concessions, rebate, set off, credits etc. pertaining to taxes, duties, imposts, fees and levies in respect of the performance or arising out of performance of all or any of the obligations of the Operator under this Contract.

19.3 Exemptions

- 19.3.1 The Operator will be responsible for furnishing all necessary documents, as may be called for by the Authority, for obtaining the exemptions and all other waivers, exemptions and refund claims which are available or may be available in future in respect of taxes, duties, levies, surcharges and cess in India, on the O&M Services availed by the Authority under this Contract.
- 19.3.2 The Authority will have the right to advise and give instructions to the Operator with respect to the exemptions available and the Operator will follow such instructions and approach the relevant Government Instrumentality to claim the said exemptions. The Operator will at all times be liable to claim all the exemptions and that the Authority will not be liable to reimburse any tax on the failure of the Operator to claim such exemptions.

20. SUSPENSION AND TERMINATION

20.1 *Right of Suspension*

20.1.1 The Authority may, by providing a notice to the Operator in this regard, order the Operator to suspend performance of any or all of its obligations under this Contract. Such notice will specify:

- (a) the obligation of which performance is to be suspended and the reasons thereof;
- (b) the effective date of the suspension; and
- (c) the anticipated duration of such suspension.

20.1.2 The Operator will, upon receipt of such notice, suspend performance of such obligation with immediate effect except those O&M Services, which are necessary for the care or preservation of the Terminal or any part thereof. The Operator will neither place nor enter into any further arrangements, contracts or purchase orders for any aspect with respect to such suspended part of the O&M Services, except to the extent expressly requested by the Authority, until notified to resume such performance by the Authority. The Operator will continue to perform its other obligations under this Contract, which the Authority has not suspended pursuant to this Article 20.1. During the period suspension, the Authority shall have a right but not an obligation to operate such suspended performance obligations at its own cost.

20.1.3 The Authority may require the Operator to suspend the O&M Services no more than 2 (two) times an Accounting Year for a cumulative period of 30 (thirty) days. The Operator will resume the performance of the suspended O&M Services as expeditiously as possible after receipt of withdrawal of suspension by the Authority. Any loss of revenue suffered by the Operator due to suspension of the O&M Services shall be paid by the Authority within a period of 30 (thirty) days of the receipt of request from the Operator along with the submission of satisfactory documents evidencing the revenue loss, which shall be based on the average revenue generated by the Operator per day in the preceding 30 (thirty) days of suspension of the O&M Services.

20.1.4 If the Authority suspends the Operator's O&M Services for any period exceeding the period specified in Article 20.1.3 above, any necessary, demonstrable and reasonable costs incurred by the Operator, as a result of suspension of the O&M Services or any part thereof, during such suspension period, pursuant to Article 20.1, shall be payable by the Authority, provided that such costs are approved by the Authority.

20.2 *Termination for public interest*

The Authority may, at any time, terminate this Contract for public interest by giving the Operator a 90 (ninety) days' notice of Termination.

20.3 *Termination for Operator's Default*

20.3.1 The Authority may, without prejudice to any other rights or remedies it may possess, forthwith terminate this Contract in the following circumstances by giving a notice of Termination, referring to this Article 20.3.1, if:

- (a) the Operator becomes bankrupt or insolvent, has a receiving order issued against it, compounds with its creditors, or if a resolution is passed or order is made for its winding up (other than a voluntary liquidation for the purposes of amalgamation or reconstruction), a receiver is appointed over any part of its undertaking or assets, or if the Operator takes or suffers any other analogous action in consequence of debt;
- (b) insolvency, receivership, reorganisation, bankruptcy, or proceedings of a similar nature

brought against the Operator and the proceedings are not dismissed or effectively stayed within 60 (sixty) days of such commencement;

- (c) the Operator assigns or transfers this Contract or any of its right or interest herein, in violation of the provision of Article 23.6; or
- (d) the Operator, in the reasonable judgment of the Authority, has engaged in corrupt or fraudulent practices in competing for or in executing this Contract.

For the purpose of this sub-Article:

“corrupt practice” means the offering, giving, receiving or soliciting of anything of value to influence the action of any official of the Authority in the procurement process or in Contract execution.

“fraudulent practice” means a misrepresentation of facts in order to influence a procurement process or the execution of the Contract to the detriment of the Authority and includes collusive practice to increase prices at artificial non-competitive levels to deprive the Authority of the benefits of free and open competition.

20.3.2 If the Operator:

- (a) fails to provide, renew or replace the Contract Performance Security, as per the terms of this Contract;
- (b) subsequent to the replenishment or furnishing of fresh Contract Performance Security, the Operator fails to meet any Condition Precedent or cure its default, as the case may be, for which whole or part of the Contract Performance Security was appropriated, within a cure period of 7 (seven) days;
- (c) has, without valid reason, failed to commence performance of the O&M Services promptly after the occurrence of the Appointed Date or has suspended the performance of the O&M Services for more than (i) 5 (five) times during the Operating Period, or (ii) a cumulative period of more than 30 (thirty) days in any Accounting Year;
- (d) fails to exercise its option as per Article 4.5.2 within the period prescribed therein;
- (e) abandons or manifests intention to abandon the performance of the O&M Services without the prior written consent of the Authority;
- (f) repudiates this Contract or otherwise takes any action or evidences or conveys an intention not to be bound by this Contract;
- (g) fails to perform this Contract in accordance with the provisions of this Contract or neglects to carry out its obligations under this Contract without just cause for a period of more than 15 (fifteen) days;
- (h) is in breach or violation of any Applicable Law, and, as a consequence, the Terminal or the Authority’s enjoyment of its rights or benefits are adversely effected;
- (i) has made any false or inaccurate representations and warranties in Article 15 (*Representation and Warranties*) of this Contract;
- (j) has incurred or is liable for Damages in excess of the amount set out in Article 16.3;

- (k) creates any lien in breach of this Contract;
- (l) effects a Change in Ownership in breach of the provisions of Article 6.9.4;
- (m) there is a transfer, pursuant to Applicable Law either of:
 - (i) the rights and/or obligations of the Operator; or
 - (ii) or all or part of the assets or undertaking of the Operator, and such transfer causes a Material Adverse Effect;
- (n) an execution levied on any of the assets of the Operator has caused a Material Adverse Effect;
- (o) submits to the Authority any statement, notice or other document, in written or electronic form, which has a material effect on the Authority's rights, obligations or interests and which is false in material particulars;
- (p) has failed to fulfil any obligation, for which failure Termination has been specified in this Contract;
- (q) issues a termination notice in violation of the provisions of this Contract;
- (r) has failed to pay any amount due and payable under this Contract to the Authority within 30 (thirty) days of the Due Date for such payment; or
- (s) has committed a material breach of this Contract,

then, the Authority may, without prejudice to any other rights it may possess under this Contract, provide a notice to the Operator, stating the nature of the default and requiring the Operator to remedy the same. If the Operator fails to remedy or to take steps to remedy the same within 30 (thirty) days of the receipt of such notice, then the Authority may terminate this Contract forthwith by providing a notice of Termination to the Operator that refers to this Article 20.3.2, without thereby releasing the Operator from any of its obligations or liabilities which have accrued as at the date of Termination of this Contract and without affecting any other rights and powers conferred by this Contract on the Authority.

20.4 Termination by the Operator

20.4.1 The Operator may, without prejudice to any other rights or remedies it may possess, terminate this Contract in accordance with the provisions of this Article 20.4.

20.4.2 Unless the default has occurred as a result of any breach of this Contract by the Operator or due to the occurrence and continuance of the Force Majeure Event, if the Authority:

- (a) becomes bankrupt or insolvent, has a receiving order issued against it, compounds with its creditors, or, if a resolution is passed or order is made for its winding up (other than a voluntary liquidation for the purposes of amalgamation or reconstruction), a receiver is appointed over any part of its undertaking or assets, or if the Authority takes or suffers any other analogous action in consequence of debt; or
- (b) has insolvency, receivership, reorganisation, bankruptcy, or proceedings of a similar nature brought against it and the proceedings are not dismissed or effectively stayed within 60 (sixty) days of such commencement,

then, the Operator may, without prejudice to any other rights it may possess under this Contract, provide a notice to the Authority in this regard, requiring the Authority to remedy the same. If the Authority fails to remedy or to take steps to remedy the same within 30 (thirty) days of receipt of such notice, then, the Operator may terminate this Contract forthwith by giving a notice of Termination to the Authority that refers to this Article 20.4.2.

20.4.3 Unless the default has occurred as a result of any breach of this Contract by the Operator or due to the occurrence and continuance of the Force Majeure Event, if the Authority:

- (a) has committed a material breach of this Contract;

has validly suspended the performance of its obligations herein, in accordance with Article 20.1 and such suspension: (i) continues for a period of 120 (one hundred twenty) days in any Accounting Year, or (ii) is caused by the Authority for more than 3 (three) times during the Operating Period;
- (b) fails to complete its obligations as per Article 4.5.1A and 4.5.5 within the period prescribed therein;
- (c) fails to maintain navigable fairway at the channels between Varanasi Terminal and Ghazipur Terminal (as and when it is handed over) for a continuous period of 3 (three) months in any Accounting Year; or
- (d) fails to ensure the grant of the relevant Applicable Permit within 120 (one hundred twenty) days of the receipt of request in such regard from the Operator along with satisfactory documents evidencing that the Operator has submitted the form as per the due process and complied with all requirements otherwise in accordance with the Applicable Laws, upon denial or delay in granting or renewing, or the expiration, revocation or cancellation or non-renewal or change in the conditions applicable to any permit available or obtained for the Terminal or any part thereof and the same is not attributable to the Operator;

then, the Operator may provide a notice to the Authority in this regard. If the Authority, pursuant to the receipt of the notice provided in Article 20.4.2(a), fails to rectify or cure the default within a period of 60 (sixty) days of the receipt of such notice, then, the Operator may by a further notice of 15 (fifteen) days to the Authority referring to this Article 20.4.2, forthwith terminate this Contract.

20.5 Consequences Following Termination

20.5.1 Actions by the Operator

Upon receipt of the notice of Termination under any provision of this Contract including under Article 20.3.1 or Article 20.3.2, or Termination of the Contract under Article 20.4.1 or Article 20.4.2, the Operator will, either immediately or upon such date as is specified in the notice of Termination:

- (a) cease performance of all further O&M Services, except for such O&M Services as the Authority may specify in the notice of Termination, required to leave the Terminal in a clean and safe condition;
- (b) place no further orders and not enter into any contracts, or agree, approve or authorize any Sub-Contracts related to the performance of the O&M Services;
- (c) terminate all contracts with its Sub-Contractors, except those to be assigned to the Authority and to the extent they relate to execution of the discontinued portion of the

O&M Services;

- (d) except as may be otherwise required by the Authority, remove the Operator's Staff, Sub-Contractors and the personnel of the Sub-Contractors' from the Terminal, the Operator's equipment and materials and any wreckage, rubbish and debris of any kind and leave the Terminal in a clean and safe condition;
- (e) take such action as the Authority may direct for the protection and preservation of the Terminal;
- (f) take such additional action as the Authority may direct and/or as may be necessary or appropriate to hand over to the Authority or its authorized representative, the Terminal along with all the infrastructural facilities expanded by the Authority from time to time in accordance with the terms of this Contract, free and clear of all liens; and
- (g) to the extent legally possible, assign to the Authority all right, title and benefit of the Operator, as at the date of Termination, and, as may be required by the Authority, in the equipment, items and materials retained by the Authority and any contracts concluded between the Operator and its Sub-Contractors (including all warranties provided by the Sub-Contractor).

20.5.2 Actions by the Authority

Upon Termination for any reason whatsoever, the Authority shall:

- (a) take possession and control of the Terminal forthwith;
- (b) take possession and control of all materials, stores, implements, items, goods and equipment on or about the Terminal, which are owned by the Authority;
- (c) be entitled to restrain the Operator and any Person claiming through or under the Operator from entering upon the Terminal or any part thereof; and
- (d) be entitled to contract the O&M of the Terminal to a Third Party.

20.5.3 Payments on Termination

(a) *General*

- (i) The payment of any amount pursuant to the Termination of this Contract shall become due and payable to the Operator by the Authority within 30 (thirty) days of the completion of the process agreed in Article 20.5.1 and thereafter a demand being made by the Operator along with a certified copy of the Statutory Auditor justifying such demand in accordance with the terms of this Contract and other necessary particulars as may be required by the Authority. If, for any reason other than those attributable to the Operator, such amount is payable by the Authority and is not paid by the Authority to the Operator on Termination as above, the Authority shall be liable to pay default interest at the base rate of State Bank of India (*as applicable on such date*) per annum or part thereof, compounded on per annum basis, from such due date until the payment thereof.
- (ii) If this Contract is terminated in terms of this Article 20, and wherever any amount is payable by the Authority, while calculating such amount, account will be taken of any sum previously paid by the Authority to the Operator or payable by the Operator to the Authority under this Contract.

Notwithstanding anything to the contrary elsewhere in this Contract, any payment on Termination determined pursuant to this Article 20.5.3 shall, once paid, be in full and final settlement of any and all claim, demand and/or proceedings of the Operator against the Authority, in relation to any Termination of this Contract and the Operator shall not have any rights or remedy against the Authority in respect of any aspect of this Contract.

(b) *Termination for End of the Operating Period*

Upon Termination of this Contract due to efflux of time. i.e., end of the Operating Period, the Authority shall not be required to pay any amounts to the Operator.

(c) *Termination for Authority’s Convenience or Authority’s Default*

Upon Termination of this Contract pursuant to Article 20.2 and/ or Article 20.4, the Operator shall appropriate the amounts standing in the credit of Escrow Account to the following extent:

- (i) the payments attributable for the part of the O&M Services completed prior to such Termination;
- (ii) the costs reasonably incurred by the Operator for the repatriation of the Operator’s Staff and the personnel of its Sub-Contractors’ and in the removal of the Operator’s equipment from the Terminal;
- (iii) any amounts to be paid by the Operator to its Sub-Contractors, in connection with the termination of any contracts with the Sub-Contractors (including any cancellation charges) payable in terms thereof;
- (iv) the cost of satisfying all other obligations, commitments and claims that the Operator may in good faith have undertaken with Third Parties, in connection with this Contract and that are not provided in any of the above; and
- (v) an amount equivalent to the sum of present value of 20% of the Service Charges assumed for the lesser of: (a) 1 (one) year, or (b) years outstanding for completion of the Operating Period under the Contract, and then, discounted at the per annum rate of 15% (fifteen percent), with 20% (twenty percent) of the Service Charges earned by the Operator in the immediate preceding completed Accounting Year being taken as the amount for all these years for the calculation purposes, as reasonable cost of Damages resulting due to such Termination. By way of illustration, the said amount will be calculated as below:

20% Service Charges in the preceding year:	Denoted by “X”				
Discount rate	15%				
Year	Y1	Y2	Y3	Y4	Y5
Present value	$[X]/(1+15\%)^1$	$[X]/(1+15\%)^2$	$[X]/(1+15\%)^3$	$[X]/(1+15\%)^4$	$[X]/(1+15\%)^5$
Damages resulting due to termination under Article 20.5.3(c)(v) = Sum of the present value of:	Sum [Y1 + Y2 + Y3 + Y4 + Y5]				

In the event, after appropriating the entire balance in the Escrow Account towards the above amounts, there is any shortfall in the recovery of amount towards the recovery of amount identified at Article 20.5.3(c) then, the Authority shall be obligated to pay such shortfall amount to the Operator as per the provisions of Article 20.5.3(a). It is clarified that in case of any shortfall, the Authority shall not be obligated to pay any amount under this Article 20.5.3(c), other than the amount identified in Article 20.5.3(c)

(d) *Termination for Operator's Default*

In case of Termination due to the Operator's Default pursuant to Article 20.3, the Operator shall appropriate the amounts standing in the credit of Escrow Account to the extent of the payments attributable for the part of the O&M Services completed prior to such Termination, as reduced by an amount of Rs. 2,00,00,000/- (Rupees Two Crore). If the amount lying in the Escrow Account on the date of Termination is not sufficient to compensate the Authority of the above said amount of Rs. 2,00,00,000/- (Rupees Two Crore) or any part thereof after meeting other costs as per the terms of the Escrow Account, then, the Operator shall compensate the Authority of any such deficient amount within 30 (thirty) days of the Termination.

(e) *Termination for No-Fault*

Notwithstanding anything contrary contained elsewhere in this Contract, upon Termination of this Contract pursuant to Article 4.5.51B, Article 4.5.5, Article 6.17.7 or Article 18.9.1, the Operator shall appropriate the amounts standing in the credit of Escrow Account to the following extent:

- (i) the payments attributable for the part of the O&M Services completed prior to such Termination;
- (ii) the costs reasonably incurred by the Operator for the repatriation of the Operator's Staff and the personnel of its Sub-Contractors' and in the removal of the Operator's equipment from the Terminal;
- (iii) any amounts to be paid by the Operator to its Sub-Contractors, in connection with the termination of any contracts with the Sub-Contractors (including any cancellation charges) payable in terms thereof; and
- (iv) the cost of satisfying all other obligations, commitments and claims that the Operator may in good faith have undertaken with Third Parties, in connection with this Contract and that are not provided in any of the above.

Provided that any payments to be appropriated by the Operator pursuant to any provision of this Article 20.5.3 in respect of payments by the Operator to the Sub- Contractor(s) or Third Parties, will be made only upon the Operator submitting documentary evidence to the satisfaction of the Authority, reflecting that any such payments are due and payable by the Operator. *Provided further that*, the Authority shall not be obligated or required to pay any amount to the Operator in any form or manner in case of any shortfall in the recovery of the amounts identified in this Article 20.5.3 from the Escrow Account, except as otherwise specifically provided in Article 20.5.3(c).

20.5.4 Transition of O&M Services

- (a) If the Authority requires the Operator to continue any part of the O&M Services after the Termination of the Contract for any reason whatsoever, then, the Authority shall pay a reasonable compensation to the Operator for meeting its operating and related

expenses for the performance of such continuing O&M Services. It is clarified that, upon Termination, the Operator shall have no right or interests in the Escrow Account and it shall not be able to withdraw any amount lying therein, except without the prior written approval of the Authority.

- (b) Upon the Termination of this Contract for any reason whatsoever, and if so requested by the Authority, the Operator shall continue to perform services in the same scope as the O&M Services herein or any portion thereof, following such Termination until the date of Termination specified in such Termination notice (“**Transition Period**”). During the Transition Period, if requested by the Authority, the Operator shall cooperate with a successor designated by the Authority (“**Successor Operator**”) to the extent necessary to transfer the Operator’s obligations under this Contract to the Operator. The terms and conditions of this Contract shall continue in full force and effect during the Transition Period, and the Authority shall continue to compensate the Operator for the O&M Services performed during the Transition Period.
- (c) The Operator shall provide the Successor Operator and other representatives of the Authority, full access to the Terminal and all relevant information, data and records relating thereto developed exclusively for performance of the O&M Services and comply with all reasonable requests made by such Persons in connection with preparing for and accomplishing the taking over of the Operator’s obligations under this Contract or otherwise. The Authority shall promptly conduct an inventory and audit of all the property and other items furnished to the Operator for the performance of the O&M Services.
- (d) Within 15 (fifteen) days of the later of the Termination of this Contract or the expiration of the Transition Period, the Operator shall deliver to (and shall, with effect from Termination, hold in trust for and to the order of) the Authority or (if so required by the Authority by notice to the Operator) to the Successor Operator, all of the books and records, Authority’s property, and property leased or licensed to Authority, in its possession or under the Operator’s control.
- (e) The Operator shall transfer to the Successor Operator, not later than the date of Termination of this Contract or the expiration of the Transition Period, its rights as the Operator under all purchase orders and Sub-Contracts entered into by the Operator along with entire intellectual property rights, non-proprietary drawings, specifications and other documents prepared by it or its Sub-Contractors, concerning the operation and maintenance of the equipment, items and materials required for performance of the O&M Services and O&M Manuals and all other documents, which are required to be prepared and submitted by the Operator as per the terms of this Contract. At all times until such transfer is completed, the Operator shall hold its rights and interests thereunder for the account and to the order of the Authority, Successor Operator or Authority’s designate. The Operator shall execute all documents and instruments and take all other actions reasonably necessary or requested by the Authority or the Successor Operator to assign and vest in the Authority, all rights, benefits, interest, and title in connection with such Sub-Contracts.

21. GOVERNING LAW AND JURISDICTION

21.1 *Governing Law*

This Contract will be governed by and interpreted in accordance with laws of India.

21.2 *Jurisdiction*

Subject to the provisions of Article 22.2, the courts of New Delhi, shall have exclusive jurisdiction.

22. DISPUTE RESOLUTION

22.1 Amicable Settlement

If any claim, dispute or disagreement of any kind whatsoever arising between the Authority and the Operator, in connection with or arising out of this Contract, including without prejudice to the generality of the foregoing, any question regarding its existence, validity, Termination, or execution and whether before or after the Termination, abandonment or breach of this Contract (“**Dispute**”), then the Parties will seek to resolve the Dispute by mutual consultation, within 21 (twenty one) days of issue of notice by either Party intimating the occurrence of such Dispute. If the Parties fail to resolve the Dispute by mutual consultation within the above period after notice of the Dispute by one Party to the other Party, then, the provisions of Article 22.2 will apply and the Dispute shall be resolved through arbitration as per the procedure prescribed therein.

22.2 Arbitration

22.2.1 If any Dispute is not resolved by the Parties pursuant to Article 22.1 within 21 (twenty- one) days of the notice of the Dispute, then either Party may provide notice to the other Party, of its intention to commence arbitration, as hereinafter provided, as to the matter in Dispute, and no arbitration in respect of the said Dispute will be commenced unless such notice is provided.

22.2.2 Any Dispute in respect of which a notice of intention to commence arbitration has been provided will be finally settled by arbitration.

22.2.3 Any Dispute submitted by a Party to arbitration will be heard by an arbitration panel composed of 3 (three) arbitrators, to be constituted in accordance with the provisions of this Article 22.2.

22.2.4 The Authority and the Operator will each appoint 1 (one) arbitrator and the said 2 (two) arbitrators will jointly appoint the third arbitrator, who will chair the arbitration panel.

22.2.5 If one Party fails to appoint its arbitrator within 30 (thirty) days after the other Party has named its arbitrator, then, the appointment of such arbitrator shall be governed by the provisions of the Arbitration and Conciliation Act, 1996.

22.2.6 If the 2 (two) arbitrators do not succeed in appointing a third arbitrator within 30 (thirty) days after the latter of the 2 (two) arbitrators has been appointed, the third arbitrator will be appointed as per the provisions of the Arbitration & Conciliation Act, 1996.

22.2.7 If for any reason an arbitrator is unable to perform its function, the mandate of the arbitrator will terminate in accordance with the provisions of Applicable Law.

22.2.8 Arbitration proceedings under this Article 22.2 will be conducted in accordance with the Arbitration and Conciliation Act, 1996 and rules made thereunder as may be amended, modified, or supplemented from time to time in English language. The seat of the arbitration proceedings shall be New Delhi.

22.2.9 The arbitrators will provide a written and reasoned award. The decision of a majority of the arbitrators (or the third arbitrator chairing the arbitration panel, if there is no such majority) will be final and binding and will be enforceable in any court of competent jurisdiction as decree of the court. The Parties hereby waive any objections to or claims of immunity from such enforcement.

22.3 Performance of Obligations

Notwithstanding the reference of any Dispute to be resolved through arbitration pursuant to this

Article 22, the Parties will continue to perform their respective obligations under this Contract, unless they otherwise agree.

23. MISCELLANEOUS

23.1 Notices

- 24.1.1 All notices, communication, statement, request or correspondence, reports, certificates or other communication to be provided under this Contract will be in writing in English Language, and will be sent by personal delivery (against receipt), special courier, registered post with acknowledgment due, facsimile or electronic mail to the address of the relevant Party specified below:

If to the Authority:

Designation: [Chairman]

Address: A-13, Sector – 1, Noida – 201 301, Uttar Pradesh

Tel No.: +91 []

E-Mail: []

Facsimile: +91 []

If to the Operator:

Designation: []

Address: []

[]

Tel No.: +91 []

E-Mail: []

Facsimile: +91 []

- 24.1.2 Any notice sent by personal receipt or registered mail or overnight courier shall be deemed to be given, upon written acknowledgement of receipt by an officer or other duly authorized employee, agent or representative of the addressee.
- 24.1.3 Any notice sent by electronic mail shall be deemed to be received upon receiving a read receipt followed by registered mail or courier.
- 24.1.4 Any notice sent by facsimile shall be deemed to be delivered upon completion of transmission as long as the sender's facsimile machine creates and the sender retains a transmission report showing successful transmission.
- In case the date of receipt not being a Business Day or is received after 1700 hrs on a Business Day, notice will be deemed to have been received on the next Business Day. Either Party may change its address, telephone or facsimile number, electronic mail address and addressee for receipt of such notices by 7 (seven) days' notice to the other Party.
- 24.1.5 Notices will be deemed to include any approvals, consents, instructions, letters, claims, promises, communications, orders and certificates to be provided under this Contract.

23.2 Entire Agreement

This Contract constitutes the entire agreement between the Parties with respect to the subject matter of Contract and supersedes all communications, negotiations and agreements (whether written or oral) of Parties with respect hereto made prior to the date of Contract.

23.3 Amendment

No amendment or other variation of this Contract will be effective unless it is in writing, is dated, expressly refers to this Contract, and is signed by a duly authorized representative of

each Party.

23.4 *Independent Operator*

The Operator will be an independent contractor performing this Contract. Subject to the provisions of this Contract, the Operator will be solely responsible for the manner in which this Contract is performed. The Operator's Staff and Sub-Contractors will be under the complete control of the Operator and will not be deemed to be employees of the Authority, and nothing contained in this Contract or in any Sub-Contract awarded by the Operator will be construed to create any contractual relationship between any such employees, representatives or Sub-Contractors and the Authority.

23.5 *Non-Waiver*

23.5.1 Subject to Article 23.5.3, no relaxation, forbearance, delay or indulgence by either Party in enforcing any of the terms and conditions of this Contract or the granting of time by either Party to the other will prejudice, affect or restrict the rights of that Party under this Contract, nor will any waiver by either Party of any breach of Contract operate as waiver of any subsequent or continuing breach of Contract.

23.5.2 Neither any inspection by the Authority or Authority's Personnel, nor any order, instruction, direction or issue of any certificate by the Authority for payment of money under this Contract nor any exercise by the Authority of the rights of the Operator will operate as a waiver of any provision of this Contract or of any power reserved to the Authority or any right to Damages provided pursuant to this Contract, nor will any waiver of any breach in this Contract be held to be a waiver of any other subsequent breach.

23.5.3 Any waiver of a Party's rights, powers or remedies under this Contract must be in writing, must be dated and signed by an authorized representative of the Party granting such waiver, and must specify the right and the extent to which it is being waived.

23.6 *Assignment*

23.6.1 *Assignment by the Operator*

Save and except for the purpose of financing its obligations under this Contract, the Operator will not, without the prior consent of the Authority, assign, mortgage or charge to any Third Party, this Contract or any part thereof, or any right, benefit, obligation or interest therein or thereunder.

23.6.2 *Assignment by the Authority*

The Operator hereby consents to the creation by the Authority, of a security assignment, mortgage or charge of its rights and interests, including any security received under this Contract in favour of any Person as may be informed by the Authority and hereby undertakes to execute upon the request of the Authority such documents as may be required by the Authority to give effect to any such assignment.

23.7 *Severability*

The provisions of this Contract are severable. If any provision or condition of this Contract is prohibited or rendered invalid or unenforceable, such prohibition, invalidity or unenforceability will not affect the validity or enforceability of any other provisions and conditions of this Contract. The Parties agree in such circumstances to negotiate an equitable amendment to the provisions of this Contract to give effect to the original intention of the Parties.

23.8 *No Partnership or Agency*

23.8.1 Nothing in this Contract will constitute or be deemed to constitute any agency, partnership, joint venture, unincorporated association, co-operative entity or other joint relationship between the Authority and the Operator for any purpose.

23.8.2 Nothing in this Contract is intended to confer any rights/remedies under or by reason of this Contract on any Third Party.

23.9 *Language*

This Contract, all correspondences and communications to be provided and all other documentation to be prepared and supplied under and pursuant to this Contract will be written in the English language and this Contract will be construed and interpreted in accordance with that language. If any correspondence or communications are prepared in any language other than the English language, the English translation of such documents, correspondences or communications will prevail in matters of interpretation.

23.10 *Counterparts*

This Contract will be signed in 2 (two) originals and 1 (one) original, and each will be retained by the Authority and the Operator.

23.11 *Survival*

The relevant provisions of Article 8 (*Tariff and Royalty*), Article 10 (*Securities*), Article 15 (*Representations and Warranties*), Article 16 (*Functional Guarantees and Damages*), Article 17 (*Indemnity*), Article 20.5 (*Consequences Following Termination*), Article 21 (*Governing Law and Jurisdiction*), Article 22 (*Dispute Resolution*) and Article 23.1 (*Notices*) and Article 23.8 (*No Partnership or Agency*) will survive Termination of this Contract, if applicable.

24. Independent Engineer

- 24.1. Independent Engineer shall be a technical consultancy firm selected in accordance with provisions of the Model Request for Proposals for Selection of Technical Consultants, issued by the Ministry of Finance, GOI vide OM 24(23)/PF-II/2008 dated May 21, 2009, or any substitute thereof. If any panel of such firms is prepared by the Authority for the purpose, then Independent Engineer shall be selected out of that panel. The Authority shall complete the selection process within a period of 3 months of the date of this Agreement. The Authority shall in the procurement documents published by it, set out in reasonable detail the scope of work as indicated in Schedule 9.
- 24.2. Any objection raised by the Operator shall be considered by the Authority and Persons against whom such objections are raised will at the discretion of the Authority, which discretion shall be used with the highest degree of prudence and fairness, be disqualified prior to seeking a financial bid.
- 24.3. If within 15 (fifteen) Days of forwarding the list, the Authority does not receive any objection from the Operator with reasons therefor, the Authority shall call for financial bids from the shortlisted Persons and select the Independent Engineer ordinarily based on the lowest fee quote for the position.
- 24.4. 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 Schedule 9. The Independent Engineer shall submit regular periodic reports (at least once every month) to the Authority in respect of its duties and functions set forth in Schedule 9.
- 24.5. On expiry or termination of the aforesaid appointment, the Authority shall appoint an Independent Engineer for a further term of 3 (three) years in accordance with the provisions of Schedule 9 and such procedure shall be repeated after expiry of each appointment.
- 24.6. The scope of work of Independent Engineer shall inter-alia include work of certification of Performance Parameters as stipulated in this Contract.
- 24.7. The costs and expenses of the Independent Engineer for its services shall be borne by the Authority and Operator, equally.
- 24.8. If the Authority either on its own or on a report of the Operator has reason to believe that the Independent Engineer is not discharging its duties in a fair, appropriate and diligent manner, the Authority may after giving the Independent Engineer due opportunity of being heard, terminate the appointment of the Independent Engineer and appoint another firm in its place in accordance with the preceding Article 24.1 above.
- 24.9. 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 22.
- 24.10. The Authority shall require the Independent Engineer to designate and notify to the Authority and the Operator 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.
- 24.11. In the event that the Authority has not appointed an Independent Engineer, or the Independent Engineer so appointed has relinquished its functions or defaulted in discharge thereof, the Authority may, in the interim, designate and authorise any person for a maximum duration of 90 days to discharge the functions of the Independent Engineer in accordance with the provisions of this Agreement, save and except that such person shall not exercise any functions relating to review, comment, approval or inspection as specified in this Agreement for and in respect of the Independent Engineer, and such functions shall be discharged as and when an Independent Engineer is appointed in accordance with the provisions of this Agreement. Provided, however, that nothing contained in this Article 24.11 shall in any manner restrict the rights of the Authority to enforce compliance of the provisions of this Contract.

IN WITNESS WHEREOF this Contract has been executed by the duly authorized representatives of the Parties as of the day and year 1st (first) above written on page 1 (one) of this Contract.

By: []
Name:
Title:
Authorised by []

For and on behalf of the
**INLAND WATERWAYS
AUTHORITY OF INDIA**

By: []
Name:
Title:
Authorised by Board Resolution dated []
For and on behalf of the
[_____]

SCHEDULE 1
Details of Terminal

Please refer to the attached CAD drawing for Project site's details including Terminal and connectivity features.

SCHEDULE 2
Technical Specifications

The following is the list of costs of Terminal's assets to be handed over to the Operator:

S No	Item Description	Value (INR crore)
1	Jetty Structures	55.91
2	Stone Pitching Works	50.63
3	Buildings (Substation, Toilet and Administrative)	3.69
4	Electrical Works	1.77
5	Mobile Cranes (2 Nos)	44.59
6	Pontoon with Gangway	7.38
7	Roads	4.37
8	Septic Tanks and Associated Works	0.03
9	Water Supply Works	0.07
10	Storm Water Drainage Works	1.29
11	Topography, Geotechnical and Hydrographic Investigations	0.27
12	External road, weigh bridge & control cabin, firefighting system	17.0
13	Duties and Taxes	4.70
	Total	190

List of immovable and essential movable contracted assets

S No	Particulars	Contracted assets	
		Immovable contracted assets	Essential movable contracted assets
1	Jetty Structures (includes berth of 200 m)	✓	
2	Stone protection piles and stone pitching	✓	
3	Buildings (Substation, Toilet and Administrative)	✓	
4	Electrical Works	✓	
5	Mobile Cranes (2 Nos)		✓
6	Pontoon with Gangway	✓	
7	Internal roads	✓	
8	Septic Tanks and Associated Works	✓	
9	Water Supply Works	✓	
10	Storm Water Drainage Works	✓	
12	External road, weigh bridge & control cabin, firefighting system	✓	
13	Approach road from National Highway 7	✓	

SCHEDULE 3
Functional Guarantees and Damages

Operator must ensure that the organizational set-up and the equipment is geared to be able to comply and meet the requested performance levels.

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 = $(1 - ((\text{Planned maintenance hours} + \text{downtime hours}) / \text{total calendar hours})) \times 100$ <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>
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> <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</p>

S No	Key Performance Indicator	Threshold	Measurement												
			measured by the HMR (Hour meter reading) device on the crane												
4	Average handling rate (operational)	Thresholds as given below: <table border="1" data-bbox="464 383 868 667"> <thead> <tr> <th data-bbox="464 383 539 510">S No</th> <th data-bbox="539 383 708 510">Commodity</th> <th data-bbox="708 383 868 510">Minimum handling rate (MT/Hour)</th> </tr> </thead> <tbody> <tr> <td data-bbox="464 510 539 573">1</td> <td data-bbox="539 510 708 573">Construction material</td> <td data-bbox="708 510 868 573">150</td> </tr> <tr> <td data-bbox="464 573 539 636">2</td> <td data-bbox="539 573 708 636">Consumer goods</td> <td data-bbox="708 573 868 636">150</td> </tr> <tr> <td data-bbox="464 636 539 667">3</td> <td data-bbox="539 636 708 667">Foodstuff</td> <td data-bbox="708 636 868 667">150</td> </tr> </tbody> </table>	S No	Commodity	Minimum handling rate (MT/Hour)	1	Construction material	150	2	Consumer goods	150	3	Foodstuff	150	<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>
S No	Commodity	Minimum handling rate (MT/Hour)													
1	Construction material	150													
2	Consumer goods	150													
3	Foodstuff	150													
5	Average turnaround time of trucks (operational)	Less than 120 minutes	<ul style="list-style-type: none"> Frequency: Quarterly Actual average turnaround of trucks = $\Sigma(\text{Gate out time} - \text{Gate in time or parking out time whichever is later}) / \text{total number of trucks}$ <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>												

Key Performance Indicator	Threshold	Measurement
		<p>Effective Working Hours means “The summation of the total time of effective use of the crane under consideration in the preceding quarter”</p> <p>Containers Handled means “The total number of containers handled by the Operator in the preceding Quarter”</p>
Average Discharge Rate	<p>Greater than 300 Tons/Hour</p> <p>(Threshold Average Discharge Rate = 300 Tons/Hour)</p>	<ul style="list-style-type: none"> • Frequency: Quarterly • Measures discharge flow from hold to storage place. • Actual Average Discharge Rate = Effective Working Hours divided by Cargo Handled <p>Wherein Effective Working Hours means “The summation of the total time of effective use of bulk cargo handling equipment in the preceding quarter”</p> <p>Cargo Handled means “The total cargo handled by the Operator in the preceding Quarter in Tons”</p>

Performance evaluation and calculation of liquidated damages

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

The Operator 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 Appointed Date. After 1st anniversary and before 2nd Anniversary of Appointed Date, liquidated damages shall be calculated on basis of Notional Royalty of the respective quarter.

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

Authority to endeavor to provide navigable fairway

The Authority shall endeavor to provide the following:

- i. Navigational aids: Safe navigation and maintenance of 24*7 and 365 days during the term and correct navigation aids
- ii. Navigable fairway: Provide navigable fairway for Varanasi along the terminal front to ensure access to the terminal front and barge turn radius for 330 days in a year

These provisions will not be applicable 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.

SCHEDULE 4

Reporting Requirements

The Operator shall submit the periodic structured reports, with due self-certification, of the items and information required to be disclosed by it as per the terms of the Contract.

1. Quarterly Reporting

The Monthly Statement shall include the following:

(a) Financial Reporting

- Revenues
 - o Statutory Fees
 - o Service fees
 - o Other revenues

Revenue calculation must be provided for the relevant period in sufficient detail to verify accuracy and coherence with Operational reporting and Tariff schedules.

- Costs
 - o Costs incurred for maintenance of
 - Authority's Infrastructure
 - Authority's Equipment

Cost reporting must be provided for the relevant period in sufficient detail to verify accuracy and coherence with Operational reporting and budget)

(b) Operational Reporting

- Throughput (in TEU and or Tons) landside and waterside
 - o Landside
 - o Riverside
 - o Specific IWT Throughput
 - o Status of Functional Guarantees as stipulated in SCHEDULE 3

Throughput reporting must be provided for the relevant period in sufficient detail and coherent structure to ensure performance-follow-up versus planned and versus KPI thresholds.

Reporting should also contain description of the cargo (commodity + specific detail), packing unit type (such as containers, bundles and pieces), Number of units, Tons (Gross, Net), Volumes (where relevant) in order to match operational reporting and tariff schedules

- Stock reporting
 - o TEU on site (as on the end of the reporting period)
 - o Tons on site (as on the end of the reporting period)
- Damages
 - o Incident reporting of previous period

Damage reporting should be provided, describing the incident itself, which

caused the damage, including the financial damage estimate, and measures taken to avoid repetition.

- Accidents
 - Incident reporting of previous period

Accident reporting should be provided, describing the incident itself, and measures taken to avoid repetition.

- Status of Functional Guarantees as stipulated in SCHEDULE 3
 - Calculation of Liquidate Damages payable by the Operator to the Authority for non-adherence to the Functional Guarantees stipulated in SCHEDULE 3.

2. Annual Reporting

Annual reporting to summarize all monthly and quarterly reporting.

SCHEDULE 5
Government Applicable Permits

The Applicable Permits to be obtained by the Authority are as under:

1. Approval under Section 13 of the IWAI Act, for the execution and delivery of this Contract;
2. Environmental Clearance in accordance with the provisions of Environment Impact Assessment Notification, 2006, for each of the Terminal;
3. Approval from Central Empowered Committee constituted by the Supreme Court in respect of 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, as applicable;
5. Consent to Operate 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 Air (Prevention and Control of Pollution) Act, 1981
7. No-objection certificate in respect of the building from the Uttar Pradesh Fire Service Directorate;
8. Clearance under CRZ Notification, 2011 (superseding CRZ Notification, 1991).

SCHEDULE 6
Format of Contract Performance Security

[To be executed on stamp paper of an appropriate value]

To,

Inland Waterways Authority of India,
Head office at A-13, Sector – 1,
Noida – 201 301, Uttar Pradesh

Subject: O & M contract dated March [], 2016 (“Contract”).

Whereas:

- A. [] (“**Operator**”) and Inland Waterways Authority of India (“**Authority**”) have entered into a Terminal Services Contract on [] (“**Contract**”), whereby the Operator has agreed to perform the O&M Services (*as defined in the Contract*), in accordance with the terms and conditions specified in the Contract.
- B. The Contract requires the Operator to furnish a Contract Performance Security to the Authority for a sum of INR 49.95 lakhs (INR Forty nine lakhs and ninety five thousand only) (“**Guaranteed Amount**”) as a security for due and faithful performance of its obligations, under and in accordance with the Contract (“**Bank Guarantee**”).
- C. We, [] through our Branch at [] (“**Bank**”) have agreed to furnish this Bank Guarantee by way of Contract Performance Security.

NOW, THEREFORE, the Bank hereby, unconditionally, and irrevocably, guarantees and affirms as follows:

1. Unless otherwise defined herein, the capitalized terms used herein will mean to have the same meaning as ascribed to such term under the Contract.
2. The Bank hereby unconditionally and irrevocably agrees and undertakes to pay to the Authority, upon its mere first written demand, and without any demur, reservation, recourse, contest or protest and without any reference to the Operator, such sum or sums upto an aggregate sum of the Guaranteed Amount as the Authority will claim, without the Authority being required to prove or to show grounds or reasons for its demand and/or for the sum specified therein.
3. A letter from the Authority merely raising a demand without any specific reference to any provision of the Contract, shall be conclusive, final and binding on the Bank and the Bank shall not be entitled to question or go into the validity, propriety, reasonableness of the demand made by the Authority.
4. The Bank further agrees that the Authority shall be the sole judge as to whether the Operator was required to pay any amounts to the Authority under the Contract or not and its decision shall be final, and binding on the Bank, notwithstanding any difference between the Authority and the Operator, or any dispute between them pending before any court, tribunal, arbitrators or any other authority or body, or by the discharge of the Operator for any reason whatsoever.
5. All payments to be made by the Bank under this Bank Guarantee shall be made without

set-off or counter claim and shall be made without any deduction whatsoever.

6. In order to give effect to this Bank Guarantee, the Authority shall be entitled to act as if the Bank were the principal debtor and any change in control, change in constitution, amalgamation, merger, reorganization, liquidation, bankruptcy, dissolution, demerger, or winding up or other change in the constitution of the Operator and/or the Bank shall not in any way or manner affect the liability or obligation of the Bank under this Bank Guarantee.
7. It shall not be necessary, and the Bank hereby waives any necessity, for the Authority to proceed or raise any claim or demand against the Operator before presenting to the Bank its demand under this Bank Guarantee.
8. The Authority shall have the liberty, without affecting in any manner the liability of the Bank under this Bank Guarantee, to vary at any time, the terms and conditions of the Contract or to extend the time or period for the compliance with, fulfilment and/or performance of all or any of the obligations of the Operator contained in the Contract or to postpone for any time, and from time to time, any of the rights and powers exercisable by the Authority against the Operator, and either to enforce or forbear from enforcing any of the terms and conditions contained in the Contract and/or the rights or remedies available to the Authority, and the Bank shall not be released from its liability and obligation under these presents by any exercise by the Authority of the liberty with reference to the matters aforesaid or by reason of time being given to the Operator or any other forbearance, indulgence, act or omission on the part of the Authority or of any other matter or thing whatsoever which under any Law relating to sureties and guarantors would but for this provision have the effect of releasing the Bank from its liability and obligation under this Bank Guarantee and the Bank hereby waives all of its rights under any such law.
9. Neither the Bank nor the Operator shall be entitled to assign its rights and/or obligations hereunder to any other Person.
10. This Bank Guarantee is in addition to and not in substitution of any other guarantee or security now or which may hereafter be held by the Authority in respect of or relating to the Contract or for the fulfilment, compliance and/or performance of all or any of the obligations of the Operator under the Contract.
11. Notwithstanding anything contained hereinbefore, the liability of the Bank under this Bank Guarantee is restricted to the Guaranteed Amount and this Bank Guarantee will remain in force for the period specified in Para 12 below and unless a demand or claim in writing is made by the Authority on the Bank under this Bank Guarantee, not later than 3 (three) months from the date of expiry of this Bank Guarantee, all rights of the Authority under this Bank Guarantee shall be forfeited and the Bank shall be relieved from its liabilities hereunder.
12. The Bank Guarantee shall remain in full force and effect upto [] which period may be extended for a further period as may be required under the Contract, with a claim period upto 3 (three) months beyond its validity, for the purposes of this Bank Guarantee. After the expiry of the period agreed in the Contract and upon request made by the Operator for release of the Bank Guarantee along with the particulars required hereunder, the Authority shall release the Bank Guarantee, in accordance with the terms of the Contract.
13. The Bank undertakes not to revoke or modify this Bank Guarantee during its currency,

except with the previous express consent of the Authority in writing, and declares and warrants that it has the power to issue this Bank Guarantee and the undersigned has full powers to do so on behalf of the Bank.

14. The Bank hereby waives all its rights of suretyship which are inconsistent with any of the provisions hereof and the Bank will have no right of subrogation against the Operator unless all the dues of the Authority under the Guarantee are fully paid to it.
15. The Bank agrees that any notice under or pursuant to this Bank Guarantee can be served upon it at its any of the branch offices at Mumbai by registered post with acknowledgment due or e-mail or facsimile and shall be deemed to have been served on the date of receipt of acknowledgment or the date of transmission provided that a confirmation of receipt is obtained within 2 (two) days after the transmission but before 5 PM. If the acknowledgment/confirmation is received at any time after 5 PM, the same shall be deemed to have been received on the following day. Any notice delivered personally (against receipt) shall be deemed to have been delivered on the date of the dispatch and receipt by the addressee.
16. Notwithstanding anything to the contrary mentioned herein and without prejudice to the Authority's other rights under Law or otherwise, the Authority shall be entitled to charge or receive interest from the Bank at the rate of 18% (eighteen percent) per annum at the quarterly rest basis, if the Bank fails to pay the Guaranteed Amount or any amount, as per the demand raised by the Authority by the date notified by the Authority, and the Bank shall be bound to make such payment of interest in addition to the said Guaranteed Amount to the Authority.
17. Furthermore, in the case of refusal or failure of the Bank to pay the Guaranteed Amount to the Authority upon demand, and the default persisting for more than 10 (ten) days, the Authority shall be entitled to recover from the Bank, court fees, legal expenses and other consequential expenses which the Authority may be put to as a result of the Authority having to enforce this guarantee upon the Bank.
18. All the aforesaid payment shall be made at or paid to the Authority at its New Delhi Office and the courts in New Delhi alone will have jurisdiction to entertain all claims arising on or relating to such guarantee as is provided herein to the Authority.
19. This Bank Guarantee shall come into force with immediate effect.
20. In view of the above, it is hereby confirmed that:
 - (a) The Bank's liability under this Bank Guarantee shall not exceed the Guaranteed Amount, i.e., an amount of INR 49.95 lakhs (INR Forty nine lakhs and ninety five thousand only).
 - (b) This Bank Guarantee is valid up to [], with a claim period of 3 (three) months after such expiry.
 - (c) The Bank shall be liable to pay any amount under this Bank Guarantee or part thereof upon the receipt of a written claim or demand from the Authority under this Bank Guarantee on or before the end of 3 (three) months from the expiry of the validity of this Bank Guarantee, i.e., by [].

Signed and sealed this [] day of [], 20[] at [].

SIGNED, SEALED AND DELIVERED

For and on behalf of
the BANK by:

(Signature)

(Name)

(Designation)

(Code Number)

(Address)

NOTES:

- i. The Bank Guarantee should contain the name, designation and code number of the officer(s) signing the Bank Guarantee.
- ii. The address, telephone number and other details of the Head Office of the Bank as well as of issuing Branch should be mentioned on the covering letter of issuing Branch.

SCHEDULE 7
Format of Escrow Agreement

[To be executed on stamp paper of an appropriate value]

THIS ESCROW AGREEMENT (“Agreement”) is entered into at [] on this the [] day of [], 20[]

BY AND AMONGST:

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

AND

[] (insert name and particulars of the Escrow Bank), having its registered office at [] and amongst other places a branch office at [] (hereinafter referred to as the “**Escrow Bank**” which expression shall, unless repugnant to the context or meaning thereof, include its successors and assigns);

AND

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

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

WHEREAS:

- A. The Authority has entered into a O & M contract dated [] with the Operator (“**Contract**”) for the performance of the O&M Services (*as defined in the Contract*) at the Terminal, in accordance with the terms and conditions as set forth in the Contract.
- B. The Contract requires the Operator to establish an Escrow Account, *inter alia*, on the terms and conditions stated therein.
- C. Accordingly, the Parties are entering into this Agreement setting forth the terms and conditions for the opening of the Escrow Account (*as defined below*) with the Escrow Bank and operation of the same.

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

1. DEFINITIONS AND INTERPRETATION

1.1. Definitions

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

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

“**Contract**” means the O & M contract referred to in Recital A above, and shall include any amendments made thereto in accordance with the provisions therein.

“**Cure Period**” means the period specified in this Agreement for curing any breach or default of any provision of this Agreement by the Operator, and shall commence from the date on which a notice is delivered by the Authority to the Operator asking the latter to cure the breach or default specified in such notice.

“**Escrow Account**” means an escrow account established in terms of and under this Agreement.

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

1.2. Interpretation

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

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

1.2.3. The rules of interpretation stated in Article 1.2 and Article 1.3 of the Contract shall apply *mutatis mutandis*, to this Agreement.

2. ESCROW ACCOUNT

2.1. Escrow Bank to act as Trustee

2.1.1. The Operator hereby appoints the Escrow Bank to act as trustee for the Authority and the Operator in connection herewith, and authorises the Escrow Bank to exercise such rights, powers, authorities and discretion as are specifically delegated to the Escrow Bank by the terms hereof together, with all such rights, powers, authorities and discretion as are reasonably incidental hereto, and the Escrow Bank accepts such appointment pursuant to the terms hereof.

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

2.2. Acceptance of Escrow Bank

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

2.3. Establishment and Operation of Escrow Account

2.3.1. Within 30 (thirty) days from the date of the Contract, and in any case prior to the Appointed Date, the Operator shall open and establish the Escrow Account with the [] (name of Branch) Branch of the Escrow Bank. The Escrow Account shall be denominated in Rupees.

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

2.3.3. The Escrow Bank and the Operator shall agree on the detailed mandates, terms and conditions, and operating procedures for the Escrow Account, but in the event of any conflict or inconsistency between this Agreement and such mandates, terms and conditions, or procedures, this Agreement shall prevail.

2.4. Escrow Bank's Fee

The Escrow Bank shall be entitled to receive its fee and expenses in an amount, and at such times, as may be agreed between the Escrow Bank and the Operator.

2.5. Rights of the Parties

Save and except as otherwise provided in the Contract, the rights of the Authority and the Operator in the monies held in the Escrow Account are set forth in their entirety in this Agreement and the Authority and the Operator shall have no other rights against or to the monies in the Escrow Account.

3. DEPOSITS INTO ESCROW ACCOUNT

3.1. Deposits by the Operator

3.1.1. The Operator agrees and undertakes that it shall deposit or cause to be deposited all inflows and receipts arising due to the performance of the O&M Services or any right granted to it pursuant to this Contract, into the Escrow Account:

- i. all monies received in relation to the Terminal due to performance of the O&M Services or otherwise including but not limited to Service Charges and Other Charges, amounts received from shareholders or any other Person or otherwise, *provided however that*, the Statutory Charges collected by the Operator or the proceeds of any refundable payment deposits, capital receipts and insurance claims shall not be required to be deposited in the Escrow Account and further, the Statutory Charges shall be directly deposited in the account instructed by the Authority from time to time;
- ii. all other revenues from or in respect of the performance of the O&M Services, including the proceeds of any rentals, etc.; and
- iii. all payments by the Authority, after deduction of any outstanding Royalty.

3.1.2. The Operator may, at any time, make deposits of its other funds into the Escrow Account, *provided that* the provisions of this Agreement shall apply to such deposits.

3.2. Intentionally Left Blank

3.3. Interest on Deposits

The Escrow Bank agrees and undertakes that all interest accruing on the balances of the Escrow Account shall be credited to the Escrow Account, provided that the Escrow Bank shall be entitled to appropriate therefrom the fee and expenses due to it from the Operator in relation to the Escrow Account and credit the balance remaining to the Escrow Account.

4. WITHDRAWALS FROM ESCROW ACCOUNT

4.1. Withdrawals

- 4.1.1. At the beginning of every month, the Operator by written instructions, determine that the Escrow Bank shall withdraw amounts from the Escrow Account and appropriate them in the following order for making due payments, and if such payments are not due in any month, then retain such monies and pay out therefrom on the Payment Date(s):
- i. Royalty due and payable to the Authority, less any Damages payable by the Authority to the Operator, which has not been disputed/ contested by the Authority for a period of 3 (three) months from the date of receipt of any such claim from the Operator, and if any such claim has been disputed/ contested by the Authority, then, upon the completion of such adjudication proceedings;
 - ii. all payments and/ or the Damages payable to the Authority, which has not been disputed/ contested by the Operator for a period of 3 (three) months from the date of receipt of any such claim from the Authority, and if any such claim has been disputed/ contested by the Operator, then, upon the completion of such adjudication proceedings; and
 - iii. balance, if any, in accordance with the instructions of the Operator.
- 4.1.2. No later than 60 (sixty) days prior to the commencement of each Accounting Year, the Operator shall provide to the Escrow Bank, with prior written approval of the Authority, details of the amounts likely to be required for each of the payment obligations set forth in this Article 4.1, provided that such amounts may be subsequently modified, with prior written approval of the Authority, if fresh information received during the course of the Accounting Year makes such modification necessary.

4.2. Withdrawals upon Termination

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

- i. outstanding Royalty;
- ii. all payments and/ or Damages payable to the Authority;
- iii. statutory payments, all taxes due and payable by the Operator for and in respect of the performance of the O&M Services at the Terminal;
- iv. incurred or accrued expenses for the performance of the O&M Services;
- v. any other payments required to be made under the Contract; and
- vi. balance, if any, in accordance with the instructions of the Operator.

4.3. Application of Insufficient Funds

Funds in the Escrow Account shall be applied in the serial order of priority, set forth in Article 4.1 and Article 4.2, as the case may be. If the funds available are not sufficient to meet all the requirements, the Escrow Bank shall apply such funds in the serial order of priority until exhaustion thereof.

5. OBLIGATIONS OF THE ESCROW BANK

5.1. Segregation of Funds

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

5.2. Notification of Balances

At least 7 (seven) Business Days prior to each Payment Date (and for this purpose the Escrow Bank shall be entitled to rely on an affirmation by the Operator as to the relevant Payment Dates), the Escrow Bank shall notify the Authority of the balances in the Escrow Account as at the close of business on the immediately preceding Business Day.

5.3. Communications and Notices

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

- i. may, in the absence of bad faith or gross negligence on its part, rely as to any matters of fact which might reasonably be expected to be within the knowledge of the Operator upon a certificate signed by or on behalf of the Operator;
- ii. 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;
- iii. shall, within 5 (five) Business Days after receipt, deliver a copy to the Authority of any notice or document received by it in its capacity, as the Escrow Bank from the Operator, or any other Person hereunder or in connection herewith; and
- iv. shall, within 5 (five) Business Days after receipt, deliver a copy to the Operator of any notice or document received by it from the Authority in connection herewith.

5.4. No Set-Off

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

5.5. Regulatory Approvals

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

6. ESCROW DEFAULT

6.1. Escrow Default

- 6.1.1. Following events shall constitute an event of default by the Operator ("**Escrow Default**"), unless such event of default has occurred as a result of Force Majeure or any act or omission of the Authority:
 - i. the Operator commits breach of this Agreement by failing to deposit any receipts into the Escrow Account, as provided herein, and fails to cure such breach by depositing the same into the Escrow Account within a Cure Period of 5 (five) Business Days;
 - ii. the Operator causes the Escrow Bank to transfer funds to any account of the Operator in breach of the terms of this Agreement and fails to cure such breach by depositing the relevant funds into the Escrow Account in which such transfer should have been made, within a Cure Period of 5 (five) Business Days; or

- iii. the Operator commits or causes any other breach of the provisions of this Agreement and fails to cure the same within a Cure Period of 5 (five) Business Days.

6.1.2. The occurrence of an Escrow Default shall be an Operator's event of default under Article 20.3.2 and the consequences thereof shall be dealt in accordance with the provisions therein.

7. TERMINATION OF ESCROW AGREEMENT

7.1. Duration of the Escrow Agreement

Unless terminated earlier by consent of all the Parties or otherwise in accordance with the provisions of this Agreement, this Agreement shall remain in full force and effect until the Termination of the Contract. Upon the termination of the Contract, the Escrow Account can be operated by and only in accordance with the instructions of the Authority, as per the Applicable Laws.

7.2. Substitution of Escrow Bank

7.2.1. The Operator may, by not less than 45 (forty-five) days prior notice to the Escrow Bank, the Authority, terminate this Agreement and appoint a new Escrow Bank, *provided that* the new Escrow Bank is acceptable to the Authority and arrangements are made satisfactory to the Authority for transfer of amounts deposited in the Escrow Account, to a new Escrow Account established with the successor Escrow Bank.

7.2.2. The termination of this Agreement shall take effect only upon coming into force of an Escrow Agreement with the substitute Escrow Bank.

7.3. Closure of Escrow Account

The Escrow Bank shall, at the request of the Operator made on or after the payment by the Operator of all outstanding amounts under the Contract including the payments specified in 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 Operator.

8. INDEMNITY

8.1. General Indemnity

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

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

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

8.2. Notice and Contest of Claims

In the event that any Party hereto receives a claim from a third party in respect of which it is entitled to the benefit of indemnity under Article 8.1 or in respect of which it is entitled to reimbursement ("**Indemnified Party**"), it shall notify the other Party responsible for indemnifying such claim hereunder ("**Indemnifying Party**") within 15 (fifteen) days of receipt of the claim, and shall not settle or pay the claim without the prior approval of the Indemnifying Party, which approval shall not be

unreasonably withheld or delayed. In the event that the Indemnifying Party wishes to contest or dispute the claim, it may conduct the proceedings in the name of the Indemnified Party and shall bear all costs involved in contesting the same. The Indemnified Party shall provide all cooperation and assistance in contesting any claim and shall sign all such writings and documents as the Indemnifying Party may reasonably require.

9. GOVERNING LAW AND DISPUTE RESOLUTION

9.1. Governing law and Jurisdiction

This Agreement shall be construed and interpreted in accordance with and governed by the laws of India, and the courts in New Delhi shall have jurisdiction over all matters arising out of or relating to this Agreement.

9.2. Dispute Resolution

- 9.2.1. If any dispute arises between the Parties, then, either Party may provide notice to the other Party of its intention to commence arbitration, as to the matter in dispute. Any dispute in respect of which a notice of intention to commence arbitration has been provided will be finally settled by arbitration.
- 9.2.2. Any dispute submitted by a Party to arbitration will be heard by an arbitration panel composed of 3 (three) arbitrators, to be constituted in accordance with the provisions of this Article 9.2.
- 9.2.3. Each of the disputing party will appoint 1 (one) arbitrator and the said 2 (two) arbitrators will jointly appoint the third arbitrator, who will chair the arbitration panel. If one Party fails to appoint its arbitrator within 30 (thirty) days after the other Party has named its arbitrator, then, the appointment of such arbitrator shall be governed by the provisions of the Arbitration and Conciliation Act, 1996.
- 9.2.4. If the 2 (two) arbitrators do not succeed in appointing a third arbitrator within 30 (thirty) days after the latter of the 2 (two) arbitrators has been appointed, the third arbitrator will be appointed as per the provisions of the Arbitration & Conciliation Act, 1996.
- 9.2.5. If for any reason an arbitrator is unable to perform its function, the mandate of the arbitrator will terminate in accordance with the provisions of Applicable Law.
- 9.2.6. Arbitration proceedings under this Article 9.2 will be conducted in accordance with the Arbitration and Conciliation Act, 1996 and rules made thereunder as may be amended, modified, or supplemented from time to time in English language. The seat of the arbitration proceedings shall be New Delhi.
- 9.2.7. The arbitrators will provide a written and reasoned award. The decision of a majority of the arbitrators (or the third arbitrator chairing the arbitration panel, if there is no such majority) will be final and binding and will be enforceable in any court of competent jurisdiction as decree of the court. The Parties hereby waive any objections to or claims of immunity from such enforcement.
- 9.2.8. Notwithstanding the reference of any dispute to be resolved through arbitration pursuant to this Article 9.2, the Parties will continue to perform their respective obligations under this Contract, unless they otherwise agree.

10. MISCELLANEOUS PROVISIONS

10.1. Notices

All notices or other communications to be given or made under this Agreement shall be in writing and shall either be delivered personally or sent by courier or registered post with an additional copy to be sent by facsimile or e-mail. The address for service of each Party, its facsimile number and e-mail address are set out under its name on the signing pages hereto. A notice shall be effective upon actual receipt thereof, save that where it is received after 5.30 PM on a Business Day, or on a day that is not a

Business Day, the notice shall be deemed to be received on the first Business Day following the date of actual receipt. Without prejudice to the foregoing, a Party giving or making a notice or communication, by facsimile or e-mail, shall promptly deliver a copy thereof personally, or send it by courier or registered post to the addressee of such notice or communication. It is hereby agreed and acknowledged that any Party, may by notice, change the address to which such notices and communications to it are to be delivered or mailed. Such change shall be effective when all the Parties have notice of it.

10.2. Amendment

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

10.3. Waiver

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

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

10.3.2. Neither the failure by any Party to insist on any occasion upon the performance of the terms, conditions and provisions of this Agreement or any obligation thereunder, nor time or other indulgence granted by any Party to another Party shall be considered or deemed as waiver of such breach or acceptance of any variation or the relinquishment of any such right hereunder.

10.4. No Third Party Beneficiaries

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

10.5. Survival

10.5.1. Termination of this Agreement:

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

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

10.6. Severability

If for any reason whatsoever, any provision of this Agreement is or becomes invalid, illegal or unenforceable or is declared by any court of competent jurisdiction or any other instrumentality to be invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions shall not be affected in any manner, and the Parties will negotiate in good faith with a view to agreeing to one or more provisions which

may be substituted for such invalid, unenforceable or illegal provisions, as nearly as is practicable to such invalid, illegal or unenforceable provision. Failure to agree upon any such provisions shall not be subject to dispute resolution under Article 10.1 of this Agreement or otherwise.

10.7.Successors and Assigns

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

10.8.Original Document

This Agreement may be executed in 3 (three) counterparts, each of which when executed and delivered, shall constitute an original of this Agreement.

IN WITNESS WHEREOF this Contract has been executed by the duly authorized representatives of the Parties as of the day and year 1st (first) above written on page 1 (one) of this Contract.

Operator

Escrow Bank

By: []
Name: []
Title: []
Authorised by []
For and on behalf of the
[____]

By: []
Name: []
Title: []
Authorised by Board Resolution dated []
For and on behalf of the
[_____]

Authority

By: []
Name: []
Title: []
Authorised by []
For and on behalf of the []
INLAND WATERWAYS AUTHORITY OF INDIA

SCHEDULE 8

Schedule I, II, III, IV and V of Inland Waterways Authority of India Amendment Regulations 2021²

In exercise of the powers conferred by section 35 read with section 17 of the Inland Waterways Authority of India Act, 1985 (82 of 1985), the Authority, with the previous approval of the Central Government, hereby makes the following regulations further to amend the Inland Waterways Authority of India (Levy and Collection of fees and charges) Regulations, 2011, namely:

1. These regulations may be called the Inland Waterways Authority of India (Levy and Collection of fees and charges) (Third Amendment) Regulations, 2021.
2. They shall come into force on the date of its publication in the Official Gazette.
3. In the Inland Waterways Authority of India (Levy and Collection of fees and charges) Regulations, 2011 (herein after referred to as the said regulations), in regulation 4, in clause (b), for sub-clause (i), the following sub-clauses shall be substituted, namely:

“(i.) for all terminals, except the terminals at Kolkata [(Garden Reach Jetty-I, Garden Reach Jetty-II and British Indian Steamer Navigation Jetty), Kalughat (District Saran), Multimodal Terminal Haldia (West Bengal) and Multimodal Terminal Varanasi (Uttar Pradesh)] be made as per Schedule II.”
4. In the said regulations, in regulation 4, in sub-regulation (b), after clause (ii), the following clauses shall be added, namely:-

“(iii.) for Multimodal Terminal at Haldia (West Bengal) be made as per Schedule IV. (iv.) for Multimodal Terminal at Varanasi (Uttar Pradesh) be made as per Schedule V.”
5. In the said regulations, for Schedules I, II and III, the following Schedules shall be substituted namely:-

² Published in the Gazette of India on 17 May 2021

Schedule I

[See regulation 4.(a.)]

(For Waterways usage charges, Vessel related charges and Composite charges for all terminals)

(I) Waterway usage charges

Sl. No	Name of the service	Charges (in rupees)
1.	Movement of cargo vessels	NIL
2.	Movement of passenger or cruise vessels	NIL
2 (a).	Movement of Ro-Ro vessels	NIL
3.	Movement of any other vessel not covered in above categories	NIL

(II) Vessel related charges

Sl. No.	Name of the service	Charges (in rupees)
1.	Berthing charges	<p>For all vessels except Ro-Ro vessels:</p> <ul style="list-style-type: none"> i. 3000/- for Kolkata (Garden Reach Jetty-I, Garden Reach Jetty-II and British Indian Steamer Navigation Jetty) for twenty-four hours or part thereof - 6AM to 6AM (next day). ii. 3000/-* for Haldia Multimodal Terminal for twenty-four hours or part thereof - 6AM to 6AM (next day). iii. 3000/-** for Sahibganj Multimodal Terminal for twenty-four hours or part thereof - 6AM to 6AM (next day). iv. 1500/- * for Varanasi Multimodal Terminal for twenty-four hours or part thereof - 6AM to 6AM (next day). v. 1500/- for all Inland Waterways Authority of India terminals (except those mentioned in paragraph (i.) to (iv.) above for twenty-four hours or part thereof - 6AM to 6AM (next day). vi. 500/- for all Inland Waterways Authority of India temporary pontoons for twenty-four hours or part thereof - 6AM to 6AM (next day). <p>For Ro-Ro vessels:</p> <ul style="list-style-type: none"> i. 100/- per hour or part thereof for all Inland Waterways Authority of India terminals or 1500/- for 24 hours whichever is lesser.
2.	Towage	On specific request as per actual cost.
3.	Pilotage	750/- per day or part thereof per pilot.

**(1) This shall be applicable and remain valid for ten years or till the end of Equip, Operate and Transfer concession in respect of Haldia Multimodal Terminal and Varanasi Multi Modal Terminal, whichever is earlier; after which there shall be a one-time escalation equal to sixty per cent of average Year-On-Year Wholesale Price Index variation (from notification of tariff to time of escalation).*

The escalated ceiling tariff level shall further be applicable and remain valid for ten years or till the end of Equip, Operate and Transfer (or any other concession/contract for terminal operations) whichever is earlier; after which there shall be another escalation equal to sixty percent of average Year-On-Year Wholesale Price variation (from previous escalation to time of escalation in question).

The same tariff revision mechanism shall be followed further.

*** (1) This shall be applicable and remain valid for ten years or till the end of Operation, Management and Development concession for Sahibganj Multimodal Terminal, whichever is earlier; after which there shall be a one-time escalation equal to sixty percent of average Year-On-Year Wholesale Price variation (from notification of tariff to time of escalation).*

(2) The escalated ceiling tariff level shall further be applicable and remain valid for ten years or till the end of Operation, Management and Development (or any other concession or contract for terminal operations) whichever is earlier; after which there shall be another escalation equal to sixty percent of

average Year-On-Year Wholesale Price variation (from previous escalation to time of escalation in question).

The same tariff revision mechanism shall be followed further.

(III) Composite charges

Sl. No	Name of the service	Charges (in Rupees)
1.	Movement of Over Dimensional Cargo	1.50/- per metric ton per kilometer* for use of National Waterways 1, 2, 3, 4 and Indo-Bangladesh Protocol Route within Indian Territory*
*A user paying Over Dimensional Cargo charges would be exempt from payment of waterway charges and vessel related charges.		

Note: Composite charges shall also be applicable on all National Waterways or part thereof which are included in the Indo-Bangladesh Protocol Route.

(IV) Taxes

Taxes extra, as applicable

Schedule II

[See regulation 4.(b).(i.)]

[Fees and charges (other than Waterways usage charges, Vessel related charges and Composite charges) for terminals other than those specifically mentioned in Schedule III, Schedule IV and Schedule V]

(I) Cargo related charges

Sl. No.	Name of the service	Charges (in rupees)
1.	Terminal Charges	
(i)	Dry cargo	a) 5/- per metric tonne or part thereof for the Bandel Thermal Power Station jetty located at Tribeni, Hooghly. b) 1/- per metric tonne or part thereof for all terminals other than (a)
(ii)	Liquid cargo	1/- per metric tonne or part thereof
(iii)	Containerised cargo	50/- per twenty-foot equivalent unit and 75/- per forty-foot equivalent unit
2.	Transit shed charges	4.1.1.1.1 Free for first thirty days 4.1.1.1.2 5/- per metric tonne per day or part thereof for next fourteen days 4.1.1.1.3 10/- per metric tonne per day or part thereof for further fourteen days 4.1.1.1.4 40/- per metric tonne per day or part thereof after fifty-eight days and the cargo shall be caused to be removed without notice and disposed off by the Authority at the risk and cost of the owner to vacate the covered area or transit shed or premises and to recover due payment. Per day – 6AM to 6AM (next day)
3.	Open storage charges	
(i)	Hard stand	a) Free for first thirty days b) 2/- per metric tonne per day or part thereof for next fourteen days c) 4/- per metric tonne per day or part thereof for further fourteen days d) 16/- per metric tonne per day or part thereof after fifty-eight days and the cargo shall be caused to be removed without notice and disposed off by the Authority at the risk and cost of the owner to vacate the hard stand or premises and to recover due payment. Per day – 6AM to 6AM (next day)
(ii)	On open area	a) Free for first thirty days b) 1/- per metric tonne per day or part thereof for next fourteen days c) 2/- per metric tonne per day or part thereof for further fourteen days d) 8/- per metric tonne per day or part thereof after fifty-eight days and the cargo shall be caused to be removed without notice and disposed off by the Authority at the risk and cost of the owner to vacate the open area or premises and to recover due payment. Per day – 6AM to 6AM (next day)

(II) Miscellaneous charges

Sl. No.	Name of the service	Charges (in rupees)
1.	Crane (including pontoon crane) hire charges	800/- per shift of eight hours for the cranes of the capacity up to five metric tonnes.
		2000/- per shift of eight hours for the cranes of the capacity up to twenty metric tonnes.
		2500/- per shift of eight hours for the cranes of the capacity of more than twenty metric tonnes.
2.	Container crane	1100/- per hour or part thereof
3.	Fork lift	600/- per shift of eight hours for the fork lift of the capacity up to three metric tonnes.
4.	Electric supply to the vessel	As per the actual rates of the Electricity Board or Authority including surcharge.
5.	Bunkering of fuel or petroleum oil lubricants	As per market rate and surcharge, transport etc.
6.	Water supply	300/- per kilolitre
7.	Sewage disposal	100/- per kilolitre
8.	Weighing scale	5/- per metric tonne. Minimum 50/- Issue of weight certificate : rupees twenty-five per vehicle
9.	Pontoon Hire Charges	1000/- per day or part thereof

(III) Taxes

Taxes extra, as applicable

Schedule III

[See regulations 4.(b).(ii.)]

[Fees and charges (other than Waterways usage charges, Vessel related charges and Composite charges) for terminals at Kolkata (Garden Reach Jetty –I, Garden Reach Jetty-II and British Indian Steamer Navigation Jetty) and Kalughat (District Saran)]

(I) Cargo related charges

Sl. No	Name of the service	Charges (in Rupees)
1.	Terminal Charges	
(i)	Dry cargo	21/- per tonne or part thereof
(ii)	Liquid cargo	21/- per tonne or part thereof
(iii)	Containerised cargo	420/- per twenty-foot equivalent unit and 800/- per forty-foot equivalent unit
2.	Handling charges - Break Bulk Cargo (Export and Import)	
(a)	Bagged Cargo	
(i)	Discharging charges from ship to shore and vice-versa using Garden Reach Jetty crane	160/- per metric tonne or part thereof
(ii)	Movement from jetty to storage yard or warehouse and vice-versa	50/- per metric tonne or part thereof
(b)	Cargo in wooden box or cartons	
(i)	Discharging charges from ship to shore and vice-versa using Garden Reach Jetty crane	250/- per metric tonne or cubic meters, whichever is higher
(ii)	Movement from jetty to storage yard or warehouse and vice-versa	80/- per metric tonne or cubic meters, whichever is higher
(c)	Iron and steel	
(i)	Discharging charges from ship to shore and vice-versa using Garden Reach Jetty crane	300/- per metric tonne or part thereof
(ii)	Movement from jetty to storage yard or warehouse and vice-versa	100/- per metric tonne or part thereof
3.	Truck loading or unloading charges	
(i)	Truck loading or unloading	50/- per metric tonne or cubic meter
4.	Storage	
(i)	Warehouse	a) Free for first three days b) 15/- per metric tonne or cubic meter or part thereof for next twelve days c) 27/- per metric tonne or cubic meter or part thereof for further fifteen days d) 54/- per metric tonne or cubic meter per day or part thereof after thirty-one days
(ii)	Open Yard	a) Free for first seven days b) 12/- per metric tonne or cubic meter per day or part thereof for next twelve days c) 22/- per metric tonne or cubic meter per day or part thereof for further fifteen days d) 44/- per metric tonne or cubic meter per day or part thereof after thirty-one days
	Handling charges for Bulk Cargo (Export and Import)	
(a)	Stone chips	

(i)	Composite charge for loading or unloading on to vessel by mechanical means, movement to yard or truck and loading or unloading on or from Truck	170/- per metric tonne
(b)	Fly Ash	
(i)	Composite charge for loading or unloading on to vessel by pneumatic means, movement to yard or truck and loading or unloading on or from Truck	45/- per metric tonne
6.	Container - Terminal Service	
(a)	Loaded container, Loading or Discharging	4500/- per twenty-foot equivalent unit container, 6000/- per forty-foot equivalent unit container and 6800/- per forty-foot equivalent high cube unit container
(b)	Empty container, Loading or Discharging	1800/- per twenty-foot equivalent unit container, 2200/- per forty-foot equivalent unit container and 2500/- per forty-foot equivalent high cube unit container
(c)	Transportation of containers from Garden Reach Jetty to storage yard and stacking or <i>vice versa</i>	850/- per twenty-foot equivalent unit container, 1000/- per forty-foot equivalent unit container and 1200/- per forty-foot equivalent high cube unit container
7.	Container – Export	
(a)	Pick up of empty container from Garden Reach Jetty storage yard, placement for stuffing, cargo receiving from truck, Customs examinations, stuffing in container and transportation of the loaded container up to Gross Garden Reach Jetty	5500/- per twenty-foot equivalent unit container, 11000/- per forty-foot equivalent unit container and 13000/- per forty-foot equivalent high cube unit container
(b)	Lift-On / Lift-Off*	700/- per twenty-foot equivalent unit container, 1300/- per forty-foot equivalent unit container and 1300/- per forty-foot equivalent high cube unit container
For forty-five feet containers, the fees shall be 1.25 times higher than Fee for forty-foot equivalent unit containers and ground rent shall be twice the rent for forty-foot equivalent unit containers. Reserve Bank of India declared exchange rate for the conversion of currency applicable for the day shall be applied. *for any additional movement if requested by exporters		
	Laden containers	
(c)	Storage for export laden containers	<ul style="list-style-type: none"> a) Free for first three days b) 6 (US Dollar equivalent in Rupees) per twenty-foot equivalent unit for next six days c) 12 (US Dollar equivalent in Rupees) per twenty-foot equivalent unit for next six days d) 24 (US Dollar equivalent in Rupees) per twenty-foot equivalent unit per day for the next six days e) 48 (US Dollar equivalent in Rupees) per twenty-foot equivalent unit per day after twenty-one days
For forty-five feet containers, the fees shall be 1.25 times higher than Fee for forty-foot equivalent unit containers and ground rent shall be twice the rent for forty-foot equivalent unit containers. Reserve Bank of India declared exchange rate for the conversion of currency applicable for the day shall be applied.		
8.	Container – Import	

(a)	Removal of laden container from gross Garden Reach Jetty storage yard to un-stuffing yard, Custom examinations, un-stuffing of container and transportation of empty container from un-stuffing yard to Garden Reach Jetty empty yard	5500/- per twenty-foot equivalent unit container, 11000/- per forty-foot equivalent unit container and 13000/- per forty-foot equivalent high cube unit container
(b)	Storage of Import laden containers	<ul style="list-style-type: none"> a) Free for first three days b) 6 (US Dollar equivalent in Rupees) per twenty-foot equivalent unit for next six days c) 12 (US Dollar equivalent in Rupees) per twenty-foot equivalent unit for next six days d) 24 (US Dollar equivalent per twenty-foot equivalent unit per day for the next six days e) 48 (US Dollar equivalent in Rupees) per twenty-foot equivalent unit per day after twenty-one days
For forty-five feet containers, the fees shall be 1.25 times higher than Fee for forty-foot equivalent unit containers and ground rent shall be twice the rent for forty-foot equivalent unit containers. Reserve Bank of India declared exchange rate for the conversion of currency applicable for the day shall be applied.		
9.	Container - Empty Container	
(a)	Lift-On / Lift-Off	350/- per twenty-foot equivalent unit container, 550/- per forty-foot equivalent unit container and 550/- per forty-foot equivalent high cube unit container
(b)	Ground Rent	70/- per twenty-foot equivalent unit container, 140/- per forty-foot equivalent unit container and 140/- per forty-foot equivalent high cube unit container
For forty-five feet containers, the fees shall be 1.25 times higher than Fee for forty-foot equivalent unit containers and ground rent shall be twice the rent for forty-foot equivalent unit containers.		
10.	Container – Transportation	
(a)	Laden and empty transportation to and from Garden Reach Jetty to Netaji Subhas Dock or Kolkata Port Trust	1500/- per twenty-foot equivalent unit container, 2500/- per forty-foot equivalent unit container and 2500/- per forty-foot equivalent high cube unit container

For forty-five feet containers, the fees shall be 1.25 times higher than Fee for forty-foot equivalent unit containers and ground rent shall be twice the rent for forty-foot equivalent unit containers.

11.	Container - Reefer Container	
(a)	Container power plug	750/- per twenty-foot equivalent unit container and 1500/- per forty-foot equivalent container for eight hours or part thereof
(b)	Power monitoring	750/- for eight hours or part thereof

(II) Miscellaneous charges

Sl. No	Name of the service	Charges (in Rupees)
1.	Electric supply to the vessel	As per the actual rates of the Electricity Board or Authority including surcharge
2.	Bunkering of fuel/petroleum oil lubricants	As per market rate and surcharge
3.	Water supply	500/- per kilolitre
4.	Weighing scale	15/- per metric tonne. (Minimum 500/-) Issue of weight certificate: 50/-per vehicle
5.	Weighment	400/- per twenty-foot equivalent unit container and 600/- per forty-foot equivalent unit container
6.	Verified gross mass	1000/- per container
7.	Mooring and ancillary functions	4000/- for eight hours or part thereof
8.	Berthing and unberthing assistance services (per Berth/Voyage)	2000/-
9.	Berthing and unberthing assistance services for Ro-Ro (per berth/Voyage)	1500/-
10.	Seal cutting charge/ Seal fixing charge	100/- per container
11.	Loaded Container survey charge	300/- per twenty-foot equivalent unit container and 600/- per forty-foot equivalent unit container
12.	Cargo survey charge	300/- per twenty-foot equivalent unit container and 500/- per forty-foot equivalent unit container
13.	Container entry	150/- per twenty-foot equivalent unit container and 300/- per forty-foot equivalent unit container
14.	Sweeping for spill over cargo	150/- per container
15.	Bagging charge (In pp bags in case of bulk cargo)	13/- per kg
16.	Customs appraisalment charges in case of multiple shipping bills	750/- per shipping bill or bill of entry
17.	Internal shifting of loaded container	700/- per twenty-foot equivalent unit container and 1225/- per forty-foot equivalent unit container
18.	Truck entry	50/-
19.	Truck weighment	200/- per truck

20.	Terminal charges Ro-Ro truck	150/- for empty truck 200/- up to 12 tonnes 300/- above 12 tonnes
21.	Truck parking	100/- per hour Truck arriving at terminal via RO-RO vessel will be allowed to move out free of charge.

(III) Discount

The operator of a terminal included in this schedule may offer a discount, if any, on prescribed rates. However, the discount has to be from the revenue share of operator only and revenue share of Authority shall not get affected due to such discounts.

(IV) Taxes

Taxes extra, as applicable

5. In the said regulations, after Schedule III, the following Schedules shall be inserted, namely:-

Schedule IV
[See regulations 4. (b.) (iii.)]

[Fees and charges (other than Waterways usage charges and Composite charges) for Multi Modal Terminal at Haldia, West Bengal]

(I) Cargo related charges

Sl. No	Name of the service	Charges (in Rupees)
1.	Terminal Charges	
(i)	Dry cargo	46/- per metric tonne or part thereof
(ii)	Liquid cargo	46/- per metric tonne or part thereof
(iii)	Containerized cargo	525/- per twenty-foot equivalent unit and 1000/- per forty-foot equivalent unit
2.	Handling charges - Break Bulk Cargo	
(a)	Over Dimensional Cargo *	
(i)	Terminal access charges	45/- per metric tonne or cubic meter (whichever is higher)
(ii)	Heavy lift charges	12000/- per day
*Charges mentioned in this tariff schedule shall be applicable over cargo as mentioned in para 3 of Schedule I.		
(b)	Bagged Cargo	
(i)	Discharging from ship to shore and vice-versa using Multimodal Terminal crane	350/- per metric tonne or part thereof
(ii)	Movement from jetty to storage yard / warehouse and vice-versa	110/- per metric tonne or part thereof
(c)	Cargo in wooden box or cartons	
(i)	Discharging from ship to shore and vice-versa using Multimodal Terminal crane	350/- per metric tonne or cubic meter, whichever is higher
(ii)	Movement from jetty to storage yard / warehouse and vice-versa	(a.) 130/- per metric tonne or cubic meter, whichever is higher or (b.) 25/- per package (of maximum 50 kg) whichever applicable
(d)	Iron and steel	
(i)	Discharging from ship to shore and vice-versa using Multi Modal Terminal crane	400/- per metric tonne or part thereof
(ii)	Movement from jetty to storage yard or warehouse and vice-versa	130/- per metric tonne or part thereof
(e)	Any other not specified break bulk cargo	

(i)	Discharging from ship to shore and vice-versa using Multimodal Terminal crane	200/- per Metric Tonne or part thereof
(ii)	Movement from jetty to storage yard or warehouse and vice-versa	75/- per Metric Tonne or part thereof
3.	Truck loading or unloading charges	
(i)	Truck loading/unloading	70/- per metric tonne or cubic meter whichever is higher or 8/- per package (of maximum 50kg) whichever is applicable
4.	Storage, bulk or break-bulk cargo	
(i)	Warehouse	a) Free for first three days b) 33/- per metric tonne or cubic meter or part thereof for next twelve days c) 35/- per metric tonne or cubic meter or part thereof for further fifteen days d) 70/- per metric tonne or cubic meter per day or part thereof after thirty days
(ii)	Open Yard	a) Free for first three days b) 20/- per metric tonne or cubic meter per day or part thereof for next twelve day c) 30/- per metric tonne or cubic meter per day or part thereof for further fifteen days d) 55/- per metric tonne or cubic meter per day or part thereof after thirty days
5.	Storage- Fly ash	
(i)	Silo	a) Free for first two days b) 33/- per metric tonne or part thereof for next thirteen days c) 45/- per metric tonne or part thereof for further fifteen days d) 70/- per metric tonne or part thereof after thirty days
6.	Handling charges for Bulk Cargo	
(a)	Stone chips	
(i)	Composite charge for loading or unloading on to vessel by mechanical means, movement to yard or truck and loading or unloading on/from Truck	275/- per metric tonne
(b)	Fly Ash or other free flowing cargo like cement etc.	
(b.1)	Bulker to barge	
(i)	Composite charge for loading or unloading on to vessel by pneumatic means, movement to yard or truck and loading or unloading on from Truck	170/- per metric tonne
(b.2)	Bulker to silo to barge	

(i)	Composite charge for loading or unloading on to vessel by pneumatic means, movement to yard or truck and loading or unloading on or from Truck	170/- per metric tonne
(c)	Coal	
(i)	Composite charge for loading or unloading on to vessel by mechanical means, movement to yard or truck and loading or unloading on or from Truck	275/- per metric tonne
(d)	Others	
(i)	Composite charge for loading/unloading on to vessel by mechanical means, movement to yard or truck and loading/unloading on/from Truck	275/- per metric tonne
(e)	Coal and Other Dry Bulk Cargo including all Minerals Ores Fertilizers etc	
(i)	Screening services	30/- per metric tonne or part thereof
(ii)	Water sprinkling	30/- per metric tonne or part thereof
7.	Handling charges- bulk liquid cargo	
(a)	Loading or unloading charges through pipeline onto shore tanks or barge vice versa	5/- per metric tonne or cubic meter whichever is higher
(b)	Delivery charges via barge	10/- per metric tonne or cubic meter whichever is higher
(c)	Delivery charges via road tanker	15/- per metric tonne or cubic meter whichever is higher
(d)	Storage charges-shore tank charge (monthly)	300/- per ton (1:1 ratio) on the shell capacity of the tank
8.	Container - Handling Charges	
(a)	Truck loading or unloading charge for laden container	450/- per twenty-foot equivalent unit container, 750/- per forty-foot equivalent unit container and 850/- per forty-foot equivalent unit high cube unit container
(b)	Truck loading/ unloading charge for empty container	200/- per twenty-foot equivalent unit container, 350/- per forty-foot equivalent unit container and 400/- per forty-foot equivalent unit high cube unit container
(c)	Laden container- Discharging from ship to shore and vice-versa using crane	4800/- per twenty-foot equivalent unit container, 6800/- per forty-foot equivalent unit container and 7000/- per forty-foot equivalent high cube unit container
(d)	Laden container-Transportation of containers from Jetty to Multi Modal Terminal storage yard and stacking or <i>vice versa</i>	1200/- per twenty-foot equivalent unit container, 1800/- per forty-foot equivalent unit container and 1800/- per forty-foot equivalent high cube unit container
9.	Container – Export	
(a)	Pick up of empty container from Multi Modal Terminal storage yard, placement for stuffing, cargo receiving from truck,	6500/- per twenty-foot equivalent unit container, 14000/- per forty-foot equivalent unit container and 14000/- per forty-foot equivalent high cube unit container

	Customs examinations, stuffing in container and transportation of the loaded container up to Multi Modal Terminal jetty	
(b)	Lift-On / Lift-Off*	1400/- per twenty-foot equivalent unit container, 2000/- per forty-foot equivalent unit container and 2000/- per forty-foot equivalent high cube unit container
*for any additional movement if requested by exporters		
	Laden containers	
(c)	Storage for export laden containers	<ul style="list-style-type: none"> a) Free for first three days b) 7 (US Dollar equivalent in Rupees) per twenty-foot equivalent unit for next six days c) 14 (US Dollar equivalent in Rupees) per twenty-foot equivalent unit for next six days d) 25 (US Dollar equivalent in Rupees) per twenty-foot equivalent unit per day for the next six days e) 48 (US Dollar equivalent in Rupees) per twenty-foot equivalent unit per day after twenty one days
Storage for laden forty-foot equivalent units shall be charged at two times that of twenty-foot equivalent units. For forty-five feet containers, the fees shall be 1.25 times higher than Fee for forty-foot equivalent unit containers. Reserve Bank of India declared exchange rate for the conversion of currency applicable for the day shall be applied.		
10.	Container – Import	
(a)	Removal of laden container from Multimodal Terminal storage yard to un-stuffing yard, Custom examinations, un-stuffing of container and transportation of empty container from un-stuffing yard to Multimodal Terminal empty yard	6500/- per twenty-foot equivalent unit container, 14000/- per forty-foot equivalent unit container and 14000/- per forty-foot equivalent high cube unit container
(b)	Lift-on/ Lift-off*	1400/- per twenty-foot equivalent unit container, 2000/- per forty-foot equivalent unit container and 2000/- per forty-foot equivalent high cube unit container
(c)	Storage of Import laden containers	<ul style="list-style-type: none"> a) Free for first three days b) 7 (US Dollar equivalent in Rupees) per twenty-foot equivalent unit for next six days c) 14 (US Dollar equivalent in Rupees) per twenty-foot equivalent unit for next six days d) 25 (US Dollar equivalent per twenty-foot equivalent unit per day for the next six days e) 48 (US Dollar equivalent in Rupees) per twenty-foot equivalent unit per day after twenty one days
Storage for laden forty-foot equivalent units shall be charged at two times that of twenty-foot equivalent units. For forty five feet containers, the fees shall be 1.25 times higher than Fee for forty-foot equivalent unit containers. Reserve Bank of India declared exchange rate for the conversion of currency applicable for the day shall be applied. *for any additional movement if requested by user		
11.	Container - Empty Container	

(a)	Empty container- discharging from ship to shore and vice-versa using Multi Modal Terminal crane	2400/- per twenty-foot equivalent unit container, 3100/- per forty- foot equivalent unit container and 3500/- per forty-foot equivalent high cube unit container
(b)	Transportation of empty containers from Jetty to Multi Modal Terminal storage yard and stacking or vice versa	350/- per twenty-foot equivalent unit container, 500/- per forty-foot equivalent unit container and 500/- per forty-foot equivalent high cube unit container
(c)	Pick up of empty container from Multi Modal Terminal storage yard, placement for stuffing, cargo receiving from truck, stuffing in container and transportation of the loaded container up to Multi Modal Terminal jetty	5000/- per twenty-foot equivalent unit container, 10000/- per forty- foot equivalent unit container and 10000/- per forty-foot equivalent high cube unit container
(c)	Lift-On / Lift-Off*	750/- per twenty-foot equivalent unit container, 1500/- per forty- foot equivalent unit container and 1500/- per forty-foot equivalent high cube unit container
(d)	Ground Rent	100/- per day per twenty-foot equivalent unit container, 160/- per day per forty-foot equivalent unit container and 200/- per day per forty-foot equivalent high cube unit container

For forty five feet containers, the fees shall be 1.25 times higher than Fee for forty-foot equivalent unit containers and ground rent shall be twice the rent for forty-foot equivalent unit containers.

*for any additional movement if requested by user

12. Container- Domestic

(a)	Lift-On / Lift-Off*	700/- per twenty-foot equivalent unit container, 1300/- per forty- foot equivalent unit container and 1300/- per forty-foot equivalent high cube unit container
(b)	Storage for laden containers	<ul style="list-style-type: none"> a) Free for first three days b) 525/- per twenty-foot equivalent unit container for next six days c) 1051/- per twenty-foot equivalent unit container for next six days d) 1877/- per twenty-foot equivalent unit container for next six days e) 3603/- per twenty-foot equivalent unit container after twenty one days

Storage for laden forty-foot equivalent units shall be charged at two times that of twenty-foot equivalent units. For forty five feet containers, the fees shall be 1.25 times higher than Fee for forty-foot equivalent unit containers. Reserve Bank of India declared exchange rate for the conversion of currency applicable for the day shall be applied.

*for any additional movement if requested by user

13.	Container – Transportation	
(a)	Laden container transportation to and from Multi Modal Terminal to Haldia Dock Complex and Nearby Container Freight Station in 5 Kilometre Radius	3000/- per twenty-foot equivalent unit container, 6000/- per forty- foot equivalent unit container and 7000/- per forty-foot equivalent high cube unit container
(b)	Empty container transportation to and from Multimodal Terminal to Haldia Dock Complex and Nearby Container Freight Station in 5 Kilometre radius	2200/- per twenty-foot equivalent unit container, 3400/- per forty- foot equivalent unit container and 3500/- per forty-foot equivalent high cube unit container
For forty five feet containers, the fees shall be 1.25 times higher than Fee for forty-foot equivalent unit containers and ground rent shall be twice the rent for forty-foot equivalent unit containers.		
14.	Container - Reefer Container	
(a)	Container power plug	900/- per twenty-foot equivalent unit container and 1800/- per forty-foot equivalent container for 8 hours or part thereof
(b)	Power monitoring	900/- for 8 hours or part thereof
15.	Railway rake terminal access and handling charges	
(a)	Terminal access charges	75000/- per rake
(b)	Container loading or unloading and shifting to yard and vice versa	5500/- per twenty-foot equivalent unit container, 11500/- per forty- foot equivalent unit container and 13500/- per forty-foot equivalent unit high cube unit container
(c)	Cargo loading or unloading from Wagon and intercart to storage yard and unloading or loading at storage yard	
(i)	Dry bulk cargo	205/- per metric tonne or part thereof
(ii)	Steel cargo	380/- per metric tonne or part thereof
(iii)	Bagged cargo	22/- per kilogram (weighing upto 50 kilogram)
(d)	Track cleaning and yard management	40/- per metric tonne or part thereof

(II) Miscellaneous charges

Sl. No	Name of the service	Charges (in Rupees)
1.	Electric supply to the vessel	As per the actual rates of the Electricity Board or Authority including surcharge
2.	Arranging of electric supply to vessel	2500/- per vessel for 24 hours or part thereof from 6AM to 6AM (next day)
3.	Bunkering of fuel or petroleum oil lubricants	As per market rate and surcharge
4.	Bunkering of fuel or petroleum oil lubricants (Safety Fee)	1000/- per vessel
5.	Entry of Fuel Tanker at terminal	600/- per tanker for 24 hour period or part thereof from 6AM to 6AM (next day) per 1000 Ltr or part thereof
6.	Water supply	500/- per kiloliter

7.	Weighing scale	15/- per metric tonne . (Minimum 500/-) Issue of weight certificate: 100/-per vehicle
8.	Weighment	500/- per twenty-foot equivalent unit container and 700/- per forty- foot equivalent unit container and 700/- per forty-foot equivalent unit high cube unit container
9.	Verified gross mass	1200/- per container
10.	Mooring and ancillary functions	4000/- for eight hours or part thereof
11.	Berthing and unberthing assistance services (per Berth or Voyage)	a) 2000/- for 24 hours or part thereof for vessels upto 1400 Dead Weight Tonnage b) 4000/- for 24 hours or part thereof for vessels from 1400 Dead Weight Tonnage to 2100 Dead Weight Tonnage c) 5500/- for 24 hours or part thereof for vessels above 2100 Dead Weight Tonnage
12.	Berthing and unberthing assistance services for Ro-Ro (per berth or Voyage)	2000/-
13.	Seal cutting charge or Seal fixing charge	100/- per container
14.	Loaded Container survey charge	350/- per twenty-foot equivalent unit container, 700/- per forty- foot equivalent unit container and 700/- per forty-foot equivalent unit high cube unit container
15.	Cargo survey charge	350/- per twenty-foot equivalent unit container, 700/- per forty- foot equivalent unit container and 700/- per forty-foot equivalent unit high cube unit container
16.	Stuffing or destuffing survey charge (empty)	150/- per twenty-foot equivalent unit container, 250/- per forty-foot equivalent unit container and 250/- per forty-foot equivalent unit high cube unit container
17.	Stuffing or destuffing survey charge (laden)	400/- per twenty-foot equivalent unit container, 800/- per forty-foot equivalent unit container and 800/- per forty-foot equivalent unit high cube unit container
18.	Container entry	150/- per twenty-foot equivalent unit container, 300/- per forty-foot equivalent unit container and 300/- per forty-foot equivalent unit high cube unit container
19.	Sweeping for spill over cargo	150/- per twenty-foot equivalent unit container, 300/- per forty-foot equivalent unit container and 300/- per forty-foot equivalent unit high cube unit container
20.	Bagging charge (In pp bags in case of bulk cargo)	14/- per kg
21.	Customs appraisalment charges in case of multiple shipping bills	800/- per shipping bill/ bill of entry
22.	Internal shifting of loaded container	a) 1000/- per twenty-foot equivalent unit container b) 1750/- per forty-foot equivalent unit container c) 1750/- per forty-foot equivalent unit high cube unit container
23.	Internal shifting of empty container	300/- per twenty-foot equivalent unit container
24.	Truck entry	100/- per truck
25.	Truck weighment	250/- per truck

26.	Terminal charges Ro-Ro truck	a) 150/- for empty truck b) 200/- up to 12 metric tonnes c) 300/- above 12 metric tonnes
27.	Truck parking	a) 100/- per hour b) Truck arriving at terminal via RORO vessel will be allowed to move out free of charge.
28.	Container repairs and cleaning (per container) manhour rate	US Dollar 1.6 per hour per twenty-foot equivalent unit US Dollar 3.2 per hour per forty-foot equivalent unit
29.	Less than Container Load delivery charges	1250/- per shipment
30.	Facilitation of examination of Less than Container Load cargo	750/- per shipment
31	Towage	4000/- per hour
32	Pilotage	5/- per gross registered tonnage

(IV) Discount

The operator of terminals included in this schedule may offer a discount, if any, on prescribed rates.

(V) Revision

- i. the above tariffs shall be revised every year based on a variation in the Wholesale Price Index.
- ii. Wholesale Price Index shall be as published by Reserve Bank of India.
- iii. such revision shall be based on indexation against sixty per cent of the variation in the Wholesale Price Index for a relevant year beginning from the 1st January and ending on the 31st December.
- iv. such revised Ceiling tariff will become applicable after the same has been notified by the concessioning Authority.

(VI) Taxes

Taxes extra, as applicable

Schedule V
[see regulation 4. (b).(iv.)]

[Fees (other than Waterways usage charges and Composite charges) for Multi Modal Terminal at Varanasi, Uttar Pradesh]

(I) Cargo related charges

Sl. No	Name of the service	Charges (in Rupees)
1.	Terminal Charges	
(i)	Dry cargo	21/- per metric tonne or part thereof
(ii)	Liquid cargo	21/- per metric tonne or part thereof
(iii)	Containerised cargo	420/- per twenty-foot equivalent unit and 800/- per forty-foot equivalent unit
2.	Handling charges - Break Bulk Cargo (Export and Import)	
(a)	Bagged Cargo	
(i)	Discharging from ship to shore and vice-versa using crane	160/- per metric tonne or part thereof
(ii)	Movement from jetty to storage yard / warehouse and vice-versa	50/- per metric tonne or part thereof
(b)	Cargo in wooden box or cartons	
(i)	Discharging from ship to shore and vice-versa using Multimodal Terminal crane	250/- per metric tonne or cubic meters , whichever is higher
(ii)	Movement from jetty to storage yard/ warehouse and vice-versa	80/- per metric tonne or cubic meters, whichever is higher
(c)	Iron and steel	
(i)	Discharging from ship to shore and vice-versa using Multimodal Terminal crane	300/- per metric tonne or part thereof
(ii)	Movement from jetty to storage yard / warehouse and vice-versa	100/- per metric tonne or part thereof
3.	Truck loading or unloading charges	
(i)	Truck loading/unloading	50/- per metric tonne or cubic meter
4.	Storage	
(i)	Warehouse	a) Free for first three days b) 15/- per metric tonne or cubic meter or part thereof for next twelve days c) 27/- per metric tonne or cubic meter or part thereof for further fifteen days d) 54/- per metric tonne or cubic meter per day or part thereof after thirty days
(ii)	Open Yard	a) Free for first three days b) 12/- per metric tonne or cubic meter per day or part thereof for next twelve days

		c) 22/- per metric tonne or cubic meter per day or part thereof for further fifteen days d) 44/- per metric tonne or cubic meter per day or part thereof after thirty days
5.	Handling charges for Bulk Cargo (Export and Import)	
(a)	Stone chips	
(i)	Composite charge for loading or unloading on to vessel by mechanical means, movement to yard or truck and loading or unloading on/from Truck	170/- per metric tonne
(b)	Fly Ash	
(i)	Composite charge for loading or unloading on to vessel by pneumatic means, movement to yard or truck and loading or unloading on or from Truck	170/- per metric tonne
6.	Container - Terminal Service	
(a)	Loaded container, Loading or Discharging	4500/- per twenty-foot equivalent unit container, 6000/- per forty-foot equivalent unit container and 6800/- per forty-foot equivalent high cube unit container
(b)	Empty container, Loading or Discharging	1800/- per twenty-foot equivalent unit container, 2200/- per forty-foot equivalent unit container and 2500/- per forty-foot equivalent high cube unit container
(c)	Transportation of containers from Jetty to storage yard and stacking or vice versa	850/- per twenty-foot equivalent unit container, 1000/- per forty-foot equivalent unit container and 1200/- per forty-foot equivalent high cube unit container
7.	Container – Export	
(a)	Pick up of empty container from storage yard, placement for stuffing, cargo receiving from truck, Customs examinations, stuffing in container and transportation of the loaded container up to jetty	5500/- per twenty-foot equivalent unit container, 11000/- per forty-foot equivalent unit container and 13000/- per forty-foot equivalent high cube unit container
(b)	Lift-On / Lift-Off*	700/- per twenty-foot equivalent unit container, 1300/- per forty-foot equivalent unit container and 1300/- per forty-foot equivalent high cube unit container
For forty-five feet containers, the fees shall be 1.25 times higher than Fee for forty-foot equivalent unit containers and ground rent shall be twice the rent for forty-foot equivalent unit containers. Reserve Bank of India declared exchange rate for the conversion of currency applicable for the day shall be applied. *for any additional movement if requested by exporters		
	Laden containers	

(c)	Storage for export laden containers	<ul style="list-style-type: none"> a) Free for first three days b) 6 (US Dollar equivalent in Rupees) per twenty-foot equivalent unit for next six days c) 12 (US Dollar equivalent in Rupees) per twenty-foot equivalent unit for next six days d) 24 (US Dollar equivalent in Rupees) per twenty-foot equivalent unit per day for the next six days e) 48 (US Dollar equivalent in Rupees) per twenty-foot equivalent unit per day after twenty-one days
For forty-five feet containers, the fees shall be 1.25 times higher than Fee for forty-foot equivalent unit containers and ground rent shall be twice the rent for forty-foot equivalent unit containers. Reserve Bank of India declared exchange rate for the conversion of currency applicable for the day shall be applied.		
8.	Container – Import	
(a)	Removal of laden container from storage yard to un-stuffing yard, Custom examinations, un-stuffing of container and transportation of empty container from un-stuffing yard to empty yard	5500/- per twenty-foot equivalent unit container, 11000/- per forty-foot equivalent unit container and 13000/- per forty-foot equivalent high cube unit container
(b)	Storage of Import laden containers	<ul style="list-style-type: none"> a) Free for first three days b) 6 (US Dollar equivalent in Rupees) per twenty-foot equivalent unit for next six days c) 12 (US Dollar equivalent in Rupees) per twenty-foot equivalent unit for next six days d) 24 (US Dollar equivalent per twenty-foot equivalent unit per day for the next six days e) 48 (US Dollar equivalent in Rupees) per twenty-foot equivalent unit per day after twenty one days
For forty-five feet containers, the fees shall be 1.25 times higher than Fee for forty-foot equivalent unit containers and ground rent shall be twice the rent for forty-foot equivalent unit containers. Reserve Bank of India declared exchange rate for the conversion of currency applicable for the day shall be applied.		
9.	Container - Empty Container	
(a)	Lift-On or Lift-Off	350/- per twenty-foot equivalent unit container, 550/- per forty-foot equivalent unit container and 550/- per forty-foot equivalent high cube unit container
(b)	Ground Rent	70/- per twenty-foot equivalent unit container, 140/- per forty-foot equivalent unit container and 140/- per forty-foot equivalent high cube unit container
For forty-five feet containers, the fees shall be 1.25 times higher than Fee for forty-foot equivalent unit containers and ground rent shall be twice the rent for forty-foot equivalent unit containers.		
10.	Container – Transportation	
(a)	Laden and empty transportation to and from Multi Modal terminal yard to other nearby yard	1500/- per twenty-foot equivalent unit container, 2500/- per forty-foot equivalent unit container and 2500/- per forty-foot equivalent high cube unit container
For forty-five feet containers, the fees shall be 1.25 times higher than Fee for forty-foot equivalent unit containers and ground rent shall be twice the rent for forty-foot equivalent unit containers.		
11.	Container - Reefer Container	
(a)	Container power plug	750/- per twenty-foot equivalent unit container and 1500/- per forty-foot equivalent container for 8 hours or part thereof
(b)	Power monitoring	750/- for eight hours or part thereof

(II) Miscellaneous charges

Sl. No	Name of the service	Charges (in Rupees)
1.	Electric supply to the vessel	As per the actual rates of the Electricity Board or Authority including surcharge
2.	Bunkering of fuel/petroleum oil lubricants	As per market rate and surcharge
3.	Water supply	500/- per kiloliter
4.	Weighing scale	15/- per metric tonne. (Minimum 500/-) Issue of weight certificate: 50/-per vehicle
5.	Weighment	400/- per twenty-foot equivalent unit container and 600/- per forty-foot equivalent unit container and 600/- per forty-foot equivalent unit high cube unit container
6.	Verified gross mass	1000/- per container
7.	Mooring and ancillary functions	4000/- for eight hours or part thereof
8.	Berthing and unberthing assistance services (per Berth or Voyage)	2000/- for twenty-four hours or part thereof
9.	Berthing and unberthing assistance services for Ro-Ro (per berth or Voyage)	1500/-
10.	Seal cutting charge or Seal fixing charge	100/- per container
11.	Loaded Container survey charge	300/- per twenty-foot equivalent unit container and 600/- per forty-foot equivalent unit container
12.	Cargo survey charge	300/- per twenty-foot equivalent unit container and 500/- per forty-foot equivalent unit container
13.	Container entry	150/- per twenty-foot equivalent unit container and 300/- per forty-foot equivalent unit container
14.	Sweeping for spill over cargo	150/- per container
15.	Bagging charge (In pp bags in case of bulk cargo)	13/- per kilogram
16.	Customs appraisalment charges in case of multiple shipping bills	750/- per shipping bill or bill of entry
17.	Internal shifting of loaded container	700/- per twenty-foot equivalent unit container and 1225/- per forty-foot equivalent unit container
18.	Truck entry	50/-
19.	Truck weighment	200/- per truck
20.	Terminal charges Ro-Ro truck	150/- for empty truck 200/- up to 12 metric tonnes 300/- above 12 metric tonnes
21.	Truck parking	100/- per hour Truck arriving at terminal via RORO vessel will be allowed to move out free of charge.
22.	Towage	4000/- per hour
23.	Pilotage	5/- per gross registered tonnage

(IV) Discount

The operator of terminals included in this schedule may offer a discount, if any, on prescribed rates

(V) Revision

- i. the above tariffs shall be revised every year based on a variation in the Wholesale Price Index;
- ii. Wholesale Price Index shall be as published by Reserve Bank of India;
- iii. such revision shall be based on indexation against sixty per cent of the variation in the Wholesale Price Index for a relevant year beginning from the 1st January and ending on the 31st December;
- iv. such revised Ceiling tariff will become applicable after the same has been notified by the concessioning Authority.

(VI) Taxes

Taxes extra, as applicable

Col. MANISH PATHAK,
Secy. [ADVT. III/4/Exty./85/2021-22]

Foot Note : The principal regulations were published in Gazette of India on dated the 16th July, 2011 vide No. IWAI/Cargo/184/2009 and subsequently amended vide no. IWAI/PR-17/IFC/(INTG) /2015 Vol. IV dated the 20th September, 2018 and IWAI/Cargo/184/2009 NoI-II dated 29th July, 2020.

SCHEDULE 9

Terms of Reference for Independent Engineer

1. Scope

1.1. These Terms of Reference for the Independent Engineer (“TOR”) are being specified pursuant to the Contract dated (“Contract”), which has been entered into between the Authority and (“Operator”) for the Project at Multimodal Terminal at Varanasi, Uttar Pradesh on Operation and Management (“O&M”) basis, and a copy of which is annexed hereto and marked as Annex-A to form part of this TOR.

1.2. This TOR shall apply to operation and management of the Project.

2. Definitions and Interpretations

2.1. The words and expressions beginning with or in capital letters used in this TOR and not defined herein but defined in the Agreement shall have, unless repugnant to the context, the meaning respectively assigned to them in the Agreement.

2.2. References to Articles and Annexures in this TOR shall, except where the context otherwise requires, be deemed to be references to the Articles and Annexures of the Agreement, and references to Paragraphs shall be deemed to be references to Paragraphs of this TOR.

2.3. The rules of interpretation stated in Articles 1.2 and 1.3 of the Agreement shall apply, mutatis mutandis, to this TOR.

3. Role and functions of the Independent Engineer

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

- i. review, inspection and monitoring of operation and maintenance as set forth in Paragraph 4;
- ii. review, inspection and monitoring of Operator’s obligations as set forth in Paragraph 5;
- iii. determining, as required under the Agreement, the costs of any works or services and/or their reasonableness;
- iv. determining, as required under the Agreement, the period or any extension thereof, for performing any duty or obligation;
- v. assisting the parties in resolution of disputes as set forth in Paragraph 7; and
- vi. undertaking all other duties and functions in accordance with the Agreement.

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

4. Operation Period

4.1. The Independent Engineer shall review the monthly report on cargo traffic, unit gross output/ discharge rates at berth, daily output rated per vessel, Tariff earned and collected by the Operator and send its comments thereon to the Authority and the Operator within 7 (seven) days of receipt of such report.

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

- 4.3. The Independent Engineer may inspect the Project more than once in a year, if any lapses, defects or deficiencies require such inspections.
- 4.4. The Independent Engineer shall in its operation and maintenance inspection report specify the tests, if any, that the Operator shall carry out, or cause to be carried out, for the purpose of determining that the Project is in conformity with the maintenance requirements. It shall monitor and review the results of such tests and the remedial measures, if any, taken by the Operator in this behalf.
- 4.5. The Independent Engineer shall determine if any delay has occurred in completion of repair or remedial works in accordance with the Agreement, and shall also determine the damages, if any, payable by the Operator to the Authority for such delay.

5. Termination

- 5.1. At any time, not earlier than 90 (ninety) days prior to termination but not later than 15 (fifteen) days prior to such termination, the Independent Engineer shall, in the presence of a representative of the Operator, inspect the Project for determining compliance by the Operator with the requirements set forth in Article 20 and, if required, cause tests to be carried out at the Operator's cost for determining such compliance.

6. Determination of costs and time

- 6.1. The Independent Engineer shall determine the costs, and/or their reasonableness, that are required to be determined by it under the Agreement.
- 6.2. The Independent Engineer shall determine the period, or any extension thereof, that is required to be determined by it under the Agreement.

7. Assistance in Dispute resolution

- 7.1. When called upon by either Party in the event of any Dispute, the Independent Engineer shall mediate and assist the Parties in arriving at an amicable settlement.
- 7.2. In the event of any disagreement between the Parties regarding the meaning, scope and nature of Good Industry Practice, as set forth in any provision of the Agreement, the Independent Engineer shall specify such meaning, scope and nature by issuing a reasoned written statement relying on good industry practice and authentic literature.

8. Other duties and functions

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

9. Miscellaneous

- 9.1. The Independent Engineer shall notify its programme of inspection to the Authority and to the Operator, who may, in their discretion, depute their respective representatives to be present during the inspection.
- 9.2. A copy of all communications, comments, instructions, DPR sent by the Independent Engineer to the Operator pursuant to this TOR, and a copy of all the test results with comments of the Independent Engineer thereon shall be furnished by the Independent Engineer to the Authority forthwith.
- 9.3. The Independent Engineer shall obtain, and the Operator shall furnish in 2 (two) copies thereof, all communications and reports required to be submitted, under this Agreement, by the Operator to the Independent Engineer, whereupon the Independent Engineer shall send 1 (one) of the copies to the Authority along with its comments thereon.

- 9.4. The Independent Engineer shall retain at least one copy each of all DPR and documents received by it, including 'as-built' drawings, and keep them in its safe custody.
- 9.5. Upon completion of its assignment hereunder, the Independent Engineer shall duly classify and list all DPR, documents, results of tests and other relevant records, and hand them over to the Authority or such other person as the Authority may specify, and obtain written receipt thereof. Two copies of the said documents shall also be furnished in their editable digital format or in such other medium or manner as may be acceptable to the Authority.
- 9.6. Wherever no period has been specified for delivery of services by the Independent Engineer, the Independent Engineer shall act with the efficiency and urgency necessary for discharging its functions in accordance with Good Industry Practice.